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**INTERNATIONAL LAW,
ARMS EMBARGOES AND THE
UNITED NATIONS SECURITY COUNCIL**

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Thesis submitted in fulfilment of the requirements for the degree of
Master of Jurisprudence

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May 2007



12 FEB 2008

In memory of Mr. Seán Devereux

1964-1993

Teacher and UNICEF aid worker assassinated in Somalia

www.seandevereux.org.uk

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LIST OF ABBREVIATIONS

AE	Arms Embargo
A/RES/xxxx	United Nations General Assembly Resolution
AJIL	American Journal of International Law
BBC	British Broadcasting Corporation
BFSP	British and Foreign State Papers
BICC	Bonn International Center for Conversion
BWC	Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction
CCWC	Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CFE	Treaty on Conventional Armed Forces in Europe
CHR	Commission on Human Rights (UN)
CRS	Congressional Research Service
CTBT	Comprehensive Nuclear-Test-Ban Treaty
CWC	Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction
CUP	Cambridge University Press
DPRK	Democratic People's Republic of Korea (North)
DRC	Democratic Republic of the Congo (Formerly Zaire)
Durban Declaration	Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance
DUSPIL	Digest of United States Practice in International

	Law
ECOWAS	Economic Community of West African States
ed./eds.	Edition or editor(s)
e.g.	<i>exempli gratia</i> – for example
et al.	<i>et alia</i> – and others
et seq.	‘and the following [pages]’
FRY	Federal Republic of Yugoslavia (i.e. Serbia and Montenegro) – part of the former Yugoslavia.
GA	General Assembly
GC	Geneva Convention(s) (1949)
1925 Geneva Protocol	Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare
Hague Convention	Hague Convention for the Suppression of Unlawful Seizure of Aircraft
HCOC	Hague Code of Conduct against Ballistic Missile Proliferation
HFG Review	Harry Frank Guggenheim Review
HRC	Human Rights Council (UN)
IAEA	International Atomic Energy Agency
<i>Ibid.</i>	<i>Ibidem</i> – the same place – References corresponds to that which is contained in the preceding citation
<i>I.e.</i>	<i>Id est</i> (That is)
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly
ICRC	International Committee of the Red Cross
IDP	Internally displaced person(s)
ILC	International Law Commission
ILC Draft Articles	International Law Commission Articles on Responsibility of States for Internationally Wrongful Acts (2001)
Ind.LJ	Indiana Law Journal

INTERPOL	International Criminal Police Organisation
IPS	International Peace and Security
Iran	Islamic Republic of Iran
IRRC	International Review of the Red Cross
JCSL	Journal of Conflict and Security Law
KLA	Kosovo Liberation Army
LURD	Liberians United for Reconciliation and Democracy
Mich.JIL	Michigan Journal of International Law
MINUSTAH	United Nations Stabilization Mission in Haiti
MoD	Ministry of Defence (UK)
MODEL	Movement for Democracy in Liberia
Montreal Convention	Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo
MTCR	Missile Technology Control Regime
No.	Number or numbers
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
NSA	Non-state actor
NSG	Nuclear Suppliers Group
NY	New York
NYBIL	Netherlands Yearbook of International Law
<i>Op. cit.</i>	Opus citatum – in the work cited previously by the same author
OPCW	Organisation for the Prohibition of Chemical Weapons
OSCE	Organisation for Security and Cooperation in Europe
Ottawa Convention	Convention on the prohibition on the Use, Stockpiling, Production and Transfer of Anti-

	Personnel Mines and their destruction
OUP	Oxford University Press
¶	Paragraph or paragraphs (when used in relation to a SC resolution, this symbol indicates an operative paragraph)
P5	Permanent Five (Members of the Security Council)
p./pp.	Page or pages
PLO	Palestine Liberation Organisation
PoA	Programme of Action
RDI	Rivista di Diritto Internazionale
Rep.	Report or Reports
RES	Resolution
RUF	Revolutionary United Front
SALW	Small Arms and Light Weapons
SALW Review Conference	UN Conference to Review Progress made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects 2006
SC/Council	United Nations Security Council
Southern Rhodesia	Now, Zimbabwe
S/RES/xxxx	United Nations Security Council Resolution
Tokyo Convention	Tokyo Convention on Offences and Certain other Acts Committed on Board Aircraft
UCDB	Uppsala Conflict Database
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNAMIR	United Nations Assistance Mission for Rwanda
UNAMSIL	United Nations Mission in Sierra Leone
UNBISnet	United Nations Bibliographic Information System

UNIFIL	United Nations Interim Force in Lebanon
UNITA	União Nacional para a Independência Total de Angola / National Union for Total Independence of Angola
UNITAF	Unified Task Force
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNMIL	United Nations Mission in Liberia
UNMOVIC	United Nations Monitoring, Verification and Inspection Commission
UNOCI	United Nations Operation in Côte d'Ivoire
UNOMSIL	United Nations Observer Mission in Sierra Leone
UNPROFOR	United Nations Protection Force (Former Yugoslavia)
UNSCOM	United Nations Special Commission
UNTS	United Nations Treaty Series
v.	Versus
Viz.	That is to say/namely
Vol.	Volume or Volumes
WMDC	The Weapons of Mass Destruction Commission
YBILC	Yearbook of the International Law Commission

ABSTRACT

Due to the political aspects of international law and the political nature of the problems involved in international relations, appreciation of the legal nature of United Nations Security Council arms embargoes is lacking. Based upon a review of the practice of the Council, this thesis explores the operation of arms embargoes within the overall scheme of international law and highlights how these measures provide an interface between the laws of collective security, armed conflict, human rights and arms control. The author outlines existing arms control regimes and the law applicable to the study of arms embargoes; examines the law relating to the powers of the United Nations Security Council under Chapter VII of the Charter of the United Nations and the legal limits thereto; identifies the patterns in practice by expounding the nature, scope and functions of arms embargoes and comments on the possible existence of a normative framework; explores the specific legal mandate for arms embargoes and considers possible alternative legal bases; and finally, investigates other issues of international law arising from the use of arms embargoes. The powers of the Security Council exist for the pursuit of one central outcome – the maintenance of international peace and security. This thesis argues that the logical way to achieve this outcome in situations of armed conflict is to remove the tools with which those types of threats are created and sustained. Conventional weapons (in particular, small arms and light weapons) are the principal, although not the exclusive, tools of armed conflict. Arms embargoes imposed in the context of an armed conflict can be legally justified with the simple objective of suppressing conflict by means of arms control.

INTRODUCTION

The Problem in General

*It stands to reason that in dealing with legal questions the elimination of the political issues involved is always relative, never absolute.*¹

Weapons provide a means of attack as well as defence. Today the manufacture and sale of armaments and related matériel can both destroy and sustain economies and the availability of weapons can create both insecurity and security. The existence and proliferation of a variety of armaments is clearly of international concern² and poses a number of interrelated legal problems and political dilemmas. Some overarching legal problems relevant to this study are the deficiencies in and the general lack of enforceable international legal regulation of conventional armaments. The specific legal problem for this thesis is to understand the operation of United Nations Security Council ('Council') arms embargoes within the overall scheme of international law and to assess the legal implications thereto, including in to which legal sphere or spheres they are or could be placed.

McClelland³ explains that the two existing conventional arms control approaches taken in international humanitarian law ('IHL') have expanded since attention has been focused on post-conflict situations, from those that prohibited particular weapons⁴ and those that restricted 'the use of weapons by reference to their wounding effects' to including also, restrictions on 'those weapons that fail to function as intended' and

¹ Kelsen, H. *Preface to The Law of the United Nations – A Critical Analysis of Its Fundamental Problems* ('Law of the UN') (1950) Stevens and Sons Limited (London) at p.xiii.

² As is the 'regulation of armaments' in general – see, e.g. Articles 26 and 47 of the Charter of the United Nations ('Charter') (Signed at San Francisco on 26 June 1945; entry into force 24 October 1945. (All future references to an 'Article' refer to provisions of the Charter unless otherwise stated.)

See also the Council's earliest considerations of the issue: S/RES/18 of 1947; S/RES/68 of 1949; S/RES/77 of 1949; S/RES/78 of 1949; S/RES/79 of 1950 and S/RES/97 of 1952.

³ McClelland, J. *Conventional Weapons: A Cluster of Developments* (2005) 54 ICLQ 755 at pp.755-6 and his note 1 (omitted).

⁴ However, few types of conventional weapons are actually prohibited and illegal *per se*. Prohibitions on types of weapons are more common for Weapons of Mass Destruction 'WMD', (i.e. nuclear, biological and chemical weapons) ballistic missiles and radiological weapons.

regulations designed to ensure ‘the clearance of explosive remnants of war afterwards.’⁵ Another important area of arms control is that which aims to restrict trafficking of weapons by reference to their end-users and end-uses. Within municipal legal systems, export controls and the use of end-use assurances and end-user certificates aim to prevent the export of weapons to ‘undesirable’ recipients based on policies specific to that state. Some national policies⁶ and parts of primary legislation⁷ on export controls are guided by international practice⁸ and standards, and secondary legal instruments⁹ are used as a method of implementation by UN Member states of UN sanctions in general. The reported breaches¹⁰ of multilateral arms embargoes indicate, that national policies are not adequately implemented and in many states such policies simply do not exist.¹¹ These national controls, while noteworthy, are still inadequate for the task of managing the global problem of unregulated arms trafficking.¹²

The only *international* legal approach¹³ which currently exists to restrict trafficking of

⁵ McClelland *op.cit.* at p.767.

⁶ For the most recent official position of the UK, see its ‘Strategic Export Controls Annual Report 2005’ available at –

<http://www.fco.gov.uk/Files/kfile/FCO-Annual%20Report%202005.LR.pdf> especially at §2.3 ‘Embargoed destinations’ p.12 (April-2007).

⁷ See e.g., the UK’s Export Controls Act 2002 & Schedule thereto <http://www.opsi.gov.uk/acts/acts2002/20020028.htm> (April-2007).

⁸ The function of UK statutory instruments regarding arms embargoes is ‘to give effect to decisions of [the] Council’.

⁹ See Appendix A, p.225 in Cortright and Lopez (eds.) *Smart Sanctions – Targeting Economic Statecraft* (‘Statecraft’) (2002) Rowman and Littlefield.

¹⁰ See Table 3.7 in A Project of the Graduate Institute of International Studies, Geneva, *Small Arms Survey 2002 Counting the Human Cost* (‘SAS-2002’) (2002) OUP at p.132.

¹¹ ‘[I]t is a reality that many countries have no export control mechanisms, or have systems that are weak and easily abused. This situation allows irresponsible arms traders overseas to make sales with little regard for how the arms will be used.’ *Ibid.* note 6 at §2.1 (p.10).

¹² E.g. End-use assurances are easily forged - See Chapter 3 of ‘SAS-2002’ *op.cit.*

For suggested improvements, see Hagelin, B. *International Armament Embargoes and the Need for End-Use Documents* in Wallenstein, P and Staibano, C (eds.) *International Sanctions – Between Words and Wars in the Global System* (‘International Sanctions’) (2005) Frank Cass at pp.75-91.

¹³ Note the existence of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (‘Firearms Protocol’) which places restrictions on weapons by reference to a factual quality of the weapon’s status in law. See further *infra*, Chapter One.

weapons by reference to their end-users and their ultimate destinations is the use of mandatory multilateral arms embargoes by the Council under Chapter VII of the Charter. However, a difficulty arises immediately because although arms embargoes represent one method of existing international regulation for conventional weapons, this function transpires as a side-effect of their primary function which, in international law, is as a demonstration of collective security rather than an approach to arms control.

Arms embargoes impose legally binding obligations on all states to prevent the sale, supply or transfer of conventional weapons to certain places or to certain entities or individuals, as decided by the Council on behalf of the UN. These temporary restrictions are motivated by reference to unacceptable situations or acts which threaten or have breached international peace and which are created and/or prolonged by those end-users and/or are occurring within those destinations. The UN system for imposing arms embargoes, unlike the approaches described by McClelland, does not necessarily operate under the auspices of IHL.¹⁴ The application of arms embargoes is not restricted to the control of conventional weapons alone and such application only endures for as long as such threats or the effects of a breach persist.¹⁵ In theory, arms embargoes can prevent or halt conflict¹⁶ by removing the flow of weapons and related matériel to the targeted area, thus contributing significantly to the maintenance or restoration of international peace and security ('IPS'). In addition, some of the objectives ascribed to the multifaceted UN arms embargoes correspond to those of the 'non-collective security' arms control approaches.¹⁷ These include, ambitions to limit or suppress conflict (by controlling either the type or number of new weapons permitted to enter the conflict zone); and ambitions to maintain the security and development

¹⁴ However, this legal sphere is relevant to the vast majority of arms embargoes.

¹⁵ This has an effect on the legal status of the measures which 'might...be regarded as analogous to executive regulations rather than to true legislation.' Frowein, J.A. and Krisch, N. in Simma, B. (ed.) *The Charter of the United Nations: a Commentary* ('Simma') (Vol.1) 2nd ed. (2002) OUP at p.708-9.

¹⁶ And in practice it is possible that arms embargoes have contributed to immobilising conflict: 'In December 1996, during a flare-up of renewed fighting in Mogadishu, the militia factions ran out of ammunition, and as a result the battle ended'. Cortright, D. & Lopez, G.A. *et al.* *The Sanctions Decade: Assessing UN Strategies in the 1990s* ('Sanctions Decade') A Project of the International Peace Academy (2000) Rienner at p.186 (their footnote omitted).

¹⁷ I.e. those outlined by McClelland.

prospects of the post-conflict situation (by removing munitions and old weapons from the conflict zone and continuing to restrict transfers of new weapons into the zone).

The deficiencies of arms embargoes have been expounded on many occasions by a variety of authors including academics,¹⁸ non-governmental organisations (NGOs),¹⁹ the media,²⁰ the UN²¹ and combinations of these.²² Current criticism tends to focus not on failings in the design²³ of these measures, but in their implementation, monitoring and enforcement,²⁴ however it is submitted that all aspects require further analysis in order for arms embargoes to be better understood and therefore used in a more efficacious manner. This includes acknowledging the appropriate legal spheres within which arms embargoes operate. According to the Small Arms Survey '[a]rms embargoes represent a unique combination of *Realpolitik*, carrot-and-stick diplomacy and ethical foreign policy motivated above all by the hope of ending conflict or ending oppression.'²⁵ This description emphasises the perception of arms embargoes as political tools, while ignoring appreciation of their legal functions and status. This omission supports the

¹⁸ See e.g. Cortright and Lopez at p.14; Bondi, L. at pp.109-123; Brzoska, M. at pp.125-143; and Elliot, K.A. at pp.174-5 all in 'Statecraft' *op.cit* note 9.

¹⁹ See e.g. Control Arms 2006 *UN arms embargoes: an overview of the last ten years* available at: http://www.controlarms.org/find_out_more/reports/UN-arms-embargoes-final-13306.pdf (April-2007).

²⁰ See e.g. *Arms traders 'dodging embargoes'* (BBC) <http://news.bbc.co.uk/1/hi/world/5398424.stm>; and *DR Congo arms embargo 'failing'* (BBC) <http://news.bbc.co.uk/1/hi/world/africa/6055864.stm> (October-2006).

²¹ See e.g. Report of the Secretary-General on Small Arms S/2003/1217. (Although a more recent report (S/2005/69) notes progress in the areas of monitoring and enforcement.)

²² See e.g. the Bonn-Berlin process in Germany, 21-23 November 1999 (First Expert Seminar - Smart Sanctions, The Next Step: Arms Embargoes and Travel Sanctions).

– final documents available at <http://www.bicc.de/events/unsanc> (April-2007).

Individual conference papers on arms embargoes included: Anthony, I. *Improving the Cooperation of Major Arms Suppliers*; Bondi, L. *Arms Embargoes: A View from a concerned NGO*; Loy, M. *Proper and Prompt National Implementation of Arms Embargoes: The German Case*; Luck, E.C. *Choosing Words Carefully: Arms Embargoes and the UN Security Council*; Nathan, L. *The Absent Sentry - Sanctions and the Problem of Weak Border Control*; and Rydell, R. *Monitoring United Nations Arms Embargoes*. Available at <http://www.bicc.de/events/unsanc/1999/papers.php> (April-2007).

²³ Although see Bondi, L. *Arms Embargoes: In name only?* in 'Statecraft' *op.cit* pp.109-123 at p.115.

²⁴ See Cortright and Lopez 'Statecraft' *op.cit*. p.14.

²⁵ 'SAS-2002' *op.cit*. note 10 at p.131 (Italics in original).

need for a thorough legal analysis of an area largely controlled by politics and humanitarian ideals.

Conventional Weapons and the Unique Problem of Small Arms and Light Weapons

It is trite to note that *conventional* weapons happen to be the standard types of weapons used during armed conflicts. They are considered to be an acceptable means of warfare under existing IHL because they have not yet been prohibited. The notable exception to this assertion is the use of antipersonnel landmines²⁶ and in the near future may include indiscriminate cluster munitions.²⁷ There are relatively few multilateral legal regimes²⁸ in operation to prohibit, restrict or regulate the use of conventional weapons and certainly not to the degree that exists for nuclear,²⁹ chemical and biological weapons³⁰ and missiles.³¹ There is a wealth of opinion³² that asserts, *inter alia*, the lethal and

²⁶ See the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction. ('Ottawa Convention') http://www.un.org/Depts/mine/UNDocs/ban_trty.htm (February-2007).

²⁷ See, <http://www.un.org/apps/news/story.asp?NewsID=21670&Cr=cluster&Cr1=munitions> (February-2007) and <http://www.regjeringen.no/en/ministries/ud/Selected-topics/Humanitarian-efforts/The-Norwegian-Governments-initiative-for/Cluster-Munitions---Norwegian-Initiative.html?id=449312> (March-2007).

See also an announcement by the MoD (UK) on 20 March 2007 that in the future only 'smart' cluster munitions will be used by the UK—

<http://www.mod.uk/DefenceInternet/DefenceNews/EquipmentAndLogistics/UkBecomesFirstMajorPowerToScrapdumbClusterMunitions.htm> (March-2007) See also issue No.158 of 'Preview' (April 2007) (MoD magazine) at p.20: "Use of Britain's remaining cluster munitions will continue to be regulated by rules of engagement and internal scrutiny procedures *designed to adhere to international law* and reflect humanitarian values." (My emphasis).

²⁸ For example the CCWC (1981); the CFE 1990; However there are a number politically binding arrangements and regional regimes in place (see below, Chapter One).

²⁹ Treaties: Treaty on the Non-Proliferation of Nuclear Weapons (NPT) (1968); CTBT (1996)(not yet in force); plus several nuclear weapons free zone treaties. Monitoring: the IAEA; the NSG and the SC Committee pursuant to Resolution 1540.

³⁰ Treaties: CWC (1993); BWC (1972), 1925 Geneva Protocol. Monitoring: OPCW; the Australia Group. See also, S/RES/620 of 1988 condemning the use of chemical weapons in the Iran/Iraq conflict.

³¹ HCOC (launched 2002) – supplement to the MTCR.

³² See e.g. the published studies list of the WMDC at p.217 of *Weapons of Terror – Freeing the World of Nuclear, Biological and Chemical Arms* and available at <http://www.wmdcommission.org> (April-2007).

undesirable nature of WMD. The threat posed by nuclear weapons in particular, however variable in its urgency and likelihood of reaching fruition, is real and the consequences thereof are potentially devastating. The past³³ and potential³⁴ uses of nuclear weapons embody a 'shock factor' which helps to maintain its status as an international priority for many states. With the difficult issue of national security interests in mind, there is not a notable *legitimate interstate trade* in nuclear weapons technology and weapons or their delivery systems, precisely because international regulation has been developed.

Throughout history, considerations regarding to whom and to where weapons should be sold have often been based on the strategic (both military and political) significance of the country of destination,³⁵ rather than for what purposes and by whom the weapons would eventually be used. States tend to be willing to trade their technologies and resources with their allies, especially those who are geographically close to their enemies. The fact that the arms trade is a global business does not detract from the issue of arms control. Controlling the proliferation of conventional arms does not entail or aspire to the end of the trade absolutely. It simply means in certain circumstances a control is placed upon where and to whom the arms can legally reach.

By imposing a unilateral arms embargo, a state makes a decision that, for a particular reason, a certain recipient state or entity should not have particular armaments. By imposing a multilateral arms embargo, the international community of states (as represented³⁶ in the Council) makes the same decision and judgement. The particular reasons will of course vary, not only between unilateral and multilateral decision-makers, but also from case to case. What should interest international lawyers are the implied or given reasons for multilateral action because such action gives rise to international legal obligations. In order not to be arbitrary decisions (which are

³³ Hiroshima and Nagasaki in Japan.

³⁴ An example of a current major nuclear threat is that of Iran – a frequent item on the agenda of the Council.

³⁵ E.g. Kuwait is a key ally for the UK in the Middle East.

³⁶ For discussion on the composition of the Council, see *infra* Chapter Two.

undesirable in law) these reasons must bear relevance to international norms.

A further important distinction is that there is a fundamental understanding that control over the proliferation of WMD, (nuclear weapons in particular) is desirable, irrespective of the final recipient.³⁷ The opening preambular section of Resolution 1540³⁸ pays due regard to this: “Affirming that proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constitutes a threat to [IPS]...”.

One aim of the NPT was to ensure that only the nuclear weapons states would keep nuclear weapons and gradually try to disarm and all others would not try to acquire them, thus supporting non-proliferation. With regard to conventional weapons, proliferation *per se* is not considered to be a threat to IPS; however, there is a growing understanding that proliferation based upon the identity of the end-user or end-use can modify this default position.³⁹ It is suggested that improved comprehension of arms embargoes could advance the aforementioned growing understanding and could also contribute to the development of an Arms Trade Treaty (‘ATT’).⁴⁰

³⁷ See Article 1 of the NPT: ‘Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever...’ (My emphasis).

³⁸ S/RES/1540 (That the Council also stated its concern about the risk posed by non-state actors vis-à-vis WMD proliferation does not detract from the inherent threat which emanates from the weapons themselves.)

³⁹ Concerns have been voiced about the need to ensure that conventional weapons, in particular illicit SALW, are not in ‘the wrong hands’.

See e.g. statement of 27 June by New Zealand during the High Level Segment of the UN Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in SALW in All Its Aspects, 2006: ‘New Zealand remains fully committed to the Programme of Action and to the advancement of initiatives which are designed to prevent small arms and light weapons falling into the wrong hands, or being used illegally.’

Available at: <http://www.un.org/events/smallarms2006/pdf/arms060627newzealand-eng.pdf> (April-2007) (‘UN Review Conference’).

⁴⁰ Part of the motivation for an ATT is to minimise the risk of diversion by controlling the legal trade, thereby helping to isolate the illicit trade and its brokers.

See e.g. http://www.lcil.cam.ac.uk/projects/arms_trade_treaty_project.php;

<http://www.controlarms.org>; <http://www.armstradetreaty.com>;

<http://www.fco.gov.uk/Files/kfile/ATT%20-%20UK%20contribution%20to%20the%20UN%20-%20final,1.pdf> (April-2007).

The current disparity between the levels of international regulation of WMD and conventional weapons is exacerbated by the lack of binding national and international standards regarding the most prevalent type of conventional weapons used in armed conflict - small arms and light weapons ('SALW'). This is compounded by setbacks in political processes which could further the necessary political will for action.⁴¹ US foreign policy makers lack faith⁴² in the multilateral process undertaken at the UN, and although this does not detract from the operation of arms embargoes, it does detract from the potential to increase levels of international regulation. Although the US was 'pleased to join the consensus...in the adoption of the Firearms Protocol'⁴³ it has neither signed nor ratified this legal instrument.⁴⁴ In some ways however, the US position complements the operation of arms embargoes, because its stance on the political processes where SALW are under discussion, views such weapons strictly as military weapons,⁴⁵ i.e. those designed for use and those being used during armed conflict

⁴¹ Such as the eventual collapse of the UN Review Conference where the final document of the Conference could not be adopted due to the failure to achieve consensus within the allotted time. See A/CONF.192/2006/RC/9 at ¶30.

⁴² This can be implied by its negative vote in the GA on the recent ATT resolution (Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms - A/RES/61/89 of 18 December 2006 - Meeting record: A/61/PV.67 of 6 December 2006 (pp.29-31) Voting record: 153-1-24 (USA against)) and its opposition to follow up processes to the UN Review Conference:

(...the United States will not commit to another Review Conference. We will only consider proposals regarding follow-on actions that are focused, practical, and intended to strengthen the implementation of the Programme of Action.' - US Statement during the High Level Segment Tuesday 27 June 2006. (Available - <http://www.un.org/events/smallarms2006/pdf/arms060627usa-eng.pdf>)).

Indeed, in its statement at the 2001 Conference the US explained it would 'not support a mandatory Review Conference...which serves only to institutionalize and bureaucratize this process.' Available at: http://www.un.int/usa/01_104.htm (April-2007).

⁴³ A/55/PV.101 at p.11 - note the non-binding nature of GA resolutions.

⁴⁴ http://www.unodc.org/unodc/crime_cicp_signatures_firearms.html (April-2007).

⁴⁵ See the statement by the US at the first UN SALW Conference in 2001 (*Ibid.* note 42):

"Small arms and light weapons, in our understanding, are the strictly military arms - automatic rifles, machine guns, shoulder-fired missile and rocket systems, light mortars - that are contributing to continued violence and suffering in regions of conflict around the world." Note also: "Our focus is on addressing the problem where it is most acute and the risks are highest: regions of conflict and instability."

However, the US perspective may detract from UN Programme of Action (Section IV of the Report of the 2001 Conference - A/CONF.192/15) which considers the illicit trade *in all its aspects*, i.e. its consideration is broader than that of the world's regions of conflict.

situations. SALW have overwhelmingly become the combatant's conventional weapons of choice. SALW are now so commonplace that the world appears to have become desensitised to their lethal nature and their capacity for mass destruction⁴⁶ (of, *inter alia*, life, social structures and regional stability). These factors do not represent the root cause of the problem of the lack of regulation, but they exacerbate it by detracting from the necessary political will.

As the focus of this thesis is on Security Council action in relation to arms embargoes, the UN's own description of SALW and ammunition⁴⁷ is the most convenient starting point:

Small arms include:

Revolvers and self-loading pistols; Rifles and carbines; Sub-machine-guns; Assault rifles and Light machine-guns.

Light weapons include:

Heavy machine-guns; Hand-held under-barrel and mounted grenade launchers; Portable anti-aircraft guns;** Portable anti-tank guns, recoilless rifles;** Portable launchers of anti-tank missile and rocket systems;** Portable launchers of anti-aircraft missile systems and Mortars of calibres of less than 100mm.

⁴⁶ 'The death toll from small arms dwarfs that of all other weapons systems—and in most years greatly exceeds the toll of the atomic bombs that devastated Hiroshima and Nagasaki. In terms of the carnage they cause, small arms, indeed, could well be described as "weapons of mass destruction". Yet there is still no global non-proliferation regime to limit their spread, as there is for chemical, biological and nuclear weapons.' *We, the Peoples: The Role of the United Nations in the 21st Century* - Millennium Report of the Secretary General (UN Doc. [ST/]DPI/2103DPI/2103) at p.52.

⁴⁷ UNGA - Report of Governmental Experts on Small Arms, A/52/298, 1997 at p.11-12 ¶26.

**These weapons are sometimes mounted. Although explosives and landmines were also included in the 1997 report, they will be excluded from the focus of this work because progress is evident in these areas, see e.g. notes 26 and 27 *supra*. This definition was confirmed in A/CONF.192/2 – Report of the GGE established pursuant to A/RES/54/54 V of 15 December 1999, entitled 'Small arms'.

⁴⁸ See Pézard, S. and Anders, H. (eds) *Targeting Ammunition – A Primer* (2006) Small Arms Survey.

Also note the US' opposition to discussion of this issue in the multilateral arena – see *ibid.* note 42 –

Ammunition⁴⁸ includes:

Cartridges (rounds) for small arms; Shells and missiles for light weapons; and Mobile containers with missiles or shells for single-action anti-aircraft and anti-tank systems.

For the purposes of this essay, the phrase 'arms and related matériel' in Council arms embargoes on conventional weapons shall be assumed to include, but not be limited to, all of the above.⁴⁹ However, it should be noted that these definitions were not 'generally accepted' in 2002.⁵⁰

Difficulties of control particular to SALW: their nature and abundance

The problem of controlling SALW is compounded by their physical nature, for example, they are small and therefore easy to conceal, and so illicit transfers (including across borders into embargoed destinations) are more difficult to detect than might be the case for larger conventional weapons. Indeed, the so-called 'Ant Trade'⁵¹ shows how single weapons can and will cross borders illegally. Military assault rifles are the most prevalent weapon in armed conflict today and of particular concern is Kalashnikov's assault rifle, the AK-47, due to its durability, longevity and simple design. It can be manufactured cheaply and on a grand scale and will be operational for many years. It can also be used by almost anyone, including children, as a single shot rifle (semi-automatic) and a fully automatic machine gun and it can be fired one-handed. Even if ammunition runs out, it can be fitted with a bayonet and the butt of the gun can be used as an improvised club-type weapon. However coincidental it may have been, the AK-47 is well-suited to the type of short-range battles, terrain and combatants that are most commonly using it in the internal conflicts on the African continent.

US Statement during UN Review Conference.

⁴⁹ In most cases all large conventional weapons will also be prohibited by an embargo. Cases that explicitly exclude the possibility of SALW by naming only large conventional weapons (e.g. S/RES/1718 on the DPRK) shall be excluded from this study. See also ¶4 of S/RES/591 of 1986 from which it could be implied that 'arms and related matériel' means 'all nuclear, strategic and conventional weapons'.

⁵⁰ Goldblat, J. *Arms control: the new guide to negotiations and agreements* (2002) Sage Publications at p.249.

⁵¹ 'SAS-2002' *op.cit* at p.135.

Direct and Indirect Consequences of Small Arms Proliferation

When speaking of SALW's, former UN Secretary-General Kofi Annan has said '...no one can deny the global scope of the human tragedy that has arisen from their illicit acquisition and use.'⁵² Although this thesis will not concentrate on the humanitarian impact of small arms,⁵³ it is a feature which must be brought to and remain within the reader's attention. The first Small Arms Survey publication states that 'the gross estimate of global deaths from all forms of homicide, war and suicide in 1998 stood at 2,272,000...from war, the number totalled 588,000' and then estimates 'that at least 50 per cent of these conflict-related deaths can be attributed to the intentional use of small arms and light weapons.'⁵⁴ However, the problems do not end where the physical effects⁵⁵ of small arms end and so it not simply the use (or rather misuse) of small arms that is at issue. Small arms are used as tools of fear and manipulation and in their possession alone, there is a great threat. This is especially relevant to post conflict situations where civilians and ex-combatants are highly vulnerable, where small arms are abundant and where the rule of law is least effective. Small arms have been used to force the displacement of individuals⁵⁶ and the recruitment of child soldiers.⁵⁷ The threat they pose can facilitate sexual violence and disrupt development programmes⁵⁸ designed to assist children in conflict and post conflict situations, to name but a few of their negative impacts. Other authors⁵⁹ have divided these issues into direct and indirect

⁵² Foreword – March 2002 in 'SAS-2002' *op.cit.*

⁵³ The International Action Network on Small Arms (IANSA) website (<http://www.iansa.org>) for example, displays a counter of the number of gun deaths since the 1st of January of each year. As of 25 November 2005 the figure for 2005 stood at 278800. As of 07 March 2007 the figure for 2007 stood at 65000. In addition, the 'Control Arms Campaign' presented the 'Million Faces' petition in demand of an international treaty for the arms trade to Kofi Annan at the opening to the UN Review Conference.

⁵⁴ A Project of the Graduate Institute of International Studies, Geneva, *Small Arms Survey 2001 Profiling the Problem* (2001) OUP at p.236.

⁵⁵ i.e. fatal and non-fatal injuries.

⁵⁶ 'SAS-2002' *Op.cit.* p.167-70.

⁵⁷ *Ibid.* p.171-2.

⁵⁸ *Ibid.* p.172-3.

⁵⁹ Godnick, W., Laurance, E.J., Stohl, R., and Small Arms Survey - *Small Arms and Light Weapons: A Call for Research* HFG Review pp.10-20 Spring 2005.

effects of small arms misuse.

The use of small arms in the commission of 'direct' crimes⁶⁰ can include death by unlawful killing, bodily or psychiatric injury, terror, rape and intimidation.⁶¹ Most states have municipal legal mechanisms in place to deal with such offences. In lawless environments, as is not unusual in countries suffering from armed conflict, these crimes often escape punishment as the identification and apprehension of offenders is an arduous task in itself and because of the lack of a functioning criminal justice system. In addition, there are many equally devastating indirect effects⁶² of SALW proliferation such as the prolongation of conflicts and increased numbers of refugees and internally displaced persons (IDPs) and the effects that these factors have on instability and insecurity in the particular regions. These subsidiary effects create additional hindrances to economic and social development thus causing enormous numbers of indirect deaths out of the conflicts. These deaths can be caused by famine, strains on medical resources and interruptions of international relief programmes. As attempts to lessen the need for emergency relief are hampered, the longer-term effects of the disruption of international development programmes could impede, for example, fulfilment of the Millennium Development Goals,⁶³ and other international pursuits. Although these indirect effects are more obscure and harder to identify, they represent problems that can be partially alleviated by humanitarian efforts. This unfortunately presents somewhat of a paradox as to achieve suitable conditions in which aid work can be applied (as is essential to this alleviation) security needs to be improved, which almost always includes the provision of armed protection.

⁶⁰ Of course, SALW can also cause death without the commission of direct or indirect crimes - commonly by accidental shootings and suicide.

⁶¹ As expounded by Godnick *et al.* (*Ibid.* note 59) at pp.10-15, the direct effects list included: Deaths, injuries and disabilities; Costs of treating injuries and disabilities; Terror; Intimidation; Other psychological effects; Particular vulnerability of women and children; *Increased potential for violations of human rights law and international humanitarian law*; Threats to humanitarian intervention; and Outbreak of intergroup violence. (My emphasis).

⁶² *Ibid.* pp.15 *et seq.*

⁶³ <http://www.un.org/millenniumgoals> (April-2007).

The Aims of this Thesis

This thesis will first outline existing arms control regimes and the law applicable to the study of arms embargoes (Chapter One); it will examine the law relating to the powers of the Security Council under Chapter VII of the Charter of the United Nations and legal limits thereto (Chapter Two); it will identify patterns in practice to thereby show whether or not past and current practice has contributed to the existence of a normative framework for the use of arms embargoes. To do this it will be necessary to expound the nature, scope and functions of mandatory, multilateral arms embargoes (Chapter Three) based upon the review and classification of the practice of the Security Council in the imposition, termination, implementation and enforcement of arms embargoes on conventional armaments⁶⁴ (Annexed Tables); it will explore the specific legal mandate for such arms embargoes and will consider possible alternative legal bases (Chapter Four); and finally, it will investigate other issues of international law arising from the use of arms embargoes (Chapter Five). Through these considerations, this thesis aims to portray the strengths and weaknesses of using these legal tools to achieve primarily political goals, including the goal of collective security.

⁶⁴ The issue of international terrorism will be considered only in so far as it relates to the targets of arms embargoes, as the scope of this thesis is not wide enough to give the issue due consideration.

CHAPTER ONE

RELEVANT LEGAL SPHERES AND EXISTING ARMS CONTROL REGIMES

1. Introduction

Mandatory, multilateral arms embargoes are complex measures. Like all Chapter VII¹ measures, they embody legal as well as political commitments and carry the potential to amalgamate reactive and preventative action. They require international law for their imposition; national law for their implementation; and a combination of both for their enforcement and monitoring. Unlike all Chapter VII measures, the use of arms embargoes reveals a unique interface between collective security law, arms control law, IHL and international human rights law. This creates a number of legal spheres under which international regulation based upon the end-user and end-use could be placed. Although these factors are potentially applicable to arms embargoes on any types of weapons, the necessity of understanding and improving regulations for conventional weapons (in particular, SALW) was outlined in the introduction.

There is a need to understand existing regulation in order to understand where arms embargoes might best fit into the international legal system. Is it solely within the collective security system under the Charter as it currently operates? Or is there scope in international law to include Council arms embargoes within part of a potentially emerging global arms control approach which regulates particular instances of arms trafficking by reference to an objectionable end-user or end-use of the weapons? Could this potential approach be justified under customary international law ('CIL') due to the absence of the explicit consent of states as would be evident in a treaty? In the absence of an active regime of collective security, individual states are free to choose² to where and whom to sell³ legal weapons. But when states act collectively through the UN Security Council against another sovereign state, thereby impeding these freedoms, can

¹ Chapter VII of the Charter – this will be detailed in Chapter Two.

² Although as will be outlined later in this chapter, there are several regional arrangements designed to guide conduct on this matter.

³ Indeed, states are also able to choose from where and whom to buy conventional weapons.

this be justified under any international law other than the law of collective security? Do states have an obligation to intervene if breaches of peremptory norms of international law are taking or haven taken place?⁴ Is the existence of enforcement measures the only legal rule which supersedes the principle of non-intervention?⁵

The Ottawa Convention demonstrates an interface between some of the areas noted above as it is 'an arms control treaty...that fulfils humanitarian purposes.'⁶ Not only does it prohibit the use, development, production, other acquisition, stockpiling, retention or transfer⁷ of a type of conventional weapon based on its (superfluous) wounding effects,⁸ it also provides for the ultimate elimination of the weapon.⁹ Must the approaches of collective security and arms control operate independently or can arms embargoes legitimately satisfy both needs simultaneously? Is it within the purview of the Council to openly incorporate an element of arms control into its responsibilities under the Charter?

2. The (lack of) arms control law - existing initiatives, arrangements and instruments regarding conventional arms, in particular SALW

2.1. The work of the General Assembly

2.1.1. Mandate

The General Assembly (GA) has a role in the maintenance of IPS supplementary to that of the Council. Under Article 12, the GA is not permitted to make recommendations relating to any matter on the Council's agenda, except at the request of the Council. However, in response to an impasse in Council discussions, the GA did pass a

⁴ However, intervention in the form of an arms embargo may not always prove to be appropriate in the circumstances, as has been argued regarding the Bosnian Genocide at Srebrenica. For confirmation of the genocide see the recent ruling in the ICJ - Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) *Judgment of 26 February 2007* at ¶297 ('Genocide Judgment 2007').

⁵ See Art 2(7) Charter.

⁶ White, N.D. *The Future of Arms Control Law: An Overview of the Workshop* ('Future of Arms Control') (2004) 9(3) JCSL 299 at p.299.

⁷ Article 1(a) and (b) of the Ottawa Convention.

⁸ Preamble *ibid.*

⁹ Article 2 *ibid.*

resolution in 1950¹⁰ to assert its power to consider matters relating to IPS,

‘...in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression...with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore [IPS].’¹¹

It has been argued that this resolution could be *ultra vires*. The references to threats to and breaches of peace and acts of aggression in the resolution, match the specific threshold events, understood to be the necessary process the Council will undertake, in exercising its Chapter VII powers.¹² However, the resolution constitutes only a recommendation of the GA and is therefore not legally binding.¹³ Despite this, it should be noted that GA resolutions still carry potential legal weight as they could have a role in the formation of CIL.¹⁴ In addition to this GA resolutions can be instrumental in ascertaining the status of political will in respect of an issue. Indeed, in relation to illicit SALW the GA has adopted a substantial number of resolutions.¹⁵

Article 12 in its effect, a qualification of Article 11, which gives the GA the power to ‘...consider the general principles of co-operation in the maintenance of [IPS]...’¹⁶ In addition, ‘[t]he GA may discuss any questions relating to the maintenance of [IPS]...’¹⁷ and it may bring situations likely to endanger IPS to the attention of the Council.¹⁸

¹⁰ ‘Uniting For Peace’ A/RES/377 (V) of 3 November 1950.

¹¹ *Ibid.* at ¶1.

¹² See Chapter Two.

¹³ The Council itself appears to have endorsed the resolution, see e.g. S/RES/119 of 1956 on the Suez Crisis. Here, it decided to call an emergency special session of the GA in order for appropriate recommendation to be made, ‘...as provided in the General Assembly’s resolution 377A(V)...’.

¹⁴ Relevant state practice could be ascertained from the decisions of the GA as they are taken on a two-thirds majority voting basis (Article 18). This would comprise the approval of at least 128 Member states, assuming all 192 members are present and do not abstain from voting. See, in general, Higgins, R. *The Development of International Law Through the Political Organs of the United Nations* (1963) OUP.

¹⁵ <http://disarmament2.un.org/cab/salw-gares.htm>

¹⁶ Article 11(1).

¹⁷ Article 11(2).

¹⁸ Article 11(3).

2.1.2. Resolutions and initiatives

The only legally binding instrument relating to a category of SALW is the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime.¹⁹ The adoption of the ATT resolution in 2006²⁰ was highly significant, not only in terms of the step towards a codification of existing obligations regarding conventional arms trafficking, but also in its display²¹ of the current state of political will in respect of this matter.

The largest multilateral initiative has been the United Nations General Assembly Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects in July 2001²² which resulted in the adoption of a Programme of Action (PoA).²³ The implementation of the PoA was discussed at the First²⁴ and Second²⁵ Biennial Meetings of States and the state of progress made in the implementation of the PoA was assessed at Review Conference in 2006.²⁶ The PoA contains references to arms embargoes in preambular paragraph 12²⁷ and section two at paragraphs 15²⁸ and 32.²⁹

The illicit trade is relevant to arms embargoes, not simply because weapons trafficked in

¹⁹ http://www.unodc.org/unodc/crime_cicp_signatures_convention.html It was adopted by the GA without vote in 2001 (A/RES/55/255) and entered into force on 3 July 2005.

²⁰ See *supra* Introduction note 42.

²¹ 178 states participated in the voting and almost 86% of those states voted in the affirmative. The percentage in respect of all 192 Member states is almost 80%.

²² Report of the Conference available at A/CONF.192/15; see also <http://disarmament.un.org/cab/smallarms/>

²³ <http://disarmament.un.org/cab/poa.html>

²⁴ <http://disarmament.un.org/cab/salw-2003.html>

²⁵ <http://www.un.org/events/smallarms2005>

²⁶ <http://www.un.org/events/smallarms2006> and note the work of its Preparatory Committee - <http://www.un.org/events/smallarms2006/prepcom/index.html>

²⁷ 'Recalling the obligations of States to fully comply with arms embargoes decided by the [Council] in accordance with the [Charter]'.

²⁸ 'To take appropriate measures [at national level], including all legal or administrative means, against any activity that violates a [Council] arms embargo in accordance with the [Charter].'

²⁹ 'To cooperate [at global level] with the [UN] system to ensure the effective implementation of arms embargoes decided by the [Council] in accordance with the [Charter].'

violation of an embargo (and therefore international law) would be categorised as 'illicit' weapons, but also because many of the targets of Council arms embargoes (especially the non-state entities) are likely to procure their weapons from the illicit trade or 'grey' market,³⁰ even before international measures are taken. The following is a list of current initiatives in operation under the auspices of the UN Secretariat: the Group of Government Experts (GGE) on tracing;³¹ the Open-Ended Working Group (OEWG) on tracing;³² and the GGE on brokering.³³ In addition, for the purposes of transparency in armaments, there is a UN Register for Conventional Arms³⁴ which was designed to be 'universal and non-discriminatory' and to contain 'data on international arms transfers as well as information provided by Member States on military holdings, procurement through national production and relevant policies'. It now includes an optional standardised reporting mechanism for transfers of SALW.³⁵

2.2. UN initiatives

Conflict zones are not the sole focus for UN action on SALW, especially as the UN's advocacy on this matter is focused on the illicit trade and irrespective of the existence or type of conflict, the trade in conventional weapons is not illegal *per se*. The effects of

³⁰ Grey markets 'comprise the following types of transactions in [SALW]-related ammunition and/or explosives: Re-export of materials previously purchased legitimately; Triangulation of materials in contravention of end-user certificates (diversion of goods from the authorized destination to a third country); Commercialization by a broker who coordinates the operation between a supplier and a recipient (be it a State or a sub-national/transnational group).' Annex 1 at p.25 of A/CONF.192/2 11/05/2001.

³¹ The GGE was created to consider feasibility of developing an international instrument to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons. <http://disarmament.un.org/cab/salw-tracingexperts.html>

³² The OEWG was created to negotiate an international instrument to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons and adopted a draft international instrument at its third substantive session in 2005. <http://disarmament.un.org/cab/salw-oewg.html>

³³ The GGE was created to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons and was working on the first draft report in January 2007. <http://disarmament.un.org/cab/GGE%20brokering.htm>

³⁴ <http://disarmament.un.org/cab/register.html>

³⁵ See press release from August 2006 - <http://www.un.org/News/Press/docs/2006/dc3040.doc.htm> This milestone came fifteen years after the UN Commission on Human Rights first recommended such an extension in Resolution 1992/39 at ¶5, adopted 28 August 1992 without a vote. See E/CN.4/Sub.2/1992/58 at p.92.

the illicit trade in SALW is a problem in all countries where low intensity conflicts exist³⁶ and where there are no armed conflicts at all: “The SALW problem in the Americas is largely characterised by illicit arms trafficking and urban violence involving organised crime, drug traffickers and increasing numbers of youth gangs.”³⁷

Any criminal act of armed violence (or other related ill effects) perpetrated through the use of illicit weapons within a state during peacetime³⁸ is a matter to be handled within the jurisdiction of that state, unless the situation was judged by the Council to be a threat to IPS. Although the boundaries between legal and illicit weapons sales, supplies or transfers are blurred in the realm of arms embargoes (because such trade would be legal but for the embargo), the focus of this thesis is on only one of the two branches³⁹ to the problem of illicit SALW and the lack of regulation for the conventional weapons: the branch related to areas of conflict⁴⁰ and international terrorism.

2.2.1. UN and UN-related bodies

Support for disarmament and arms control matters in the Secretariat comes from the new⁴¹ Office for Disarmament Affairs (ODA).⁴² Its role includes technical and

³⁶ Colombia is one example where there are major drug trafficking problems alongside an internal armed conflict. This ‘guerrilla warfare’ has been in operation since the mid-1960’s with varying levels of intensity. See Uppsala Conflict Database (‘UCDB’): <http://www.pcr.uu.se/database/conflictSummary.php?bcID=148> (April-2007)

³⁷ Biting the Bullet project of International Alert - implementation briefings assessing progress against the implementation of the UN Programme of Action on:

The Americas: http://www.international-alert.org/pdfs/BtB_Americas.pdf at p.2

See also briefings on Africa: http://www.international-alert.org/pdfs/BtB_Africa.pdf; Europe: http://www.international-alert.org/pdfs/BtB_Europe.pdf; and Asia: http://www.international-alert.org/pdfs/BtB_South_Asia.pdf (April-2007)

³⁸ i.e. neither a state not suffering nor having recently suffered an armed conflict.

³⁹ One factor common to both branches is the role of organised crime in facilitating and perpetuating the ‘black market’. Indeed, one unintended consequence of placing a prohibition on arms is the increase of traffic via the illicit market. There is also a connection between illicit arms trafficking, organised crime and terrorism, however due consideration of this relationship is beyond the scope of this thesis.

⁴⁰ Although, as noted by UNODC (Office on Drugs and Crime): SALW have ‘contribut[ed] to approximately 300,000 direct deaths each year, of which about 100,000 occur in armed conflict and 200,000 in non-conflict situations...’. <http://www.unodc.org/newsletter/en/200504/page005.html> (April-2007)

⁴¹ A/RES/61/257 - the head of ODA, once appointed, will report directly to the Secretary General.

substantive support;⁴³ serving conferences and expert panels; monitoring and information services;⁴⁴ and the coordination of activities between UN bodies and tools, for example the Coordinating Action on Small Arms (CASA) mechanism.⁴⁵ The United Nations Institute for Disarmament Research (UNIDIR)⁴⁶ is an autonomous research body which regularly publishes its work to assist with disarmament and security efforts and acts as a liaison between researchers and UN Member states.

2.3. Regional arrangements

There are a number of regional arrangements in place which are politically binding on signatories. These include: the EU Code of Conduct on Arms Exports (1998);⁴⁷ the OAS Model Regulations for the Control of Brokers of Firearms, their Parts, Components and Ammunition (2003);⁴⁸ and the Nairobi Protocol for the Prevention, Control and Reduction of SALW in the Great Lakes Region and the Horn of Africa (2004).⁴⁹ The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies⁵⁰ is composed of 40 countries crossing several regions of the world. Its fundamental purpose is to prevent 'destabilising accumulations' of conventional arms and dual-use goods and technologies thus contributing to regional and international security and stability. Importantly, 'if the situation in a region or the behaviour of a state is, or becomes, a cause for serious

⁴² Previously the 'Department for Disarmament Affairs' (DDA). Its remit is available at <http://disarmament.un.org/DDA-activities.htm> (April-2007).

⁴³ The most recent Report of the Secretary General on small arms (S/2006/109. For other SG reports, see <http://disarmament.un.org/cab/salw-sggarep.htm>) contains three recommendations relating to (numbers 5, 10 and 11) and 11 paragraphs (9, 10, 11, 14, 39, 44, 47, 48, 50, 51 and 63) referring to arms embargoes.

⁴⁴ <http://disarmament.un.org/dda-mdi.htm> (April-2007).

⁴⁵ <http://www.un-casa.org/> (April-2007).

⁴⁶ <http://www.unidir.org/> (April-2007).

⁴⁷ Text: <http://consilium.europa.eu/uedocs/cmsUpload/08675r2en8.pdf> (April-2007) The EU Code replaced 'any previous elaboration of the 1991 and 1992 Common Criteria'.

⁴⁸ Text:

http://www.cicad.oas.org/Desarrollo_Juridico/ENG/Resources/322MRFirearmsBrokersEng.pdf (April-2007).

⁴⁹ Text: <http://www.grip.org/bdg/g4552.html> (April-2007).

⁵⁰ <http://www.wassenaar.org/introduction/index.html> (April-2007)

concern to the Participating States' the Arrangement is a useful forum to 'enhance co-operation to prevent the acquisition of armaments and sensitive dual-use items for military end-uses' relating to those concerns.⁵¹ The ECOWAS Convention on SALW, their ammunition and other associated material (2006) is a legally binding treaty, which replaced the ECOWAS Moratorium on the Importation, Exportation and Manufacture of Light Weapons (1998).

2.4. Customary international law

2.4.1. For a new arms control approach

The formation of a new customary rule has two distinct and indispensable requirements: First, 'State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision invoked... within the period [of formation] in question'.⁵² Second, there must be evidence of the genuine conviction of states that the practices they undertake (relating to the issue under consideration) are required by law – the *opinio juris*. It is unlikely that a new customary rule in respect of the control of conventional arms, in particular SALW, by reference to the end-user or end-use has formed thus far. Nevertheless, several aspects of the practice and statements of the UN and by states (either unilaterally, or in regional groups) with regard to arms control issues and of the Council and Member states with regard to arms embargoes could indicate that such a customary rule might emerge in the future. The main difficulty here would be to ascertain the precise content of the rule.

2.4.2. Regional Custom⁵³

Regional customs can develop and be formed in the absence of a general customary rule. Once formed, the custom will bind the states in that region. However, 'the

⁵¹ All excerpts taken from the 'Purposes, Guidelines and Procedures, including the Initial Elements': <http://www.wassenaar.org/publicdocuments/Guidelines.doc> (April-2007).

⁵² North Sea Continental Shelf, *Judgment*, ICJ Rep. 1969, p. 3 at p.43.

⁵³ See e.g. the Colombian-Peruvian asylum case *Judgment of November 20th 1950* ICJ Rep. 1950, p.266, where no regional custom was found; and the Case concerning Right of Passage over Indian Territory (Merits) *Judgment of 12 April 1960* ICJ Rep. 1960, p. 6, where it found the CIL requirements were satisfied as between the parties and had 'given rise to a right and a correlative obligation' which comprised a local custom. (at p.40).

standard of proof required...is higher than in cases where an ordinary or general custom is alleged.’⁵⁴ The EU Code is an example of a regional arrangement which contains a number of criteria⁵⁵ which aim to guide export policy based upon characteristics of the end-user and end-use. These principles could have the potential to develop into regional custom for arms exports licensing in Europe. However, if the rule did not extend to brokers within the region that arranged sales or transfers that physically by-passed the region and/or if those individuals that breach arms embargoes sourced their arms and related matériel from outside the region, the practical effect of such a rule may be undermined.

3. International humanitarian law

3.1. Context

Some legal regimes are applicable only when particular factual circumstances exist and accordingly context is an important consideration. The background to the imposition of Council arms embargoes has been almost uniformly one relating to armed conflict⁵⁶ thus some or all of IHL is applicable in those cases. The two exceptions to this both concerned the problem of international terrorism. There is an unresolved debate on two relevant points here. The first poses a question as to which parts of IHL apply in the different types of armed conflict (either international, internal, or ‘internationalised’⁵⁷). Literature on the matter has considered whether the distinction between the types has any real value or consequence⁵⁸ and whether it is likely to be sustained.⁵⁹ The second concerns the question of whether international terrorism can be considered to embody an armed conflict in any way.⁶⁰ Separate to the law specific to these contexts, other

⁵⁴ Shaw, M. *International Law* (‘International Law’) 5th ed. (2003) CUP at p.87.

⁵⁵ Criteria 1, 2, 3, 6, and 7 have particular relevance for future international norms.

⁵⁶ Either ongoing or the recent cessation of conflict – See below, Table 1, Annex.

⁵⁷ See Chapter Three.

⁵⁸ See Stewart, J.G. *Towards a single definition of armed conflict in international humanitarian law: A critique of internationalized armed conflict* (‘Internationalized’) (2003) 85 (850) IRRC 313.

⁵⁹ Boelaert-Suominen, S. *Grave Breaches, Universal Jurisdiction and Internal Armed Conflict: Is Customary Law moving towards a Uniform Enforcement Mechanism for all Armed Conflicts?* (2000) 5(1) JCSL 63.

⁶⁰ For the US legal perspective, see e.g. note 1 of Sassòli, M. *Possible Legal Mechanisms to Improve Compliance by Armed Groups with International Humanitarian Law and International Human*

areas of general international law continue to be applicable to the use of arms embargoes, as will be seen throughout this thesis. The four contextual bases evident in the use of arms embargoes by the Council are:

- 1) The absence of an armed conflict⁶¹
- 2) The existence of an armed conflict primarily international in character⁶²
- 3) The existence of an armed conflict primarily internal in character⁶³
- 4) The existence of an armed conflict with a mix of internal and international characteristics.⁶⁴

To classify each of the arms embargoes into one of these four bases, guidance on the meaning of the term 'armed conflict' must be explored. Even before classification and definitions take place,⁶⁵ arguments can be put forward about the law that, in addition to general international law, will apply in each situation. An important point to note is that even when armed conflict ceases, the cessation of the threat to IPS is not necessarily concurrent, for example, although in the DRC, the arms embargo⁶⁶ was not imposed until after the conflict was over, the threat was a continuing one.⁶⁷ Has IHL expanded enough to be applicable during post-conflict times of official 'peace' that nonetheless still threaten IPS?

3.2. The scope of the *jus in bello*

Traditionally, IHL, as primarily codified in the Geneva Conventions, applies only to armed conflicts of an international nature and as such, was designed to regulate armed

Rights Law – Armed Groups Conference Paper (available at: http://www.armedgroups.org/images/stories/pdfs/sassoli_paper.pdf) (April-2007) and references cited therein.

⁶¹ See Tables D, Annex.

⁶² See Tables C, Annex.

⁶³ See Tables A, Annex.

⁶⁴ See Tables B, Annex.

⁶⁵ See Table 1, Annex and Chapter Three.

⁶⁶ S/RES/1493.

⁶⁷ The Council had first determined the threat to IPS and had also acted under Chapter VII *during* the conflict - see S/RES/1080 (1996).

violence between states. During times of international armed conflict,⁶⁸ it limits the methods and means of warfare⁶⁹ and regulates the conduct of combatants with respect to the protection of sick and wounded combatants; the treatment of prisoners of war; and the protection of civilians.⁷⁰ There is near universal participation in the Geneva Conventions due to the 194 states parties.⁷¹ The first exception to the application of the Conventions to only international armed conflicts was Article 3 (common to all four Conventions) which provides a minimum level of protection⁷² in cases 'of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties'. Common Article 3 also recommends that non-state warring parties create 'special agreements' in order to bring into force 'all or part of the other provisions of the present Convention', which shows the intention to make the Conventions applicable in all instances of armed conflict, so far as is legally possible.⁷³ A safeguard is also included: 'The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.'

The application of traditional IHL to certain types of non-international armed conflict was expanded in 1977 by Article 1(4)⁷⁴ of the First Additional Protocol to the Conventions to include '...armed conflicts which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right

⁶⁸ Regarding scope, see Common Article 2 and note that some provisions also apply in peacetime, e.g. torture and the taking of hostages (both considered to be grave breaches under Article 147 GC(IV)). Note also, Article 1 Convention on the Prevention and Punishment of the Crime of Genocide (1948).

⁶⁹ Hague Conventions 1899 and 1907.

See <http://www.icrc.org/ihl.nsf/TOPICS?OpenView#Methods%20and%20Means%20of%20Warfare> (April-2007)

⁷⁰ Geneva Conventions I to IV (12 August 1949) & Protocols I and II (8 June 1977).

⁷¹

See [http://www.icrc.org/IHL.nsf/\(SPF\)/party_main_treaties/\\$File/IHL_and_other_related_Treaties.pdf](http://www.icrc.org/IHL.nsf/(SPF)/party_main_treaties/$File/IHL_and_other_related_Treaties.pdf) (May-2007) and note that applicability is subject to any valid reservations or declarations, as is the case for all treaties.

⁷² Common Article 3(1)(a-d) and (2) Geneva Conventions.

⁷³ Non-state parties to internal conflicts cannot accede to the Geneva Conventions because only states have the capacity to become parties to a treaty. See Zegveld, L. *Accountability of armed opposition groups in international law* ('Accountability') CUP (2002) at p.17.

⁷⁴ Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts 1977 (Geneva Protocol I).

of self-determination...'⁷⁵ i.e. internal armed conflicts only with those designated attributes. The 'peoples' in this category do not include armed opposition groups but *bona fide* national liberation movements.⁷⁶ It should be noted here, that while participation is relatively wide (167 states parties), some important states have not ratified Additional Protocols I and II,⁷⁷ including some states that have been subject to Council arms embargoes.⁷⁸ This raises a question as to the customary nature of Protocol I, including the important provision of Article 1(4).

Geneva Protocol II⁷⁹ was designed to develop and supplement Common Article 3. It does not seek to change the legal positions of states,⁸⁰ and highlights the non-intervention principle,⁸¹ which could be interpreted as a reminder to states that they may not intervene in an internal armed conflict, even indirectly, for example, by providing armaments to the warring parties.

Article 7 of the Rome Statute of the International Criminal Court (1998) provides for the jurisdiction of the Court in respect of crimes against humanity and Article 7(2)(a) explains that the 'widespread and systematic attack directed against any civilian population' means 'a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or *organizational policy* to commit such attack'. This would suggest that non-state entities are also intended to be subject to this provision. Article 8(c) provides for jurisdiction of the Court in respect of war crimes in cases of armed conflict, not of an international character. These provisions, in addition to the expansion of international human rights law (below), broaden the applicability of the rules of IHL to

⁷⁵ However, this is qualified by Article 96(3) of Protocol I where an authority representing such peoples 'may undertake to apply the Conventions and this Protocol in relation to that conflict by means of a unilateral declaration' – i.e. it is at their discretion whether or not to apply the rules relating to international armed conflict.

⁷⁶ See 'Accountability' *op.cit.* note 73 at p.18.

⁷⁷ E.g. the USA.

⁷⁸ E.g. Afghanistan, Eritrea, Iraq and Somalia.

⁷⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Geneva Protocol II), 8 June 1977. There are 163 states parties.

⁸⁰ Article 3(1), Geneva Protocol II.

⁸¹ *Ibid.* Article 3(2).

'non-international' or 'internal' armed conflicts. However, once again, participation is not universal, as there are currently only 104 states parties.

4. International human rights law

Attention to this legal sphere will persist throughout this thesis, being considered as and when it is appropriate. Here it is sufficient to note its interaction with IHL. International human rights law concerns, *inter alia*, the protection of citizens from affronts on personal dignity by the state or its officials. Due to this it is of particular relevance to civil wars and other internal armed conflict situations.⁸² Such abuses might directly contribute to the onset of the armed conflict or they might prolong it. Some of its principles however, surpass context, as they are applicable during times of armed conflict,⁸³ in addition to peacetime (and importantly, post-conflict⁸⁴) situations. The line between internal civil disturbance and internal armed conflict can be so finely drawn, that it can be difficult to determine where the minimalist IHL regime for internal conflicts would end and the peacetime human rights laws should begin, hence the necessary fusion. It may be that during armed conflict some of the human rights principles are modified, supplemented or superseded by IHL (i.e. the right to life of an individual is not violated if he or she is an active combatant, killed within the boundaries of IHL; however, if these boundaries were violated, the killing would be unlawful and the right to life violated.) The international protection of human rights

⁸² Some determinations of a threat to IPS during an internal armed conflict were associated with violations of human rights. E.g. preamble S/RES/418 (Rwanda).

⁸³ '[I]t is important to recall that the ICCPR applies both in times of peace and in times of armed conflict. In its General Comment No. 31 of 29 March 2004, the Human Rights Committee clarified: "The Covenant applies also in situations of armed conflict to which the rules of [IHL] are applicable. While, in respect of certain Covenant rights, more specific rules of [IHL] may be especially relevant for the purposes of the interpretation of the Covenant rights, both spheres of law are complementary, not mutually exclusive.'" de Zayas, A. *Human rights and indefinite detention* (2005) 87 (857) IRRC 15 at p.18 and his note 10 (omitted).

Also; 'international law has moved beyond recognition of insurgency during armed conflict to a new type of recognition for human rights purposes. The obligations of the non-state actor in such situations stretch beyond both the duration of armed conflict and the laws of armed conflict.' Clapham, A. *Human rights obligations of non-state actors in conflict situations* (2006) 88 (863) IRRC 491 at p.493.

⁸⁴ 'There is...a necessity for a reasonable cut-off point in the application of the *jus in bello*, although even beyond that point it must be remembered that general human rights norms will continue to apply.' McCoubrey, H. and White, N.D. *International Law and Armed Conflict* ('Armed Conflict') (1992) Dartmouth at p.199.

depends on those rights being found in treaties to which the offending state is party, being part of customary international law, or for a particular right to constitute a *jus cogens* norm.⁸⁵

5. The System of Collective Security under the Charter

According to Ninčić,⁸⁶ the constituent elements of collective security might be listed as: The concept of security; The breach of security; and The reaction to the breach, and the fundamental norm of any *system*⁸⁷ of collective security is "*Pax est servanda*".⁸⁸ Under the Charter, there is a collective security system and mechanism of collective measures through which the system is upheld.

5.1. The System

The UN was created in a post-world-war period and so the primary concern of the international environment at that time was to prevent and/or respond to interstate aggression. The fundamental legal principle embedded in systems of collective security is the sovereign equality of those states within it, so that all benefits and burdens are spread equally. Another relevant principle concerns the duty not to intervene in matters within the domestic jurisdiction of any state.⁸⁹ It is of great importance, however, that this principle is qualified by the operation of the collective security system. This was to ensure that the system could function in response to *any* international security problem, whether it arose within or outside of the domestic jurisdiction of a state.

5.2. The Mechanism

The Charter provides a mechanism for collective security in Chapter VII and entrusts it to the Security Council. The opening Articles of Chapter VII (Articles 39 to 42

⁸⁵ This category of peremptory norms from which no derogation is possible is comprised of very few norms.

⁸⁶ Ninčić, D. *The Problem of Sovereignty in the Charter and in the practice of the United Nations* ('Sovereignty') (1970) Martinus Nijhoff at p.81.

⁸⁷ My emphasis.

⁸⁸ This is interpreted to mean the 'peace is respected'.

⁸⁹ See Article 2(7) and its later interpretation in the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations - A/RES/2625 (XXV) (1970).

inclusive) detail the powers of the Council to determine 'the existence of any threat to the peace, breach of the peace, or act of aggression'⁹⁰ and for measures to be taken by the Council in response to any such threat, breach or act. Although the Council rarely refers to specific articles when taking action under Chapter VII the provisions most relevant to arms embargoes are Articles 39 and 41.⁹¹ The Council has discretion whether or not to make an Article 39 determination and what action to take, if any, under Articles 40, 41 or 42 after such a determination is made.⁹² These issues will be discussed further below, in Chapter Two.

The concept behind the use of collective measures was ultimately, the centralisation of the use of force, so that any state that acted in a manner which threatened or breached IPS or committed an act of aggression against another sovereign nation would expect all other states within the system to act collectively in response to such actions. The mechanism is legally capable of permitting the use of force to enforce the peace, whether it has or has not yet been breached, thus distinguishing it from the mechanism of collective defence.⁹³ In practice, however, the mechanism is actually decentralised, i.e. collective measures are implemented by individual states. The provision designed to centralise force via military agreements⁹⁴ has not yet been implemented. Without these agreements, the Military Staff Committee (MSC)⁹⁵ (designed to advise and assist the Council on, *inter alia*, the military requirements needed and strategic direction of armed forces used in pursuit of IPS and advice pertaining to the regulation of armaments), has had only a limited role.⁹⁶ Instead of creating a 'UN armed force' to

⁹⁰ Article 39.

⁹¹ Article 40 is also considered of relevance (Chapter Four).

⁹² Gill, T.D. *Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter* ('Limitations') (1995) XXVI NYBIL 33 at p.46; Frowein/Krisch in 'Simma' *op.cit.* at p.719: 'Article 39 empowers, but does not oblige the [Council] to act.'

⁹³ 'Armed Conflict' *Op.cit.* note 84 at p.125.

⁹⁴ Article 43.

⁹⁵ Article 47.

⁹⁶ See Higgins, R. *Problems and Process – International Law and How We Use it* ('Problems and Process') (1994) OUP at pp.263-266; White, N.D. *The United Nations System – Toward International Justice* (2002) Rienner at pp.144-5; Bryde/Reinisch in 'Simma' *op.cit.* at p.770 *et seq.*

respond under the authority of the Council to threats or breaches to or acts of aggression against international peace, the Charter only succeeded in recruiting a General⁹⁷ with no designated troops to command.⁹⁸

Since 1990, the UN Security Council has made ever-increasing use of the collective measures mechanism, but the vast majority of cases comprise non-forcible measures, some of which have been supported by the use of force.⁹⁹ The mechanism has expanded to also unify efforts against threats to international peace from states that have failed¹⁰⁰ to neutralise threats emanating from situations or entities within their own territories. This has not exceeded the mandate of the Charter because the terminology does not specify that the threats must come from states. Further, relatively recent, expansion has occurred to react directly against non-state entities and individuals that have created problems which have affected or could affect the IPS guaranteed to all states, by all states, for their mutual benefit. The only case of the operation of the collective security system as originally intended¹⁰¹ was the Council's reaction to the annexation of Kuwait by Iraq in 1990.

An effective system of collective security acknowledges that *any* threat is capable of spreading thereby creating the potential to damage the underlying system of values which the collective system is designed to protect. As a consequence, every member of the system must treat the threat which is actually universal in its potential effects as if it were instead, unilateral.

5.3. The Prohibition on the Use of Force

5.3.1. The Rule

⁹⁷ Or, in UK terms, a Field Marshal (or its Naval/Air Force equivalent). See April 2007 update on the Chairman of the MSC - <http://www.un.org/News/Press/docs/2007/sc8991.doc.htm>.

⁹⁸ The troops that are used when Member states have been authorised to use force 'remain fully under their control, with respect to both their deployment and their actual conduct.' Frowein/Krisch in 'Simma' *op.cit* at p.759.

⁹⁹ E.g. in support of a sanctions regime (S/RES/665 of 1990 on Iraq) or peacekeeping force (S/RES/794 of 1992 on Somalia).

¹⁰⁰ The intent of the state is irrelevant.

¹⁰¹ With the exception of Article 43.

Under Article 2 (4), 'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.' This provision has normative value independent of the collective security system, which 'was not expressly designed to safeguard the values...otherwise protect[ed] by means of...prohibitive norms.'¹⁰² Thus the collective security system relies on observance of the other parts of the Charter in order to create an environment where collective measures should not need to be used. The primary norm of the Charter is that disputes shall be settled peacefully, as supported by the existence of Chapter VI. The Chapter VII mechanism exists as a last resort to this default position.

5.3.2. The Exception – Self Defence under Article 51

At this point¹⁰³ it will suffice to say that this treaty-based right (of states to defend against an armed attack) represents a limit to the act of reassignment of sovereignty that occurred by accession to the Charter.¹⁰⁴ States commit to a system of collective security where by default, no state should use force without the authorisation of the Council, but only with the guarantee that they can lawfully fight back if another state violates this default position. In order to have the capacity for self defence against an armed attack, a state will require armaments. States clearly have a legitimate interest in arming their militaries and having defence ministries. If this interest constitutes a right of a state to arm its military and once armed, to stay armed, then there must be a correlating duty upon governments to ensure the legitimate procurement and responsible possession and use of those weapons, i.e. by conforming to the rules of IHL. If this interest is merely a freedom, (i.e. where there is no law to prohibit a state from arming its own military or from possessing weapons), it can be legitimately curtailed for a 'superior' interest.

The right of self defence in Article 51 exists only until the Council has taken 'measures necessary to maintain [IPS]' and after that point it can be lawfully impaired. Moreover,

¹⁰² 'Sovereignty'*op.cit* note 86, at p.87.

¹⁰³ See later, Chapter Five.

¹⁰⁴ See Cullen, H. The Role of History in Thomas Franck's Fairness in International Law and Institutions (2002) 13(4) European Journal of International Law 927 at p.932 and her note 32: Held, D. *Models of Democracy* 2nd ed. (1996) Cambridge, Polity Press at p.267.

the exercise of the right to self defence has no effect on the Council's authority or responsibilities under the Charter. The juxtaposition of this inherent right that is also qualified, demonstrates the supremacy of the Council, and also the fundamental nature of the Council's responsibility – the maintenance or restoration of IPS. In the interests of IPS, all substantive rights, obligations and guarantees within the Charter are subject to displacement for the duration of the overriding interest. If it were not so, the collective security system could not function as intended. While not unlimited, the Council's power is supreme.¹⁰⁵

The proliferation of SALW raises a further question: should states be allowed to build excessively large arsenals for the purposes of self defence if there is a high risk¹⁰⁶ of those weapons being intercepted by unauthorised groups? As arms control regimes suggest, 'accumulations' can be destabilising, and fundamentally, the aims of such controls is so that each state possesses only what it needs to fulfil its minimum defence requirements.¹⁰⁷

6. Conclusion

A number of UN initiatives and regional regimes exist for the control of conventional armaments, but few have legally binding force. The majority of arms embargoes have the common background of an armed conflict and this highlights the importance of considering the rules under IHL and human rights law. The UN system of collective security envisaged the need for international cooperation on issues that might threaten the IPS they all aim to share. The precise legal nature and scope of that system will be considered in the following chapter.

¹⁰⁵ See Chapter Five, regarding Article 103.

¹⁰⁶ See A Project of the Graduate Institute of International Studies, Geneva, *Small Arms Survey 2006 Unfinished Business* (2006) OUP at pp.38-63.

¹⁰⁷ Note that some states defence requirements will be increased by the presence of a peacekeeping force.

CHAPTER TWO

THE UNITED NATIONS SECURITY COUNCIL: LEGAL POWERS AND LIMITS

1. The United Nations Security Council

1.1. Background

The United Nations is an international organisation that possesses international legal personality.¹ It 'is a political body, charged with political tasks...[including]...the maintenance of [IPS]...'.² The Council³ is one of the six principal organs⁴ of the UN and its function is to be the tool with which the UN implements the aforementioned task.

1.2. Origin of powers

1.2.1. The Charter of the United Nations

Due to the decentralised collective security mechanism, the primary responsibility for implementation of Chapter VII measures, such as arms embargoes, rests with 'all states'.⁵ The preamble of the Charter which begins, 'We the Peoples of the United Nations...', reminds all present and future Member states that the convention was negotiated by states for the benefit of all peoples. Both the fundamental mandate for and legitimacy of Chapter VII measures, comes from Charter through the will of the Member states, as secured by the act of accession.

2. Legal Powers of the Council

2.1. Specific powers outside of Chapter VII

¹ Reparation for injuries suffered in the service of the United Nations Advisory Opinion of 11 April, ICJ Reports 1949, p. 174 at p.179.

² *ibid.*

³ For further discussion, see, e.g. Sands, P. and Klein, P. *Bowett's Law of International Institutions* ('Institutions') 5th ed. (2001) Sweet & Maxwell pp.39-55; Bruha, T. in Wolfrum, R. (ed.) *United Nations: Law, Policies and Practice* Volume II (1995) Martinus Nijhoff at pp.1147-1161.

⁴ Article 7.

⁵ This is how the Council addresses those obligated to carry out the measures upon which it has decided.

The powers of the Council are primarily assigned in Chapter V.⁶ With the aim of ensuring 'prompt and effective action by the United Nations', the responsibility conferred primarily on the Security Council by Article 24(1) is to maintain IPS. Kelsen rejected the general interpretation of Article 24 (1) that the members (i.e. the states parties) confer this responsibility onto the Council. It is the Charter that confers responsibilities as only this legal instrument is capable of such action.⁷ Gill interprets Article 24(1) to mean '[i]t is the members who attributed the Council with the powers to take necessary and effective measures...to maintain [IPS] by 'conferring' the powers to do so upon the Council as a whole'. Gill explains that the 'conferring' of powers 'implies a superior or hierarchical relationship in as much as the grantor generally has the power to determine that the grantee has exceeded his authority and ultimately to withdraw the authority which has been granted.'⁸ It is suggested a compromise between these positions can display an acceptable interpretation of Article 24(1); it was a group of states that became the *founding* members who attributed the Council with the powers needed to perform its responsibility to maintain IPS and by formulating a treaty and acceding to it they created the legal means with which (i.e. the Charter) the Council could justify the use of those powers.⁹

The Council is likely to possess a number of other general¹⁰ or implied powers,¹¹ but these will be limited and regulated by the specific powers which arise from the

⁶ Articles 24-26.

⁷ 'The formula cannot be justified by stating that the Charter is a treaty concluded by the Members; for the Charter is not a treaty concluded by the 'Members,' but by states which became 'Members' only through the Charter, after this treaty came into force.' 'Law of the UN' *op.cit.* (note 1 Introduction) at p.281.

⁸ 'Limitations' *op.cit.* (note 92 of Chapter One) at p.68.

⁹ This corresponds to Sarooshi's interpretation that the Charter confers, but the original source of the powers, transferred via the Charter, is the Member states acting collectively. Sarooshi, D. *The United Nations and the Development of Collective Security – The Delegation by the United Nations Security Council of its Chapter VII powers* ('Delegation') (1999) Oxford at pp.20 *et seq.*

¹⁰ 'The granting of 'specific' powers logically presupposes that the organ holding such 'specific powers' also has 'general powers as well.' Delbrück in 'Simma' *op.cit.* at p.448.

¹¹ For discussion, see e.g. Blokker, N. *Is the Authorization Authorized? Powers and Practice of the UN Security Council to Authorize the Use of Force by 'Coalitions of the Able and Willing'* (2000) 11(3) EJIL 541 at p.547-555.

responsibility to maintain IPS,¹² which are contained in the provisions of Chapters VI, VII, VIII and XII.¹³

The Chapter VII powers of the Security Council embody the 'last resort' approach for the maintenance of IPS, if pacific methods under Chapter VI prove to be ineffective. However, the Council does not have to exhaust Chapter VI before it can make use of Chapter VII. The Chapter VII powers are the collective security mechanism mentioned earlier, and Articles 41 and 42 are generally considered to be the enforcement measures as referred to in Article 2(7). To what exactly the *enforcement* is referring shall be explored in a later chapter. The duty to *maintain* IPS appears to correlate to the preventative, pacific dispute settlement mechanisms in Chapter VI and the duty to *restore* IPS appears to correlate to the reactive, enforcement action mechanisms under Chapter VII. To which set of provisions arms embargoes are best suited is an issue which will be discussed later, in Chapter Four.

The Security Council also has powers under Chapter VIII, which is concerned with regional arrangements regarding the maintenance of IPS. The phrase in Article 52(1), 'Nothing...precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of [IPS] as are appropriate for regional action',¹⁴ does not displace¹⁵ any of the Council's powers under Chapter VII but rather supports them; the Security Council '...shall encourage the development of pacific settlement of local disputes...'¹⁶ as of course such a process should assist in reducing the numbers of cases¹⁷ which demand the Council's attention. Furthermore, in Article 53, '[t]he Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority.' These provisions also indicate the importance of regional stability to the maintenance of IPS and that the perspective of

¹² See e.g. 'Limitations' *op.cit* at p.69-72.

¹³ Article 24(2).

¹⁴ The only qualifications in that provision are that the arrangements must be appropriate for regional action, and '...that such arrangements...are consistent with purposes and principles of UN'.

¹⁵ See Articles 53 and 54.

¹⁶ Art 52(3).

¹⁷ As implied in Art 52(2).

the framers of the Charter was for efforts for regional peace to be instrumental in minimising the need for enforcement action by the Council.

2.2. Powers under Chapter VII

2.2.1. Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore [IPS].¹⁸

2.2.1.1. Procedure and substance

Article 39 gives the Council the power to determine what constitutes a threat to or breach of the peace or act of aggression, 'on behalf of the Organisation as a whole'.¹⁹ Implied in the commanding term 'shall', is the duty to make this determination *before* measures are taken in pursuit of maintaining or restoring IPS.²⁰ However, there is no duty upon the Council to make a determination in any particular situation that might warrant it. The second imperative in this provision (...and shall...decide what measures shall be taken...) when read together with Article 24(2),²¹ suggests that only the Council (as no other organ is referenced) is authorised to take Chapter VII measures under the Charter. This does not mean however, that the Council is the only organ that can act in pursuit of IPS.²²

When the Council considers Article 39 issues it acts as an executive organ but when it makes decisions after Article 39 determinations it employs its limited 'law-making' function as well. References to municipal constitutional mechanisms such as the separation of powers doctrine add little to this discussion because the power the Council

¹⁸ Article 39. For further discussion, see e.g. Frowein/Krisch 'Article 39' and references therein, in 'Simma' *op.cit.* at pp.717-729; De Wet, E. *The Chapter VII powers of the United Nations Security Council* ('Powers') (2004) Oxford: Hart at pp.133-177.

¹⁹ 'Institutions' *op.cit.* (note 3) at p.46.

²⁰ Frowein/Krisch *op.cit.* at p.726.

²¹ 'The specific powers granted...'

²² 'Law of the UN' *op.cit.* at p.283; Goodrich, L.M. and Simons, A.P. *The United Nations and the Maintenance of International Peace and Security* (1955) The Brookings Institute, Washington D.C. at p.15.

possesses to make decisions that impose legally binding obligations are ultimately, *ad hoc*, and only available if the 'situation' conforms to the rule, that is, if it threatens or breaches IPS. There is a wide margin of appreciation in determining what any particular situation might involve,²³ as indicated by the word 'any' in Article 39. Indeed, '[t]here is nothing in the language of Article 39 to suggest that the requirement that the Council determine "a[ny] threat to the peace" refers only [to] a threat that is specific rather than one that is general.[sic]'²⁴ It might be a specific act that breached international peace, such as Iraq's invasion of Kuwait; or the escalation of an internal armed conflict might have been judged to be a sufficient threat to motivate a collective response. Resolution 1540 could be classified as a 'general' Article 39 determination, because although the determination referred to proliferation of specific types of weapons (WMD) and their means of delivery, to certain actors, it was a supplement for its grave concern regarding the threat of terrorism, rather than any specific occurrence or situation.

In all other circumstances, the Council has no power to create new law.²⁵ Of course, its role is not to interpret the law either, but it must, to some degree, consider the current state of the law when embarking on a decision-making process in order to remain within its mandate.

2.2.1.2. Mandates for action

Article 39 also indicates the relevant provisions upon which the Council may base its action when required by its primary duty under the Charter. Discretion exists both to

²³ 'The Committee therefore decided to adhere to the text drawn up at Dumbarton Oaks and to leave to the Council the entire decision as to what constitutes a threat to peace, a breach of the peace, or an act of aggression.' (The United Nations Conference on International Organization, vol. XII ('UNCIO vol.XII'), Commission III (Security Council), Committee 3 (Enforcement Arrangements) at Section C, p.505. (p.4 of original document – 'Doc.881, III/3/46, June 10, 1945') (1945) New York; London: United Nations Information Organizations.

²⁴ Wood, M. (KCMG) "*The UN Security Council and International Law*" *Lecture One – The Legal Framework of the Security Council* 7th November 2006 Sir Hersch Lauterpacht Memorial Lectures at the Lauterpacht Centre for International Law - University of Cambridge at ¶25. Available at http://www.lcil.cam.ac.uk/Media/lectures/pdf/2006_hersch_lecture_1.pdf (April-2007) (NB: 'These papers are subject to editorial revision').

²⁵ See the reference to Frowein/Krisch's observation regarding 'executive regulations' (*ibid.* Introduction at note 15).

recommend a voluntary course of action and to decide upon a mandatory course of action. If the Council wants to give legal weight to its determination, it must make decisions over the measures to be applied from those available in Articles 41 or 42. The language of Article 39 retains a level of ambiguity with regard to Article 40. It suggests that decisions (and therefore legally binding action) can only be taken under Articles 41 and 42. However, the position of Article 40 in Chapter VII rather than Chapter VI suggests action taken therein could be legally binding and practice has shown that Article 39 determinations were made where it was intended to create binding effects for the parties.²⁶ The absence of a reference to Article 40 in Article 39 might imply that no Article 39 determination would be required for measures to be taken under Article 40. The fact that Article 40 describes provisional measures as a precursor to only the second part of Article 39, i.e. 'recommendations or...measures provided for in Article 39' reveals two points: first, that the determination process of Article 39 (the first part) is not excluded from the purview of Article 40, which suggests that Article 40 would require an Article 39 determination as a condition of its use; and second, it shows that Article 40 is not intended to be part of the recommendatory nor mandatory action used to maintain or restore IPS. Instead it exists to 'prevent an aggravation of the situation'. The Article 39 recommendations belong to Article 39 alone, and as has been suggested,²⁷ Article 39 is the basis from which non-binding measures, such as voluntary arms embargoes, find their legal basis. This allows for prompt involvement by the Council, before the finer details of provisional or enforcement measures are debated with a view to action, which also implies that like Articles 41 and 42, Article 40 measures may also be binding. However, voluntary arms embargoes have been recommended without any determination or reference to Chapter VII.²⁸

The duty to maintain peace in a specific case could be partially omitted if there is a breach of peace or an act of aggression, there is no peace to be maintained. However

²⁶ Frowein/Krisch in 'Simma' *op.cit.* at p.731 and their note 12.

²⁷ *Ibid.* at p.727.

²⁸ See e.g. ¶4 of S/RES/1076 of 1996 on Afghanistan. Similarly, the voluntary arms embargo on South Africa (S/RES/181 of 1963) stated: 'Being convinced that the situation in South Africa is seriously disturbing [IPS],' prior to imposition – but this is not a clear Article 39 determination of a *threat* to international peace.

the threat to peace creates a middle ground between the maintenance of peace²⁹ and the restoration of peace. A threat to peace is a moment embedded with a risk including both the positive potential for the prevention of destruction of IPS as well as the negative potential to fail to prevent such an occurrence.

2.2.1.3. 'Any threat to the peace'

The phrases 'threat to the peace', 'breach of the peace'³⁰ and 'act of aggression'³¹ clearly show an '...escalation of intensity...' ³² however it is sufficient to find any one of the three in order to take Chapter VII measures. The level of gravity relative to IPS is irrelevant to the ability of the Council to pass the required threshold for invoking enforcement action under Article 41 or 42 (or other action under Chapter VII). For the purposes of this thesis, the most important of the three is the least intense – a threat to the peace. The first 'threshold event' is almost universally employed in practice as only one³³ of the arms embargo cases made reference to a different threshold event. The case of Kosovo³⁴ is an anomaly to this practice as no Article 39 determination was used in the text of this resolution, although the representative from the UK, Mr Richmond, made an explicit reference during the Council meeting, 'that the situation in Kosovo constitutes a threat to [IPS] in the Balkans region'.³⁵

This is entirely coherent as an arms embargo is less serious and less grave a measure than the use of military force, which may be the more appropriate response for breaches of the peace or acts of aggression.³⁶

²⁹ More appropriately considered under Chapter VI.

³⁰ See 'Powers' *op.cit.* note 18 at §2.2, p.144.

³¹ *Ibid.* at §2.3, p.145.

³² *Ibid.* at §2.1, p.138.

³³ S/RES/661 of 1990 ('breach of the peace').

³⁴ S/RES/1160 of 1998.

³⁵ Provisional Verbatim meeting record of the Council - S/PV.3868.

³⁶ 'Aggression' has never been used as part of an Article 39 determination ('Limitations' *op.cit.* at p.49). However, the Council has determined an act of aggression without invoking Chapter VII; see S/RES/573 of 1985 at ¶1: 'Condemns vigorously the act of armed aggression perpetrated by Israel against Tunisian territory in flagrant violation of the Charter of the United Nations, international law and norms of conduct'. In addition, the definition of aggression has been the subject of continuous

2.2.1.4. Interpreting 'peace'

According to De Wet,³⁷ a threat to the peace is a situation or a set of conditions which holds the potential to result in international (i.e. two or more states involved) armed conflict, although in actuality, no such conflict need endure to provide the legitimacy for such a determination by the Council because '...the term 'threat' [has] an element of flexibility...inherently attached'.³⁸ Is it necessary that international peace is referred to by the Council when making a determination under Article 39? The language of the Article 39 determination is simply 'the peace' not 'international peace', although international peace is what is at stake. Although international peace is mentioned at the end with reference to the goal of the measures, the word 'international' was not present in the *travaux préparatoires*³⁹ regarding this article, in all likelihood because it would have been superfluous at the time. As shall be seen in Chapter Three, the Council is fairly liberal with terminology relating to this point.

De Wet reasons that 'peace' in Article 39 is defined negatively, although not to such a narrow extent as to match Martenczuk's perspective that '...[IPS] within the meaning of Article 39 only refers to the absence of armed violence in international relations.'⁴⁰ The importance of this detour from a narrow perspective is evident in the relatively novel⁴¹ situations of internal armed conflict with which the international environment is now troubled. The mandate for collective action under the Charter was originally conceived for dealing with international armed conflicts. However, this modern, broad interpretation of Article 39 shows that any situation involving armed violence and interests of any actors in the international community (e.g. the rights of civilians

debate, but this shall not be considered here. See e.g. Müller-Schieke, I.K. *Defining the Crime of Aggression Under the Statute of the International Criminal Court* (2001) 14(2) *Leiden Journal of International Law* 409.

³⁷ 'Powers' *op.cit.* at §2.1 and §3, pp. 138-144 and 149-174 respectively.

³⁸ *Ibid.* at p.138.

³⁹ See 'UNCIO vol. XII' *op.cit.* at Section D, p, 506. (p.5 of original document).

⁴⁰ Martenczuk, B. *The Security Council, the International Court and Judicial Review: what lessons from Lockerbie?* (1999) 10(3) *EJIL* 517 at p.543 (his note 140 omitted).

⁴¹ Certainly novel in terms of the history of international 'relations'.

affected by the violence) may trigger a response by the Council under Chapter VII.

2.2.1.5. 'Peace' in practice⁴²

Indeed in reality, the original mandate has not changed substantively; it must still be at least a threat to international, not domestic, peace and security that instigates Council action. However, without needing a formal amendment to the Charter, the Council has reacted to otherwise internal affairs by reference to Article 39, by interpreting it to mean the potential or realised consequences of the internal situation will amount to a threat to *international* peace and security.⁴³ De Wet uses the term 'double strategy',⁴⁴ to describe this process. The most common explanation for this is where the Council refers to the effect on the 'region' and where there is a fear that the internal conflict could spread beyond its own borders.⁴⁵ This was certainly the case in the Former Yugoslavia⁴⁶ and bears relevance to almost every other arms embargo case. It may be that 'allowing' mass human rights violations to occur⁴⁷ within a state threatens the fabric of international law and thus all states have an interest in attempts⁴⁸ to resolve the situation. A common interest of all states is the combating international terrorism and is

⁴² Extensive discussion is available via the UN's *Repertoire: Eleventh Supplement (1989-1992)*-Chapter XI, especially at p.16 ff of part 1. (Cases 1-7) Available at: <http://www.un.org/Depts/dpa/repertoire/index.html> (October-2006).

⁴³ See e.g. preambular ¶ of S/RES/1343 on Liberia – '*Determining* that the active support provided by the Government of Liberia for armed rebel groups in neighbouring countries, and in particular its support for the RUF in Sierra Leone, constitutes a threat to [IPS] in the region.' See also 'Legal Mandate' in Tables 3A-D, Annex.

⁴⁴ '[T]he SC has frequently made use of a double strategy whereby it utilised the impact of a situation within a country on international relations to address the internal situation itself under Chapter VII of the Charter.' Powers' *op.cit.* §3.1, p.150.

⁴⁵ This has been extended even further with arguments that the causes of the internal problem does not necessarily need to be militarily based but must nevertheless carry a risk of resulting in international armed conflict - Powers' *op.cit.* at p.140-142 and note 47 therein citing: Lailach, M. *Die Wahrung des Weltfriedens und der internationalen Sicherheit als Aufgabe des Sicherheitsrates der Vereinten Nationen* (1998) Berlin, Duncker & Humblot at 181 and 186.

⁴⁶ '*Deeply concerned* by the fighting in Yugoslavia, which is causing a heavy loss of human life and material damage, and by the consequences for the countries of the region, in particular in the border areas of neighbouring countries. *Concerned* that the continuation of this situation constitutes a threat to [IPS]...' Preamble SC/RES/713.

⁴⁷ I.e. the situation that would ensue, should nothing be done by the UN.

⁴⁸ Note the Council's collective security action is not required to settle the disputes on behalf of the parties – that remains their responsibility.

an area in which the Council is currently involved.⁴⁹ This problem threatens IPS *per se*⁵⁰ and so the political will to deter and ultimately remove state involvement in terrorism is, in general, forthcoming. However it should be noted that international conventions regarding international terrorism have been in operation since the 1960's,⁵¹ which shows that, although there are deficiencies therein, the involvement of the Security Council under Chapter VII is not the primary source of legally binding obligations for the issue, unlike the current situation for the principal issues under consideration here.

Another explanation for this 'double strategy' behaviour could be the pressure exerted by the General Assembly. On several occasions the GA, through its resolutions has 'pre-empt[ed] and pre-judge[d] the work of the Council' and has even made determinations of threats to the peace.⁵² So while the Council has looked 'for some sign of danger to international peace arising from something more than the internal situation' in order for it to have 'international repercussions',⁵³ the GA has pursued its agenda of calling attention to internal situations deemed unacceptable to the majority of states as represented in that larger forum.

2.2.1.6. An interpretation of Article 39 designed for arms embargoes?

Although the Article 39 determinations for arms embargoes were based on a variety of interpretations of a threat to the peace,⁵⁴ and only one was explicitly related to

⁴⁹ Although not involving arms embargoes, see e.g. SC/RES/1373; SC/RES/1456; SC/RES/1535; SC/RES/1566.

⁵⁰ 'Reaffirming further that acts of international terrorism constitute a threat to [IPS]...' (Preamble S/RES/1390). See also the implication in Annex to A/RES/51/210 of 1997 - *Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism* at ¶1.

⁵¹ See e.g. the Tokyo Convention (1963), the Hague Convention (1970) and the Montreal Convention (1971) on Civil Aviation; Convention on the Prevention and Punishment of Crimes Internationally Protected Persons, Including Diplomatic Agents (1973); Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988); and the International Convention for the Suppression of Terrorist Bombings (1998).

⁵² White, N.D. *Keeping the Peace: The United Nations and the Maintenance of International Peace and Security* ('Keeping the Peace') 2nd ed. (1997) Manchester University Press at p.170.

⁵³ *Ibid.* at p.171.

⁵⁴ See Chapter Three and for general discussion see e.g. Österdahl, I. *Threat to the Peace – The Interpretation by the Security Council of Article 39 of the UN Charter* ('Interpretation') Volume 13

armaments, the next section considers the ways in which armaments can be related to a threat to the peace.

When discussing the use of this double strategy, De Wet makes an important point related to arms embargoes. In relation to the enforcement action against South Africa in 1977, she states: 'Even though the resolution was motivated by the apartheid policies, the threat to peace was explicitly connected to the arms build-up in South Africa.'⁵⁵ Can it be implied here that the actual threat was the use of the arms build up for enforcing the policy of apartheid? Or did the arms build up create a separate threat because, perhaps, it simply strengthened the illegal regime, which might have made future attempts to quell it more difficult? It should be noted, however, that '[t]he internal sources of a threat to peace...can include behaviour which is not illegal in itself.'⁵⁶

It may be an inference too great to postulate that *any* build-up of arms within a state constitutes a threat to IPS *per se*. Could the inference be supported by the increased likelihood of an armed conflict occurring?⁵⁷ One important consideration is the timing: *When* does a build up or increase in the supply of arms become a threat to IPS? The default position for states should be recalled at this point. States may legitimately acquire most types of conventional weapons. 'Accumulations' may become a threat based on the situation in a region or the behaviour of a state, as shown by the Wassenaar Arrangement. Do these considerations extend to non-state entities increasing their arms stockpiles or is that a matter within the jurisdiction of a state? If a state is 'the host' to an internal armed conflict it will not necessarily have effective control over certain matters within its jurisdiction, such as civilian possession of weapons. Moreover, in failed state situations such as Somalia, the lawless environment would suggest a 'free-

Uppsala University Swedish Institute of International Law – Studies in International law (1998) Iustus Förlag.

⁵⁵ 'Powers' *op.cit.* at §3.1 p.151

⁵⁶ *Ibid.* at p.140; See further *infra* Chapter Four.

⁵⁷ It is suggested that the likelihood of a conflict reaching the requisite 'intensity' threshold is greatly reduced by the absence of armaments.

for-all' where weapons⁵⁸ or other 'commodities' are concerned. In failed state situations it is difficult to see the sustained relevance of 'domestic jurisdiction' when there would appear to be no such thing in operation. Finally, is it only the stockpiling of weapons that might cause such threats, or the trafficking itself, which (in states where there is no manufacturing capability) necessarily comes beforehand?

2.2.2. Article 41

'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.'

2.2.2.1. Defining Arms Embargoes on Conventional Weapons

Like all Chapter VII measures, Article 41 may only be invoked after an Article 39 determination has been made. The Security Council appears to regard arms embargoes in a number of various ways. Although arms embargoes are currently understood to be *ad hoc* measures, patterns of use have emerged from their frequent use since 1990. Security Council arms embargo resolutions usually contain the phrase 'arms and related matériel', but have never defined this explicitly. Instead occasionally, examples of some general types of weapons are given.⁵⁹ It is suggested that only conventional armaments and their related matériel are prohibited,⁶⁰ (as opposed to WMD, radiological or missile related weapons and delivery systems thereto) because when weapons which fall outside of the broad 'conventional' category are prohibited, they are explicitly named in the relevant Council resolutions.⁶¹

⁵⁸ Indeed, in these situations, guns equal power.

⁵⁹ See the 'paradigm construction' of the scope of an arms embargo, below in Chapter Three (§4.1 'nature and scope', especially at note 70 of that chapter).

⁶⁰ Unless otherwise stated within the resolutions, e.g. the clarification in ¶4 of S/RES/591 of 1986, which included the prohibition of nuclear, strategic as well as conventional weapons to South Africa.

⁶¹ See e.g. S/RES/620 of 1988 (concerning Iraq/Iran's use of chemical weapons); S/RES/1736 of 2006 (Iran – Nuclear and ballistic missile programme); 1718/06 concerning the DPRK – the resolution referred specifically and exclusively to a number of large conventional weapons, but none that would constitute SALW. Also note, the Council explicitly referred to Article 41 as its legal basis for the measures on DPRK.

Schrijver asserts⁶² that Article 41 measures can only impose negative obligations on states, that is, to refrain from certain action, in the case of arms embargoes, refraining from selling, supplying or transferring arms and related matériel to state or entity X. However, the evolving practice of the Council shows that existence of the arms embargo carries an implied obligation which is a positive obligation to amend national law or create it where none exists in order to implement the embargo and create a method for its national enforcement. This shows how the decentralised collective security system operates by relying on Member states to carry out the decisions of the Council. However, even as practice has deviated from the original conception of a centralised use of force, the effect on non-forcible measures is not as important because the terminology of Articles 25 and 48 shows this type of action was in any case, expected of Member states.

Former UN Secretary General Boutros Boutros-Ghali drew attention to the modern⁶³ legal framework for the imposition of collective measures under Chapter VII of the Charter when he said: 'Under Article 41 of the Charter, the Security Council may call upon Member States to apply measures not involving the use of armed force in order to maintain or restore IPS. Such measures are commonly referred to as sanctions.'⁶⁴ There is a general consensus⁶⁵ that arms embargoes are one of an undetermined number of options available to the Council under Article 41, as indicated by use of the words 'may include' in the second sentence.

⁶² Schrijver, N. *The Use of Economic Sanctions by the UN Security Council: An International Law perspective* ('Economic Sanctions') in Post, H. H. G (ed.) *International Economic Law and Armed Conflict* ('International Economic Law') (1994) Martinus Nijhoff pp.123-161 at p.156.

⁶³ The origin of what became Article 41 was the Covenant of League of Nations (1918) Article 16 and it was originally labelled 'Chapter VIII B, No.3' under the Dumbarton Oaks Proposals when the Charter was being drafted - See Frowein/Krisch in 'Simma' *op.cit.* pp. 735-749.

⁶⁴ Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations ('Supplement') - UN Doc. A/50/60-S/1995/1 of 3 January 1995 at ¶ 66.

⁶⁵ Although the Council rarely refers to Article 41, the UN does, and importantly, so do some of the states that implement the measures. For an alternative view, see Chapter Four at §3 on the potential legal alternatives to Article 41.

The suitability of the term ‘sanctions’ (as is ubiquitous in the communications of the UN and its Member states) has been debated in general⁶⁶ but the potential misnomer endures. This issue will be considered later in Chapter Four.

2.2.2.2. Other measures available under Article 41

Sanctions under Article 41 can be either mandatory⁶⁷ or voluntary and various examples include trade restrictions such as petroleum, timber and diamonds.⁶⁸ Restrictions can be imposed over the use of air space and the extent of diplomatic missions. Travel bans⁶⁹ and financial⁷⁰ sanctions, like arms embargoes, are the other types of ‘smart’ or ‘targeted’ sanctions.⁷¹ Individual government members, warlords and their families can be targeted to have their freedom of movement between states severely restricted. This has begun to be used more frequently in relation to the problem of international terrorism. There have been cases where the Council, via a recommendation, has expressed its willingness to impose future measures, without necessarily imposing them at the time.⁷² This gives a ‘last chance’ opportunity to resolve conflicts peacefully.⁷³

Furthermore, the Council has the power to establish *ad hoc* international tribunals and examples of this include the International Criminal Tribunal for the former Yugoslavia

⁶⁶ ‘Law of the UN’ *op.cit.* at p.724 ([I]t is doubtful whether the enforcement measures provided for by the Charter may be properly characterised as sanctions.’) and p.706 (‘Sanctions are the specific reactions of the community, constituted by the legal order, against delicts.’).

⁶⁷ ‘[I]t is the Security Council, which, exclusively, may order coercive action’ Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter) Advisory Opinion of 20 July 1962: ICJ Rep. 1962, p.151 at p.163.

⁶⁸ See Table 4 – Concurrent measures column (Annex).

⁶⁹ See the Bonn-Berlin Process (*Ibid.* Introduction at note 22).

⁷⁰ See the Interlaken Process - <http://www.smartsanctions.ch> (September-2006).

⁷¹ See further the Stockholm process - <http://www.smartsanctions.se> (September-2006).

and United Nations Sanctions Secretariat, Department of Political Affairs *Smart Sanctions, the Next Step: Arms Embargoes and Travel Sanctions* - Second Expert Seminar, Berlin, December 3-5, 2000 Available at <http://www.un.org/Docs/sc/committees/sanctions/background.doc> (March-2006)

⁷² E.g. Angola, S/RES/851 of 1993 at ¶ 2 ‘Reiterate[d] its readiness to consider taking action promptly...’.

⁷³ E.g. Iraq, S/RES/678 of 1990 ‘[g]ave Iraq “pause of goodwill” to comply with UN demands’ - ‘Sanctions Decade’ *op.cit.* (note 16 Introduction) at p.40.

(‘ICTY’)⁷⁴ and the International Criminal Tribunal for Rwanda (‘ICTR’).⁷⁵ Both of these tribunals have considered questions relating to the legality of their creation and thus discussed their legal bases.⁷⁶ In addition to the formation of the ICTR, the Council was innovative when (in addition to an existing sanctions committee⁷⁷) it established the UN International Commission of Inquiry,⁷⁸ which had investigative powers which proved far more useful in the pursuit of arms embargoes enforcement than any sanctions committee had previously been.⁷⁹ Finally, the Council can also establish interim transitional administrations for certain territories⁸⁰ under Chapter VII, however the precise legal basis for this may still be a moot point.⁸¹

2.2.2.3. Relation to other Chapter VII measures

Article 41, as one of the Council’s methods of addressing threats to the maintenance of international peace and security (IPS), was designed to be the next step taken in (at the very least) bilateral disputes after the exercise of Article 40. However, flexibility of the language used shows that the use of provisional measures is not a prerequisite for the use of non-forcible measures under Article 41. A precautionary stance is taken in Article 40 where, to prevent aggravation of a situation, the Security Council is offered the power to ‘...call upon the parties

⁷⁴ Established by S/RES/827 of 1993.

⁷⁵ Established by S/RES/955 of 1994.

⁷⁶ *ICTY Prosecutor v. Dusko Tadić* (IT-94-1): Trial Chamber I - *Decision on the Defence Motion on Jurisdiction 10 August 1995* at ¶27: ‘Chapter VII confers very wide powers upon the Security Council and no good reason has been advanced why Article 41 should be read as excluding the step, very appropriate in the circumstances, of creating the International Tribunal to deal with the notorious situation existing in the former Yugoslavia.’

ICTR – Trial Chamber 2 - *The Prosecutor v. Kanyabashi* (ICTR-96-15-T) *Decision on the Defence Motion on Jurisdiction (Judgment of 18 June 1997)* at ¶27.

⁷⁷ Created at the same time as the arms embargo (S/RES/918 of 2004).

⁷⁸ ‘UNICOI’ – S/RES/1013 of 1995.

⁷⁹ See ‘Sanctions Decade’ *op.cit.* at p.196-198. UNICOI appeared to monitor the situation effectively and found numerous violations. See ‘Statecraft’ *op.cit.* at p.14 and note 14 (omitted).

⁸⁰ E.g. Kosovo and East Timor. This matter is also being debated with regard to the situation in Iraq.

⁸¹ For discussion, see e.g. Ruffert, M. *The Administration of Kosovo and East Timor by the International Community* (2001) 50 ICLQ 613; Wilde, R. *From Danzig to East Timor and Beyond: The Role of International Territorial Administration* (2001) 95 AJIL 583; Rothert, M. *UN Intervention in East Timor* (2000-1) 39 Columbia Journal of Transnational Law 257; Kondoch, B. *The United Nations Administration of East Timor* (2001) 6(2) Journal of Conflict and Security Law 245.

concerned to comply with such provisional measures as it deems necessary or desirable...’ before any recommendations are made, or decisions are taken. In addition, the Security Council is instructed to take account of any failure to comply with such provisional measures. The possibility of arms embargoes finding their legal basis in Article 40 will be discussed later, in Chapter Four.

Article 42 authorises the Security Council to ‘...take such action by air, sea or land forces as may be necessary to maintain or restore [IPS].’ The authorisation has, as a precursor, a soft requirement that measures provided for in Article 41 would be inadequate or have been proved inadequate for the situation. This makes it possible to be used immediately, without the incremental stages, if such an urgent international situation so required. This power is flexible, given its purpose in being a last resort method to safeguard IPS and to allow the Security Council to fulfil its primary function. No armed force is permitted (save in self defence) without first having an Article 39 determination, followed by an explicit instruction by the Council for the use of force. Occasionally action under Article 42 may be threatened or mandated in an effort to support measures under Article 41.⁸² The threat of a legitimate use of force (and therefore one with no remedial recourse) provides a strong incentive to comply with non-forcible measures and if non-compliance ensued, an Article 42 measure would embody a classical sanction.

Although the original intention within the Charter was to have a centralised force mechanism, the obsolete nature of Article 43 (and related articles) has encouraged the evolution of an alternative mechanism⁸³ for the use of force, namely, a decision of the Council to use force and the corresponding obligation on the Member states that are addressed to implement the decision through national means. This would appear to be a legitimate departure from what was originally intended, because there is nothing within

⁸² E.g. Member states were authorised to use ‘all necessary means’ to enforce the sanctions against Iraq. (S/RES/678 of 1990 at ¶2). S/RES/794 of 1992 authorised (what became) UNITAF to use ‘all necessary measures to establish...a secure environment for humanitarian relief operations.’ (¶10) In the same resolution, the Council, acting under Chapter VII and VIII *called upon* states to ‘use such measures as may be necessary to ensure strict implementation’ of the arms embargo (¶16).

⁸³ See earlier reference to potential implied powers at note 11.

Article 43 to actually qualify the application of Article 42. The lack of special agreements immobilises Articles 44 and 45 and a number of aspects relating to the MSC, but it does not necessarily immobilise Article 42. This was confirmed by the International Court of Justice in an advisory opinion:

[A]n argument which insists that all measures taken for the maintenance of [IPS] must be financed through agreements concluded under Article 43, would seem to exclude the possibility that the Security Council might act under some other Article of the Charter. The Court cannot accept so limited a view of the powers of the Security Council under the Charter. It cannot be said that the Charter has left the Security Council impotent in the face of an emergency situation when agreements under Article 43 have not been concluded.⁸⁴

With regard to the interaction between Article 42 and arms embargoes, a key question is whether or not arms embargoes are an adequate alternative to forcible measures in the pursuit of quelling threats to and breach of the peace and armed aggression. Logically and *in principle*, arms embargoes are adequate measures for suppressing armed aggression (or lesser breaches of or threats to the peace) because they remove the means with which such aggression can be perpetrated. In practice, however, details regarding their use have presented challenges to their effectiveness and their legality and part of this is due to confusion over their objectives. For instance, do arms embargoes seek to achieve what is logical and practical (i.e. removing the means of violence) or do they possess more complicated motives and means to achieve the overall rationale of maintaining or restoring IPS? This issue and others will be considered in later chapters.

3. Legal Limits to the Council's exercise of the powers contained in Chapter VII

'The Security Council has broad discretion in exercising its authority under Chapter VII and there are few limits on the exercise of that power.'⁸⁵ It is worth recalling that the Council exercises the powers in Chapter VII on behalf of the Organisation. Any limits therefore, will restrict the freedom of the UN to respond to situations which have been determined to be threats to IPS and thus of concern to all Member states. Only the most

⁸⁴ Certain Expenses of the United Nations *ibid.* note 67 at p.167.

⁸⁵ Tadić Jurisdiction (Judgment of 10/08/95) *ibid.* note 76 at ¶7.

essential restrictions are likely to be maintained as norms in practice, so as not to unduly restrict the aforementioned freedom. It is suggested that it could be possible that restrictions customised to a particular situation, may be respected by the Council under those particular circumstances, but that it is unlikely to entertain any views of setting precedents thereby.

'[T]he General Assembly has no constitutional authority to countermand Chapter VII decisions of the Security Council'⁸⁶ despite the overlap in the area of IPS seen in the Uniting for Peace resolution.⁸⁷ This comment was made in reference to a vote in the GA⁸⁸ on the matter of exempting Bosnia-Herzegovina from the arms embargo⁸⁹ and a failed draft resolution⁹⁰ aiming for formalise such an exemption.

3.1. Restrictions under the Charter

The Council cannot be a party to the Charter and thus the Council cannot be legally bound by it in the same way that is true for a Member state. However, the Charter created the Council and determined its functions and powers and therefore, it is logical to argue that the powers of the Council can only extend to that which is provided for in the Charter.⁹¹ The main difficulty here is that some of its powers were formulated with the intention of having a wide margin of discretion (as principally seen in Article 39) and so the limits outlined in other parts of the Charter might in some ways be incompatible with the powers in Chapter VII and thus be overruled by the necessary operation⁹² of those powers. '[W]hen the Organization takes action which warrants the assertion that it was appropriate for the fulfilment of one of the stated purposes of the

⁸⁶ Damrosch, L.F. *Enforcing International Law Through Non-Forcible Measures* 'Enforcing International Law') 269 Recueil Des Cours 9 (1997) at p.125.

⁸⁷ See note 10 of Chapter One.

⁸⁸ A/RES/47/21 of 1992.

⁸⁹ S/RES/713 of 1993.

⁹⁰ Provisional verbatim meeting record of the Council - S/PV.2347 29 June 1993 at 148.

⁹¹ See *Tadić Appeals Chamber: Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction*, 2 October 1995 at 28.

⁹² Due to the discretion afforded to the Council, the quality of necessity is of course, judged entirely by the Council.

United Nations, the presumption is that such action is not *ultra vires* the Organization.⁹³

The superiority of Chapter VII is confirmed by the fact it comprises the ultimate means by which the fundamental purpose of the UN might be achieved. However, an alternative means to achieve the fundamental purpose of the UN under the Charter is by peaceful settlement, measures for which are contained in Chapter VI. This method, unlike Chapter VII, carries the legitimacy of the requirement in Article 1(1) that such settlements are to be 'in conformity with the principles of justice and international law.' These act as legal limits solely to the Council's exercise of powers under Chapter VI, which suggests that the principles of justice and international law do not limit the Council's exercise of powers under Chapter VII.⁹⁴ The Council is fundamentally limited in terms of achieving the fundamental purpose of the UN through Chapter VI by the fact that such measures cannot be binding upon Member states, and so the alternative means cannot compete.

3.1.1. Article 23 - Composition⁹⁵ of the Security Council

Five nations⁹⁶ make up the permanent membership of the Council (the 'P5'), while ten other representatives elected by the GA⁹⁷ make up the remaining non-permanent membership.⁹⁸ The composition of the Council has a significant role in terms of any

⁹³ *Certain Expenses of the United Nations* *ibid.* note 67 at 168.

⁹⁴ See Goodrich, L.M., Hambro, E. and Simons, A.P. *The Charter of the United Nations*, 3rd ed. (1969) New York; London: Columbia University Press at pp.27-28 as cited in 'Limitations' *op.cit.* (Chapter One, note 92) at p.65. In addition, Goodrich *et al.* note that during drafting of the Charter that 'the major powers refused to accept an amendment...requiring that collective measures be taken in accordance with international law and justice...' With regard to *arms embargoes*, another important comment of the drafters was noted: 'the object of collective measures was to *prevent or suppress the use of force*, and not to achieve a settlement.' (My emphasis).

⁹⁵ For reform discussion within the UN, see e.g. ¶13 and Chapter XIV (¶244 *et seq.*) of *A more secure world: our shared responsibility - Report of the High-level Panel on Threats, Challenges and Change A/59/565* (2004).

⁹⁶ The People's Republic of China, the French Republic, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

⁹⁷ The GA must pay due regard first to 'the contribution of Members of the United Nations to the maintenance of [IPS] and to the other purposes of the Organization, and also to equitable geographical distribution.' (Article 23(1)).

⁹⁸ Five seats for African and Asian countries; One seat for Eastern European countries; Two seats for

action pursued.⁹⁹ Under Article 27(3), there are two ways in which action on non-procedural matters can be blocked; one is the use of the veto of a permanent member and the other is where the P5 agree, but only 3 non-permanent members concur. It is obvious that if the political will of any one permanent member desired a negative outcome in respect of a proposed collective security action, there is nothing that can be done to avoid that outcome, purely because of the veto.¹⁰⁰ Indeed, '[p]olitical will is a crucial factor at every stage and the United Nations cannot regulate state conduct unless members, and particularly the Permanent members of the Security Council, wish it to do so.'¹⁰¹ Ninčić notes that unlike other states, none of the Great powers has had to renounce its sovereignty; '[t]hey are thus *never* placed in a position to assume legal obligations to which they had not given their consent.'¹⁰² Indeed, this situation cannot be changed without the consent of all five permanent members because such consent is required before any amendments to the Charter can be made.¹⁰³ Yet this, like the second part of Article 24(1)¹⁰⁴ is something to which states consent when they decide to become members of the UN and thus bind themselves to the provisions of the Charter.

Issues regarding composition can cause difficulty for Chapter VII measures, as described by the Chairman of the Sanctions Committee for Somalia:

'The Security Council mirrors power realities. The unequal power structure gives rise to views of its inability to act in an objective, consistent and credible manner...The Council itself must have its own

Latin American and Caribbean countries; Two seats for Western European and other countries. For the current list of membership see, <http://www.un.org/sc/members.asp> (February-2007).

⁹⁹ See, e.g. the potential conflict of interest that exists for the P5 in respect of arms exports and arms embargoes, below in Chapter Four (at note 7).

¹⁰⁰ Note the effect of the Cold War (1947-1991) on Council action. Very few sanctions regimes or arms embargoes were imposed during this period because of the situation between the USA and the USSR.

¹⁰¹ Doxey, M.P. *International Sanctions in Contemporary Perspective* ('Contemporary Perspective') 2nd ed. (1996) Macmillan Press at p.7.

¹⁰² 'Sovereignty' *op.cit.* (Chapter One, note 86) at p.95. Consent may be either explicit or tacit – the P5 are also bound by decisions upon which they acquiesced by virtue of an abstention from voting, as has occurred on a number of occasions (most often by China) where arms embargoes were imposed or modified. (See Table 5, Annex).

¹⁰³ Article 108.

¹⁰⁴ I.e. the agreement that the Council was chosen to act on behalf of the UN (which comprises Member states) in maintaining IPS.

lessons learned unit that would analyse and consider the effectiveness of the measures it implements and the practices and procedures it employs, particularly in the area of sanctions and the mandates of the sanctions committees...'¹⁰⁵

The Informal Working Group on General Issues related to Sanctions¹⁰⁶ had been set up prior¹⁰⁷ to this 'to develop general recommendations on how to improve the effectiveness of United Nations sanctions'¹⁰⁸ and its most recent report was published in 2006.¹⁰⁹ The mechanism is however only temporary.¹¹⁰

3.1.2. Article 24(2)

'In discharging these duties the Security Council shall act in accordance with Purposes and Principles of the United Nations.' According to the *travaux préparatoires* of the Charter, this provision is seen as the 'sole reserve' to the Council's freedom to act under Chapter VII.¹¹¹

3.1.2.1. Chapter I – The Purposes and Principles of the UN

It could be argued that the purposes and principles embody only a political limitation to the powers of the Council.¹¹² Some treaty principles or customary laws may present a limit to the Council's powers under Chapter VII, but only to the extent that they are subsumed under Chapter I of the Charter, not of themselves.¹¹³

¹⁰⁵ Mr Baja during the 5332nd meeting of the Council (19/12/05) – Provisional verbatim meeting record S/PV.5332 at p.6.

¹⁰⁶ <http://www.un.org/Docs/sc/committees/sanctions/index.html> (April-2007).

¹⁰⁷ S/2000/319 of 17/04/00.

¹⁰⁸ S/2005/841 of 29/12/05.

¹⁰⁹ S/2006/997 of 22/12/06.

¹¹⁰ See S/RES/1732 (2006) – '*Decides* that the Working Group has fulfilled its mandate...'

¹¹¹ 'Wide freedom of judgment is left as regards the moment it may choose to intervene and the means to be applied, with the sole reserve that it should act "in accordance with the purposes and principles of the Organization (end of article 1). [sic - lack of closing speech marks] Statement of the Rapporteur of Committee, Joseph Paul-Boncour at the opening meeting of the Committee. UNCIO vol.XII *op.cit.*, at Part I, p, 572. (p.1 of original document – 'Doc.134, III/3/3, May 9, 1945').

¹¹² See Wood, M. (KCMG) "*The UN Security Council and International Law*" *Lecture Two* – The Security Council's Powers and their Limits - 8th November 2006 University of Cambridge *ibid.* note 24 at ¶20.

¹¹³ See Article 103 and further discussions below.

The principles and purposes of the UN provide a limitation to Council action via Article 24 as it limits Council discretion in determination of the objectives of its action.¹¹⁴ It must always be acting in order to maintain IPS. It is important that the principles and purposes of the UN encompass fundamental human rights norms, to which the Council may be subject. According to Angelet,¹¹⁵ this goes well beyond what is expounded in Article 1(3) and cases such as the advisory opinion in Legal Consequences for States of the continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970)¹¹⁶ and the United States Diplomatic and Consular Staff in Tehran case¹¹⁷ show examples of the legal commitment to upholding human rights norms.

Angelet has noted that ‘...it also appears to be in the Security Council’s interest to base its decisions on the principles and rules of international law, so as to foster the acceptance of these decisions by the ‘target’ entity...as well as by the United Nations Members in general’¹¹⁸ and this embodies the principle that for justice to be done, it must be seen to be done. It is further explained that if it can be in the Council’s best interest to found its actions on international law, it must be seen to rely on those principles¹¹⁹ and likewise, it could be assumed that the Council must not be *seen* to violate those principles in addition to the suggestion that it in fact, must not violate them. However, as noted earlier,¹²⁰ Article 1(1) shows, the principles of international law are a limit ascribed to the peaceful settlement of disputes and so while it may be in the Council’s interest ‘to base its decisions on the principles and rules of international law’, in law it need not.

¹¹⁴ Angelet, N. *International Law Limits to the Security Council* in Gowlland-Debbas, V (ed.) *United Nations Sanctions and International Law* The Graduate Institute of International Studies ‘UN Sanctions’ (2001) Kluwer Law International pp.71-82 at p.74.

¹¹⁵ *Ibid.* at p.75.

¹¹⁶ ICJ Rep. (1971) p.16 at p.57.

¹¹⁷ ICJ Rep. (1980) p.3 at p.42.

¹¹⁸ Angelet *op.cit.* at p.71-72.

¹¹⁹ *Ibid.* at p.72

¹²⁰ *Ibid.* note 94 – Goodrich *et al.* and ‘Limitations’.

Angelet concludes that there are various limits under international law to the exercise of Council enforcement action under Chapter VII, but none impose limits which would hamper the Council's ability to fulfil its responsibility under the Charter to maintain IPS. This implies that therefore the Council is using its powers to take superfluous action which is a strong allegation indeed. A recent debate has emerged over the terrorism sanctions and the sanctions committees' 'blacklists', which raises further questions about the limits to the powers of the Council, regarding the delegation of its powers¹²¹ and abiding by, *inter alia*, rules of due process.¹²²

Does Article 1(1) impose a requirement of effectiveness of measures thereby requiring the Council to act effectively or to cease when it can be shown that it has not? It is suggested, that while effectiveness is an ongoing sub-objective for all Chapter VII measures, such an obligation may unduly restrict the Council's ability to at least try to maintain or restore IPS and so this is unlikely to constitute a formal limit.

3.1.3. Article 50

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.¹²³

As states have a right to consult, the Council does have a duty to make consultations possible, but solving the problems is a practically beneficial endeavour to undertake,¹²⁴ rather than a legal duty. In addition, such a legal duty would not create a general obligation for the Council to act any differently in future cases and so would not limit its use of the powers in Chapter VII.

¹²¹ Article 29. For discussion, see 'Delegation' *op.cit.* note 9.

¹²² See further below in Chapter Five.

¹²³ Article 50.

¹²⁴ E.g. the practical benefit gained by ensuring enforcement of the measures and perhaps also, in maintaining friendly relations.

3.2. International humanitarian law

For the reasons already outlined, international law does not present a legal limit to the Council's exercise of power, however, it is unlikely to be ignored in practice.¹²⁵ Schrijver notes the importance of the Fourth Geneva Convention regarding civilian protection in times of war due to the indirect effects of enforcement measures.¹²⁶ When the measures used are arms embargoes, this rule does not present the same degree of concern that arises when the sanctions are imposed upon other commodities. The increased use of exemptions in arms embargo measures and more careful targeting has relieved some, but not all of the concerns the Fourth Geneva Convention raises. A restriction on arms proliferation should be positive for a civilian population, but some indirect effects remain when enforcement is incomplete, such as the diversion of resources in order to pay for illicit weapons. The principle of proportionality is embedded in IHL and corresponds well to the types of enforcement action possible under Chapter VII. Whether the threat to IPS arises from an internal or international conflict situation, proportionality 'must still be applied in that whatever action the Council chooses to take, it must be appropriate and necessary for the achievement of its stated purposes...and may not affect other interest to an extent disproportionate to the advantage obtained or pursued.'¹²⁷

3.3. *Jus Cogens*

'The concept of *jus cogens* operates as a concept superior to both customary international law and treaty. The relief which Article 103 of the Charter may give the Security Council in case of conflict between one of its decisions and an operative treaty obligation cannot - as a matter of simple hierarchy of norms - extend to a conflict between a Security Council resolution and *jus cogens*. Indeed, one only has to state the opposite proposition thus - that a Security Council resolution may even require participation in genocide - for its unacceptability to be apparent.'¹²⁸

¹²⁵ Indeed most, if not all, Council delegations will consult legal advisors in the drafting of resolutions.

¹²⁶ 'Economic Sanctions' *op.cit.* (note 62) at p.156.

¹²⁷ Angelet *op.cit.* at p.72.

¹²⁸ Further Requests for the Indication of Provisional Measures Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order of 13 September 1993, ICJ Reports 1993, p. 325, Separate Opinion of Judge *Ad Hoc* Lauterpacht at 440.

Jus cogens norms embody the indisputable legal limit on the powers of the Council. As there are very few norms which may be classified as *jus cogens*,¹²⁹ the limit loses part of its practical, but still none of its legal significance.¹³⁰

3.4. Judicial Review

Whether or not the acts of the Council are justiciable and by whom is an issue worthy of thorough examination¹³¹ and remains undecided. There is certainly no formal system for it.¹³² As the issue is not of immediate *practical* consequence with regard to the Council's powers to take action to maintain or restore IPS, and as it would not reduce or remove the parameters within which the Council must operate as already set under the Charter and *jus cogens*, it will not be considered here. Suffice it to pose the question; which of the legal limits discussed above might be justiciable if exceeded? The answer to this would show which limits possess the potential to affect the way the Council acts to maintain or restore IPS thereby altering the entire system of collective security under the Charter.

4. Conclusion

There are very few clear legal limits that restrict the Council's exercise of its powers under Chapter VII. Nonetheless, in practice, the Council is unlikely to act in a way that would contravene the limits that do exist (or some others that might only be considered as political limits) unless it was deemed necessary for the maintenance of IPS. In the case of violation of a *jus cogens* norm, it is unintelligible that there could be a necessity in terms of IPS that would warrant such action. In addition, no Council resolution would, with knowledge, deliberately include such a provision because it would not achieve the consensus required to be adopted. There is probably sufficient political

¹²⁹ See Chapter Five.

¹³⁰ It might be asked; must the Council act using its available powers to prevent the beginning or progression of a violation of a *jus cogens* norm or does it maintain its discretion?

¹³¹ The issue has been considered by a number of authors. See, e.g. Dugard, J. *Judicial Review of Sanctions* in 'UN Sanctions' *op.cit.* (note 114) at pp.82-91; Martenczuk (*op.cit.* note 40) and the references he cites in his note 5 at p.518-9 (omitted).

¹³² See 'Keeping the Peace' *op.cit.* (note 52) pp.67 *et seq.*

discord between members of the Council to conduct a mutual form of internal oversight – a peer review, perhaps. The argument that the embargo on the former Yugoslavia disproportionately affected the Bosnian side and thus helped to facilitate the genocide is however, an important consideration to take into account. As will be seen in the next chapter, Council practice is evolving to temporally limit the effects of its decisions. It is suggested that if such a problem arose in the future, this mechanism would assist the Council in reviewing its own actions.

CHAPTER THREE

THE REVIEW AND CLASSIFICATION OF UNITED NATIONS SECURITY COUNCIL PRACTICE REGARDING MANDATORY ARMS EMBARGOES

1. Introduction

collected

The principal exercise for this chapter was to identify and record all mandatory arms embargoes imposed by the Security Council using its Chapter VII powers from its first meeting in 1946 to the present day. Although similar identification has previously taken place (and published, at least up to May 2004¹) for Security Council sanctions in general, a legal focus solely upon arms embargoes has not yet been found and similarly no collection of related information in addition to the specific resolutions which impose or terminate arms embargoes has yet been found. Consequently, one aim was to collect and present information on all resolutions which impose,² terminate, modify, re-affirm or in some other way refer to past or existing arms embargoes. This way, it was envisaged that a complete catalogue³ of the Security Council's practice in relation to arms embargoes would be produced.

1.1. Methodology and rationale behind review and classification

This chapter presents information as a set of assertions based on the material collected and will not contain any judgements on the merits or failings of the practice. The key resource for this research process was the Security Council's website.⁴ These records were systematically searched for documents with content relevant to arms embargoes. The relevant resolutions were classified into groups of either 'internal', 'international' 'mixed' or 'absence of' armed conflict situations. This distinction was drawn in order to fix these variables so that a comparative analysis could take place to identify what

¹ Table 3.1 by Staibano in *Trends in UN Sanctions: from ad hoc practice to institutional capacity building* pp.32-34 in 'International Sanctions' *op.cit.* (Introduction note 12) and her noted source – <http://www.un.org/News/oss/sanction.htm> (April-2006).

² Including those which were imposed conditionally, i.e. 'unless X is done or not done then an arms embargo will come into force...'.

³ See Table 5 - the chronological index of all of all resolutions associated with arms embargoes with basic factual information.

⁴ http://www.un.org/Docs/sc/unsc_resolutions.html (September-2006).

role, if any, context plays in respect to a number of other classifications labelled as 'discussion points'.⁵ This information was catalogued in a number of tables,⁶ which (by presenting the Council's actual practice) form the basis of the observation, analysis and evaluation contained in the remaining chapters. The reasons behind this review include the analysis of Council practice relative to its mandate and identification of any design and/or operational deficiencies in arms embargoes. The review was essential to the construction of arguments for and against the existence of a framework. Table 6 presents statistics relevant to the earlier made classifications. It highlights the frequency of use of these 'discussion point' variations in internal, international and no-conflict situations and as used overall, when all cases are taken together. The purpose of this was to make it possible to distinguish the most typical cases where arms embargoes have been used (i.e. those which follow these patterns) and conversely, to distinguish the most unique cases. This, it is suggested, will assist the formation of an opinion as to whether arms embargoes are *ad hoc* measures, or whether they fit into a normative framework.

2. The Four Contextual Bases

For the purposes of this chapter, identification of the type of conflict is purely to chart any contextual differences in the practice of the Council when it has used arms embargoes. For the purposes of Chapter Five, the view taken on the classification of these conflicts will determine the extent of the principles of IHL that can be applied to the 18 conflict cases outside of the 'international' category.

2.1. The first contextual basis - no armed conflict

Chapter VII has been used where there is no armed conflict in progress, but where a threat to IPS nonetheless exists. Some of these cases⁷ show the Council operating in a preventative and general manner.

⁵ See Table 6, Annex.

⁶ Tables 2 and 3 present information regarding the imposition and termination of arms embargoes, including their legal mandates and stated objectives. Table 4 presents further information regarding the operation of the arms embargoes, e.g. exemptions and monitoring mechanisms.

⁷ E.g. S/RES/1390 (arms embargo and other measures targeting terrorists) and S/RES/1718 on the DPRK (nuclear weapons and ballistic missiles).

2.1.1. What is an armed conflict?

The following definitions⁸ from the Uppsala University Armed Conflict database⁹ have been used as the primary basis for the classifications in this study because they provide simple, objective criteria against which each case can be measured. This chapter does not aim to construct a universally acceptable definition of armed conflict, but tries to ensure that any distinctions made as to variations in conflict (i.e. the classifications) are consistent. Thus, 'an armed conflict is a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths¹⁰ in one calendar year.'

2.1.2. International terrorism

International terrorism may be a factor in an internal¹¹ or international armed conflict or it may be completely independent of such classification.¹² One argument for why the rules of IHL are not applicable to the two arms embargo cases that concerned international terrorism because "terrorists" cannot be properly characterised as a "parties" to a conflict as required by IHL.¹³ In addition, terrorists do not meet the IHL

⁸ http://www.pcr.uu.se/database/definitions_all.htm (April-2007).

⁹ UCDB - <http://www.pcr.uu.se/database/index.php> (April-2007).

¹⁰ Note, '[t]he massacres performed by Hutu militias and Hutu civilians are often estimated as having resulted in 500,000-800,000 deaths. These deaths are not classified as battle-related...' <http://www.pcr.uu.se/database/conflictInformation.php?years=1994&bcID=92&variables%5B%5D=4&button=+Search> (April-2007).

¹¹ There is an obvious association between the internal troubles in Afghanistan in the late 1990's and the later internationally recognised issues of terrorism. This arms embargo case (S/RES/1333) was imposed against a background of internal disorder and so it has been classified as an internal armed conflict arms embargo.

¹² The Libyan case (S/RES/748) was associated with a specific terrorist act; The Usama bin Laden *et al.*/Taliban case (S/RES/1390) was not associated with a particular territory. Although international terrorism is an international issue, it is not of itself dependent on or a consequence of armed conflict – see the preamble of S/RES/1373 of 2001 '*Reaffirming further that...any act of international terrorism, constitute[s] a threat to [IPS]*'.

¹³ See p.18-19 in *International humanitarian law and The Challenges of Contemporary Armed Conflicts* Report prepared by the ICRC (28th International Conference 2-6 December 2003) available

requirements for 'combatant' status, the basics of which are to distinguish oneself from the civilian population, to carry arms openly and to respect the laws and customs of war'.¹⁴ There is an understanding that the requisite level of harm for the existence of an armed conflict can exist in acts of terrorism. As the minimum threshold in terms of fatalities is 25 people, many isolated terrorist attacks engulf this figure. One of the cases in point concerned a terrorist attack which took 270 lives.¹⁵ The death toll from the attacks of 11 September was greater still.¹⁶ However, another aspect that distinguishes terrorism from armed conflict is the indiscriminate nature of the killings. Civilian deaths during armed conflict may be considered incidental to the fighting between parties, or even additional to it, in the sense that such killings are intentional (and therefore breach IHL). This may occur in civil war, when many civilians take up arms, and the distinction between combatants becomes increasingly difficult to maintain.¹⁷

2.2. The second contextual basis - International armed conflict

According to the UCDB, an international/interstate armed conflict is one 'between two or more governments'.¹⁸ This definition, like the others used in the UCDB, is dependent on the status of the parties: a party is either a government or it is not. This, however, begs the question; what is a government? The UCDB defines 'government' as '[t]he party controlling the capital of the state' because this can be empirically determined. It 'is concerned with who is controlling power in practice...not...who is

[http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5XRDCC/\\$File/IHLcontemp_armedconflicts_FIN_AL_ANG.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5XRDCC/$File/IHLcontemp_armedconflicts_FIN_AL_ANG.pdf) (April-2007).

¹⁴ See, e.g. Article 13 GC II; Article 44(3) Geneva Protocol I.

¹⁵ Pan AM flight 103 which exploded over Lockerbie on 21 December 1988.

¹⁶ Although the 1390 sanctions regime against Usama bin Laden *et al.* were not a direct reaction to those events, it was in support of the failure to comply with S/RES/1267 on counter-terrorism.

¹⁷ This is further complicated by the use of child soldiers (also a breach of IHL under Article 77(2) of Additional Protocol I 1977). See also Article 38 of the UNCRC (1989). The issue of SALW also increases the difficulties here because SALW can be used by young children. This is something that distinguishes these types of weapon from others (e.g. the machetes used in Rwanda), which are less likely to be used by a child.

¹⁸ This simple definition negatives consideration of other aspects of a conflict which might be common to international conflicts, such as the involvement of third states. However, such aspects will be necessary in determining the potentially international nature of an otherwise internal conflict.

the rightful holder of the power.’ It would appear to exclude from its scope the idea that more than one party could control the capital of a state, or that control could be equally divided between parties and therefore excludes intrastate conflicts from its ambit.

2.3. The third contextual basis - Internal armed conflict

According to the UCDB, an internal/intrastate armed conflict is one ‘between a government and a non-governmental party, with no interference from other countries’. An internal armed conflict is thus one that takes place within a single territory. It may occur within a state where armed groups, outside of the control of the legitimate government, create disorder of their own volition (i.e. an insurrection) or react to unacceptable behaviour by the state (e.g. minority force in defence of the right to self determination, which may also amount to secession.)¹⁹ It is suggested that it may also occur in cases where no legitimate government can be discerned and armed ‘warlords’ and their supporters have *de facto* control over different sections of the territory.

2.4. The fourth contextual basis – Mixed-nature armed conflicts

Essentially, this context comprises internal armed conflicts that have had foreign involvement. According to the UCDB, such a conflict is one ‘within a country between a government and a non-governmental party; where the government, the opposition or both sides receive troop support from other governments, that actively participates in the conflict.’ This factor of foreign troop involvement has been argued²⁰ to be one of the ways in which an internal conflict can become international. It does not necessarily mean that foreign involvement by way of the provision of armaments alone may internationalise the conflict. If that were the case, almost every armed conflict would be internationalised, and this conclusion cannot be sustained. The ‘dismemberment of a confederation’,²¹ as occurred in the former Yugoslavia could have retrospectively

¹⁹ See Doehring, in ‘Simma’ *op.cit.* at p.57; This point is developed in Chapter Five.

²⁰ ‘In addition, in case of an internal armed conflict breaking out on the territory of a State, it may become international (or, depending upon the circumstances, be international in character alongside an internal armed conflict) if (i) another State intervenes in that conflict through its troops, or alternatively if (ii) some of the participants in the internal armed conflict act on behalf of that other State.’ *Tadić Appeals Chamber Judgment of 15 July 1999* at 84.

²¹ Doehring *op.cit.* at p.57.

shown that the conflict there had international and internal aspects, because it influenced creation of newly independent states. Importantly, the ICJ in Nicaragua said that in the case of a mixed conflict, 'there is no need to address the question whether [certain] actions must be looked at in the context of the rules which operate for the one or for the other category of conflict' because 'the minimum rules applicable to international and to non-international conflicts are identical.'²² This would imply that only the minimum rules may be applied in a mixed conflict situation, thus despite its international elements, no greater protection and control under IHL could be afforded to those involved in such a conflict.

2.5. Internationalised armed conflicts

The importance of this potential type of conflict is that it provides a mechanism through which an internal or mixed armed conflict is elevated to the status of an international armed conflict, thus gaining the added benefits available under traditional IHL. This type of conflict has been described as one that is 'not actually 'international' but are for some purposes treated as 'internationalized'.²³ Traditionally, this would only include those armed conflicts that are defined in Article 1(4) of Geneva Protocol I. However, perhaps due to the disproportionate number of internal and mixed conflicts occurring in the world, there appears to have emerged discussion on whether a particular conflict is 'international', separate to a (relatively) simple and empirical finding of 'two or more governments'.

One method that has been used to test for internationalisation is the determination of 'three different standards of control under which an entity could be considered a de facto organ of a State, each differing according to the nature of the entity.'²⁴ This determination was considered to be able to both generate the international responsibility of a State and also render the conflict international.²⁵ This argument was found

²² Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (*Merits*) Judgment, ICJ Reports 1986, p.14 at ¶219, p.114.

²³ 'Armed Conflict' *op.cit.* (Chapter Two note 18) at p.197-198.

²⁴ 'Internationalized' *op.cit.* (Chapter One note 58) at p.325 and his note 70 (omitted).

²⁵ Tadić *op.cit.* note 20 at 140.

unpersuasive by the ICJ because it broadens 'the scope of State responsibility well beyond the fundamental principle governing the law of international responsibility: a State is responsible only for its own conduct, that is to say the conduct of persons acting, on whatever basis, on its behalf.'²⁶ The ICJ noted that 'it may well be that the [Tadić] test is applicable and suitable...[i]nsofar as the "overall control" test is employed to determine whether or not an armed conflict is international'²⁷ but doubted its broader application to matters such as State responsibility, given that the Tribunal adjudicates upon issues related to criminal responsibility.²⁸ The Court effectively said²⁹ that the occurrence of internationalisation is dependant upon the degree and nature of a state's involvement in an armed conflict on another's territory but that such internationalisation is independent of any consideration relating to the responsibility of that state in respect of that involvement.³⁰

3. Basic summary of results

The Council imposed arms embargoes on twenty-two occasions during the selected period of study.³¹ The relevant information on the two earliest cases³² was unavailable through the UCDB, but both were placed into the internal armed conflict context.³³

²⁶ 'Genocide Judgment 2007' *op.cit.* (Chapter One note 4) at ¶406.

²⁷ *Ibid.* at ¶404-406.

²⁸ *Ibid.* at ¶403: '[T]he Court attaches the utmost importance to the factual and legal findings made by the ICTY...[But] The situation is not the same for positions adopted by the ICTY on issues of general international law which do not lie within the specific purview of its jurisdiction and, moreover, the resolution of which is not always necessary for deciding the criminal cases before it.'

²⁹ Although it did not 'think it appropriate to take a position on the point in th[at]...case, as there [was] no need to resolve it for purposes of th[at]...Judgment.' *Ibid.* at ¶404.

³⁰ *Ibid.* at 405.

³¹ 25 January 1946 - 31 January 2007.

³² Southern Rhodesia (S/RES/232) and South Africa (S/RES/418).

³³ For South Africa, there was clear reference to the level of violence and 'acts of aggression' within the arms embargo resolution. The inclusion of Southern Rhodesia in the internal armed conflicts group could be challenged. The inclusion was based upon the understanding that the situation with which the Council became involved later developed into an internal armed conflict. Although as has been noted the latter situation was 'never dealt with' by the Council. (See Kooijmans, P.H. *The Security Council and Non-State Entities as Parties to Conflicts* ('Non-State Entities') in Wellens, K. (ed.) *International Law: Theory and Practice* - Essays in honour of Eric Suy (1998) Martinus Nihjoff 333-346 at p.335).

Moreover, this was the first application of Chapter VII measures by the Council, and its objectives

Arms embargoes were imposed nine times in the internal armed conflict context;³⁴ they were imposed twice in the international armed conflict context;³⁵ they were imposed nine times in the mixed armed conflict context;³⁶ and finally there were two cases where they were imposed in the absence of armed conflict.³⁷ In one of these cases there was neither an associated government nor territory and so an armed conflict within the definition expounded by the UCDB was not applicable. Twenty-one of these cases were officially associated with one or more specific territories.³⁸ One country has had three separate arms embargoes imposed upon it³⁹ and two countries have had two separate impositions.⁴⁰ In all other cases only one embargo has been imposed, although in four of these cases⁴¹ the measures have been renewed at least once. Nineteen of the twenty-two cases were imposed or re-imposed with unlimited duration.

Arms embargoes have not been used every time the Council has determined a threat⁴² to or breach⁴³ of IPS, which shows that they are not automatic reactions to threats or breaches of international peace. This corresponds to the discretionary nature of the Council's power under Article 39. However, they are the most commonly used of the Chapter VII measures. In ten of the twenty-two cases, a mandatory arms embargo was the first and only (i.e. standalone) Chapter VII measure to be imposed upon the situation

and target were the most difficult to categorise. For these reasons, this case is identified in Table 6 by a * in the columns where data relating to it has been entered. This is so that it can be seen that the overall patterns in practice were not affected by its inclusion.

³⁴ See Tables (#) A (Annex). Reduced to eight times, if Southern Rhodesia is excluded.

³⁵ See Tables (#) C (Annex).

³⁶ These were classified as 'mixed' conflict cases, possessing elements of both intra and interstate armed conflicts. See Tables (#) B (Annex).

³⁷ See Tables (#) D (Annex).

³⁸ The exception is the case of S/RES/1390 regarding terrorism.

³⁹ Liberia – S/RES/788, S/RES/1343, S/RES/1521.

⁴⁰ Sierra Leone – S/RES/1132, S/RES/1171 and the former Yugoslavia/Kosovo – S/RES/713; S/RES/1160.

⁴¹ S/RES/1333, S/RES/1493, S/RES/1521 and S/RES/1572.

⁴² See e.g. 'threat to [IPS]' – S/RES/1072 of 1996 on Burundi – although this was not strictly a determination of a threat to IPS, but a deep concern of the threat posed to peace and security (in a region) by the situation. In addition, an arms embargo was threatened (Part B ¶11); 'threat to peace and security in the region' – S/RES/1101 of 1997 (Albania).

⁴³ See e.g. the Argentine invasion of the Falklands Islands S/RES/502 of 1982.

at the time of imposition.⁴⁴ On occasion, the target territory consented to the measures⁴⁵ or retained partial control over their operation. The latter point is presented by the 'arms boycott factor' information displayed in Table 2. Half of the cases have been terminated or have expired,⁴⁶ and three of the eleven cases were suspended prior to termination. There is an established practice of terminating measures by passing a new resolution to that effect. However, as there has been an increase in the number of 'limited duration' enforcement measure regimes, it is likely that more cases will simply expire.⁴⁷ With regard to contextual differences⁴⁸, 5/9 internal cases⁴⁹, 1/2 international cases, 4/9 mixed cases, and 1/2 'absence of a conflict' cases are no longer in force.

Common concurrent measures included, targeted financial sanctions such as the freezing of funds or assets; embargoes on oil, aviation, diamonds or timber; and travel bans. Four forms of Council-mandated monitoring exist:⁵⁰ sanctions committees, expert panels or groups, monitoring groups and via existing peacekeeping missions.⁵¹ Sometimes the Secretary General is requested to report on implementation.⁵² Regional arrangements⁵³ have been used to assist in the monitoring efforts. The sanctions

⁴⁴ See Table 4 'concurrent measures'.

⁴⁵ E.g. Former Yugoslavia. Conversely, the Government of Rwanda (in a rare case where the target was sitting as a non-permanent member of the Council at the time) voted against the arms embargo in S/RES/918.

⁴⁶ See Table 3 'Current status'.

⁴⁷ Although note, only one 'limited duration' case (S/RES/1298 Eritrea/Ethiopia) has expired without measures being immediately renewed. The Council issued a Presidential Statement to mark the expiration of the measures due to occur the following day. (S/PRST/2001/14). Another case (S/RES/1132) was set to expire but was terminated prematurely and a new embargo was imposed upon non-governmental forces alone.

⁴⁸ Other contextual differences can be compared in Table 6, Annex and see S.5.1.1 below.

⁴⁹ Reduced to 4/9 if Southern Rhodesia is excluded.

⁵⁰ There have also been regional arrangements for monitoring, such as the OSCE's Sanctions Assistance Missions (SAMs) in the former Yugoslavia. See 'International Sanctions' *op.cit.* at p.39.

⁵¹ E.g. UNMIL was directed to monitor observance of the embargo in Liberia and UNCOI's mandate was extended to monitor implementation of the arms embargo in cooperation with its Group of Experts, other peacekeeping missions in West Africa and relevant governments (¶2(m)-(n) S/RES/1609). See Tables 4 and 6 for additional information. Regional peacekeepers such as ECOMOG, have also been authorised to 'ensure strict implementation' (see ¶8 of S/RES/1132).

⁵² E.g. see S/RES/418 at ¶6.

⁵³ SAMs in the former Yugoslavia case and the OSCE Verification Mission for the Kosovo measures.

committees are established under Rule 28 of the Council's provisional rules of procedure⁵⁴ and are dissolved at the same time measures are terminated. Expert panels/groups and monitoring groups have limited-duration mandates and need to be renewed. The table below shows the range of (paraphrased) duties undertaken by the two key mechanisms. Not all duties were created in all cases, and several were not frequently used.

Table A:

Mechanism	Range of duties
Sanctions Committee	Examine reports of states to Secretary-General on measures taken for the effective implementation of measures; Seek from states further measures on such implementation; Recommend ways of increasing effectiveness of measures; Consider information brought by states regarding violations of measures; Recommend appropriate measures in response to violations – provide this information to the Secretary-General to distribute to states; Promulgate guidelines that may be necessary to facilitate the implementation of measures; Report to the Council on, <i>inter alia</i> , identification of violators and vessels involved in violations; Designate individuals and entities onto a 'blacklist' upon which additional enforcement measures will be imposed and to update and maintain this list, and to consider and decide on exemption requests to such measures; Publicise relevant information; Liaise with regional and UN peacekeepers regarding implementation; Consider visits by the Committee Chairmen to targeted region and neighbouring states; Cooperate with other relevant Council Sanctions Committees; Provide prior approval to the relevant government for the movement of military equipment and supplies into the targeted region; Give special attention to communications under Article 50 from neighbouring or other states with special economic problems concerning the carrying out of measures.
Panel/Group of Experts	Investigate violations of measures; Collect and assess information on verification (whether or not target complying with demands) and thereby assess progress towards meeting the conditions for the lifting of measures; Investigate links between the exploitation of natural resources and the fuelling of conflict; Collect information linked to illegal activities of listed individuals; Report to the Council on implementation of measures and keep the Committee updated; Coordinate activities as appropriate with regional peacekeepers; Report on implementation, violations (including by rebels and neighbouring countries) and on the various sources of financing breach (e.g. illicit arms for natural resources); Report to the Council on observations and recommendations on how to minimise any humanitarian and socio-economic impact of the measures; Scrutinise information collected by peacekeepers; Gather and analyse all relevant information in the target state and region on the flows of arms; Consider and recommend ways of improving the capabilities of states to implement the measures effectively; Consider the adequacy of air traffic control systems in the affected region; Provide the Committee with a list (with supporting evidence) of violators and accomplices; Cooperate with other Expert Groups/Panels; Generate independent information on violations, including from sources in civil society, governments and the business

⁵⁴ 'The Security Council may appoint a commission or committee or a rapporteur for a specified question.'

community; Assess the capacity of states in the affected region to fully implement the measures, including a thorough review of national/customs/border control regimes.
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There have also been a number of ‘one-off’ monitoring mechanisms used, including, UNICOI for the 918 measures (Rwanda);⁵⁵ a Monitoring Group for the 733 measures (Somalia);⁵⁶ a Monitoring Group in New York and a Sanctions Enforcement Support Team for the 1333 measures (Taliban-controlled areas of Afghanistan);⁵⁷ and an Analytical Support and Sanctions Monitoring Team for the 1390 measures (Usama-bin Laden/Taliban/Al Qaeda).⁵⁸ Also unique, were the monitoring mechanisms in Iraq – UNSCOM and UNMOVIC, although these were particular to verification tasks regarding Iraq’s WMD.⁵⁹

3.1. Target addressees in practice

This section establishes with whom or what the Council was aiming to communicate and thereby target by means of the measures in the resolutions. There were five types of target addressee identified in the arms embargoes resolutions: Governments; *de facto* authorities; the parties to the conflict; any recipient in the territory (i.e. the Government and non-state actors, including individuals in the relevant territory); and non-state actors alone. All but the final type of target addressee indicated the imposition of an embargo which would affect the whole of the relevant territory. Table 6 shows that it was equally common for the Council to target governments alone and non-state actors alone.

3.2. Obligation addresses in practice

In addition to the ubiquitous mandatory decision ‘all states shall prevent the sale, supply and transfer...’ which creates an obligation for all states, there have been calls for compliance by all states (including non-Member states) and international organisations

⁵⁵ ¶1 S/RES/1013 (4 point mandate). This was recognised as ‘an example of a useful means for strengthening the effectiveness of an arms embargo established by the Council’ (preamble S/RES/1196).

⁵⁶ ¶3 S/RES/1587 (9 point mandate).

⁵⁷ ¶3 and 4 of S/RES/1363 (3 point mandate).

⁵⁸ ¶6 of S/RES/1526 + annex thereto (9 point mandate).

⁵⁹ For further details, see <http://www.unmovic.org> (March-2007).

as well.⁶⁰

3.3. Stated or apparent objectives in practice

There is one ultimate rationale which motivates not only the use of arms embargoes, but all measures imposed under Chapter VII – the maintenance or restoration of IPS. It is worth recalling De Wet's discussion of the Council's apparent double strategy⁶¹ because a multidimensional element arises from the 'layering' of objectives and purposes when arms embargoes are used. This layering contributes to the difficulty in measuring the effectiveness of arms embargoes in terms of their success in achieving their goals. Table 6⁶² shows the patterns in the use of the four identified⁶³ types of objectives individually and in combination. The data presented there shows that the most common purpose for the overall use of arms embargoes was to promote peace (type B). The table below shows the arrangement of the 'layers' of the goals and purposes arms embargoes have aspired to fulfil.

Table B:

Rationale	The maintenance or restoration of IPS			
Sub-rationale	Conflict containment		Compliance by coercion	
Objective	Arms control Type A	Peace-promotion Type B	Punishment Type C	Bargaining Type D

The measures used for attempting to ensure compliance by coercion operate in two ways. First, through negative or forced coercion, i.e. 'punishment': Demands are made in an earlier resolution which did not impose any measures. If the demands are not met, the Council issues an embargo for that failure to comply; or a threat is issued after an Article 39 determination, that an embargo will come into force unless a certain condition or set of conditions is deemed to have been satisfied within a set time period. This type of coercion becomes punishment as soon as the target fails to comply as

⁶⁰ E.g. ¶20 of 864/93 (UNITA).

⁶¹ I.e. The Council might be able to address an internal problem by way of its potential international effects - see Chapter Two.

⁶² See Annex.

⁶³ Identification of these objectives involved reviewing the objectives stated in the text of the Council resolutions and looking for indications of other or identical objectives that were apparent within the text. The details contained in the legal mandates were most indicative and therefore most useful in performing this task.

ordered. In all instances where a threat was issued, the target defaulted and the embargo came into force. Second, through positive or induced coercion, i.e. 'bargaining': An embargo is imposed immediately after an Article 39 determination, and 'readiness' to terminate once certain demands were met is stated or other incentives for early termination or suspension are offered. These types of objectives accord with Article 41 because they are used to enforce decisions of the Council. This could be interpreted as the measures being used to enforce international law, either because the demand made of the target, by the Council, was already an obligation under international law or because the demand of the Council constituted a decision and therefore invoked Article 25 and made the demand a new international obligation under the Charter.

The measures used for attempting to contain a conflict operate by an embargo being imposed immediately after an Article 39 determination, which will persist until the Council says otherwise. These types of objectives are rarely associated with demands other than that which is immediately related to the armed conflict, such as ceasing the hostilities, or disarming, if indeed, any demand is made at all. Sometimes a 'readiness to terminate' was stated in relation to these demands for peace. Rather than trying to modify the behaviour of a target, these objectives try to modify the state of the situation itself.

Sometimes the objectives within different sub-rationales are mixed. The following combinations of objectives were used: types A and B; types A and D; types B and D; and types C and D. Only type C was never used with types A or B and only type D was used in combinations with all other types. Before and during the 1990's, it was more common for individual objectives to be used,⁶⁴ rather than combinations of objectives. Since 2000, it has been more common for combinations of objectives to be used,⁶⁵ rather than individual ones.

3.4. Basic legal mandates in practice

The requisite legal foundation for the use of enforcement measures under Chapter VII is

⁶⁴ 10/13 cases.

⁶⁵ 7/9 cases.

Article 39 of the Charter. There were eight formulations of legal mandates used in the arms embargoes resolutions,⁶⁶ they were:

1. A breach of IPS
2. A threat to IPS
3. A threat to IPS in the region
4. A threat to peace and security in the region
5. A threat to IPS and stability in the region
6. A threat to IPS in the area of *x*
7. A threat to IPS, in particular to the cause of *y*
8. No explicit Article 39 determination given in the resolution itself or in a Chapter VII resolution immediately preceding it⁶⁷ (in terms of Council action regarding that state).

The data presented in Table 6 shows that the most common formulation of a legal mandate for the overall use of arms embargoes was Type 2. This was the expected result because it embodies the standard phrasing for the use of Chapter VII measures. The most useful information to garner from these formulations is the wide variety that Council has used. If it is argued that, essentially, it is understood that *international* peace is what is being considered, why does the Council not simply state that and use the most precise formulations (Types 1 or 2) in all cases? Article 39 refers simply to 'any' threat, however, this cannot be interpreted as being a non-international threat, because the mechanism of Article 39 is designed for measures to be taken 'to maintain or restore *international* peace and security.' It is suggested that the use of the term *international* should therefore be uniform, even if additional regional references are included to demonstrate the extent of the Council's concerns. Hence, Types 4 could be argued to fail to fulfil the element of Article 39, but certainly Type 8 would, because the one essential requirement is not apparent in the document that established the legal

⁶⁶ See Table 3. (Annex)

⁶⁷ A case where an Article 39 determination was not given in the resolution itself was Iraq S/RES/661 of 1990. However, the Council's action on the matter immediately preceded the arms embargo resolution, both in terms of Council action regarding Iraq and temporally. The initial Council action was in response to the occupation of Kuwait, however measures continued once the withdrawal had taken place because of the threat to peace cause by fighting in Iraq itself regarding the Kurdish population.

measures. It could therefore be possible to contest the legality of S/RES/1160 and S/RES/1171, however, both cases did refer to Chapter VII. In the former, one representative did refer to a threat to IPS in the meeting when the resolution was adopted,⁶⁸ but this position must not have achieved consensus for it was omitted from the text of the resolution. In the latter case, the function of the resolution was to modify the targets of an existing arms embargo by terminating that resolution and passing a new resolution. So it could be argued that the determination in the original resolution persists, however as the target of the measure was being modified, a new determination could have easily been included. No representatives made any statements during that meeting.

4. Nature and scope of arms embargoes

Many practical difficulties exist for the UN system and the Council, like many other entities in the UN also undertakes multilateral negotiations. Due to the existence of a voting system, the constraint of the requirement of consensus (which is required in many other areas of UN work) is avoided by the Council. Nevertheless, the text of any document which has been internationally agreed is unlikely to ever truly represent the views of any one member state. Compromises must be reached to allow progress to be made and so the textual analysis of these Council resolutions is performed with these imperfections in mind. Nevertheless, the Council should expect a certain level of evaluation of its chosen terminology as the resolutions passed are legally binding. It could be that the only reason for finding some evidence of a normative framework is because there is a method of practice within the UN of 'borrowing' previously used (and therefore, previously accepted) terminology to formulate each new decision, without expending (often restricted) time redrafting innovative, ingenious and/or more textually consistent resolutions.

4.1. Introduction

Earlier chapters have attempted to identify the origins of the authority behind the imposition of arms embargoes, but what is the precise source of the obligation which

⁶⁸ See Table 3B.

arises once a Council resolution has been adopted? Although it would appear correct to state that it is the national implemented laws which create the arms embargo as a legal device, not the Council resolution – so the obligation not to violate the arms embargo is addressed, secondarily, to any person or entity that the implementing state directs. The Council is only owed a legal obligation from its Member states (and possibly other states) to implement the decisions it passes in its resolutions – i.e. to ‘accept and carry out’ the Council’s decisions.

A model construction of the obligations addressed to member states when an arms embargo is imposed (i.e. the scope of the embargo) might be as follows:

[The Council] *Decides* that all States shall take the necessary measures to prevent the direct or indirect, sale or supply or transfer to [...the target addressee(s)⁶⁹.....], by their nationals (including by their nationals outside of their territories) or from their territories, or using their flag vessels or aircraft, of arms and related matériel, including [...more detailed list of weapons types⁷⁰...], (whether or not originating in their territories), *and* to prevent the provision of any technical assistance, advice or training related to the provision, maintenance, use or manufacture (including the provision of licences for manufacture) of the prohibited items *and* any activities by their nationals or in their territories which promote or are calculated to promote such sale, supply, transfer or provision.⁷¹

It is interesting to note that the phrase ‘the necessary measures to prevent...’ is used rather than ‘the measures necessary to prevent...’ because the latter implies those measures will be documented somewhere. In addition, the terminology in the former implies the lowest common denominator option – basically letting states ‘get away with’ doing the minimum possible to attempt to prevent actual or planned violations of the measures, rather than making them do all that is within their power to ensure the prevention of actual or planned violations of the measures. Perhaps this is because the Council and all UN member states accept that it is not practical to expect that the

⁶⁹ To State(s) X / the territory of State(s) X / to entity/entities Y / to any person or body in State(s) Z or to any person or body for the purposes of any business carried on in or operated from State(s) Z.

⁷⁰ Including; weapons and ammunition, military vehicles (including aircraft) and equipment, paramilitary equipment, and spare parts for the aforementioned.

⁷¹ This was compiled from the language of the 22 arms embargo cases as used by the Council.

measures will be implemented and enforced absolutely.

4.2. Political or legal measures?⁷²

Kuyper has noted⁷³ that how measures are viewed by the authorities charged with implementation and the citizens affected by them is important in deciding if they are legal obligations or political decisions. Those states that create new legislation to implement the measures clearly perceive the measures to be legal. Do arms embargoes actually bind states in practice, given the absence of formal reprimands for a state's failure to effectively implement the measures within its internal jurisdiction? They are bound by a norm, but like most international law, there is no overarching mechanism that is capable of enforcing obligations arising from that norm and so compliance relies on the individual political will of each state to implement the measures.

4.3. Primacy

An interesting factor shown in the Council's practice is the primacy of arms embargoes. Even when imposed as part of a comprehensive regime, arms embargoes have always been contained in a separate operative paragraph (or sub-paragraph) within the resolution, even on occasion, when the Article 39 qualification was not.

In addition, half of the arms embargo resolutions contained a provision, the model example of which could be stated as follows:

[The Council] *Calls upon* all States, including States non-members of the United Nations, and all international and regional organizations, including the United Nations and its specialized agencies, to act strictly in accordance with the provisions of this resolution, *notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the entry into force of the prohibitions imposed by this resolution.*

Although this primacy is not conveyed through a decision, but a recommendation, the existence of Article 103 indicates that these provisions serve as a reminder of the pre-eminence of Council resolutions. This also serves to remind states of the fact they

⁷² See Anthony *op.cit* (Introduction note 22 - Bonn) p.5 *et seq.*

⁷³ Kuyper, P.J. *The Implementation of International Sanctions – The Netherlands and Rhodesia* (1978) Sijthoff and Noordhoff International Publishers at p.6.

cannot invoke internal law as a reason for failing to fulfil their international obligations.⁷⁴

4.4. Main obligations

The fundamental obligations upon states are to abide by Articles 25 and 48 by accepting and carrying out the decisions of the Council. To do this, the explicit obligations outlined above in the model construction need to be implemented and those obligations enforced. The only effective way to do that would be to make such activities criminal⁷⁵ or civil offences under internal law.⁷⁶ The internal law would need to include all of the elements contained in the resolution, for example:

1. It is an offence for a National of [State X], wherever he or she resides, to directly or indirectly:
 - a. Sell, supply or transfer the prohibited items to the targeted destination/user;
 - b. Provide any technical assistance, advice or training related to the provision, maintenance, use or manufacture (including the provision of licences for manufacture) of the prohibited items to the targeted destination/user;irrespective of the origin of the prohibited items.
2. It is an offence to promote (or calculate the promotion of) the occurrence of the activities outlined in S.1.
3. It is an offence to use a flag vessel or aircraft of [State X] to perform the activities outlined in S.1.
4. It is an offence to perform the activities outlined in S.1 from the territory of [State X], irrespective of an individual's nationality.

In order to effectively enforce the law, as is required, states must impose appropriate

⁷⁴ See Chapter Five.

⁷⁵ Making the violation of an arms embargo a criminal offence was 'encouraged' in ¶2 of S/RES/1196 of 1998. The Council has also made recommendations with regard to legislative, administrative and judicial action and the imposition of penalties for violation. See, e.g. S/RES/1343 at ¶21; S/RES/1390 at ¶8; and S/RES/864 at ¶21.

⁷⁶ The benefit of a civil law offence in English law regarding the covert operations of illicit arms brokers and illicit arms transfers would be the lower standard of proof required for liability. However, the value of punishment in criminal law for increasing compliance with the law remains largely in its potential deterrent effect. Custodial sentences and large fines would be more likely to deter some potential offenders (although presumably not all) than would the case in providing only a civil remedy.

penalties (whether criminal or civil) designed to reprimand offenders, deter future breaches and to enforce any other principle of punishment under the internal law. In order to identify breaches, states must also regulate the activities of individuals or entities that export weapons (to any destination) if they are a national of the state or if they reside there or if a relevant (e.g. arms/logistics) company is incorporated in that state. States must also investigate potential violations and apprehend alleged offenders.

As well as implementing the resolution, there are three sub-obligations upon all states. In order to support the legal status of the measure, states must not; deliberately violate the embargo; or assist other states or entities that violate the embargo, whether intentionally or otherwise. In addition, states are under an obligation to amend the internal law, if the Council amends any part of the resolution, which also includes the obligation to repeal the internal law once the Council has decided the measures are to be terminated. There are additional obligations upon neighbouring states⁷⁷ to physically enforce the embargo. Methods of doing this might be to create or improve internal law regarding export and import (border) controls and to police relevant borders where resources exist. It is suggested that the arms embargoes do not obligate non-regional Member states to occupy land or sea border areas in order to physically police exports and imports.

Failure to fully implement and/or enforce the arms embargo in the ways described above would constitute a violation of Articles 48(1) and 25. If this happens, the Council could then take action against the violating state to ensure future compliance, unless effective action can be taken under another sphere of international law, such as that of state responsibility. The international obligations required for state responsibility can be identified but to whom the obligation is owed is more problematic. This issue will be considered below, in Chapter Five.

5. A normative framework?

5.1. Arguments in support

The work of the Expert Working Group⁷⁸ on a Common Understanding of Arms

⁷⁷ Peacekeeping forces and Council monitoring mechanisms have been given mandates to provide assistance for the physical enforcement of arms embargoes and other measures to ease the burden on neighbouring states.

⁷⁸ Hereinafter, the 'Bonn group'.

Embargoes during Bonn-Berlin process produced a 'Model Resolution'⁷⁹ with four defined sections: (preambular paragraphs) causes and objectives of the embargo; (operative paragraphs) scope of the embargo; monitoring; and additional provisions. Through the review in this thesis, it is apparent that some patterns have emerged in the Council's practice on the use of arms embargoes.⁸⁰ There is overwhelming support for the requirement of an Article 39 determination prior to action. The clearest evidence of the development of norms in the Council's use of arms embargoes is in connection with its decisions to use exemptions and monitoring and enforcement mechanisms at the time the embargo was imposed. In addition, it was far less common for arms embargoes to be used as 'standalone' or 'exclusive' enforcement measures. There did not appear to be any significant contextual difference in the way these variables were used.

5.1.1. The role of context?

The greatest contextual difference to note is the significantly larger number of internal and mixed armed conflict situations recorded compared to the international or no armed conflict situations. This is likely to be due to the fact that there have been many more non-international conflicts in operation since the end of the Second World War. To establish the true role of context, it would be necessary to also ascertain in which cases the Council did not make determinations under Article 39 but where armed conflict was in progress and the cases in which it did make such a determination, but no Chapter VII action was taken. Such investigation would go beyond the scope of this thesis, but the point is worth recalling because it emphasises the fact that this study, based solely on determining patterns regarding the practice on one type of Chapter VII measure, is necessarily limited.

5.1.1.1. Target Addressees

In both internal and international armed conflict situations, the most common targets were governments (33% and 100% of cases respectively). The mixed situation most commonly targeted non-state actors (44% of cases) and the no armed conflict situations

⁷⁹ See Davis, I. (Rapporteur) Chapter 2 (p.25) of *Design and Implementation of Arms Embargoes and Travel and Aviation Related Sanctions: Results of the 'Bonn-Berlin Process'* Brzoska, M. (ed.) (2001) BICC, Bonn. <http://www.bicc.de/events/unsanc/2000/booklet.php> (January-2007).

⁸⁰ See Table 6, Annex.

were divided equally between a government and a non-state actor. This would indicate that targeting is an *ad hoc* process where the Council does not make a choice relevant to the contextual situation as such; rather the target presents itself as a problem to the Council and the Council responds.

5.1.1.2. Legal Mandate

The variety of formulations for the legal mandate used in internal conflicts are so evenly spread, that the differences between the most and least common results are only two cases apart. Use of the terminology 'a threat to IPS in the region' was therefore only slightly more common in internal cases than 'a threat to IPS'. The small number of cases in the international and no armed conflict groups are highlighted as to their limited ability to show significant patterns in practice.⁸¹ It is likely that the disparities in chosen terminology are due to the conditions in which these decisions are taken. The affirmative vote requires the agreement of nine sovereign states with respect to a delicate political situation. The omission of the word 'international' in some cases therefore, is assumed to be due to necessary political compromise rather than any legal consideration. The mixed and no armed conflict cases most commonly used the second formulation;⁸² which is perceived to be the most appropriate because it aligns with the terminology of the Charter.

5.1.1.3. Objectives

The range of stated or apparent objectives was evenly spread in all contexts. Rather than denying the existence of a norm here, it is suggested that this observation reveals the multifaceted nature of the purposes behind arms embargoes. They are not simply used as coercive 'carrots and sticks' to achieve compliance with Council demands. They have a variety of objectives used, often in combination, in response to the needs of the situation. As will be discussed later, the fundamental need in all armed conflict situations is a method to reduce the intensity of the violence (and therefore the number of casualties) and one objective in particular, is designed for precisely that purpose.

⁸¹ In the international group, the first case of a protracted interstate conflict (where the embargo remained in force equally between the two parties for its entire duration) had the unusual formulation 'a threat to peace and security in the region' (S/RES/1298).

⁸² 'A threat to [IPS]'.

5.2. Arguments in opposition

With the exception of operational points, such as the exemptions, monitoring arrangements and use of concurrent measures, these results would suggest that the Council has evaluated each case on its own merits when deciding to use arms embargoes and in the way it has constructed the measures. From one perspective, this is laudable because despite the shared contexts in many cases, the details of the conflict, its parties and the underlying tensions are complicated and in some ways unique. It could be said that there have been no like cases to treat alike. From another perspective, it is reasonable to criticise the Council regarding the inconsistencies in terminology⁸³ and the continued lack of clarity concerning the objectives, how they operate and how they are connected to the ultimate rationale of the maintenance of IPS. It is the language of the text that will determine its legal character and through this, the precise content of the states' obligations. For this reason it is desirable to have common standards that form a template for future use, as the Bonn group have shown. As well as increasing the clarity of resolutions, this would also increase the efficiency of drafting and may well assist the standardisation of implementation efforts, as has been suggested is desirable.⁸⁴

6. Conclusion

There are patterns evident in practice, but these are not consistent enough to establish a functioning normative framework. The Council needs to maintain its flexibility in order to respond to *any* threat or breach of the peace. The partly *ad hoc* approach taken in practice appears to be conducive to that requirement. Fundamentally, the alleged existing norms in practice tend to focus on the objectives⁸⁵ of measures. Indeed, this

⁸³ See further, Luck *op.cit* (Introduction note 22 - Bonn).

⁸⁴ See e.g. 'Economic Sanctions' *op.cit* (Chapter Two note 62) at p.157; Biersteker, T.J., Eckert, S.E., Halegua, A., and Romaniuk, P. *Targeted Sanctions and State Capacity – Towards a framework for national level implementation* in 'International Sanctions' *op.cit* at pp.57-64.

⁸⁵ I.e. the UN's public perspectives regarding for what purposes it employs the sanctions, see e.g. the Sanctions Committee website - <http://www.un.org/sc/committees>; ¶66 of A/50/60/S/1995/1; and the preamble of S/RES/1196 of 1998 regarding the Secretary-General's report on "The causes of conflict and the promotion of durable peace and sustainable development in Africa" (A/52/871)(S/1998/318).

should be the case, because the logical way to measure the success of measures is by their apparent attainment of their stated goals. In the next chapter the objectives and the legal basis for arms embargoes will be further examined and the interaction between these elements will be considered.

CHAPTER FOUR

WHAT IS THE CORRECT LEGAL BASIS FOR ARMS EMBARGOES WITHIN THE CHARTER?

1. Introduction

This Chapter does not intend to judge whether or not specific Council resolutions were *ultra vires* or unlawful in any other way. Instead, this chapter will first examine the specific legal mandate for arms embargoes; and second, will discuss whether there could be alternative legal bases available under the Charter, taking into account considerations about the placement of arms embargoes within Chapter VII of the Charter.

1.1. The Concept of a Mandate in General

'[T]he likelihood of continued collective action depends on the perceived legitimacy of the decision maker, the Council itself.'¹

1.1.1. Legitimacy² and Legality

The delicate distinction between law and politics is apparent in every area of Council theory and practice. It is a political body empowered to take legally binding actions. 'Legitimacy' is an inherently political, sociological and perhaps also moral term. In law, its partner is 'legality', however, the terms are not synonymous. Legality is a consequence of adherence to the positive law itself. It is binary in nature; either legality is found or it is not. Legitimacy (in terms of law) however, may be a multifarious quality awarded after the assessment of positive laws.

The concept of a mandate is embedded in the rule of law as it operates on the national

¹ Caron, D. *The Legitimacy of the Collective Authority of the Security Council* (1993) 87 American Journal of International Law 552 at 554.

² See further, Franck, T. M. *The Power of Legitimacy Among Nations* (1990) New York: Oxford University Press; Georgier, D. *Politics or Rule of Law: Deconstruction and Legitimacy in International Law* (1993) 4(1) EJIL 1, especially at p.12; and Section B of A/59/565 (High Level Panel) on the question of legitimacy (beginning ¶204).

level. The presence or absence of a mandate will determine the fundamental content and structure of all laws, whether prescriptive or proscriptive. Although the absence of a mandate may not necessarily make an action illegal, it may still lack legitimacy as understood in political and legal fields. Mandates create a measure of legality and a sense of legitimacy for action taken. Action taken without the requisite mandate may generate illegality or illegitimacy, depending on the context in which it is being judged. Legal accountability may arise from such illegality and non-legal accountability (e.g. political, moral) may arise from such illegitimacy. Illegality may trigger operations of law which automatically cancel the action.³ Illegitimacy might provide an excuse for disregarding any such action but it will not change the content of the law.

As described earlier, the Council has a mandate under Chapter VII which authorises collective action; however, if the mandate is exceeded there may be an argument for illegality of the action and/or the illegitimacy of the action. At the very foundations of this, the correct mandate (from which measurement of the accuracy of the actual mandate used, as evidenced in the Council's practice) must be established. If the relevant provisions are not employed correctly, or if procedures (such as voting) are not followed, illegality may be charged. Whereas, if the legitimacy of action is contested, this follows not from what occurs on the face of the Council action, i.e. that which can be established from the text of the resolutions, but instead, it follows from concerns whether or not a legitimate motivation caused the decision to be taken (e.g. is the problem really international?) and whether its objectives and the way the measure operates (i.e. by compelling compliance or containing conflict) are acceptable.

The imbalance of power between UN Member states as concentrated in the Council is one of a variety of circumstances which present a need for the Council's mandate to be *seen* to be complied with, not only in terms of including appropriate references in resolutions to the powers in use, but also on a wider scale, perhaps via endorsements of the GA, where all Member states are equally represented. Doxey noted that the

³ See, e.g. the principle of *ultra vires*.

‘permanent members and their clients are permanently exempt from formal censure’⁴ with regard to the Interlaken II process on targeted financial sanctions. It is submitted that this problem is equally relevant, if not more so, to the Council’s use of arms embargoes, because of the possible conflict of interest which arises for the permanent members: an American study⁵ has shown that the P5 are the biggest exporters of conventional arms to developing nations and such nations are the most common targets⁶ of Council arms embargoes. Thus, in international law a mandate comprises two things: a measure of legality (whether or not the practice is in accordance with the legal limits of the powers to act); and a measure of legitimacy (whether or not the motivations behind the practice is in accordance with the overall rationale for taking action at all).

2. Exploring the specific legal mandate for arms embargoes

In trying to establish the correct legal basis for arms embargoes, it must be asked whether or not such measures fall clearly into one of the categories listed in Article 41. For standalone arms embargoes, the closest match is the ‘partial interruption of economic relations’ because not all economic relations are interrupted. This also connotes the intended temporary nature of measures involving economic relations; they serve as an interruption, not an absolute severance of relations (as diplomatic relations are described), which may be restored, rather than renewed.

The Council’s use of arms embargoes does not constitute a specific legal regime to deal with (e.g. criminalise) illicit trafficking. Fundamentally, they interfere with what would, but for the embargo, be a lawful arms transfer. Arms embargoes are seldom invoked in response to a clearly identifiable breach of international law. Unlike other enforcement measures under the heading of ‘measures short of the use of force’, arms

⁴ Doxey, M.P. *United Nations Sanctions: Lessons of Experience* in the report of the Second Interlaken Seminar on Targeting UN Financial Sanctions 29-31 March, 1999 at p.210. Available at <http://www.seco.admin.ch/themen/00513/00620/00639/00641/index.html?lang=en> (April-2007).

⁵ See ‘SAS-2002’ *op.cit.* pp.22-29, 32 and 39 and their references to Grimmett, R. *Conventional Arms Transfers to Developing Nations 1993-2000* CRS Report for Congress (2001). The P5 ranked in this order: 1st – USA; 2nd – Russia; 3rd – France; 4th – UK; 5th – China (See Table 1F at p.52 *Arms Transfer Agreements with Developing Nations, 1993-2000* available at <http://www.worldpolicy.org/projects/arms/reports/arms.pdf> (April-2007).

⁶ The vast majority of arms embargoes have been imposed against developing nations in Africa.

embargoes are not usually imposed for the economic pressures under which a state may be put.⁷ It is suggested that it may be the case that the obligation-addressees of the arms embargoes (to date, that is, 'all states') collectively suffer greater economic consequences from *inter alia*, losses from the absence of sales or transfers of weapons, than the target addressees (the state or entity prohibited from buying or dealing in the weapons).

As is evident in the arms embargo resolutions, the Council has operated under Chapter VII while only once citing Article 41 as its basis for doing so⁸ and in that case the arms embargo was used with other measures concurrently. The omission of a specific Article may be deliberate, as it may be satisfied that Article 39 implies that the only measures capable of maintaining or restoring IPS once threatened or breached are those explicitly mentioned therein. In the alternative, it may be because the Council knows it can act without being specific and so does. In fact, as the Council is under no obligation to take the listed measures after an Article 39 determination, it is feasible that Article 40 measures could be used instead.

The Council might be unclear about the correct specific legal base for its actions, because it tends to focus on the political, not legal, dimensions of a problem.⁹ Without doubt, it has always acted under Chapter VII and so practice maintains that the correct chapter – action with respect to threats to the peace, breaches of the peace, and acts of aggression – is being used. It is important to establish an accurate legal basis for the use of an arms embargo because if properly executed, it has the potential to interfere with a variety of other rights and principles protected by international law, some of which will be considered in Chapter Five.

⁷ See for example, Iraq Sanctions – S/RES/661; S/RES/678 which had a devastating effect on the civilian population.

⁸ Southern Rhodesia.

⁹ Analysis of the relevant meeting records (these are listed in the index of resolutions - Table 5, Annex) may be able to give an indication over whether Article 41 was established as the appropriate basis for action – indeed, it may have been the need for consensus/cooperation to achieve results that forced the actual texts of resolutions imposing action against threats to the peace to be vague. This, it is suggested, is the most likely reason for the weaknesses in Chapter VII action, as it is throughout the entire UN system. It appears to be an unavoidable problem if the legitimacy that comes with open participation wants to be maintained.

2.1. The legal nature of an arms embargo

2.1.1. Decisions and enforcement measures

Article 25 needs to be interpreted with the implied assumption that ‘agreeing to accept’ and ‘carrying out’ the decisions of the Council are two independent obligations.

In relation to arms embargoes, a minimum of two decisions are involved. ‘The Council *decides* that

- 1) all states shall...
- 2) ...prevent the sale, supply or transfer of arms and related matériel’ to the target.’

Decision 1 invokes Article 48(1) and decision 2 invokes Article 25. Decision 1 creates the ‘obligation addressee’ by asserting which Member states must take the *action required* to fulfil the obligation created by the second decision. The action required in this example, is the implementation of an arms embargo in internal law. Thus, the legally binding force of the arms embargo *instrument* comes from Article 48(1). This instrument is not a decision of the Council *per se* and so does not gain its legal force from Article 25. Decision 2 creates a standard from which the obligation addressees must not deviate, as would be the case for any decision taken by the Council where Article 25 is invoked. It is submitted that this is what is meant by the phrase in Article 41 ‘to give effect to the decisions of the Council’. Thus an enforcement measure is a measure used to provide the means by which a decision¹⁰ of the Council may be enforced. The ‘decisions’ in Article 41 do not necessarily relate to other decisions which might also be present in the same resolution. These other decisions could either operate in the way described above, by invoking both Article 48(1) and 25,¹¹ or they could *only* invoke Article 25. The latter category would include any demands the Council makes of a target addressee, thereby also making the target an obligation addressee. It is important to note that any obligation(s) made of the target via Article 25 are completely independent of the obligation(s) addressed to ‘some or all’ states via Articles 48(1) and 25 together. Therefore, what is seen as simply an arms embargo (the

¹⁰ One which invoked both Articles 48(1) and 25.

¹¹ This would occur where more than one type of enforcement measure is imposed in the same resolution, i.e. concurrent use of enforcement measures.

instrument) actually possesses two distinct parts (the obligation and the means to fulfil it) both of which are important legally.

2.1.2. Enforcing decisions, law and/or peace?

Despite the above analysis, enforcement measures appear to be seen solely as sanctions used to enforce those decisions of the Council which only invoke Article 25, i.e. those that make specific demands of the targets. But such decisions are not enforcement *measures, per se*. These 'sanctions' represent a third decision of the Council in one resolution (with additional fourth or fifth etc. decisions, corresponding to each extra demand made). These demands could either be reiterations of existing international law obligations owed by the target (attempted enforcement of international law) or political demands which gather the force of new international law because they comprise decisions of the Council which invoke Article 25 (but not, also Article 48(1)) and therefore become legal obligations to that addressee. If arms embargoes are used in the first way, viz. as measures to enforce *existing law*, Damrosch contends that for this application to be 'on a "principled" basis, the principle ought to be restricting the flow of arms to initiators and/or perpetrators of conflict rather than to areas of conflict.'¹² Such an analysis, ignoring the 'peace enforcement' role,¹³ also begs the question of how the Council can adjudicate the matter of the fault of the parties, a role although not explicitly excluded from Article 41 like it is in Article 40, is nevertheless encroaching on a judicial role. However, Damrosch does not assert that all non-forcible measures are designed to enforce (existing) law, and that '[a]nalytically, sanctions to induce political compromise need to be distinguished from sanctions to enforce international law.'¹⁴ It is submitted that this mislabelling of 'sanctions' (i.e. demands) needs to be distinguished from enforcement measures, although the two may co-exist in one resolution.¹⁵ 'Sanctions', if indeed present, may operate in a manner subsidiary to the

¹² 'Enforcing International Law' *op.cit.* (Chapter Two note 86) at p.127.

¹³ I.e. one clearly connected with the overall rationale. See, e.g. Frowein/Krisch in 'Simma' *op.cit.* at p.705; Arangio-Ruiz, G. *On The Security Council's <<Law-Making>>* ('Law-Making') (2000) 83 *Rivista di Diritto Internazionale* 609 at p.611.

¹⁴ *Ibid.* note 12 at p.130.

¹⁵ As they are in the cases that have 'coercive compliance' objectives.

enforcement measure, in that as a side-effect of the primary function¹⁶ of the enforcement measure, the measure also happens to support the solely Article 25 demands. Moreover, 'the Council has no power...to threaten enforcement measures in order to impose upon a State a conduct which is not genuinely instrumental to that same end.'¹⁷ Thus, the demands must be in pursuit of the maintenance or restoration of IPS.

It may be that what are seen as 'sanctions' (i.e. demands) gain their legal force from Article 41; default on which may *lead to* enforcement measures. But here, the enforcement measure is still not necessarily a traditional sanction. The enforcement measure is created because a threat to IPS has been caused by the target's failure to abide by the demands made of it.¹⁸ Sometimes, non-binding recommendations are made (such as strongly urging parties to 'cease hostilities and agree to a cease-fire'¹⁹) and simultaneously, enforcement measures are used. Once again, the legal foundation of the enforcement measure is independent of the conduct of the parties, although their compliant behaviour may lead to the situation no longer constituting a threat to IPS, which would justify termination of the measures. Compliance alone, without a determinable removal of the threat to the peace, cannot *legally* justify the termination of measures.

2.1.3. Legal Implications arising from the legal nature of an arms embargo

Decision 1 is important for two reasons: first, to ensure that the failure to create a practical effect of the arms embargo will have a legal consequence, that is, it will represent a violation of provisions of the Charter; second, because it confirms that the arms embargo is an enforcement measure and only enforcement measures can override the principle of non-intervention in matters essentially within the domestic jurisdiction

¹⁶ I.e. to provide a means for the execution of the decision to take a measure

¹⁷ 'Law-Making' *op.cit.* note 13 at p. 627.

¹⁸ 'One must view the application of sanctions to a State not complying with as particular recommendation as resting on an independent decision by the SC under Chapter VII, i.e. as being a measure against a threat to the peace, constituted by the act of non-compliance with the specific terms of the recommendation in question. Delbrück in 'Simma' *op.cit.* at p.456-7.

¹⁹ See, e.g. Somalia, ¶4 of S/RES/733 of 1992.

of a state.²⁰ There is a corresponding international doctrine of intervention and the purpose of this is '...to provide an acceptable balance between the sovereign equality and independence of states on the one hand and the reality of an interdependent world and the international law commitment to human dignity on the other.'²¹ Thus, the Council is not prevented from acting in any situation which it has determined to be a threat to the peace, whether or not such action would so intervene.

2.2. Do arms embargoes fit the mould of Article 41?

2.2.1. The 'sanction' element

According to Doxey, international sanctions are 'penalties threatened or imposed as a declared consequence of the target's failure to observe international standards or international obligations.'²² Arms embargoes are commonly referred to a 'sanctions' however the use of this is a generalisation which, when compared to the actual practice, becomes a misnomer. To understand this point it is helpful to consult Tables 2 ('Target Addressee...' column) and 3 ('Legal Mandate' column).²³ When these factors are compared in each case, it can be seen that in the majority of cases, it was the situation, not a particular targeted entity, which motivated the decision to impose an arms embargo. However, this is a difference of only one case. As this categorisation is not presented in any of the annexed tables, it is shown below.²⁴

Table C

Targeted entity group		Situation group	
Tables # A	Cases 1, 2 and 6.	Tables # A	Cases 3, 4, 5, 7, 8 and 9*.
Tables # B	Cases 3, 6 and 7.		
Tables # C	Cases 1 and 2.	Tables #B,	Cases 1, 2, 4*, 5, 8 and 9.
Tables # D	Cases 1 and 2.		

With regard to context, it is interesting that all of the international and no armed conflict

²⁰ Article 2(7).

²¹ Higgins, R. *Intervention and International Law* p.30 Bull, H. (ed.) *Intervention in World Politics* (1984) OUP.

²² 'Contemporary Perspective' *op.cit.* (Chapter Two note 101) at p.9.

²³ Annex.

²⁴ To avoid any confusion; e.g. Table # A, Case 1 is S/RES/232 on Southern Rhodesia. Table # B, Case 9 is S/RES/1701 on Lebanon. These numbers are exactly the same in Tables 2 and 3.

cases (Tables # C and D) were imposed as 'sanctions' compared to only 6 out of 18 internal or mixed armed conflict cases (Tables # A and B). In those cases in the 'situation group' where a demand was made of the target, only those demands which were not directly connected to the containment of conflict could be correctly classified as 'sanctions'.²⁵ 'Sanctions' can be evidenced by a 'sunset clause'²⁶ where the Council expresses its intention to terminate the measures once the demands are met. Nevertheless, due to the fact that some of the arms embargo cases are clearly not sanctions, the generalisation that classifies all Article 41 enforcement measures as 'sanctions' is therefore incorrect. It is particularly unhelpful with respect to the understanding and effectiveness of arms embargoes. Arms embargoes can be general and non-discriminatory, and can be imposed without reference to the specific acts of a potential target. They can target an ultimate destination (i.e. a territory) or a particular end-user or both. Only in the latter cases must there be an identifiable target addressee.

2.2.1.1. The classically punitive concept of a legal²⁷ sanction

'It is the conduct of a party to a dispute and not so much its non-compliance with a prior call of the Security Council (which can also have been made under Chapter VI, in which case it is not binding) which is the determinative factor for the taking of enforcement measures.'²⁸

According to Hart, it '[shall be taken that] neither Article 16 of the Covenant of the League of Nations nor Chapter VII of the United Nations Charter introduced into

²⁵ These cases are identified by the * symbol in Table C, above. In one case, part of the demand was to cease the incitement of violence (Côte d'Ivoire) and in the other, the sole demand was to 'relinquish power...and make way for the restoration of the democratically elected Government and a return to constitutional order' (Sierra Leone I).

²⁶ See, The Swiss Confederation, the United Nations Secretariat and the Watson Institute for International Studies Brown University *Targeted Financial Sanctions - A Manual for Design and Implementation* at p.58 Available - <http://www.seco.admin.ch/themen/00513/00620/00639/00641/index.html?lang=en> (February-2007).

See also, ¶16 of S/RES/841; ¶11 of S/RES/1343.

²⁷ '[T]o some commentators true legal sanctions are non-existent in the absence of third party procedures or a centralized system to determine whether reaction to alleged violations of international law are indeed legitimate.' 'UN sanctions' *op.cit.* (Chapter Two note 114) at p.3.

²⁸ Kooijmans, P.H. *Provisional Measures of the UN Security Council* ('Provisional Measures') pp.289-300 in Denters, E. and Schrijver, N. *Reflections on international law from the low countries: in honour of Paul de Waart* (1998) Martinus Nijhoff at p.299.

international law anything which can be equated with the sanctions of municipal law.’²⁹ It would seem that little of the aforementioned Article 16 was brought into Article 41, due to the lack of an underlying ‘boycott’ element (i.e. true isolation) as a response to an unlawful act (resorting to war).

Arangio-Ruiz³⁰ has argued that sanctions are responses to wrongful conduct and to punish such conduct via a sanction is to pass judgement on behaviour. This, he argues, is not part of the role of the Council. An individual state is free to condemn the actions of another state and even may do so in an international forum, such as a Council meeting, but legal enforcement that opinion is a step ‘outside [the] scope of the Security Council’s competence.’

When Schrijver generalises about the use of economic sanctions³¹ by the Council (which includes but is not limited to arms embargoes) he defines their objectives as ‘[the coercion of the target state] to put an end to unlawful policies...[or alternatively]...to serve as collective measures to redress an international wrongful act and to restore legality.’³² This definition, according to Gowlland-Debbas, ‘establishes a link between Charter mechanisms for peace maintenance and state responsibility.’³³ In determining that Kelsen’s conclusion that ‘the purpose of the enforcement action under Article 39 is...to maintain, or restore peace [not law]...’³⁴ is ‘borne out of the wide discretion...under Article 39 which do not require attribution of guilt or of responsibility’, Gowlland-Debbas cites the International Law Commission’s definition of the term “sanction”³⁵ as a means of supporting the idea that collective measures are

²⁹ Hart, H.L.A. *The Concept of Law* Second Edition (1994) OUP (Clarendon) at p.217.

³⁰ ‘Law-Making’ *op.cit.* at p.631.

³¹ Offering the possible exceptions of Libya and Iraq where punishment or repression of the target state may have been intended.

³² ‘Economic Sanctions’ *op.cit.* at p.146.

³³ Gowlland-Debbas, V. *Comments* pp.163- 173 in ‘International Economic Law’ *op.cit.* (Chapter Two note 62) at p.163.

³⁴ (My emphasis). See *ibid.* and for the original: Kelsen, H. ‘*Law of the UNs*’ *op.cit.* at p.294.

³⁵ *Ibid.* note 33 at p.164, citing the YBILC 1979 vol. II pt.2 at ¶21, p.121:

‘[Sanctions are] reactive measures applied by virtue of a decision taken by an international organization following a breach of an international obligation having serious consequences for the

legal sanctions, which possess 'an important law-enforcement function.' With respect, it is suggested that this interpretation of legal sanctions extends beyond law-enforcement and into determination of the law, or more precisely, the adjudication of matters of legality. Neither of these areas is strictly designed for the Council's involvement. In relation to enforcement measures, it is the Member states that must enforce the law they create by implementing Council resolutions.

Crawford³⁶ notes that the word 'sanction' is never used in the Charter³⁷ and that Council authorises 'collective responses' but it does not impose "sanctions" in the strict sense detailed by Professor Abi-Saab. Hence, they are not necessarily imposed as responses to internationally wrongful acts and moreover, it would, in general, be the consequence(s) of the wrongful act threatening or breaching IPS which invoked the Council's response, rather than the act itself.³⁸ The UN maintains that 'the purpose of sanctions is to modify the behaviour of a party that is threatening [IPS] and *not to punish or otherwise exact retribution.*'³⁹ However, one clear way to attempt to modify undesirable behaviour (for the short-term at least) is chastisement and the Council has used this method in practice.

2.2.2. Economic Pressure: Enforcement measures 'may include complete or partial interruption of economic relations...'

Modern international sanctions are neither essentially punitive like internal law sanctions, nor are they an attempt to isolate or boycott that target vis-à-vis all other entities. One reason for the latter is that international law no longer regulates purely interstate relations; a concept which would have been novel for Members of the League. Although like other economic measures, arms embargoes are a trade restriction, they are

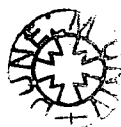
international community as a whole, and in particular for certain measures which the United Nations is empowered to adopt, under the system established by the Charter, with a view to the maintenance of [IPS].'

³⁶ Crawford, J. *The relationship between Sanctions and Countermeasures* in 'UN Sanctions' *op.cit.* at p.57.

³⁷ However it is present in the *travaux préparatoires* – see 'UNCIO Vol.XII' *op.cit.* at p. 581.

³⁸ The exceptions might be the four cases categorised as having purely 'punitive' objectives at the time of imposition (See Table 3).

³⁹ Supplement to 'An agenda for peace' (A/50/60/S/1995/1) p.16 at ¶66 (My emphasis).



also a transfer and supply restriction (i.e. a comprehensive boycott on that particular 'commodity', designed to eliminate the introduction of any new supplies of that commodity into the designated area or to the designated target). The economic analysis is not appropriate in all cases because not all arms embargoes are based on compliance with a demand of the Council. In those where it may be, the basic rationale is that the 'cost' to the target of non-compliance with the demands, must be greater than the cost of compliance. Economic sanctions are designed to pressurise the target into undertaking a 'cost-benefit' analysis of non-compliance and choosing compliance. Thus only two options are intended to be available: *either* compliance (which would lead to the termination of measures when compliance was the primary objective), *or* non-compliance (which would mean sufferance of an economic hardship directly related to the theoretically now scarce commodity).⁴⁰

2.2.3. Problems for the economic theory of 'sanctions'

2.2.3.1. The availability of a third option when the restricted commodities are weapons

As arms embargoes have never been fully enforced on the ground⁴¹ some of the trade restrictions may have instead served to strengthen the minimal control certain parties to the conflict had over a particular resource.⁴² While there is trade in armaments there will always be more than two options for a target. A third may be the option to invest more effort and more resources (monetary or otherwise) into acquiring the prohibited

⁴⁰ This type of sanction also assumes that the target currently has a monopoly over the commodity in question, so by taking it away it is isolated or boycotted because it cannot get new supplies from anywhere in its own jurisdiction. When used to target a state that is fighting a civil war against, e.g. an armed opposition group (AOG) in its territory, it is clear that the target state *does not* have ultimate control over the armaments within its territory. If it did, there would be no armed conflict. When used to target a non-state entity, it becomes nonsensical, because the non-state entity, precisely because of its 'not-a-state' status, will not have a monopoly over all of a particular commodity within the territory. Although some commodities could be argued to be within the control of a non-state entity due to physical location of the commodity, such as the RUF's control of certain areas of Sierra Leone where natural resources were available, such as the diamond fields, or Taylor's control of forests for the exploitation of timber in Liberia. In addition, sometimes the state structure would be so badly damaged by the conflict that the idea of any individual entity, state based or otherwise, having a monopoly over any specific commodity is absurd.

⁴¹ See below, Chapter Five on practical enforcement issues.

⁴² If no single entity is in control of the 'state' (as evident in Liberia, Somalia...) then the scarcity of some resources may only affect the already weakest parties.

commodity from illicit sources.⁴³ Arms embargoes could be doing more harm than good by inadvertently fuelling the illicit trade.⁴⁴ As a commodity, it is still a case of supply and demand, so arms embargoes can cause suffering to the civilian population because of the diversion the natural resources of the territory into the illicit market, to ensure a seamless flow of weapons continues to reach those in control of the resources. These last two points may indicate that the costs endured by the obligation addressees of the arms embargoes, and by areas in which the UN is attempting to make progress may be disproportionate to the 'cost' expected to be forced onto the target.

2.2.3.2. Artificial compliance

The economic sanction theory of arms embargoes, where they are used as incentives or punitive measures (depending on their terms), plays a short-term game to negotiate for the short-term goal of compliance. This method does nothing to ensure future lapses back into the situation threatening international peace which evoked the attention of the Council in the first place. It may be assumed that whatever is being demanded by the Council would automatically include resolution of the problem of the proliferation of conventional weapons, thus also paying due regard to the possibilities of preventing future conflict by having introduced some control over the tools with which conflicts are being fought. But rather than entering this diplomatic process, why not go straight to the source of the problem? That is, the events that have caught the Council's attention – the fighting and the insecurity arising therefrom. It would surely be easier to resolve conflict by controlling armaments (and thereby the target's power), rather than trying to coerce the individual will of a target state or entity.⁴⁵ By (perhaps inappropriate) analogy, take the task of reasoning with an infant for him or her to not

⁴³ Generally, when commodities are prohibited the restrictions are as against other states importing those goods from the targeted, so in the case of diamonds, timber and oil – natural resources of some states targeted by the Council, the embargo relates to imports. For arms embargoes, the restriction is for export – the destination rather than the origin is embargoed. And unless all of these measures are used concurrently, to ensure an economic effect, they will be ineffective as economic measures, which necessarily have 'coercive compliance' objectives.

⁴⁴ See Brzoska at p.126 in 'Statecraft' *op.cit.*

⁴⁵ See Nathan, L. *op.cit.* (Introduction note 22) at p.6: 'The assumption that internal pressure can induce the target party to abandon an unacceptable course of action underestimates the resolve of groups which believe that their freedom or survival is at stake and whose members are willing to kill and die for their cause. Indeed, coercive leverage that intensifies a party's insecurity is likely to make that party more rather than less intransigent.'

pick up an article dangerous to him or her: Is it better to negotiate with the child (who has neither the capacity nor will to appreciate your perspective) in an attempt to persuade that the article could cause harm, or to simply remove it from the child's reach? In an emergency situation, it is surely the latter. That is not to say negotiation has no role or value in situations of threats to IPS: in many ways this is the only method to try to gently bring a target back into an international forum, so that sustainable peace or resolution may be achieved. However, such genuinely diplomatic efforts are not compatible with the stigma of 'sanctions'. Coerced compliance can guarantee neither genuine nor future obedience.

2.2.3.3. The logical purpose of arms embargoes

The logical purpose of an arms embargo is to stop, or at the very least, reduce the numbers of new weapons entering the prohibited territory or being acquired by the targeted entity. Ultimately, this is to contain conflict by reducing its intensity thereby decreasing its negative effects.⁴⁶ But the achievement of this objective needs to be maintained until a pacific method of conflict resolution is in place. If the embargo is lifted any earlier, there is no guarantee that the intensity of the conflict will not increase again, hence the threat to the peace subsists. The EU, an implementing institution for arms embargoes, segregates its information on 'arms embargoes' and 'economic/financial sanctions' under its Common Foreign and Security Policy and it notes their purpose as being to 'stop the flow of arms and military equipment to conflict areas or to regimes that are likely to use them for internal repression or aggression against a foreign country.'⁴⁷ The House of Lords Select Committee on Economic Affairs (UK) describes arms embargoes as 'sanctions of a non-economic kind'.⁴⁸ The Council itself has noted 'the importance of strengthening the effectiveness of arms embargoes as a means to diminish the availability of arms with which to pursue armed

⁴⁶ Another possible (and implicit) purpose of conflict containment embargoes, is to prevent internal conflicts becoming international, by means of the external involvement of other states, even by the provision of weapons – See Scott, C. *et al. A Memorial for Bosnia: Framework of Legal Arguments concerning the Lawfulness of the Maintenance of the United Nations Security Council's Arms Embargo on Bosnia and Herzegovina* (1994-1995) 16 Mich.JIL 1 at p.6.

⁴⁷ http://ec.europa.eu/external_relations/cfsp/sanctions/index.htm#1 (April-2007).

⁴⁸ At Chapter I, ¶2, in the 2nd Report of Session 2006–07 *The Impact of Economic Sanctions* Volume I: Report (9 May 2007):

Available at <http://www.publications.parliament.uk/pa/ld/ldeconaf.htm> (May-2007)

conflicts.’⁴⁹

2.2.3.4. Undermining the logical purpose

The economic theory ignores the instrumental value of controlling the proliferation of weapons to situations that threaten or breach IPS. It might well be the case that some economic measures do have the effect desired in the view of the Sanctions Committees, which is to ‘apply pressure on a State or entity to comply with the objectives set by the...Council without resorting to the use of force.’⁵⁰ Even if such a result was accurate in terms of how *enforcement measures* function in law (i.e. the actual arms embargo),⁵¹ the role of an arms embargo measure in that process might be negligible. It would very difficult to measure the precise effect of each measure contained in a comprehensive sanctions package. So, for arms embargoes, more useful information might arise from their exclusive use.⁵² The Sanctions Committee perspective, like many others, focuses on the ‘sanction’ aspect, thereby ignoring all of those arms embargo cases which do not operate as sanctions, but as pure enforcement measures.

If compliance with a specific demand of the Council by the target is one or the only goal of an arms embargo, this undermines the value of arms control by condoning the resumption of unregulated arms trafficking once ‘compliance’ has been achieved. If, and only if, internal arms regulation was a requirement⁵³ embedded in the demands of which compliance was expected could this problem of being undermined be

⁴⁹ S/RES/1196 of 1998, preamble.

⁵⁰ <http://www.un.org/sc/committees/> Note, the Committees relate the purposes quoted above to the ‘use of mandatory sanctions’, yet when they introduce the overview of this area of the Council’s work they refer to the ‘enforcement measures’ that can be taken to maintain or restore IPS, without once making the distinction that exists in law.

⁵¹ Which, as was argued earlier, is not. How these measures function in law is the ultimate consideration for the effectiveness of the collective security system and the involvement of the Council, because it is the legal function that makes the measures *legally* binding.

⁵² In the seven ‘standalone’ cases, 64 % had a type B objective, 21 % had a type A objective and 14% had a type D objective. Percentages are based on ‘overall’ use. (Compare the figures in bold parentheses in Table 6, Annex.) 7 cases, overall objectives: 4.5 = Type B; 1.5 = Type A; 1 = Type D. Individual objectives: 1 = A; 3 = B; 1 = A + B; 2 = B + D.

⁵³ Although this could be seen as a step too far into the realm of domestic jurisdiction. The Council has on other occasions tried to modify the behaviour of a regime with regard to other matters, such as democracy and human rights.

circumvented. Even then, the temptation to re-arm due to the resumed flow of weapons would be difficult to ignore, especially if the target continued to feel insecure. Peace and security can only compete with its opponents by removing the actual weapons from their hands. This can be legitimately and practically achieved by the efficacious use of arms embargoes and properly monitored disarmament programmes.⁵⁴ If compliance with an obligation is not the objective of the measure, then grouping these measures together with those which do have compliance as the goal will simply weaken the measures that have a compliance objective and make those without one, (i.e. arms control and peace promotion arms embargoes) entirely irrelevant from the perspective of their effectiveness.⁵⁵

The catch-all method in which arms embargoes are used weakens their enforcement because the Council negotiates by offering termination once other, sometimes completely separate goals, are achieved. Objectives are still unclear in these resolutions. They are often mixed, resulting in contradictions of purpose or the possibility of one goal being forgotten in the midst of any sign of compliance by a target. The lack of clarity in turn reduces motivation to implement and enforce the measures and makes the task of identifying when objectives have been achieved more difficult.

2.2.3.5. More suitable sanctions alternatives to compel compliance?

There are many other measures which could be used more effectively to compel compliance without undermining the intuitive purpose of arms embargoes. These could

⁵⁴ By creating a database, an official from one of the UN's Panels of Experts to an arms embargo was able to show that some weapons handed in by ex-combatant rebels through a disarmament programme, were redistributed ('legitimately') among government forces only to be handed in a second time by rebels. (Personal correspondence).

⁵⁵ Take the case of Iraq and especially S/RES/687. Here the objectives appear to change from the punitive objective as seen in the original resolution (S/RES/661) to the combined objectives of bargaining, arms control and peace promotion. The latter two of these objectives are long-term prospects, and a formal ceasefire does nothing to constrict the pursuit of 'balanced and comprehensive control of armaments in the region'. However, the bargaining objective clearly triumphs over the other objectives, because it is stated, within the operative paragraphs, that there is a way for measures to be terminated. From a culmination of other resolutions, the way for this to be done, was by the Government of Iraq making changes to its policies and practices (involving as it did at the time, policies which threatened IPS, such as threats to use prohibited chemical and biological weapons...).

be travel bans, targeted financial measures, aviation bans or on commodities likely to have an impact on the target economy. Indeed, Article 5 permits the suspension of the exercise of the rights and privileges of a Member against which preventative or enforcement action has been taken. Given the existence of available alternatives, why are arms embargoes being used in a way that permits their logical purpose to be undermined in some cases? The main reason fathomed is that it means a minor arms control effort can be undertaken at the same time as utilising the collective security system to deal with threats to the peace. It might also be because the impact on the civilians is deemed to be low. However, the underlying purpose of measures which primarily aim to coerce compliance is political, not practical, and is for the benefit of the international status quo between UN member states, rather than helping to end conflict for the benefit of the civilians and ultimately preventing future conflict.

2.2.4. 'Smart sanctions'

Arms embargo exemptions⁵⁶ can allow for the shipment of non-lethal military equipment for humanitarian and protective use and protective clothing required by the UN, journalists and aid workers (such as flak jackets, to take one example). It may also allow for arms and other military supplies solely for the use of protection and peacekeeping forces to enter the embargoed destinations. The use of exemptions has increased since concerns were noted over the extent of indiscriminate negative effects from the use of enforcement measures in comprehensive sanctions regimes.

Thus, the popular term 'smart' or 'targeted' sanctions arose, where more use was made of specific measures which intended to affect the target of the measure rather than the civilian population connected with the targeted territory. Arguments have since arisen, that through this smarter method, 'sanctions' are becoming more effective. But in terms of legal success for arms embargoes, nothing has necessarily changed. What is required for legal success is effective implementation and enforcement by member states. What has changed is that the civilian population might not be suffering as severely as was the case during comprehensive regimes. However this, although positive change, is not tantamount to asserting the existence of *effective* measures. In all probability, these

⁵⁶ See tables 4 and 6 (Annex).

measures are more likely to be ineffective as 'sanctions', purely because the 'boycott' effect wanes as the level of specificity of measures increases. Cortright notes that measures which are imposed rapidly using immediate comprehensive action are more effective than measures which are imposed incrementally, with a gradual, slow and flexible process involved.⁵⁷ Moreover, whenever an arms embargo has an exemption, an extra risk of diversion into the illicit market is created for all legitimately-imported weapons.

3. Alternative legal bases for mandatory arms embargoes: Article 40?

Although Article 41 appears to be the correct basis upon which to base arms embargoes, the economic and sanctions categories under which they are perceived compels the question; are there any other legal bases available which could be more suitable than Article 41? It is not disputed that Chapter VII is the appropriate section for the imposition of mandatory measures, and the Council's practice in citing Chapter VII is testament to this. Arms embargoes are inherently non-forcible,⁵⁸ and so Article 42 would not be an appropriate basis. The only other provision in Chapter VII capable of imposing binding measures is Article 40. Although Article 40 measures can be seen as being only recommendatory in nature, the test of whether the Council intended to produce binding effects will depend upon the character of the terminology used and the context for use.⁵⁹ States have commented on the binding nature of provisional measures, for example in relation to Iraq, when Article 40 was explicitly invoked.⁶⁰

3.1. Arguments in support of Article 40

'The imposition of an embargo on the supply of arms seems to have become a common preliminary step in the Security Council's dealing with civil war situations and

⁵⁷ 'Sanctions Decade' *op.cit.* (Introduction note 16) at p.26.

⁵⁸ Although they may require forcible measures or additional (but different) non-forcible measures (i.e. those that can more appropriately be labelled 'sanctions', such as travel bans and targeted financial measures) to supplement enforcement, as implementation alone (based upon the norm of Article 25) may not be sufficient to motivate the political will needed for enforcement.

⁵⁹ See 'Provisional Measures' *op.cit.* note 28 at p.299.

⁶⁰ See Provisional Verbatim Meeting Record: S/PV.2933 regarding S/RES/660 of 1990.

situations involving a serious humanitarian crisis.’⁶¹

Given the ubiquitous nature of arms embargoes vis-à-vis the Council’s agenda, and the Council’s relatively recent willingness to take additional Chapter VII measures in support of them, arms embargoes do appear to be developing a character similar to that of preliminary or provisional measures. If they were seen as having simply conflict-containment objectives, their purpose would be to begin to reduce the intensity of the violence in an armed conflict or post-conflict situation.⁶² They aim to and would, in fact,⁶³ prevent a physical aggravation of the situation. Moreover, it would be logical to impose an arms embargo at the same time as calling for a ceasefire, (the latter has been done under Article 40⁶⁴), thus assisting the likelihood of a ceasefire coming into operation. Arms embargoes are inherently preventative in nature; however, this does not categorically place them under Article 40 as Article 41 measures may also be preventative. If arms embargoes require additional forcible measures to ensure their enforcement, would this remove them from the scope of Article 41 due to the expressly exclusion of measures involving the use of armed force?

3.2. Arguments in opposition

Arms embargoes have been both short and long-term in duration; to date, the longest running case with the original target addressee unchanged (Somalia) shows (15 years old as of 23 January 2007) that arms embargoes can be seemingly open-ended. The shortest duration for an arms embargo (excluding cases where measures were renewed) was the case of Eritrea and Ethiopia, at exactly one year. While one year could be accepted as a provisional period, 15 surely cannot. In addition, the sole objectives have not been for conflict containment (i.e. preventative methods) alone, even in the standalone arms embargo cases. There is a clear need to maintain a lower level of violence (by continuing to halt the flow of new weapons) until a peaceful settlement is

⁶¹ ‘Interpretation’ *op.cit.* (Chapter Two note 54) at p.71.

⁶² Where, on occasion, hostilities break out again, as was the case in the DRC.

⁶³ The factual evidence of this assumes that effective implementation and enforcement took place. However, it is suggested that arms embargoes would be more effective in achieving this goal, considering its simplicity and clarity relative to the layering that is evident at present.

⁶⁴ See the examples given in ‘Provisional Measures’ *op.cit.* at p.291.

reached, and this would require the arms embargoes to be capable of having long-term duration. If this is not possible under Article 40, then Article 41 becomes the only alternative.

There does appear to be a general acceptance⁶⁵ that Article 41 is the sole legal basis of arms embargoes, irrespective of any attributes which appear inappropriate, but reasons as to why they could not be provisional measures are not as forthcoming. Kooijmans remarks that Combacau's⁶⁶ argument that an arms embargo directed against one of the parties to a conflict would be prejudicial to the rights of that party and therefore incompatible with Article 40, is too simplistic. In addition to the prejudicial nature of a one-sided mandatory arms embargo, Kooijmans explains that such a measure 'is usually seen as the first stage of a sanction and sanctions belong to the domain of Article 41 and 42. He later maintains that '[a] mandatory arms embargo, even if is directed against all parties, must be seen not so much as a measure taken in order not to aggravate the situation but as a measure to give effect to the Council's decisions, which is the terminology of Article 41' for the same reason given above. It would appear that no argument is offered as to why arms embargoes cannot be provisional measures; the offering is simply that arms embargoes are *more* suited to Article 41. It does not necessarily follow that simply because a measure 'is usually seen as the first stage of a sanction' that it must therefore belong *solely* to that realm. This could be interpreted to be an argument in favour of the legal basis of arms embargoes being Article 40, because there is nothing to stop any other type of Article 40 measure being the first stage of a 'sanction'. Indeed, account shall be taken of a failure to comply with provisional

⁶⁵ E.g. In the UK, Section 1 of the United Nations Act 1946 (c.45) reads: 'If, under Article forty-one...the...Council...call[s] upon His [sic] Majesty's Government...to apply any measures to give effect to any decision of that Council...'

In addition, Secretary General Ban has recently stated 'The legal basis for sanctions is contained in Article 41 of Chapter VII of the...Charter' (Speech to the Symposium on Enhancing the Implementation of Security Council Sanctions ('SG Sanctions Speech') - 30 April 2007, available at: <http://www.un.org/News/Press/docs//2007/sgsm10968.doc.htm> (April 2007)), even though the Council continues to refer only to Chapter VII without being specific as to the relevant Article.

Furthermore, see, *Repertoire: Eleventh Supplement (1989-1992)-Chapter XI*, especially at p.32 *et seq.* of part 3.

⁶⁶ 'Provisional Measures' *op.cit.* at 296; Combacau, J. *Le Pouvoir de Sanction de l'O.N.U.* (1974) Paris: Pedone at p.167.

measures, and so Article 40 measures can be (but do not need to be) precursors to measures under Articles 41 or 42.

Kooijmans further states:

‘[a]n appeal to all States not to provide the parties to the dispute with weapons may be a provisional measure under Article 40 if the other conditions for its applicability are met...such appeals are non-prejudicial to the rights of the parties and are certainly helpful for the prevention of an aggravation to the situation’.⁶⁷

It must next be asked, what are the other necessary conditions for Article 40? Kooijmans implies that provisional measures must respect the non-intervention principle.⁶⁸ The *travaux préparatoires* indicate that provisional measures were not intended to be classified as enforcement measures,⁶⁹ which would have the effect of removing them from the realm of collective action that may supersede the ‘non-intervention’ principle in Article 2(7). The reasons for this are not clear. Is it because they might not invoke Article 48(1) because there is no decision to carry out? The Council may only ‘*call upon* the parties concerned’ to comply with the measures; however, if it is accepted that Article 40 measures can be binding, Article 48(1) will be invoked and thus it can be labelled an enforcement measure. In addition, the interpretation of ‘enforcement measures’ to mean ‘measures taken to enforce the peace once threatened’ could include Article 40 measures, because all of the Council’s powers are granted for the discharge of its duties relating to the maintenance of IPS. If these arguments are not accepted, there are alternative approaches.

Conforti, (who disagrees⁷⁰ with the view that it is the Article 39 determination that gives binding quality to actions of the Council), notes that cases where enforcement measures are used or ‘which in turn lead to enforcement measures being adopted’ are exempt

⁶⁷ ‘Provisional Measures’ *op.cit.* at p.296

⁶⁸ *Ibid.* at p.297. See also *Tadić op.cit.* (Chapter Two note 91) at 33.

⁶⁹ See, ‘UNCIO vol. XII’ *op.cit.* at Section D, p, 505. (p.4 of original document) heading: ‘provisional measures preliminary to enforcement measures’ and at p.507 (p.6 of original document) it refers to ‘the enforcement *or* provisional measures’. (My emphasis).

⁷⁰ Conforti, B. *The Law and Practice of the United Nations* Second Edition (2000) Kluwer Law International at p.183.

from the domestic jurisdiction principle.⁷¹ Such a possibility of enforcement measures being taken in the future is expressly provided for in Article 40, and so if this is the correct basis for exemption from the main principle in Article 2(7), the Council would be permitted to take provisional measures in respect of any situation, whether internal or external to a state. In addition, '...when a situation is designated a threat to the peace it is inevitably taken out of the domestic realm and put into the international sphere. Any action within Chapter VII, whether enforcement or not, is not limited by Article 2(7).'⁷²

Arangio-Ruiz notes that '...the implementation of provisional measures whether merely recommended or bindingly decided upon by the Council is generally understood to be entrusted to the parties themselves...'.⁷³ If this were the case for arms embargoes, they would likely never be implemented. Indeed, while used under the label 'sanction', arms embargoes, whether voluntary or mandatory, carry a certain stigma. However, as Kooijmans notes, the 'parties concerned' appears to be addressing 'not only the parties to the dispute, but also any other international actors...instrumental in [achieving the prevention of an aggravation of the situation]'.⁷⁴

There are some benefits that would arise from arms embargoes being legally based in Article 40 that do not exist under Article 41: First, the generalisation of the 'sanctions realm' and the related economic issues would be removed; and second, the culture of prevention would be reinforced. Moreover, it would not in any way affect the Council's ability to take other enforcement measures under Article 41 to compel compliance.

3.3. Chapter VI and a half?

In conclusion on this point, the main problem would appear to be the longevity of the current arms embargoes, which simply does not correlate to very nature of *provisional* measures and so practice would appear unable to endorse this legal basis. It could be that arms embargoes are one of the 'mechanisms which evade a classification in terms

⁷¹ *Ibid.* at p.159.

⁷² 'Keeping the Peace' *op.cit.* (Chapter Two note 52) at p.57.

⁷³ 'Law-Making' *op.cit.* at p.648/9.

⁷⁴ 'Provisional Measures' *op.cit.* at p.295.

of the Charter provisions'.⁷⁵ Nevertheless, because of their capacity for prevention of threats to peace (by assisting disarmament efforts) as well as emergency reactions to it (conflict containment), arms embargoes would appear to sit comfortably between Chapters VI and VII. In law, this is not an acceptable conclusion, however, arms embargoes are an enforcement measure with great potential (under the objectives of arms control and peace promotion and if used effectively) to reduce the urgency of the situation, which would allow recourse to Chapter VI to arise once again. Chapter VI is important at the first stage of a dispute where the Council's involvement is designed to be limited to making calls for pacific settlement without suggesting any content for that settlement;⁷⁶ the control remains in the hands of the disputing parties, as shown in Article 33. Chapter VII is the collective security mechanism which can be triggered by the failure of parties to resolve the dispute by peaceful means, and thereby puts the control into the hands of the UN.

4. Conclusion

The main problem demonstrated in this chapter is that arms embargoes operate in a different way and for different reasons to that which is perceived as being uniformly applicable to all enforcement measures. The 'sanctions' label is a misnomer, not least because the primary notion of a sanction relates to its punitive character (rather than an encouraging form of coercion), but because the basic legal interpretation of enforcement measures has been overshadowed by political expediency. Arms embargoes have value as measures taken to maintain or restore IPS that is independent of whether the behaviour of the target or entities fighting in the designated territory is modified or remains as it was. If arms embargoes were truly effective, the choice to continue fighting at the levels of intensity permitted by the use of conventional armaments, especially SALW, would be taken out of the hands of the combatants and their leaders and put under the control of the rest of the international community via collective security. An arms embargo has the potential to actually force a change in behaviour and

⁷⁵ *Ibid.* at p.298.

⁷⁶ Hilderbrand, R.C. *Dumbarton Oaks – The Origins of the United Nations and the Search for Postwar Security* (1990) University of North Carolina Press at p.136.

the intensity of violence because if the tools necessary to fight at that level are removed or reduced, the entities will become incapacitated and physically unable to continue their previous threatening behaviour. Whether such incapacitation could give rise to a legal reason not to use arms embargoes will be discussed in the following chapter, in addition to considerations regarding other areas of international law affected by the use of arms embargoes.

CHAPTER FIVE

OTHER ISSUES OF INTERNATIONAL LAW ARISING FROM THE USE OF UNITED NATIONS SECURITY COUNCIL ARMS EMBARGOES

1. Addressees

1.1. International legal personality

A basic (but rebuttable) presumption with regard to the actions of the Council is that the Council may only impose legally binding international obligations upon entities that possess a measure of international legal personality. International legal personality could be described as the possession of rights and duties under international law by an entity. Traditionally this corresponds to the notion of being a 'subject' of international law.¹ The broad recognition by states, of a particular entity's status as a subject possessing international legal personality, can be important in confirming that status for practical effect,² but this is not uniformly applicable in all cases.³ When the Charter was written, the only entities thought to possess international legal personality were states. Indeed, the concept of non-state entity involvement in the international community to the degree evident today was unlikely to have been contemplated at the time.⁴ The existence of the Nuremburg and Tokyo trials after the Second World War, and more recently, the ICTY,⁵ ICTR and ICC have all shown that individuals can bear

¹ See, e.g. Lauterpacht, H. *International Law Collected Papers*, Vol.II (1975) CUP at p.489; and for rejection of the notions of 'subjects' and 'objects' see 'Problems and Process' *op.cit.* (Chapter One note 96) at p.49.

² See, e.g. the GA's grant of observer status to the PLO - A/RES/3237 (XXIX) 22 November 1974 and participation in international conferences being a result of recognition by regional groups - A/RES/ 3247 (XXIX) - 'International Law' *op.cit.* (Chapter One note 54) at p.220

³ Noortman, M. *Non State Actors in International Law* ('NSAs') in Arts, B., Noortman, M., Reinalda, B. (eds.) *Non-State Actors in International Relations* (2001) Ashgate pp.59-76 at p. 69 regarding the finding of legal personality of insurrection movements irrespective of such recognition.

⁴ Note, however Higgins' point (*Ibid.* note 1) that 16th and 17th Century scholars such as Plutarch and Grotius respectively, 'effectively acknowledged [and refined the idea] that non-state entities had internationally recognized legal rights.' In addition, see Alston, P. (ed.) *Non-State Actors and Human Rights* (2005) OUP.

⁵ The case of Tadić (Trial Chamber II, Judgment of 7 May 1997) has shown that Council is permitted to act in a way that affects individuals: 'The International Tribunal...has the competence to exercise the authority granted to it by the Security Council to make findings in this case regarding

responsibilities under international criminal law and that non-state entities (including individuals) hold duties under international law in certain circumstances such as the obligations in IHL applicable during armed conflict. It is clear that individuals possess rights under international law; however these are vertical rights, in that they must be enforced via the internal law of each state and cannot be relied upon directly.⁶

In certain states, such as Somalia, the branches of government have been so severely eroded by the internal conflict that it does not function as a state otherwise would. Despite this, Somalia's international legal personality remains intact. As Thürer explains; '[T]he "failed State" is one which, though retaining legal capacity, has for all practical purposes lost the ability to exercise it...there is no body which can commit the State in an effective and legally binding way, for example, by concluding an agreement.'⁷ It is suggested that this applies only to agreements within the scope of the VCLT, and so agreements under Article 3 VCLT may still be practically possible to conclude. Peace agreements⁸ fall under Article 3 VCLT and the non-state party to an international agreement of this type obtains international legal personality within the framework of the agreement.⁹ The quality of permanence of legal personality appears to be applicable only to states. It has been argued that in the situation of a non-state entity acquiring personality via an internationalised peace-agreement, that personality exists only until the agreement has been implemented, but that also thereafter, they can be 'held accountable under international law in instances of non-compliance.'¹⁰ So, for most purposes, they do not retain the international legal personality afforded to them by

the guilt of the accused, whether as a principal or an accessory or otherwise as a participant.' at ¶669.

⁶ See, e.g. Article 34(1) of the Statute of the ICJ (1945): Only States may be parties in cases before the Court.

⁷ Thürer, D. *The "Failed State" and international law* (1999) 81 (836) IRRC 731 under section I. Description of the phenomenon - <http://www.icrc.org/Web/eng/siteeng0.nsf/html/57JQ6U> (October-2006)

⁸ 'Peace agreements resemble internationalized contracts in the use of international law as a basis for a legal order that is "neutral" as between the parties...[h]owever...the use of international law is driven...by the need to take processes of domestic legal reform outside their normal channels so as to address the illegitimacy of the preagreement legal and political order.' - Bell, C. *Peace Agreements: Their nature and legal status* (2006) 100 AJIL 373 at p.406.

⁹ 'NSAs' *op.cit.* note 3 at p.69.

¹⁰ 'Non-State Entities' *op.cit.* (Chapter Three note 33) at p.339.

the agreement.

1.2. Obligation addressees

As noted earlier, in practice, 'all states' are the sole addressees of the obligations to implement arms embargoes decided upon by the Council. Any entity within the jurisdiction of an implementing Member state will be an indirect addressee of the arms embargo, but the extent of their obligations will be determined by the internal law particular to that state. International organisations have been called upon to 'act strictly in accordance' with the measures,¹¹ however this does not form a legal obligation and the Council has never addressed such entities in a way that could be interpreted as legally binding. The term 'all states' includes non-Member states but from where does the direct obligation arise given the fact non-Member states are not party to the Charter and therefore unlike Member states, have not provided their consent and so cannot be bound? It has been argued¹² that Article 2(6) 'creates binding obligations' on non-Member states; however no obligations can arise under the treaty itself except for states parties. Schrijver refers to this problem as a 'bone of contention' which remains and notes the Swiss declaration regarding the Second Gulf War that although it would implement the sanctions¹³ against Iraq, it was not legally required to do so.¹⁴ However, it is feasible that a customary law has developed to the effect that in matters relating to the maintenance of IPS, non-Member states are required to act in accordance with Council decisions. In any case, this issue is not of great practical concern today due to the large number of UN Member states¹⁵ and because the most significant non-Member state became one in 2002.¹⁶

¹¹ See e.g. ¶7 of S/RES/748; ¶9 of S/RES/841; ¶20 of S/RES/864; ¶15 of S/RES/918; ¶11 of 1132; ¶10 of S/RES/1160; ¶9 of S/RES/1298; ¶17 of S/RES/1333. In addition, at ¶21 of S/RES/1343, States were called upon to 'take appropriate measures to ensure that individuals and companies in their jurisdiction...act in conformity with United Nations embargoes.'

¹² See 'International Law' *op.cit.* at p.835 and references to Kelsen and McNair therein.

¹³ S/RES/661.

¹⁴ 'Economic Sanctions' *op.cit.* at p.147-8 and note 51 therein.

¹⁵ 192 Member states as of 28 June 2006.

¹⁶ Switzerland – S/RES/1426 of 2002.

1.3. Target addressees

When Chapter VII is invoked by the Council, the question of international legal personality becomes important with regard to non-state entities targeted by the Council because their international legal personality is questionable. International *obligations* (rather than mere *relations*) arise from Council action, the roots of which are found in the Charter.¹⁷ As non-state entities cannot accede to the Charter, what is the Council's legal basis for imposing obligations (default on which would give rise to enforcement measures) upon such entities? Could this be an explanation for the absence of specific articles when imposing measures? Does Chapter VII give the Council a 'free rein' to take measures 'against any entity which it considers to be an obstructive factor in the restoration of peace' as could be implied from Kooijmans' writing?¹⁸ Even if legal personality is found, what is the source of the Council's power to take measures against non-signatories? Is Article 41 part of CIL and if it is, is it applicable to all or no non-state entities, or only those with international legal personality?

1.3.1. Problems with regard to a lack of international legal personality

If an entity lacked international legal personality, it would appear incorrect to impose obligations upon it under international law and then reprimand them for non-compliance. The basic problem here is the disadvantaged position of non-state entities relative to states, *vis-à-vis* the Council. For example, unlike states, these entities cannot lawfully (albeit under certain circumstances)¹⁹ take countermeasures against an internationally wrongful act of a state. Representation at the UN remains the prerogative of states.²⁰ The Charter provides for the participation and representation of a 'specially affected'²¹ state in the discussion of enforcement measures, although no

¹⁷ Although in general international law and perhaps customary international law, principles have changed in order to acknowledge the different types of actors, the source of these obligations is not the Charter. The Charter is only applicable to the states that have ratified it. That is a basic rule of treaty law, which combines with the *pacta sunt servanda* principle to show that treaties must be performed in good faith by parties that have consented.

¹⁸ 'Non-State Entities' *op.cit.* at p.339

¹⁹ See Article 22 of the ILC's draft Articles on State Responsibility.

²⁰ Article 4(1).

²¹ Article 31. Article 32 also creates provision for non-Member states' participation. See also Rule 37 of the Council's provisional rules of procedure.

right to vote on any such measures is afforded by virtue of interest alone.²²

The precautionary measure contained in Article 50 applies to states alone, whether they are members of the UN or not. It does not give any rights to non state entities that suffer special economic problems as a result of the implementation of Council enforcement measures. The wording of Article 50 shows that non-MS are assumed to have obligations under the Charter – or at the very least, that they are bound to abide by Council decisions. As this is written into the constitutive document of the UN, it is impossible to say that the Charter codified a pre-existing customary international law that the decisions of the Council must be carried out by all entities, as the Council did not even exist beforehand. However, it is possible for a concurrent customary law to emerge, but this would only take account of the practice of states.

UN Secretary-General Ban has recently said that ‘great difficulty has been encountered in exerting leverage on non-State actors.’²³ Perhaps part of the reason for this could be the lack of clarity over the status of such actors in international law.

The acquiescence of states may be important in justifying the Council’s targeting of non-state entities because they tend not to object to such measures being taken. If they did have any objections, states have recourse to the fora available at the UN. However, the only forum available to non-state entities, not permitted as observers to the UN, would be through the territorial state in which it is based. If the entity is engaged in an internal conflict, the state power will not be an appropriate vehicle for contesting the measures.

As noted earlier, not all arms embargoes require an identifiable target entity, however, the Council has targeted non-state entities on a number of occasions. In connection with arms embargoes, there are two ways Council action can directly affect non-state entities (including individuals). The first is when such entities are explicitly targeted by

²² Only membership on the Council (whether temporary or permanent) creates eligibility to vote (Article 27), and so only if that interested state happens to be sitting as member of the Council at the relevant time, is it entitled to vote. Rwanda (1994) is an example of when measures were imposed on a serving member of the Council.

²³ ‘SG Sanctions Speech’ *op.cit.* (Chapter Four note 65).

the Council where arms embargoes are used as 'sanctions' to coerce compliance by bargaining or punishment. The second is when Sanctions Committees create 'blacklists' of entities against which certain supplementary measures (excluding arms embargoes²⁴) are directed to be taken, for the purpose of punishing a violation of the arms embargo.

1.3.2. Problems with ascertaining the international legal personality of a non-state entity.

1.3.2.1. Explicit targeting

There have been five cases²⁵ where demands were made of non-state entities in cases where arms embargoes were used as sanctions against non-state targets. In the first case, UNITA was again²⁶ directed to establish a ceasefire and to agree on the implementation of the peace agreement. UNITA's failure to comply instigated the imposition of an arms embargo and other enforcement measures. This case has been explained by UNITA acquiring a measure of international legal personality by virtue of the peace agreement to which it was designated as a party. The agreement was not apparently 'internationalised' during negotiation, but only when confirmed in the Lusaka Protocol of 1994.²⁷ However, the Council acted against UNITA before this point, so did it act against an entity that did not possess any international legal personality?

It has been argued that in the absence of recognition via internationalised agreements or through IHL, rebel movements can 'acquire partial international legal personality only through the SC measures'.²⁸ However, it has also been argued that '[enforcement] measures do not in themselves have the effect of giving international personality to the

²⁴ It is highly unlikely that the Council would impose an arms embargo as a 'sanction' for the violation of a separate measure, such as a travel ban or a targeted financial measure.

²⁵ S/RES/864 (UNITA); S/RES/1132 and 1171 – non-governmental forces in Sierra Leone; S/RES/1333 and 1390 – Taliban and associated entities. Note S/RES/1390 is the only case where an individual (Usama bin Laden) has been named in a Council resolution.

²⁶ The cessation of hostilities had been previously demanded in ¶3 of S/RES/785; and in particular, regarding a ceasefire, for 'offensive troop movements' to stop (¶4 of S/RES/793).

²⁷ 'Non-State Entities' *op.cit.* at p.338.

²⁸ Frowein/Krisch in 'Simma' *op.cit.* at p.716.

target.’²⁹ It could be argued that, when peace agreements are involved, the Council deals directly with the state alone, thereby not exceeding its mandate under Chapter VI. However Chapter VII is the relevant realm for the cases in point. The non-intervention principle is superseded, but does this give the Council the right to assert its control over entities and individuals within a state? Article 104³⁰ might support such a finding.

If the Council was pressed to give the foundation of its right to target UNITA, it could be found in paragraph 13 of S/RES/864 where the Council condemned UNITA’s attacks on UN Personnel and reaffirmed that such attacks ‘are clear violations of [IHL].’ Thus, UNITA’s international legal personality would arise through its position under IHL and not the peace agreement. According to Zegveld,³¹ the limited personality that arises from IHL for armed opposition groups can be objectively ascertained through the legal instruments pertaining to IHL, such as the Geneva Conventions and also by the fact of being a party to an armed conflict. Thus, in almost all of the arms embargo cases, it would seem the Council does have a basis for deciding to act against non-state entities engaged in the armed conflict.

The second and third cases can be considered simultaneously. In Sierra Leone, demands were made of the non-governmental forces (i.e. the military junta and the RUF) to ‘relinquish power in Sierra Leone and make way for the restoration of the democratically elected Government’ and to disarm and demobilise. Their failure to comply was connected to the continuation of the measures. Again, the likely explanation for the targeting of non-state entities in Sierra Leone, is that the armed groups acquired a measure of personality through IHL. However, in this mixed international/internal armed conflict the full range of IHL may not apply, so it should be questioned; did the demands made of the forces correspond to what they were obligated to do under international law? If their personality is limited to their role in an armed conflict, are their obligations under international law also limited to the same field?

²⁹ ‘Non-State Entities’ *op.cit.* at 339.

³⁰ ‘The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.’

³¹ Zegveld, L. *Armed Opposition Groups in International Law: The Quest for Accountability* PhD Thesis (2000) at p.212 as cited in ‘NSAs’ *op.cit.* at p. 67.

Could it be that once personality is acquired, irrespective of limitations thereto, an entity can be obligated to the full extent of international law?

The fourth and fifth cases can also be considered simultaneously. The primary demands³² were that the Taliban: cease the provision of sanctuary and training for international terrorists and their organisations; turn over Usama bin Laden to appropriate authorities to facilitate his arrest and trial; and close all terrorist training camps in the territory under its control. The Taliban continues to disregard these demands, but from where does its legal obligation (which would justify the measures as sanctions) to do otherwise originate? The options of acquiring international legal personality via peace agreements or IHL are not applicable here, based upon the classifications used earlier. The Taliban was in control of most of Afghanistan, but received little diplomatic recognition, but was probably nevertheless considered to have a measure of international legal personality. Has the status of its international legal personality changed now that it no longer has the same degree of control?

1.3.2.2. No personality, no problem?

Could the Council justify its assertion of power over the non-governmental forces in Sierra Leone by virtue of the consent of the state in which it was acting, without considerations of the existence of personality? This consent could be seen as a temporary relinquishment of sovereignty by Sierra Leone, where the UN acts as a guardian of the state's power in order to regain control of the territory which had been legitimately elected by the population. However, this is more akin to the operation of transitional governments where state structures have collapsed, which was not the case in Sierra Leone. The official powers in Angola and Sierra Leone retained some control over the imports of weapons when UNITA and the RUF were targeted, which if followed, may in future suggest that consent is part of the mechanism involved in targeting non-state entities that are not connected with terrorism.

The Council's legal power to act against *any* entity, whether state, individual or non-state actor, might simply stem from the power to take action for the maintenance of IPS.

³² Contained in: ¶13 S/RES/1214 of 1998, ¶2 S/RES/1267 of 1999 and ¶1-3 of S/RES/1333 of 2000.

This argument could be accepted in respect of arms embargoes which target non-state entities, if they were understood to be pure enforcement measures and not 'sanctions'. What could be happening is that ultimately, arms embargoes are imposed in pursuit of IPS and that the 'demands' the Council makes of non-state entities are not equivalent to the imposition of international legal obligations via Article 41, as would be the case when demands are made of targeted states. This would mean that UNITA, the RUF and former military junta in Sierra Leone and the Taliban and its associates are not legally bound to comply with the decisions of the Council in the absence of international legal personality. But the Council may nevertheless impose enforcement measures, in view of the threat to the peace. If it was concluded that these entities do not have international legal personality, then the use of sanctions terminology, 'grace periods' and 'sunset clauses' only serve to confuse the objectives of the measures and therefore make their success difficult to measure. Perhaps more importantly, from a procedural perspective, it might become more difficult to decide when to terminate such measures. Usually, the 'sunset clauses' indicate that compliance is the route to termination. This method could be used when compliance is not a legal obligation, but simply a political incentive. The Council's use of the term 'demand' is ambiguous and so it could be that the Council does not interpret these demands as being legally binding obligations.

1.3.2.3. Blacklisting

Blacklisting has been used in the cases of the Taliban, the DRC and Côte d'Ivoire. Fundamentally, the same considerations as discussed above are applicable here, and the consideration is whether or not the Council (through its Sanctions Committees) can target individuals and punish them for violating an obligation which they only owe to their respective (implementing) Member state and not the UN itself. It is suggested that this problem is not greatly significant because it can be explained as simply facilitating enforcement and thereby assisting states in their efforts to apprehend and punish such violators. The more important problem arising from blacklisting is the actual operation of the lists and potential violation of the human rights of those listed. This is of more concern when enforcement measures like travel bans and targeted financial measures are used, however, because such measures have been threatened as a means of punishing violations of arms embargoes, consideration of these points is still desirable

here.

2. Primacy revisited

The fundamental point with regard to any of the problems outlined below is that unless a particular right embodies a *jus cogens* norm, the decisions of the Council under Chapter VII will override that right, by virtue of Articles 103³³ and 105(1).³⁴ The Council's powers sit at the top of the international obligations hierarchy.³⁵ Article 103 does not appear *prima facie*, to affect customary law obligations, and, in any case, the customary rules which would be relevant to the points raised in relation to enforcement measures, do not yet exist.³⁶ However, in the hierarchy of sources of international law, treaties are usually seen to be positioned above CIL due to the explicit consent involved and so it could be argued that if treaties are subject to Article 103 (and treaties are a more powerful source of international obligation) it must also be the case for CIL.

States may not invoke internal obligations³⁷ as an excuse for failing to implement a Council resolution, even when such obligations preceded the adoption of the resolution. The 'notwithstanding' provisions referred to earlier³⁸ are explicit about the equally retrospective and prospective nature of Council enforcement measures and make reference to the fact that pre-existing rights or obligations under contracts and licences cannot affect the requirements made of states in the resolutions. This is of particular

³³ Article 103 reads: 'In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.'

³⁴ Article 105(1) reads: 'The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.' Thus, no national (or regional) judicial action could affect the position of the UN, when measures are taken under Chapter VII.

³⁵ See also Article 59 of the ILC draft Articles on State Responsibility.

³⁶ See Fassbender, B. *Targeted Sanctions and Due Process* - The responsibility of the UN Security Council to ensure that fair and clear procedures are made available to individuals and entities targeted with sanctions under Chapter VII of the UN Charter Study commissioned by the Office of Legal Affairs - United Nations March 2006. Available at http://www.un.org/law/counsel/Fassbender_study.pdf (December-2006) at p.6.

³⁷ See also, Article 27 of the VCLT; and Articles 3 and 32 of the ILC's draft Articles on State Responsibility.

³⁸ Chapter Three 'Primacy'.

importance for arms embargoes where the internal effect of the law, would be to prohibit pre-existing contracts being completed. In turn, this could lead to civil proceedings for breach of contract.³⁹

3. Rights affected by implementation⁴⁰

Some concerns are derived from regional human rights treaties,⁴¹ others from the Universal Declaration on Human Rights⁴² and additional arguments have been constructed with regard to the two human rights treaties of the UN – the International Covenant on Civil and Political Rights (1966)⁴³ and the International Covenant on Economic, Social and Cultural Rights (1966).⁴⁴ To date, no cases have been found where the implementation of an arms embargo has given rise to an appeal to a judicial body for human rights violations. The standalone arms embargo does not give rise to many, if any, contestable human rights abuses, however, potential problems shall be briefly outlined.

The rights involved when measures secondary to an arms embargo (i.e. imposed as a

³⁹ No breach of a human right could be alleged here, however, because non-retroactivity of laws is applicable to criminal law only.

⁴⁰ See e.g. Cameron, I. *Protecting Legal Rights – On the (in)security of targeted sanctions* pp. 181-206 in 'International Sanctions' *op.cit.* (Introduction note 12).

The Secretary-General paid due regard to this issue in the 'SG Sanctions Speech' (*op.cit.*) when he said: 'A more recent challenge to effective implementation of sanctions revolves around the issue of due process in the listing and "de-listing" of individuals designated for targeted sanctions, such as asset freezes and travel bans. The Council has moved to address these concerns, and maintain confidence in the credibility and legitimacy of its measures, again with the assistance of Germany, Switzerland and Sweden, and in cooperation with the Watson Institute at Brown University. Further to the Council's resolution 1730, the Secretariat has created a focal point for de-listing, which provides direct access of listed persons and entities to Committees.'

Note, however, a report that these cooperation efforts 'appear to have been largely ignored' by the 1267 Committee:

http://www.securitycouncilreport.org/site/c.g1KWLeMTIsG/b.2294423/k.3920/January_2007BRTargeted_Sanctions_ListingDeListing_and_Due_Process.htm#De_listing (April-2007)

⁴¹ E.g. the ECHR (adopted 04/11/50; in force September 1953), ACHR (adopted 22/11/69; in force July 1978).

⁴² Adopted by A/RES/217(III) of 10/12/48.

⁴³ Adopted 16/12/66, (in force March 1976) ('ICCPR')

⁴⁴ Adopted 16/12/66, (in force January 1976) ('ICESCR')

method of enforcing the arms embargo) are of equal concern to those when travel bans and financial sanctions are primarily employed as against individuals because the measures will operate in the same way. The only difference is that the measures are now entirely punitive in nature, adopted in order to reprimand violation of the arms embargo. To date, there are no cases known to this author contesting the legality of such 'secondary sanctions' listings.⁴⁵ This may be due to the fact that until recently, there were no procedures available for de-listing. With regard to the Taliban cases, only those individuals attempting to dissociate themselves from Al-Qaida, or denying any association at all, are likely to contest their place on a Sanctions Committee list.

3.1. The requirement of due process before rights are removed⁴⁶

Fassbender explains that some of the problems facing individuals targeted on sanctions lists include: lack of notification prior to the event; no direct petition to the Committee of the Council for de-listing; no chance for a hearing by the Council or Committee; and due to the supremacy of Article 103 of the Charter, national methods to present a legal challenge the listing are lacking, as states are bound to comply with Council resolutions.⁴⁷

3.1.1. Lack of a fair trial and associated rights

Individuals had been placed on blacklists (and were thereby subject to punitive measures in light of violations of arms embargoes or other obligations), without necessarily even being notified of the charges against them, and without being tried to establish the verity of their culpability, were punished by means of travel bans and financial sanctions. Under normal circumstances, such a position could not be tolerated

⁴⁵ See e.g. in DRC ¶13 of S/RES/1596 – travel bans in place for AE violators; and in Côte D'Ivoire – ¶32 of S/RES/1721: 'Underlines that it is fully prepared to impose targeted measures against persons to be designated by the Committee established by ¶14 of resolution 1572 (2004) who are determined to be...in violation of the arms embargo, as provided in resolutions 1572 (2004) and 1643 (2005)'.

⁴⁶ See e.g. Cameron, I. *The ECHR, Due Process and UN Security Council Counter-Terrorism Sanctions*

Available at:

http://www.coe.int/t/e/legal_affairs/legal_co-operation/public_international_law/Texts_& Documents/2006/I.%20Cameron%20Report%2006.pdf
(February-2007)

⁴⁷ *Op.cit.* note 36 at Sect B p.4-5.

in law. However, the right to a fair trial and associated rights, as available under Article 14 of the ICCPR is applicable only to criminal charges and the violation of an arms embargo may or not be a criminal offence; its status will depend on the choice of implementation of the state. Due to the lack of a UN-specific mechanism to deal with requests to be removed from blacklists, individuals placed on lists and thereby subject to travel bans and having their assets frozen, have been unable to contest the measures unless their state of which they are nationals was willing to petition the relevant Sanctions Committee. If domestic remedies were exhausted, another option for appeal was only available for those individuals in regions where individuals may have the requisite *locus standi* in a higher court (for example, as exists in Europe and was utilised by Yusuf⁴⁸). Without this they could not challenge the measures imposed against them. This situation has been partially alleviated after the adoption of S/RES/1730 of 2006 which adopted a de-listing procedure and S/2007/178 concerning the establishment of the focal point for de-listing with the Secretariat. This came 6 months after the Council stated it was ‘committed to ensuring that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them...’.⁴⁹ It will be of interest to follow the progress of this new focal point to see if it operates as an adequate mechanism through which consideration of appeals against listing can take place.

3.2. Other international human rights⁵⁰

⁴⁸ Yusuf and Al Barakaat International Foundation v. Council and Commission (Case T-306/01) 21 September 2005. Yusuf’s case was against the EC’s implementation of the relevant Council resolutions. The CFI said: ‘Admittedly, the procedure [of petitioning to a state] confers no right directly on the persons concerned themselves to be heard by the Sanctions Committee, the only authority competent to give a decision, on a State’s petition, on the re-examination of their case. Those persons are thus dependent, essentially, on the diplomatic protection afforded by the States to their nationals. Such a restriction of the right to be heard, directly and in person, by the competent authority is not, however, to be deemed improper in the light of the mandatory prescriptions of international law.’ (at ¶314-5).

⁴⁹ S/PRST/2006/28 (22 June 2006).

⁵⁰ See e.g. Birkhäuser, N. *Sanctions of the Security Council Against Individuals – Some Human Rights Problems*

Available at - <http://www.statewatch.org/terrorlists/docs/Birkhauser.PDF> (February-2007); and van den Herik, L. and Schrijver, N. in Section Two (p.9-23) - *Human Rights Concerns in Current Targeted Sanctions Regimes from the Perspective of International and European Law* in *Strengthening Targeted Sanctions through Fair and Clear Procedures* Biersteker, T.J. and Eckert, S.E. published by the Watson Institute.

The case of Yusuf⁵¹ is relevant here, although the arms embargo itself was scarcely mentioned because it was the freezing of funds and travel ban that created the impetus for action and these measures were created as part of the original regime, rather than in support of the arms embargo.

3.2.1. The right to property

The right to property and the freedoms⁵² of contract, trade and navigate, come into question when an arms embargo is used (whether used in conjunction with other measures or as a standalone measure). These rights are common to the targets of the measures and to those affected by the implementation of the measures by states, such as arms companies, dealers and indirectly, it might be said, governments themselves. The right to property is expressed in two parts in the UDHR: the right to own property (individually and in concert) and the right not to be arbitrarily deprived of one's property. It would be difficult to argue that measures debated and adopted internationally by the UN, could constitute an arbitrary deprivation of property, such that might be thought to occur, for example, if a contract was unable to deliver goods promised because of the arms embargo. The right to property is also contained in the First Protocol to the ECHR, but it is absent from the ICCPR and ICESCR, which highlights its low status in the hierarchy of rights protected by international law.

There are conflicting rights, such as the right to life of the civilians suffering from the persistence of armed conflict,⁵³ of which suffer abuse because of the rights to property and freedoms to contract, trade and navigate, but these potential violations may be remedied by the arms embargo. This conflict of rights creates the need to perform a balancing exercise. The right to life is clearly superior to the others mentioned, however, there is a difficulty in that the other rights and freedoms are easily protected or

⁵¹ Yusuf *ibid.* note 48 - now on appeal to the ECJ.

For discussion see, e.g. Garde, A. *Is it Really for the European Community to Implement Anti-Terrorism UN Security Council Resolutions?* (2006) 65 Cambridge Law Journal 281.

⁵² I.e. In the absence of positive law to prohibit certain behaviour, in this case making a contract, or engaging in trade, individuals and entities individuals and entities are free to behave as they choose, limited only by the rules particular to that enterprise (i.e. the law of contract and so on).

⁵³ Protected, *inter alia*, under Article 6 ICCPR; Article 3 UDHR; Article 2 of the ECHR; and for civilians under IHL.

respected by the absence of an arms embargo (as the default position is that it is acceptable to trade in almost all conventional arms), whereas the presence of an embargo cannot guarantee the protection of the right to life, thus creating an argument against their superiority in the balance. In addition, as arms are sometimes needed to protect or respect the right to life (such is the nature of security) an argument arises against their use. However, as the Council's practice shows, the use of exemptions mitigates this problem, by allowing certain groups (for example, peacekeeping forces) to receive arms and related matériel so that the only arms legally entering the territory are those designed to protect the population, thus striving to protect the right to life. Direct associations have been made between the abuse of human rights and the use of SALW.⁵⁴

Another way deprivation of property may occur is through the seizure of goods, i.e. arms cargo found in place or *en route* to a place prohibited under a Council resolution. Once again, it would be difficult to argue that this was an arbitrary deprivation of property, given the background to the measures. A difficulty could arise if seizure occurred unlawfully,⁵⁵ and this could be the case if insufficient authority was vested in the individuals or entities⁵⁶ seizing the property.

In the case of Bosphorus,⁵⁷ the ECJ said: 'Any measure imposing sanctions has, by definition, consequences which affect the right to property and the freedom to pursue a trade or business, thereby *causing harm to persons who are in no way responsible for the situation which led to the adoption of the sanctions.*'⁵⁸ In relation to arms embargoes, arms manufacturers and brokers may be at least partly *factually* responsible

⁵⁴ See reports by Special Rapporteur Barbara Frey for the Human Rights Council on the prevention of human rights violations committed with SALW A/HRC/Sub.1/58/27 (Final Report).

and E/CN.4/Sub.2/2004/37 (Progress report under the auspices of the CHR).

⁵⁵ E.g. piracy, or perhaps INTERPOL, depending upon their powers.

⁵⁶ E.g. this may include customs officials, police or military personnel that patrol territorial waters and so on.

⁵⁷ In the ECJ – Bosphorus Hava Yollari Turzüm ve Ticaret AS v. Minister for Transport, Energy and Communications and others C-84/95, 30 July 1996.

⁵⁸ *Ibid.* at 22.

for the threat to IPS. Responsibility, in this sense, is not intended to connote legal culpability, but a part of the causal chain of events. The Court went on to say: 'Moreover, the importance of the aims pursued by the regulation at issue is such as to justify negative consequences, even of a substantial nature, for some operators'.⁵⁹ Ultimately, the right to property is not absolute and it is certainly not a *jus cogens* right.⁶⁰

3.3. Freedom to trade, contract and navigate?

These cannot be construed as human nor any other kind of rights. They are freedoms which can be curtailed if necessary for an overriding interest, such as the maintenance of IPS. The necessity of interferences with the freedoms to trade, contract and navigate arises because otherwise the embargoes could not operate. The action is proportionate because security is an overriding interest of states and all participants in the international community and this consideration could only be qualified by the evidence to show that unrestricted arms flows do not cause insecurity. In any case, as these freedoms are realised via contracts agreements, they are subject to Article 103 and the 'notwithstanding' provisions mentioned in Chapter Three.

3.4. Travel bans and financial sanctions

The right to property may also be invoked in relation to financial sanctions, but would be superseded for the same reasons as given above. The right to freedom of movement, as contained in Article 12 ICCPR may be restricted by a travel ban, but the Council accommodates the principle in Article 12(4) ICCPR⁶¹ by often providing that no travel ban 'shall oblige a State to refuse entry into its territory to its own nationals.'⁶² The right 'freedom of thought, conscience and religion' under Article 18 ICCPR has also been accommodated within travel bans by providing exemptions for the purposes of

⁵⁹ *Ibid.* at 23.

⁶⁰ See *Yusuf*, *op.cit.* at 293: '[I]t is only an arbitrary deprivation of [the right to property] that might...be regarded as contrary to *jus cogens*.'

⁶¹ 'No one shall be arbitrarily deprived of the right to enter his own country.'

⁶² E.g. ¶9 of S/RES/1572.

religious observance.⁶³

4. Self determination⁶⁴

4.1. Introduction to the right

This part of the discussion excludes those cases where the background to the measures did not involve an armed conflict⁶⁵ and therefore did not invoke the rules of IHL. The main question for this section is whether or not the denial of self determination could occur due to the imposition and operation of an arms embargo by the Council and would therefore be a violation of international law, warranting an appeal to the Council to desist from such action in future. To determine this, the following points must be established: what is status of the right to self determination, who bears this right and in what ways could an arms embargo violate it in respect of those persons?

Self determination underscores an interaction between the Council and the GA, as the latter bears a responsibility to protect *inter alia*, self determination⁶⁶ potentially causing a situation where the work of one organ overtly undermines the other. On the side of the Council, this is relevant because the basic purpose of collective action is for the UN to be united against threats to international peace. If two of the principal organs of the UN are at odds with one another, the whole system could be affected. On the side of the GA, the situation is relevant because respect for the right of self determination is one of the purposes and principles of the UN; it is recognised as a human right in custom and in the UN human rights treaties⁶⁷ and is argued by some to be a rule of *jus cogens*.⁶⁸ As shown in Chapter Two, this final point would be sufficient to restrict the Council's application of an enforcement measure that violated the right to self determination.

⁶³ E.g. ¶10 of S/RES/1572.

⁶⁴ In general, see e.g. Cassese, A. *Self-Determination of Peoples: A legal reappraisal* (1995) CUP; Rigo-Sureda, A. *The Evolution of the Right of Self-Determination: A Study of United Nations Practice* (1973) Leiden: Sijthoff.

⁶⁵ I.e. Libya 748 and Taliban 1390.

⁶⁶ 'Keeping the Peace' *op.cit.* at p.169-172.

⁶⁷ Article 1 ICCPR and ICESCR.

⁶⁸ See Doehring in 'Simma' *op.cit.* at p.62.

4.2. Whose right?

This problem is primarily of relevance to those cases targeting solely non-state actors or the 'parties to the conflict', but is also relevant where an arms embargo affects the entire territory. Self determination is an issue relevant to the concept of collective security against a common threat, which happens not to be a state. The situation envisaged is one where the government of a state is fighting its own people who have banded into armed groups, or if the control of the country has decentralised to such an extent that different parts are run by different authorities, or by no authority at all. Unlike the original self determination field, decolonisation is no longer the root of change, as most colonies are now self-governing, however, alongside ethnic conflicts, some of the internal conflicts do have the influence of their previous colony powers as a factor in the operation – from e.g. the lack of natural resources from earlier exploitation or perhaps that the colonial powers left behind 'technology' such as weapons.

4.2.1. National Liberation Movements (NLMs)

NLMs have a unique non-state actor position under IHL because they are considered to fight in international conflicts.⁶⁹ In addition, although NLMs are not able to be party to the Geneva Conventions and protocols, Article 1(4) of Protocol I is applicable to them, dependent on their consent via Art 96(3).⁷⁰ Their right to self determination is undisputed and could be violated by an arms embargo if the content of the right is such as to permit the use of armed force for its maintenance.

4.2.2. Armed Opposition Groups (AOGs) / Insurgents

Zegveld reviewed the accountability of AOGs and set out the law relevant to the behaviour of such groups. An AOG derives its position under IHL from the position of the authority (in control of the territory from it operates) with regard to the Geneva Conventions and protocols thereto. If a state has ratified it,⁷¹ an AOG operating within that state can reap the benefits of the protection it affords to combatants and can be

⁶⁹ 'Accountability' *op.cit.* (Chapter One note 73) at p.18.

⁷⁰ *Ibid.* at p.17-18.

⁷¹ See earlier comments (Chapter One) on numbers of states parties to the relevant conventions and protocols.

bound by the obligations therein. Armed opposition groups fight internal wars only, but does this factor affect their right to self determination?

When considering the deficiencies in conventional arms controls, should it not be asked how this breed of non-state actor has evolved? Did they evolve out of the failures of the international protection of minorities?⁷² However, as the situation in Rwanda showed, being the minority does not necessarily mean being the weakest party. AOGs are classified by the fact that they are armed. This shows the default position that arms sales, supplies and transfers are legally deemed inherently acceptable until measures contrary to this are imposed, i.e. an arms embargo. The removal of acceptability only continues for the duration of such measures. Why are AOGs distinguished from NLMs? NLMs also fight, but are afforded a status more akin to that of the state, which is the political direction of the aspirations of such a movement. This could be because they have behaved in such a way as to merit this respect, which might create an assumption that that AOGs are not generally behaving in a state-like manner, perhaps for example, by abiding by the rules of IHL. The GA has said that the exercise of the right of self determination does not equate to aggression⁷³ which would imply that force may be lawfully used to enforce the right of self determination. So, in cases that are determined to be genuine struggles against the suppression of self-determination (i.e. to enforce the right it must be threatened) the use of force is permitted for that particular, confined purpose.

4.3. The effect of arms embargoes

Did that Council act in a way that could affect the right to self determination of NLMs by forceful means? It is suggested that the relevant non-state actors in the arms embargoes cases were AOGs rather than legitimate NLMs and so there is no question of such groups having a right to be armed for the purposes of self determination and to achieve that status by force. This could amount to 'violent secession'; something

⁷² The international response came in the form of a number of treaties and provisions, such as Article 27 of the ICCPR (and General Comment No.23(50) by the UNHRC); CERD; and the Durban declaration.

⁷³ Art 7 of GAOR XXIX, supp no.31 (A/9631) p.142. 1974 as cited in Doebling *op.cit.* at p.52.

which, according to O'Connell, is not permitted under self determination.⁷⁴ However, in some cases, the background to the conflicts encompassed deep ethnic incompatibilities, where outright removal of the opposing party was a greater desire than the mere taking of control of the territory.

5. Self defence

5.1. In General

Self defence is an intuitive human concept. It is the essence of survival when faced with a threat. There is a clear moral right to self defence, and a legal right exists under specific conditions in municipal criminal law. Under international law there are two clear sources of a legal right to self defence - there is the treaty-based rule (applicable only to UN Member states) contained in Article 51 of the Charter and there are custom-based rules. Although much of the Charter is considered representative of customary law, the original customary rules on self defence are distinct from any customary rule based on Article 51. It is important to consider this issue here because it can be argued that arms embargoes impair the right to self defence. Under the Charter a state's right of self defence is theoretically curtailed as soon as the Council takes measures under Chapter VII against it. Only absolute enforcement of the measures (which is of course desired) would curtail the actual capacity to defend one's self and even this would not necessarily be an absolute curtailment as arms embargoes do not have a direct effect on existing stockpiles. Arms embargoes are not a tool for restricting legal capacity to defend oneself, although it could be argued that the legal capacity becomes irrelevant when curtailed by a physical limitation. If a warring party already has weapons there is nothing an arms embargo could do to curtail their use, except insofar as the supply of ammunition was successfully restricted by it. If other dangerous weapons are prevalent, such as the machetes used in the Rwandan genocide, embargoes on conventional arms and related matériel will not have restricted the self-defence capacity of those individuals, groups or governments determined to use any weapons to achieve their aims in the conflict.

⁷⁴ O'Connell, M.E. *Continuing Limits on UN Intervention in Civil War* (1991-1992) 67 *Indiana Law Journal* 903 at p.908

5.2. Customary Law

A definition for the customary rules for a right to self defence arose relating to the 1837 shipping case of the *Caroline*⁷⁵ In discussions⁷⁶ it was qualified by two requirements: necessity and proportionality. A parallel for this has emerged in the treaty-based right of self defence.

In Nicaragua v. USA,⁷⁷ explicit comments were made in respect of self defence and Article 51:

‘[E]ven if a treaty norm and a customary norm relevant to the present dispute were to have exactly the same content,⁷⁸ this would not be a reason for the Court to hold that the incorporation of the customary norm into treaty law must deprive the customary norm of its applicability as distinct from the treaty norm.’⁷⁹

This is usually applied (as was the problem in the case) in order to avoid non-applicability of certain provisions of a treaty due to reservations. Customary law can trump treaty law in this regard. Moreover, this provides application to those entities unable to rely on Article 51 by virtue of not being a party to the Charter.

5.3. Treaty Law – Article 51

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain [IPS]. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council

⁷⁵ 29 BFSP 1137-1138; 30 BFSP 195-196.

⁷⁶ ‘Enclosure 1 - Extract from note of April 24, 1841’ available at <http://www.yale.edu/lawweb/avalon/diplomacy/britain/br-1842d.htm#web2> (February-2007).

⁷⁷ *Op.cit.* Chapter Three note 22.

⁷⁸ Which, it should be noted, they do not – Article 51 has a particular aspect relating only to the Charter, i.e. that self defence is only acceptable until Chapter VII measures have been taken. However, note the interesting comment of the Legal Adviser to the US Department of State regarding the *Caroline* case, where the customary version of the right to self defence was expounded – ‘the exercise of the inherent right of self defence depends upon a prior delict, an illegal act that presents an immediate, overwhelming danger to an actual and essential right of the state.’ DUSPIL, 1975, p.17 as cited in ‘International Law’ *op.cit.* at p.1025. This corresponds to the requirement of a prior armed attack contained in Article 51.

⁷⁹ *Ibid.* note 77 at p.94-95.

under the present Charter to take at any time such action as it deems necessary in order to maintain or restore [IPS].”⁸⁰

Article 51 has a number of self-evident but important qualifications. On a simple textual interpretation, the right exists only in connection to an armed attack, and will subside once measures have been taken by the Council (presumably under Chapter VII) in pursuit of its primary duty. Council measures taken at any time will override the operation of measures taken in self defence. The requisite timing of an armed attack has been subject to dispute however the debate on pre-emptive or anticipatory self defence⁸¹ is beyond the scope of this thesis. In addition, the precise scope of an ‘armed attack’ has undergone discussion and some elements of this may be worth noting. For example, the dispute over whether the provision of weapons as assistance to rebel groups could constitute an armed attack against the state fighting the rebels (and therefore justify the use of force based on self defence) was rejected by the ICJ in Nicaragua v. USA.⁸²

It is important to see the right of self defence in its context as a justification for the use of force by states, as this is usually prohibited.⁸³ This highlights the fact that although acting in self defence is an inherent right of a state, the action will not *per se* be deemed to constitute acceptable behaviour. It remains wrong, but is excused and but for the satisfaction of the conditions of self defence the action taken would be an illegitimate use of force and may constitute an act of aggression - itself deserving of Council measures.

Is a right to self defence, also a right to purchase and acquire arms? It may be difficult to prove that the particular purchases or acquisitions are for the purposes the buyer purports (i.e. self defence). In addition, it must be established who or what possess

⁸⁰ Article 51.

⁸¹ See, e.g. Reisman, W.M., and Armstrong, A. *The Past and Future of the Claim of Preemptive Self-Defense* (2006) 100 AJIL 525.

⁸² *Op.cit* at p.103-4.

⁸³ Article 2(4) Charter; the rule exists also in CIL and is part of the foundations of the UN where disputes are to be settled peacefully (Article 2(3) and Chapter VI).

these rights. The default position for states is the legitimate purchase, transfer and acquisition of arms, subject to rules of contract law. As explained above, there is a legally protected right to property and a freedom to trade, neither of which are inalienable (and the latter is not protected by human rights law), and if contested would be subject to tests of proportionality. The default position for individuals or non state entities that comprise groups of individuals is a similarly open right to make contracts in the arms trade. However, any non state entity or individual's ownership and possession rights will vary according to the internal laws of their state.

The main difference occurs in that a state may legitimately have a monopoly on the use of force within its own territory and to that end has a greater claim to a right to armaments. Moreover, the types of weapons acceptable for civilian possession tend to be smaller weapons as it is harder to justify the need for non-military possession of military style weapons, such as assault rifles. However, these weapons are the types of weapons most prominently used in civil wars, by state forces and non state entities alike. As is ultimately the problem in the conventional arms control arena, the default position of the right to purchase and acquire arms is governed not by international law, but by domestic, and in some cases regional, regulation. It remains an internal matter until a multilateral arms embargo is imposed.

5.4. Case in point

A significant adverse and unintended humanitarian side-effect of arms embargoes can occur when an embargo reinforces an unequal measure of fighting power, leading to breaches of international law as a result of the incapacity for one side to defend itself. In the Application of the Convention on the Prevention and Punishment of the Crime of Genocide⁸⁴ case, it was argued that the arms embargo reinforced the *status quo* where one side had a stronger military position in the war.⁸⁵ As that side⁸⁶ was already sufficiently armed, it had a significant advantage over its opponent who had few military resources. The main argument in respect of the arms embargo was that it effectively made the implementing states accessories to the genocide. The majority of

⁸⁴ Provisional Measures, Order of 8 April 1993, ICJ Rep. 1993, p. 3

⁸⁵ See further, Scott. C *et al. op.cit.* Chapter Four note 46.

⁸⁶ The Bosnian Serbs (FRY).

the Court refused to consider the issue because the '[provisional] measures requested by Bosnia-Herzegovina...go beyond matters within the scope of the Genocide Convention...' ⁸⁷ so the Court confined 'its examination of the measures requested, and of the grounds asserted for the request for such measures, to those which fall within the scope of the Genocide Convention.' ⁸⁸

However, Judge *Ad Hoc* Lauterpacht, in his separate opinion to the second request for provisional measures, stated that:

'So far, then, as this fourth request is related to the elimination of the arms embargo vis-à-vis Bosnia-Herzegovina, I would be prepared to say that the Applicant may have an indication of a provisional measure in the following terms: that as between the Applicant and the Respondent the continuing validity of the embargo in its bearing on the Applicant has become a matter of doubt requiring further consideration by the Security Council.' ⁸⁹

This conclusion pays regard to the difficulty seen in this case, of an arms embargo effectively removing a right to self defence, which may have led to the violation of a rule of *jus cogens*.

6. The Role of the Council in enforcement

6.1. Responsibilities of states under the Charter

The only official punishment the UN can take against a Member state is expulsion under Article 6 when there has been persistent violation of the Principles of the Charter; however, violations of Articles 2(5), 25 and 48 are unlikely to be deemed as such. Leaving aside the probative issues, this Article has never been used and is highly unlikely to be invoked.

Violation of an arms embargo by a state by assisting in breach or violation of the obligation to implement the measure can be considered to be a threat to IPS, thereby justifying further measures ⁹⁰ against such states. The logic for this type of threat is

⁸⁷ *Ibid.* note 84 at ¶33.

⁸⁸ *Ibid.* at ¶35.

⁸⁹ Further Requests for the Indication of Provisional Measures Application of the Convention on the Prevention and Punishment of the Crime of Genocide, *op.cit.* (Chapter Two note 128) at p.442 (¶107 of the separate opinion).

⁹⁰ Labelled 'secondary sanctions' by Frowein/Krisch 'Article 41' in 'Simma' *op.cit.* at p.748.

based upon the idea that the obligations are in place because they are deemed to be instrumental in overcoming the threat and so any contrary action both undermines the collective action and further exacerbates the threat. The measures taken against Liberia in S/RES/1343 were directly related to its 'active support...for armed rebel groups in neighbouring countries'. This point highlights the instrumental normative value of arms embargoes and all enforcement measures, because it creates another way for the spread or aggravation of conflict to be designated as unlawful. This in turn may deter such occurrences and therefore deter the assistance (such as the provision of arms) which violates the measures. As this represents the only likely reprimand for states, the P5 would be exempt from any practical form of reprimand due to the veto.

6.1.1. State assistance in breach

'Most often a violation of end-user undertakings requires the assistance of a sympathetic government, or, at the very least, the collaboration of a corrupt high-ranking government official. Such ruses are particularly successful if the assistance comes from a neighbouring country.'⁹¹

Many arms embargoes violations have occurred because neighbouring states would be supporting one side to an internal conflict and flagrantly breaching embargoes, as the Liberian case shows. By virtue of the embargo, such behaviour would amount to a violation of Article 2(5). The reasons for such behaviour may be political, which outweigh the perceived benefits of adherence to the Charter, indeed, '[t]he reluctance of governments to act against targets whose support may be needed in other circumstances is often a serious hurdle in building sanctions coalitions.'⁹² In respect of enforcement measures, it could be that political commitments are perceived by states as having greater normative value than legal obligations. It is political considerations that ultimately guide action and collective security is itself a political endeavour. There is no overarching mechanism to enforce the international law obligations of states under the Charter and so it is not the legal commitment that prompts states to act.

When non-state entities assist a target in active breach it is a matter for the state in which the entity resides or operates. The Council may make suggestions for action

⁹¹ 'SAS-2002' *op.cit.* p.134.

⁹² 'Contemporary Perspective' *Op.Cit.*(Chapter Two note 101) at p.4.

against those entities as it did in the Southern Rhodesian case.⁹³ It is suggested that violation of an arms embargo could not be an international crime. Such violation does not directly accord with the ICC's jurisdiction under Article 5 of the ICC Statute. Indirect application would lack the necessary, verifiable proximity and causation. Article 8(2)(b) of the ICC Statute shows intolerance of specific types of weapons,⁹⁴ but this does not include conventional weapons. There is nothing explicit in the 'Elements of Crimes' (2000) to prohibit the sale and transfer of weapons to armed conflicts.

However, individual criminal responsibility can be invoked (under Article 25 (3)(c) of the ICC Statute) against individuals that aid or abet in order to facilitate commission of a crime, including providing the means for its commission.⁹⁵ This suggests that arms brokers with the seemingly requisite intent (i.e. the broker aids or abets 'for the purpose of facilitating the commission of such a crime') could be criminally responsible in international law for crimes committed with the armaments they have provided. However, it is expected that arms brokers would deny any consideration of the future uses of the armaments they provide to individuals and entities that use them to commit international crimes, or indeed those that use them to violate norms of IHL or human rights law. Perhaps this is an area where states could take action within their internal legal spheres to ensure that brokers are legally obligated to consider such possibilities before executing a transfer. It is not clear whether knowledge (of providing the means to commit an international crime) alone is sufficient to invoke the responsibility of an individual for aiding and/or abetting the commission of an international crime.⁹⁶

7. Other spheres of international law under which to hold states responsible?

7.1. State Responsibility

⁹³ See ¶4 of S/RES/333 of 1973.

⁹⁴ This is largely derived from existing laws and developing norms – see sections xviii-xx.

⁹⁵ See, Wood, B. *Strengthening Compliance with UN Arms Embargoes –Key Challenges for Monitoring and Verification in Verifying Disarmament and Non-Proliferation Agreements Today* DDA Occasional Papers No. 10, March 2006, pp.53-73 at p.57 Available at: <http://disarmament.un.org/ddapublications/OP10/4Wood.pdf> (March-2007).

⁹⁶ However, it is thought to be highly unlikely to be sufficient.

The law of state responsibility may provide another route for the determination and punishment of a state's failure to abide by its international obligations in respect of enforcement measures. A recourse separate to the law of the UN would be vital if a permanent Member of the Council violated its obligations in respect of arms embargoes and other enforcement measures.

7.1.1. Applicability?

Separate to the questions of whether the Council has (or should have) any role in adjudicating the responsibility of states and whether it uses enforcement action as a method of enforcing states' international legal obligations,⁹⁷ the issue of the international responsibility of states arises in respect of the actual operation of those rules. This is the relevant here because the violations of arms embargoes or failures to implement resolutions to give effect to the arms embargoes may give rise to international responsibility, as such violations or failures constitute breach of international obligations, as defined in Article 1 of the ILC draft Articles on State Responsibility.⁹⁸

7.1.2. Substance

Under Article 2 of the draft Articles, '[t]here is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) [i]s attributable to the State under international law; and (b) [c]onstitutes a breach of an international obligation of the State. Violations of arms embargoes or failures to implement resolutions clearly breach international obligations of the state and as long as factual evidence could be produced, these acts or omissions would be attributable to the state. In the case of the failure to implement an arms embargo, the omission would be clearly imputed to the state as no other entity is obligated to take such action.

Under Article 33 of the draft Articles, the obligations may be owed to 'another State, to several States, or to the international community as a whole, depending in particular on

⁹⁷ Gowlland-Debbas, V. *Security Council Enforcement Action and Issues of State Responsibility* (1994) 43 ICLQ 55; 'Enforcing International Law' *op.cit.* (Chapter Two note 86).

⁹⁸ Note, the 2001 draft Articles have not yet been adopted by states and consequently carry no binding legal force *per se*; however see commendations in A/RES/56/83 of 2002 and A/RES/59/35 of 2004.

the character and content of the international obligation and on the circumstances of the breach.’ The circumstances of the breach are less relevant with regard to violations of enforcement measures because such a violation is independent of factors which might usually affect this aspect.⁹⁹ The effects of a breach may be more severe in some cases than others; however, the obligations are always owed to the international community as a whole, because they arise through the collective security mechanism of the Charter, which exists for the benefit of all states. The required injury for state responsibility might be considered difficult to quantify in respect of the breach of an enforcement measure. However, in the case of the breach of an arms embargo, the damage to the collective security effort is immediate, as the objective is to prevent weapons crossing the determined threshold.

Under Article 16 of the draft Articles, ‘[a] State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) [t]hat State does so with knowledge of the circumstances of the internationally wrongful act; and (b) [t]he act would be internationally wrongful if committed by that State.’ This article could be used to find the responsibility of a state that willingly assists another state in the active breach of an arms embargo. In the cases of diversion of weapons in breach of an embargo, where the exporting state knew the original destination to be lawful (and had taken steps to ensure the authenticity of relevant end-use and end-user documents), it might be difficult to prove that the state had the requisite knowledge of the eventual diversion to an end-user or ultimate destination prohibited under international law by the embargo.

7.2. International humanitarian law

The breach of an arms embargo does not constitute a violation of IHL *per se*. The effects of the breach may provide the means in which certain violations are carried out. However, the conventional weapons under discussion are not subject to IHL concerning

⁹⁹ The Commentary to the draft Articles uses the example of pollution which, under some circumstances, may affect only one state and under others, may affect the international community as a whole.

Available at: http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf at p.233 (April-2007).

the means and methods of warfare and so there are no specific provisions to prohibit states from providing the means for combat. However, states still have an obligation 'to respect and to ensure respect for the [Geneva Conventions and Protocol I] in all circumstances.'¹⁰⁰ It could be argued that such respect and assurance of respect is marred by the transfer of armaments to end-users or for end-uses which result in the commission of acts contrary to IHL. Although causation in particular cases would be very difficult to establish, as many weapons are unmarked and therefore difficult to trace, it is the overall principle that is of value. An element of knowledge may be required for Article 1 GC to obligated states to desist from such actions (for example, undesirable transfers) that may undermine this core principle. The ICRC asserts that the 'obligation [in Common Article 1] entails a responsibility to consider, when arms are made available, whether the intended recipient can be expected to comply with IHL, in particular the rules concerning the protection of civilians.'¹⁰¹ Arms embargoes can therefore provide a direct method that states can use to comply with their obligations under IHL. However, under the strict legal understanding of the dichotomy between international and internal armed conflicts, this core principle will not apply in internal armed conflict situations.

8. Practical difficulties with regard to Enforcement

8.1. Practicalities of physical enforcement

Border control is a major practical issue.¹⁰² Physical enforcement of the arms embargoes is not an easy task even when border control is well established. When consideration is had for the thousands of miles of land and sea borders existing throughout the whole of Africa (where most of the arms embargoes exist), the problem of how to patrol and physically stop the weapons being brought onto the prohibited soil, seems overwhelming. However, the problem should not be one that is impossible to overcome, because if proper legal regulation was introduced, either as part of the arms embargo regimes, or on a larger scale, perhaps in line with the ATT proposals, then the weapons could be stopped before they leave the exporting country. The biggest

¹⁰⁰ Article 1 common to the GC's 1949 and Article 1(1) of Geneva Protocol I.

¹⁰¹ Website section on 'Small arms availability and international humanitarian law':

http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/section_ihl_arms_availability?OpenDocument
(May-2007)

¹⁰² See Nathan, L. *op cit*.

apparent problem is diversion, because in the current state of the law, once a state has sold and exported to a 'legitimate' recipient that is the end of their legal responsibility. If arms embargoes carried a provision detailing the responsibility for failing to prevent diversion, it might act as a form of encouragement for states to do as much as is practically possible to reduce the risk of diversion.

9. Conclusion

The use of arms embargoes raises issues under many areas of international law. Further attention should be given to discussions regarding the legal status of the addressees targeted in sanction-type arms embargoes, however, this problem does not affect the 'target-neutral' non-coercive arms embargoes. In addition, the use of arms embargoes *per se* raises few human rights issues, however, the same cannot be said of the secondary measures used in support of them. If an arms embargo could be shown to exacerbate, rather than mollify, a situation threatening IPS, the Council would be well advised to carefully review the benefits and burdens of the measures. The Council has, in general, failed to reprimand states for their failure to effectively enforce embargoes. Can the UN maintain its authority and integrity in the midst of so many breaches and is it a lack of capacity or lack of will by the UN which causes this failure? As the representative body of the UN, perhaps the GA could have a greater role in this process as its power to condemn the failure to avert breaches of arms embargoes would carry significant political weight. As the ICJ recalled, there is a

'fundamental distinction between the existence and binding force of obligations arising under international law and the existence of a court or tribunal with jurisdiction to resolve disputes about compliance with those obligations. The fact that there is not such a court or tribunal does not mean that the obligations do not exist. They retain their validity and legal force. States are required to fulfil their obligations under international law, including [IHL], and they remain responsible for acts contrary to international law which are attributable to them.'¹⁰³

Indeed, as Higgins has said; 'International law is not rules. It is a normative system.'¹⁰⁴

¹⁰³ 'Genocide Judgment 2007' *op.cit.* at 148, citing Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), *Jurisdiction of the Court and Admissibility of the Application, Judgment of 3 February 2006* pp. 52-53, ¶127.

¹⁰⁴ Higgins, *Problems and Process, Op.cit* at p.1

CONCLUSIONS

Arms embargoes have a mixed record of success; not least because it is difficult to ascertain with certainty to which objective or objectives they aspire. Arms embargoes appear to have been intended to, and in fact do, have normative as well as practical value, although any aspects of an ideal framework must bow to the demands of the actual situation. Their normative value is important for international law because it contributes to the potential for the future regulation of conventional armaments based upon the suitability of end-users and end-uses. Their practical value is also important in international law because it provides a means with which to contribute to the protection of certain rights that are put at risk from the proliferation itself, most importantly, the right to life of civilians.

This thesis has explored the many facets of arms embargoes in an attempt to improve comprehension of how these enforcement measures operate and their status in international law. The Council has acted in a punitive manner, despite the position held by the UN that it does not. The fact that Articles 25 and 48 are invoked when arms embargoes are imposed should put beyond dispute their legally binding nature.¹ This thesis has argued that not all arms embargoes should be labelled as 'sanctions' and that this misnomer impedes the effectiveness of the measures. Moreover, the economic theory of arms embargoes encounters various problems, the most important of which with respect to the emergence of overall norms, is the fact that the economic theory undermines the logical purpose of arms embargoes.

Mandatory, multilateral arms embargoes currently operate under the law of collective security but for various reasons, they are not achieving their full potential, which would be to physically curtail the intensity of armed violence when it has reached a level that elevates it beyond the concern of the territory upon which it is occurring. The law of collective security (as embodied in the non-sanction types of arms embargoes), IHL and arms control law share one fundamental practical purpose: to limit the negative effects

¹ In addition, Gill notes ('Limitations' *op.cit.* at p.130-1) that despite the Council's failures, it had succeeded in securing compliance with its measures by most Member states, most of the time.

of warfare, so far as is possible, for the sake of humanity. This purpose is, however, undermined when arms embargoes are used as coercive sanctions and currently is not fully realised when they are used as conflict containment measures. The operation, development of and interaction between these areas of law contributes to international law in general, by creating and/or maintaining particular standards and norms. As states already have obligations under the Geneva conventions, it is convenient to pursue a system of regulation of armaments based upon their end-users and end-uses that incorporates IHL. The ICRC has 'promoted specific criteria for arms transfers aimed at preventing weapons from falling into the hands of those likely to use them to violate [IHL]'.² In situations where IHL is not applicable, there may still be a threat to the peace. Here, collective security law can play a role if the system is invoked by the Council. It would be desirable to have another alternative method of regulation, dependent not upon achieving the conditions necessary for the application of IHL or upon the readiness of the Council to act, but solely on the consent of states. The arms control option may not be appropriate for the Council to pursue unilaterally:

'[T]he [Council] enjoys the competence to enact arms embargoes in situations of crisis...[b]ut this does not necessarily include a competence to take general measures for the limitation of armaments, or a possibility to regard armament by States in itself as a threat to the peace. In principle, States are free to decide on their armament, and both the GA and the [Council] possess only recommendatory powers with respect to the general regulation of armaments.'³

This admission would suggest that states can use the UN to facilitate the general regulation of armaments, but that they must decide upon such means for themselves. The current ATT work at the UN is testament to this arrangement. However, one difficulty in attempting to use a legal sphere outside of the UN's system of collective security to regulate the trafficking of armaments to 'undesirable' end-users or to places for 'undesirable' end-uses, is that the circumstances involved are dynamic and the armaments in question are not inherently unlawful. Neither of these aspects is likely to

² Official statement - 04-04-2007 'The development of an international arms trade treaty' -

<http://www.icrc.org/Web/eng/siteeng0.nsf/html/arms-availability-statement-020407> (May-2007)

³ Frowein/Krisch in 'Simma' *op.cit.* at p.726 (Their footnotes omitted).

change. The position and status of the various actors involved may vary before, during and after a conflict and so any treaty would struggle to provide for the numerous possible eventualities.

It might be possible to have a number of norms operating simultaneously. For example, in situations of armed conflict, there could be a norm of IHL, which prohibits the trafficking of armaments to actors likely to use them to commit violations of IHL, as the ICRC has advocated. In situations that threaten IPS (irrespective of whether an armed conflict exists) there could be a norm of collective security law which prohibits the trafficking of armaments to those entities and places that could or have threatened IPS. However, such a norm would pre-empt future actions of the Council and due to its wide discretion in utilising the collective security system, such a position cannot be maintained. In all other situations, it would be desirable to have a norm that aspires to the prevention of either of the two aforementioned situations from reaching fruition. This could be facilitated through international human rights law, which could prohibit the trafficking of armaments to those likely to use them to commit human rights violations. These norms would persist, even without adequate judicial or executive mechanisms to ensure they were respected.

Arms embargoes contain an inherent, preventative element and in addition to their role in conflict containment, there is potential for them to be used as a tool of conflict prevention⁴ under collective security law (perhaps as a provisional measure), human rights law or arms control law. As Kofi Annan noted, 'the international community has been more willing and able to absorb the enormous costs of conflict than to generate the will and foresight to prevent it.'⁵ Indeed, it seems to be the case that states are more concerned with short term liquidation rather than long term prosperity when managing international affairs.

⁴ See, e.g. Wallensteen, P., Eriksson, M., and Strandow, D. *Sanctions for Conflict Prevention and Peace Building - Lessons Learned from Côte d'Ivoire and Liberia* (2006) Department of Peace and Conflict Research – Uppsala.

⁵ A/57/270

31 July 2002 Implementation of the United Nations Millennium Declaration Report of the Secretary-General Preventing armed conflict at paragraph 29;

In the Council meeting where the arms embargo against Liberia was adopted, the then Minister of Foreign Affairs of the Interim Government of Liberia, Mr. Matthews, said: 'We are here because peace is not possible in Liberia unless these belligerent parties are divested of the prospect of acquiring additional arms. Peace is not achievable unless their capacity to wage war is curtailed.'⁶ This highlights two important points; first, the most effective ways to curtail such capacity is to limit the flow of new weapons and to create mechanisms⁷ through which old weapons can be destroyed; and second, the minister referred to the combatants, that is, the end-users. There is a logical connection between arms trafficking to and stockpiling by certain end-users and the beginnings, escalation and prolongation of conflict.

While arms embargoes cannot be seen as tools of conflict resolution, their arms control function can affect the nature of a conflict by reducing the intensity of the violence thereby creating circumstances more suitable for the advancement of peace. Indeed, '[i]t is difficult to see peace, but certainly impossible to see security being achieved without arms regulation.'⁸ Although the arms control function of arms embargoes is subsidiary to the collective security function, it has the potential to be a means to the ends protected by the collective security system, namely, the maintenance or restoration of international peace and security.

⁶ Provisional Verbatim meeting record of the Council (19/11/1992), S/PV.3138 at p.18.

⁷ E.g. DDR and related programmes (<http://www.unddr.org>).

⁸ White, N. *The Future of Arms Control Law: An Overview of the Workshop* 9(3) JCSL 299-302 (2004) at p.302

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Title/Type of document	UN Document number
Provisional Verbatim Meeting Records	
Briefings by Chairmen of subsidiary bodies of the Security Council	S/PV.5332
Resolutions	
Regulation of armaments	S/RES/18
Regulation of armaments	S/RES/68
Regulation of armaments	S/RES/77
Regulation of armaments	S/RES/78
Regulation of armaments	S/RES/79
Regulation of armaments	S/RES/97
Emergency special session of the General Assembly on the Suez question	S/RES/119
Falklands	S/RES/502
Israeli air raid over Tunisia/'aggression'	S/RES/573
Chemical weapons use in the conflict between Iraq/Iran	S/RES/620
Established ICTY	SC/RES/827
Established ICTR	SC/RES/955
Burundi	S/RES/1072
DRC threat to IPS	S/RES/1080
Albania	S/RES/1101
Terrorism	S/RES/1373
Admission of the Swiss Confederation to UN	S/RES/1426

membership	
Terrorism	S/RES/1456
Terrorism	S/RES/1535
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Title/Type of document	UN Document number
Provisional Verbatim Meeting Records	
Illicit arms trafficking 101st plenary meeting, 31 May 2001	A/55/PV.101
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Conference Documents	
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Uniform Resource Locators

UN related	
Review Conference 2006	http://www.un.org/events/smallarms2006
Review Conference Preparatory Committee 2006	http://www.un.org/events/smallarms2006/prepcom/index.html
GGE on Tracing	http://disarmament.un.org/cab/salw-tracingexperts.html
OEWG on Tracing	http://disarmament.un.org/cab/salw-oewg.html
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GGE on brokering	http://disarmament.un.org/cab/GGE%20brokering.htm
Millennium Development Goals	http://www.un.org/millenniumgoals
General Assembly Resolutions dealing with Small Arms and Light Weapons	http://disarmament2.un.org/cab/salw-gares.htm

UN Register of Conventional Arms	http://disarmament.un.org/cab/register.html
US Statement during the High Level Segment Tuesday 27 June 2006.	http://www.un.org/events/smallarms2006/pdf/arm_s060627usa-eng.pdf
Current signatories to the United Nations Convention against Transnational Organized Crime	http://www.unodc.org/unodc/crime_cicp_signatures_convention.html
United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects	http://disarmament.un.org/cab/smallarms/
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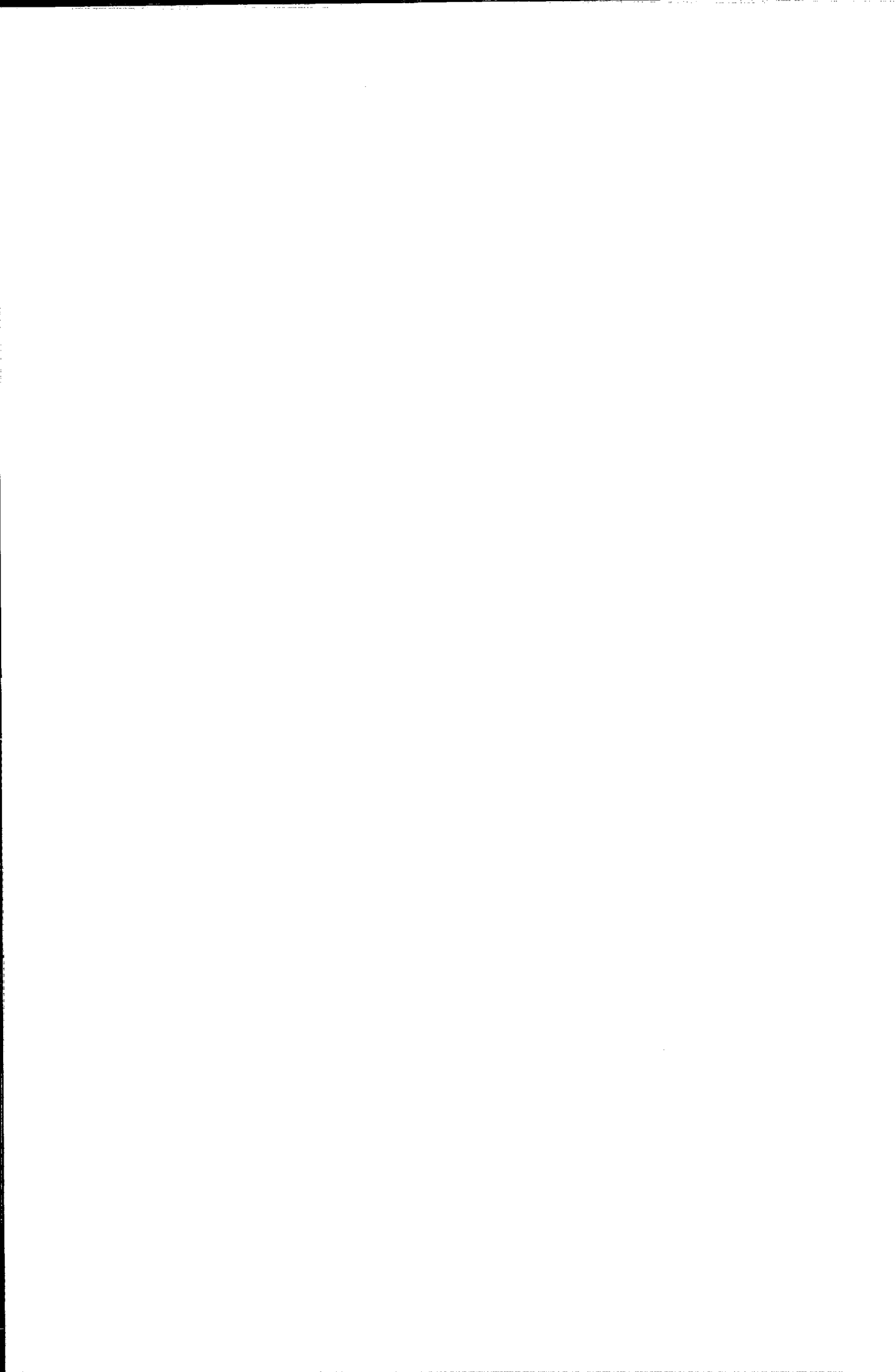
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- Digest of United States Practice in International Law 1975



ANNEX



**The Practice of the United Nations Security Council Regarding Mandatory Arms Embargoes
1946-2007**

Table 1
Conflict Classifications¹

AE ⁱⁱ	Date of imposition (Termination)	Conflict type	Conflict duration ⁱⁱⁱ	Conflict intensity at time of AE imposition/continuation	Conflict intensity	
					in year following AE imposition	in year preceding AE imposition
A - Armed Conflicts primarily Internal in character						
S/RES/232 Southern Rhodesia	16/12/1966 (21/12/79)	Intrastate				
S/RES/418 South Africa	04/11/1977 (26/05/94)	Intrastate				
S/RES/788 Liberia	19/11/1992 (07/03/01)	Intrastate	December 89- August 2003	War	Intermediate	Intermediate
S/RES/1343 Liberia	07/03/2001 (22/12/03)			Minor	Minor	Minor
S/RES/1521 Liberia	22/12/2003			Post-Conflict (Previously 'War')	N/A	Minor
S/RES/841 Haiti	16/06/1993 (29/09/94)	Intrastate	April 1989-1994	Officially Post-Conflict (0-24 battle related deaths during 1993) (Previously 'Minor')	N/A	N/A
S/RES/918 Rwanda	17/05/1994	Intrastate	October 1990-March 2002	Intermediate	N/A	Intermediate
S/RES/1556 Sudan	30/07/2004	Intrastate	April 2003 – present	War	Intermediate	War
S/RES/1572 Côte d'Ivoire	15/11/2004	Intrastate	September 2002 – December 2004	Intermediate	N/A	Intermediate
B - Armed Conflicts primarily International in character						
S/RES/661 Iraq and Kuwait	06/08/1990	Interstate	August 1990 – 03 March 1991	Minor	War (1991)	Minor (pre-1990)
		Intrastate with foreign involvement	04 March 1991 - present	War	N/A	Intermediate
		Interstate (US, UK, Australia)	March-April 2003	War	N/A	N/A
S/RES/1298 Eritrea and Ethiopia	17/05/2000 (expired 16/05/01)	Interstate	June 1998 – June 2000	War	N/A	War

Table 1
Conflict Classificationsⁱ

AE ⁱⁱ	Date of imposition (Termination)	Conflict type	Conflict duration ⁱⁱⁱ	Conflict intensity at time of AE imposition/continuation	Conflict intensity	
					in year following AE imposition	in year preceding AE imposition
C - Elements of both international and internal conflicts						
S/RES/713 Yugoslavia	25/09/1991 (01/10/96)	Intrastate ^{iv}	August-December 1991	War	N/A	N/A
S/RES/733 Somalia	23/01/1992	Intrastate with foreign involvement	April 1978 – present	War	Intermediate	War
S/RES/864 Angola	15/09/1993 (09/12/02)	Intrastate with foreign involvement	November 1975 – April 2002	War	War	War
S/RES/1132 Sierra Leone	08/10/1997 (05/06/98)	Intrastate with foreign involvement	April 1991 – November 2000	Intermediate	War	Intermediate
S/RES/1171 Sierra Leone	05/06/1998			War	War	Intermediate
S/RES/1160 FRY including Kosovo	31/03/1998 (10/09/01)	Intrastate with foreign involvement	March 1998 – June 1999	War	War	N/A
S/RES/1333 Afghanistan	19/12/2000	Intrastate with foreign involvement	September 1978 - present	War	War	War
S/RES/1493 DRC	28/07/2003	Intrastate with foreign involvement	October 1996 – December 2001	Post conflict	N/A	War (2000); Intermediate (2001)
S/RES/1701 Lebanon	11/08/2006	Intrastate (Israel vs. Hezbollah)	July-August 2006	War	N/A	N/A
D - No Armed Conflict						
S/RES/748 Libya			31/03/1992 (12/09/03)		-	
S/RES/1390 Usama bin Laden et al. /Taliban			16/01/2002		-	

ⁱ Information on conflict dates and intensity gathered from Uppsala University Conflict Database (UCDB): <http://www.pcr.uu.se/database/index.php> (Information correct as of 31 December 2006)

The database contained information from 1989-2006.

ⁱⁱ Arms Embargo

ⁱⁱⁱ Duration is measured from the first time the armed conflict threshold is passed (25+ 'battle-related' deaths) and when the threshold is achieved annually thereafter. See 'Definitions' on UCDB website *ibid*.

^{iv} Although this is the only case deemed not to have foreign involvement, it has been argued that this conflict had elements of both international and internal armed conflicts.

Table 2 – Target Addressees and other information related to the imposition of arms embargoes

Table 2A
UNSC Chapter VII resolutions imposing arms embargoes during *internal armed conflict* situations

	Resolution Number	Relevant Provision	Duration	Arms Boycott Factorⁱ	Target Addressee(s) of arms embargo	Affected Country
1	S/RES/232	¶2(d)	Unlimited	Complete	The de facto authorities - Ian Smith's 'illegal racist regime' – whole territory affected.	Southern Rhodesia
2	S/RES/418	¶2	Unlimited	Complete	South African Government - whole territory affected.	South Africa
3	S/RES/788	¶8	Unlimited	Complete	All parties to the conflict - whole territory affected.	Liberia
4	S/RES/841	¶5	Unlimited	Complete	The 'de facto authorities' – i.e. those responsible for the coup. Officially - 'any person or body in Haiti or to any person or body for the purpose of any business carried on in or operated from Haiti'	Haiti
5	S/RES/918	¶13	Unlimited	Complete	All parties to the conflict - whole territory affected.	Rwanda
6	S/RES/1343	¶5(a)	14 months	Complete	Liberian Government - whole territory affected.	Liberia
7	S/RES/1521	¶2(a)	12 months	Complete	Any recipient in Liberia, including all NSA's, such as LURD and MODEL, and all former and current militias and armed groups - whole territory affected.	Liberia
8	S/RES/1556	¶7	Unlimited	Complete	All non-governmental entities and individuals, including the Janjaweed, operating in the states of North, South and West Darfur.	Sudan
9	S/RES/1572	¶7	13 months	Complete	Ivorian Government - whole territory affected.	Côte d'Ivoire

Table 2 continued...

Table 2B
UNSC Chapter VII resolutions imposing arms embargoes during *mixed armed conflict* situations

	Resolution Number	Relevant Provision	Duration	Arms Boycott Factor	Target Addressee(s) of arms embargo	Affected Country
1	S/RES/713	¶6	Unlimited	Complete	All parties to the conflict - whole territory affected.	Yugoslavia
2	S/RES/733	¶5	Unlimited	Complete	All parties to the conflict - whole territory affected.	Somalia
3	S/RES/864	¶19	Unlimited	Partial	UNITA	Angola
4	S/RES/1132	¶6	Unlimited	Complete	Government and non-governmental forces - whole territory affected.	Sierra Leone
5	S/RES/1160	¶8	Unlimited	Complete	The Government of the Federal Republic of Yugoslavia and any terrorists operating therein (or in Kosovo, e.g. the KLA) - whole territory affected.	FRY including Kosovo
6	S/RES/1171	¶2	Unlimited	Partial	All non-governmental forces (i.e. RUF and members of former military junta).	Sierra Leone
7	S/RES/1333	¶5(a)	12 months/ unlimited	Complete	The de facto authorities - Afghan territory under Taliban control	Afghanistan
8	S/RES/1493	¶20	12 months	Partial	All foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, and groups not party to the Global and All-inclusive agreement, in the DRC.	DRC
9	S/RES/1701	¶15	Unlimited	Absent	Any entity or individual in Lebanon. (Excluding the Government)	Lebanon

...Table 2 continued.

Table 2C
UNSC Chapter VII resolutions imposing arms embargoes
during *international armed conflict* situations

	Resolution Number	Relevant Provision	Duration	Arms Boycott Factor	Target Addressee(s) of arms embargo	Affected Country/Countries
01	S/RES/661	¶3(c)	Unlimited	Complete	Iraqi Government – whole territory affected.	Iraq and Kuwait
04	S/RES/1298	¶6(a)	12 months	Complete	Eritrea and Ethiopia - whole territory affected.	Eritrea and Ethiopia

Table 2D
UNSC Chapter VII resolutions imposing arms embargoes
in the *absence of an armed conflict* situation

	Resolution Number	Relevant Provision	Duration	Arms Boycott Factor	Target Addressee(s) of arms embargo	Affected Country/Countries
01	S/RES/748	¶5(a)	Unlimited	Complete	Libyan Government - whole territory affected.	Libyan Arab Jamahiriya
02	S/RES/1390	¶2(c)	Unlimited	Complete	Usama bin Laden, members of the Al-Qaida organisation, the Taliban and all associates as referred to in the list created pursuant to S/RES/1267 and S/RES/1333	None

ⁱ Degree of removal of the State's control over weapons imports.

Table 3 – Current Status, Objectives and Legal Mandate

Table 3A
UNSC Chapter VII resolutions imposing arms embargoes during *internal armed conflict* situations

	Resolution Number	Current Status ⁱ	Stated or Apparent Objectives ⁱⁱ	Legal Mandate
1	S/RES/232	Terminated by ¶2 S/RES/460	Type D - To bring an end to the rebellion in Southern Rhodesia – at the time a colony of the UK.	- Acting in accordance with Articles 39 and 41 of the UN Charter, - ¶1 <i>Determines</i> that the present situation in Southern Rhodesia constitutes a threat to IPS.
2	S/RES/418	Terminated by ¶1 S/RES/919	Type A - ‘... the existing arms embargo must be strengthened... in order to prevent a further aggravation of the grave situation in South Africa.’	<i>Considering</i> that the policies and acts of the South African Government are fraught with danger to IPS. - Acting under Chapter VII... - ¶1 <i>Determines</i> ... that the acquisition of arms and related <i>materiel</i> ... constitutes a threat to the maintenance of IPS.
3	S/RES/788	Terminated by ¶1 S/RES/1343	Type B - ‘... establishing peace and stability in Liberia...’ until further notice.	<i>Determining</i> that the deterioration of the situation in Liberia constitutes a threat to IPS, particularly in West Africa as a whole.
4	S/RES/841	<i>Terminated</i> by ¶4 S/RES/944	Type D - To coerce agreement to reinstate the legitimate Government of President Jean-Bertrand Aristide. Seeking political resolution of the crisis (i.e. avoiding military action).	<i>Determining</i> that, in these unique and exceptional circumstances, the continuation of this situation threatens IPS in the region.
5	S/RES/918	Active	Types A & B - ‘Cease hostilities, agree to a ceasefire and bring an end to the mindless violence and carnage that engulfs Rwanda.’ To stem/halt the armed contribution to the Genocide.	(Preamble) <i>Concerned</i> that the continuation of the situation in Rwanda constitutes a threat to peace and security in the region. Part B <u><i>Determining</i></u> that the situation in Rwanda constitutes a threat to peace and security in the region, Acting under Chapter VII...
6	S/RES/1343	Terminated by ¶1 S/RES/1521	Types C & D - ¶5(a) – in force in two months unless certain demands are met. Aimed to coerce the Govt of Liberia to cease its active support for RUF in Sierra Leone.	<i>Determining</i> that the active support provided by the Government of Liberia for armed rebel groups in neighbouring countries, and in particular its support for the RUF in Sierra Leone, constitutes a threat to IPS in the region.
7	S/RES/1521	Active – Last renewed by S/RES/1731	Types A & B - Disarmament to assist/facilitate the peace process.	<i>Determining</i> that the situation in Liberia and the proliferation of arms and armed NSA’s, including mercenaries, in the subregion continue to constitute a threat to IPS in West Africa, in particular to the peace process in Liberia.
8	S/RES/1556	Active	Types A & D - To coerce the Government of Sudan to comply with the demands in ¶6 – ‘...to disarm the Janjaweed militias and apprehend and bring to justice Janjaweed leaders and their associates...’ SC expressed intention to consider modification/ termination of measures once Government fulfils its commitments in ¶6.	<i>Determining</i> that the situation in Sudan constitutes a threat to IPS and to stability in the region,
9	S/RES/1572	Active – Last renewed by S/RES/1727	Types B & D - To influence progress on the peace and national reconciliation process as defined in the Linas-Marcoussis and Accra III Agreements.	<i>Determining</i> that the situation in Côte d’Ivoire continues to pose a threat to IPS in the region,

Table 3 continued...

Table 3B
UNSC Chapter VII resolutions imposing arms embargoes during *mixed armed conflict* situations

	Resolution Number	Current Status	Stated or Apparent Objectives	Legal Mandate
1	S/RES/713	Terminated by ¶2 S/RES/1074	Type B - '...establishing peace and stability in Yugoslavia...' until further notice.	<i>Concerned</i> that the continuation of this situation constitutes a threat to IPS.
2	S/RES/733	Active	Type B - '...establishing peace and stability in Somalia...' until further notice.	<i>Concerned</i> that the continuation of this situation... constitutes a threat to IPS.
3	S/RES/864	Terminated by ¶2 S/RES/1448	Types B & D - To coerce implementation of the 'Acordos de Paz' - AE will come into force...unless... '...with a view to prohibiting all sale or supply to UNITA of arms and related matériel...'	<i>Determining</i> that, as a result of UNITA's military actions, the situation in Angola constitutes a threat to IPS.
4	S/RES/1132	Terminated by ¶1 S/RES/1171	Type D - Restoration of democratically Government and a return to constitutional order. Intention to terminate AE when... [the Council's demands are met]	<i>Determining</i> that the situation in Sierra Leone constitutes a threat to IPS in the region.
5	S/RES/1160	Terminated by ¶1 S/RES/1367	Type B - '...for the purposes of fostering peace and stability in Kosovo...'	None given. ¹
6	S/RES/1171	Active	Types A & D - To coerce the military junta to comply with demands. Readiness to terminate measures once lawful Sierra Leone Government has fully re-established control over all its territory and [rebels] are disarmed and demobilized.	Recalls previous resolutions but no specific re-determination of Article 39.
7	S/RES/1333	Active - Renewed by S/RES/1390 with unlimited duration.	Type C - Punitive measure because demands of 1267/99 not met. Comprehensive ² attempt to control Taliban and force implementation of 1267/99.	<i>Determining</i> that the failure of the Taliban authorities to respond to the demands in [¶13 of S/RES/1214, ¶2 of S/RES/1267] constitutes a threat to IPS,
8	S/RES/1493	Active - Last renewed by S/RES/1698	Types A & B - Disarmament to assist/facilitate the peace process for the ultimate aim of national reconciliation.	<i>Noting</i> that the situation in the DRC continues to constitute a threat to IPS in the region,
9	S/RES/1701	Active	Types B & D - To support the call for a ceasefire/cessation of hostilities between Israel and Lebanon and in pursuit of the Taif Accords; and so that only Government-authorized weapons may enter Lebanon.	<i>Determining</i> that the situation in Lebanon constitutes a threat to IPS.

¹ "In adopting this resolution, the Security Council sends an unmistakable message: that by acting under Chapter VII of the Charter, the Council considers that the situation in Kosovo constitutes a threat to international peace and security in the Balkans region. It says to Belgrade that repression in Kosovo will not be tolerated by the international community; and to the Kosovar side, it says that terrorism — in whatever guise and for whatever purpose — is unacceptable." Mr Richmond – UK's representative at that SC meeting. S/PV.3868 (*My emphasis*)

² The measures go far beyond conventional arms embargoes, e.g. prohibiting chemical weapons, freezing funds and closing Taliban offices/airlines.

...Table 3 continued.

Table 3C
UNSC Chapter VII resolutions imposing arms embargoes
during *international armed conflict* situations

	Resolution Number	Current Status	Stated or Apparent Objectives	Legal Mandate
1	S/RES/661	Active	Type C - Punitive measure in response to invasion of another sovereign country (Kuwait) and failure to comply with demands in S/RES/660	Given in preceding resolution – S/RES/660 – a breach of IPS.
2	S/RES/1298	Expired on 16 May 2001	Types B & D - To persuade towards a peaceful definitive settlement of the conflict. If settlement reported by the Secretary General as conclusion to conflict, the arms embargo will be terminated with immediate effect.	<i>Determining</i> that the situation between Eritrea and Ethiopia constitutes a threat to peace and security in the region.

Table 3D
UNSC Chapter VII resolutions imposing arms embargoes
in the *absence of an armed conflict* situation

	Resolution Number	Current Status	Stated or Apparent Objectives	Legal Mandate
1	S/RES/748	<i>Terminated by ¶1 S/RES/1506</i>	Type C - Punitive measure - Issued because the Libyan Government had 'still not provided a full and effective response' to the requests in S/RES/731.	<i>Convinced</i> that the suppression of acts of international terrorism, including those in which States are directly or indirectly involved, is essential for the maintenance of IPS
2	S/RES/1390	Active	Type C - Prevention of Terrorist acts – part of continuing comprehensive sanctions regime. Specific reason given: <i>Determining</i> that the Taliban have failed to respond to the demands in ¶13 of S/RES/1214, ¶2 of S/RES/1267 and ¶1, 2 and 3 of S/RES/1333.	<i>Reaffirming</i> further that acts of international terrorism constitute a threat to IPS.

ⁱ Measures which were suspended at one point prior to eventual termination are identifiable by the italicised text.

ⁱⁱ Types of objective at the time the measures were imposed:
A = To control arms; B = To promote peace; C = To punish; D = To bargain.

Table 4 – Monitoring and Enforcement, Exemptions and Concurrent Measures

Table 4A

UN Document Symbol	Chapter VII Monitoring/ enforcement	Arms Embargo Exemptions	Other SC Chapter VII enforcement measures used concurrently	Additional Information
Resolution 232 of 1966				
S/RES/253	¶20 Committee established – 2 point mandate.		Comprehensive economic measures	
S/10632	Report on how to deal with countries breaching measures			
S/10920	Report on how to deal with countries breaching measures			
Resolution 418 of 1977				
S/RES/421	¶1 Committee established – 3 point mandate.		Standalone arms embargo	
S/14179	Report on ways to increase effectiveness			
Resolution 788 of 1992				
S/RES/985	¶4 Committee established – 3 point mandate.	¶9 – N/A to arms destined for the sole use of the peacekeeping forces of ECOWAS...subject to review	Standalone arms embargo	
S/RES/866	¶3b – UNOMIL to assist monitoring compliance of arms embargo.			¶2 – UNOMIL established.
S/RES/1020	¶2c UNOMIL to monitor compliance with military provisions of peace agreement, including observance of the AE.			
Resolution 841 of 1993				
S/RES/841	¶10 Committee established – 6 point mandate.	None in original resolution, but Committee granted authority to grant exceptions.	Petroleum/products embargo; freezing of funds of de facto	

Table 4A

Further details regarding operation of the *internal conflict* arms embargoes

UN Document Symbol	Chapter VII Monitoring/ enforcement	Arms Embargo Exemptions	Other SC Chapter VII enforcement measures used concurrently	Additional Information
S/RES/861			authorities in Haiti	Suspended AE
S/RES/873	¶3 Mandate for Committee expanded to 7 point mandate.			Re-imposed suspended AE.
S/RES/917		¶7 and 8 - N/A to supplies intended strictly for medical purposes and foodstuffs; With the approval of the Committee and other commodities and products for essential humanitarian needs; trade in informational materials	Comprehensive economic measures	
Resolution 918 of 1994				
S/RES/918	¶14 Committee established – 3 point mandate.	¶16 N/A to activities related to UNAMIR and UNOMUR	Standalone arms embargo	
S/RES/1005		Un-numbered –sole operative paragraph: N/A to appropriate amounts of explosives intended for humanitarian de-mining programmes, under Committee's authority.		
S/RES/1011	¶10 – measures to avoid diversion ¶11 Notification/markings/registering requirement imposed on Rwandan Government in receiving arms. Notification requirement on all states exporting to Rwandan government.	¶7 N/A to the Government of Rwanda		Significant modification
S/RES/1013	¶1 UN International Commission of Inquiry (UNICOI) established with 4 point mandate.			
S/RES/1161	¶1 Request for SG to reactivate UNICOI mandate - 3 point mandate.			
Resolution 1343 of 2001				
S/RES/1343	¶14 Committee established – 9 point	¶4(c) N/A to non-lethal military equipment	Diamond embargo;	

Table 4A

Further details regarding operation of the *internal conflict* arms embargoes

UN Document Symbol	Chapter VII Monitoring/enforcement	Arms Embargo Exemptions	Other SC Chapter VII enforcement measures used concurrently	Additional Information
	mandate; ¶19 Panel of Experts established - 6 point mandate.	intended solely for humanitarian or protective use and related technical assistance or training. ¶4(d) N/A to protective clothing used by the UN, media or aid workers.	travel bans;	
S/RES/1478	¶25 new Panel of Experts requested 4 point mandate. ¶29. <i>Requests</i> the Committee to establish, maintain and update a list of air and maritime companies whose aircraft and vessels have been used in violation of AE.		Timber embargo; Travel bans.	
Resolution 1521 of 2003				
S/RES/1521	¶21 Committee established – 7 point mandate; ¶22 Panel of Experts requested – 3 point mandate.	Part B, ¶2 (d)-(g) N/A to supplies for UNMIL; arms intended solely for support of or use in an international training and reform programme for the Liberian armed forces and police; non-lethal military equipment intended solely for humanitarian or protective use; and protective clothing used by the UN, media or aid workers.	Diamond embargo; Timber embargo; travel bans;	
S/RES/1549	¶8 the 1521-Panel of Experts re-established – 3 point mandate (6 months).			
S/RES/1579	¶8 the 1549-Panel of Experts re-established – 6 point mandate.			
S/RES/1607	¶8 the 1579-Panel of Experts re-established – 6 point mandate.			
S/RES/1647	¶9 the 1607-Panel of Experts re-established – 6 point mandate.			
S/RES/1683		¶1 N/A to arms already provided to members of the SSS ¶2 to limited supplies of arms intended for sole use		

Table 4A

Further details regarding operation of the *internal conflict* arms embargoes

UN Document Symbol	Chapter VII Monitoring/enforcement	Arms Embargo Exemptions	Other SC Chapter VII enforcement measures used concurrently	Additional Information
		of Government of Liberia police and security forces (Committee approval needed and individuals must have been vetted/trained since UNMIL's inception).		
Resolution 1556 of 2004				
S/RES/1556		¶9 N/A to supplies and related technical training and assistance to monitoring, verification or peace support operations (UN authorized); supplies of non-lethal military equipment intended solely for humanitarian, human rights monitoring or protective use; supplies of protective clothing for the UN, human rights monitors, media and aid workers.		
S/RES/1591	¶3(a) Committee established – 7 point mandate; ¶3(b) – established Panel of Experts – 3 point mandate	¶3(f) and (g) (i-iii) Additional exemptions	Freezing of funds of those listed for <i>inter alia</i> violating AE.	AE itself extended by ¶7: AE also applies 'to all the parties to the N'djamena Ceasefire Agreement and any other belligerents in the states of North Darfur, South Darfur and West Darfur.'
S/RES/1672			Specific individuals added to list of frozen funds.	
S/RES/1706	¶12(a) extends UNMIS' mandate to seize/collect arms in Sudan in violation of AE.			

Table 4A

Further details regarding operation of the *internal conflict* arms embargoes

UN Document Symbol	Chapter VII Monitoring/enforcement	Arms Embargo Exemptions	Other SC Chapter VII enforcement measures used concurrently	Additional Information
Resolution 1572 of 2004				
S/RES/1572	¶14 Committee established – 6 point mandate.	¶8 N/A to arms solely for the support/use of UNOCI and the French forces who support them; supplies of non-lethal military equipment intended solely for humanitarian or protective use; supplies of protective clothing used by the UN, media or aid workers; arms for forces of a State taking action to facilitate the evacuation of its nationals; arms intended solely for support/use in the process of restructuring defence and security forces pursuant to ¶3, subparagraph (f) of the Linas-Marcoussis Agreement.	Travel bans for AE violators; freezing of funds of those listed for <i>inter alia</i> violating AE.	
S/RES/1584	¶2(a)(b) UNOCI and the French forces which support it, authorized to monitor implementation of AE and to collect and dispose of weapons brought into region in violation of AE. ¶7 Group of Experts established – 8 point mandate.			
S/RES/1609	¶2 UNOCI mandate extended to 14 point plan.			
S/RES/1643	¶9 request for Group of Experts – 9 point mandate.			Renewed AE

Table 4 Continued...

Table 4B

Further details regarding operation of the mixed conflict arms embargoes

UN Document Symbol	Chapter VII Monitoring/enforcement	Arms Embargo Exemptions	Other SC Chapter VII enforcement measures used concurrently	Additional Information
Resolution 713 of 1991				
S/RES/724	¶5b Committee established – 4 point mandate.		(Originally) Standalone arms embargo	
S/RES/743		¶11 – N/A to arms destined for sole use of UNPROFOR.		¶2 established UN Protection Force
S/RES/757	Role of 724 Committee extended by ¶13.		Comprehensive economic measures on FR Y (Serbia and Montenegro)	because of Bosnian Serb Party's failure to comply with 752.
S/RES/942			Comprehensive economic measures on FR Y	Measures designed to reinforce and extend measures regarding 'those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces.'
Resolution 733 of 1992				
S/RES/751	¶11 Committee established – 3 point mandate		Standalone arms embargo.	¶2 of S/RES/751/92 – UNOSOM established.
S/RES/1356		¶2 and ¶3 – N/A to supplies of protective clothing used by the UN, media or aid workers; supplies of non-lethal military equipment intended solely for humanitarian or protective use.		
S/RES/1425	¶3 requested SG to establish a panel of experts – consult with			

Table 4B

Further details regarding operation of the mixed conflict arms embargoes

UN Document Symbol	Chapter VII Monitoring/enforcement	Arms Embargo Exemptions	Other SC Chapter VII enforcement measures used concurrently	Additional Information
S/RES/1474	Committee - 5 point mandate. ¶3 Panel re-established - 8 point mandate			
S/RES/1519	¶2 requests SG to establish monitoring group - 6 point mandate.			
S/RES/1587	¶3 Monitoring Group re-established (6 months) and role extended - 9 point mandate;			
S/RES/1630	¶3 Monitoring Group re-established (6 months)			
S/RES/1676	¶3 Monitoring Group re-established (6 months)			
S/RES/1725		¶5 - N/A to supplies of weapons and military equipment and technical training and assistance intended solely for the support of or use by the [protection and training mission - see ¶3.]		
Resolution 864 of 1993				
S/RES/864	¶22 Committee established - 5 point mandate.		Petroleum/products embargo.	
S/RES/1127	¶11 Additional requests made of Committee		Travel and flight ban.	
S/RES/1173			Freezing of funds; severance of diplomatic relations, diamond embargo.	
S/RES/1237	Part B - ¶6 Panel of Experts requested - 3 point mandate.			
Resolution 1132 of 1997				

Table 4B

Further details regarding operation of the mixed conflict arms embargoes

UN Document Symbol	Chapter VII Monitoring/enforcement	Arms Embargo Exemptions	Other SC Chapter VII enforcement measures used concurrently	Additional Information
S/RES/1132	¶10 Committee established with 8 point mandate.		Petroleum/products embargo; travel bans.	Terminated by ¶1 of S/RES/1171/98
Resolution 1160 of 1998				
S/RES/1160	¶9 Committee established – 5 point mandate.		Standalone arms embargo.	
S/RES/1203		¶15 N/A to relevant equipment for sole use of OSCE Verification Mission.		
S/RES/1244		¶16 N/A to arms for use of international civil and security presences.		
Resolution 1171 of 1998				
S/RES/1171	¶6 – Committee to continue its work on the same 8 point mandate.	¶3 N/A to arms for the sole use of ECOMOG or the UN	Travel bans.	
S/RES/1299		¶3 N/A to arms for the sole use of those Member States cooperating with UNAMSIL and the Government of Sierra Leone.		
S/RES/1306	¶19 Panel of Experts requested – 4 point mandate.		Diamond embargo.	¶12 requested Committee to meet to assess role of diamonds in conflict and link between trade in diamonds and arms.
Resolution 1333 of 2000				
S/RES/1333	¶15 request for committee of experts – 4 point mandate; ¶16 – 1267-Committee mandate extended – 7 additional points.	¶6 N/A to non-lethal military equipment intended solely for humanitarian/protective use or to protective clothing used by the UN, media or aid workers.	Freezing of funds; Air embargo; closure of related administrative offices; Chemical weapon embargo - acetic anhydride	

Table 4B

Further details regarding operation of the mixed conflict arms embargoes

UN Document Symbol	Chapter VII Monitoring/enforcement	Arms Embargo Exemptions	Other SC Chapter VII enforcement measures used concurrently	Additional Information
S/RES/1363	¶3 of S/RES/1363/01 – monitoring mechanism (A Monitoring Group in NY and a Sanctions Enforcement Support Team) created – 3 point mandate.			
Resolution 1493 of 2003				
S/RES/1493	¶23 ‘...possible establishment of a monitoring mechanism.’	¶21 N/A to supplies to MONUC and supplies of non-lethal military equipment intended solely for humanitarian or protective use.		
S/RES/1596/05			Travel bans and freezing of funds for AE violators.	
S/RES/1683		¶1 N/A to arms already provided to members of the SSS ¶2 to limited supplies of arms intended for sole use of Government of Liberia police and security forces (Committee approval needed and individuals must have been vetted/trained since UNMIL’s inception).		
Resolution 1701 of 2006				
S/RES/1701		¶15 N/A to arms authorized by the Government of Lebanon or by UNIFIL.		

...Table 4 Continued...

Table 4C

Further details regarding operation of the *international conflict arms embargoes*

UN Document Symbol	Chapter VII Monitoring/enforcement	Arms Embargo Exemptions	Other SC Chapter VII enforcement measures used concurrently	Additional Information
Resolution 661 of 1990				
S/RES/661	¶6 Committee established – 2 point mandate		Comprehensive economic measures including freezing of funds.	
S/RES/670			Air embargo (cargo); Denial of aircraft bound for Iraq or Kuwait to overfly territory; Detention of Iraqi ships used in violation of S/RES/661 and deny port entry.	
S/RES/687	¶9(b)(i) established UNSCOM.	¶20 N/A to foodstuffs notified to the Security Council Committee established by resolution 661 (1990)		
S/RES/1284	¶1 established UNMOVIC			Replaced UNSCOM
Resolution 1298 of 2000				
S/RES/1298	¶8 Committee established – 6 point mandate.	¶7 N/A to non-lethal military equipment intended solely for humanitarian use.	Standalone arms embargo	

... Table 4 Continued.

Table 4D

Further details regarding operation of the absence of conflict arms embargoes

UN Document Symbol	Chapter VII Monitoring/enforcement	Arms Embargo Exemptions	Other SC Chapter VII enforcement measures used concurrently	Additional Information
Resolution 748 of 1992				
S/RES/748	¶9 Committee established – 6 point mandate.		Airspace/flight embargo	
S/RES/883			Freezing of funds	
Resolution 1390 of 2002				
S/RES/1390	¶5 1267 Committee requested to undertake 6 tasks; ¶9 – requested 1363 Monitoring Group to monitor implementation of sanctions in ¶2.			¶1 <i>Decides</i> to continue the measures imposed by paragraph 8 (c) of resolution 1333 (2000)
S/RES/1455	¶8 request to re-appoint experts; ¶11 requests members of Committee to consider visiting selected countries to enhance implementation/encourage all states to implement all relevant resolutions – requested again in ¶10 of S/RES/1526/04.		Freezing of funds; travel bans.	
S/RES/1526	¶1 <i>Decides</i> to improve the implementation of the measures imposed by... ¶1 and 2 of resolution 1390 (2002); ¶2 strengthen mandate of 1267 Committee; ¶6 established an Analytical Support and Sanctions Monitoring Team; ¶10 requests members of Committee to consider visiting selected countries to enhance implementation/encourage all states to implement all relevant resolutions;			
S/RES/1617	¶19 mandate of Analytical Support and Sanctions Monitoring Team extended (expounded in Annex I).			
S/RES/1735	4. <i>Calls upon</i> States to redouble their efforts to implement the measure in paragraph 1 (b) and 1 (c) of this resolution;			¶1(c) renewed arms embargo

Table 5
Chronological index of all¹ UNSC decisions and requests associated with arms embargoes

UN Document Symbol ¹	'Parent' Resolution Number	Date of Adoption	Provisional verbatim meeting record # ²	Voting record (in favour – against – abstention)	Relevant Territory/territories
S/RES/181	Preceded 418	7 August 1963	S/PV.1056	9-0-2 (France, UK)	South Africa
S/RES/182	Preceded 418	4 December 1963	S/PV.1078	Adopted unanimously	South Africa
S/RES/191	Preceded 418	18 June 1964	S/PV.1135	8-0-3 (Czechoslovakia, France, USSR)	South Africa
<i>S/RES/232</i>	<i>N/A</i>	<i>16 December 1966</i>	<i>S/PV.1340</i>	<i>11-0-4 (Bulgaria, France, Mali, USSR)</i>	<i>Southern Rhodesia</i>
S/RES/253	232	29 May 1968	S/PV.1428	Adopted unanimously	Southern Rhodesia
S/RES/277	232	18 March 1970	S/PV.1535	14-0-1 (Spain)	Southern Rhodesia
S/RES/282	Preceded 418	23 July 1970	S/PV.1549	12-0-3 (France, UK, USA)	South Africa
S/RES/288	232	17 November 1970	S/PV.1557	Adopted unanimously	Southern Rhodesia
S/RES/311	232	4 February 1972	S/PV.1639	14-0-1 (France)	South Africa
S/RES/314	232	28 February 1972	S/PV.1645	13-0-2 (UK, USA)	Southern Rhodesia
S/RES/318	232	28 July 1972	S/PV.1655	14-0-1 (USA)	Southern Rhodesia
S/RES/320	232	29 September 1972	S/PV.1666	13-0-2 (UK, USA)	Southern Rhodesia
S/RES/326	232	02 February 1973	S/PV.1691	13-0-2 (UK, USA)	Southern Rhodesia
S/RES/333	232	22 May 1973	S/PV.1716	12-0-3 (France, UK, USA)	Southern Rhodesia
S/RES/411	232	30 June 1977	S/PV.2019	Adopted unanimously	Southern Rhodesia
<i>S/RES/418</i>	<i>N/A</i>	<i>04 November 1977</i>	<i>S/PV.2046</i>	<i>Adopted unanimously</i>	<i>South Africa</i>
S/RES/421	418	09 December 1977	S/PV.2052	Adopted unanimously	South Africa
S/RES/423	232	14 March 1978	S/PV.2067	10-0-5 (Canada, France, Germany, UK, USA)	Southern Rhodesia
S/RES/445	232	8 March 1979	S/PV.2122	12-0-3 (France, UK, USA)	Southern Rhodesia
S/RES/460	232	21 December 1979	S/PV.2181	13-0-2 (Czechoslovakia, USSR)	Southern Rhodesia
S/RES/473	418	13 June 1980	S/PV.2231	Adopted unanimously	South Africa
S/RES/475	418	27 June 1980	S/PV.2240	12-0-3 (France, UK, USA)	South Africa
S/RES/558	418	13 December 1984	S/PV.2564	Adopted unanimously	South Africa
S/RES/591	418	28 November 1986	S/PV.2723	Adopted 'by consensus'	South Africa
S/RES/660	Preceded 661	2 August 1990	S/PV.2932	14-0-1 (Yemen)	Iraq
<i>S/RES/661</i>	<i>N/A</i>	<i>6 August 1990</i>	<i>S/PV.2933</i>	<i>13-0-2 (Cuba and Yemen)</i>	<i>Iraq</i>
S/RES/662	661	9 August 1990	S/PV.2934	Adopted unanimously	Iraq

¹ These documents can be accessed via UNBISnet using the browse list search – <http://unbisnet.un.org>

² These citations also correspond with the official UN Document Symbols, similarly accessible via UNBISnet.

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Chronological index of all¹ UNSC decisions and requests associated with arms embargoes

UN Document Symbol ¹	'Parent' Resolution Number	Date of Adoption	Provisional verbatim meeting record # ²	Voting record (in favour – against – abstention)	Relevant Territory/territories
S/RES/664	661	18 August 1990	S/PV.2937	Adopted unanimously	Iraq
S/RES/665	661	25 August 1990	S/PV.2938	13-0-2 (Cuba and Yemen)	Iraq
S/RES/666	661	13 September 1990	S/PV.2939	13-0-2 (Cuba and Yemen)	Iraq
S/RES/667	661	16 September 1990	S/PV.2940	Adopted unanimously	Iraq
S/RES/669	661	24 September 1990	S/PV.2942	Adopted unanimously	Iraq
S/RES/670	661	25 September 1990	S/PV.2943	14-0-1 (Cuba)	Iraq
S/RES/674	661	29 October 1990	S/PV.2951	13-0-2 (Cuba and Yemen)	Iraq
S/RES/677	661	28 November 1990	S/PV.2962	Adopted unanimously	Iraq
S/RES/678	661	29 November 1990	S/PV.2963	12-2-1 (Cuba, Yemen against; China abstaining)	Iraq
S/RES/686	661	02 March 1991	S/PV.2978	11-1-3 (Cuba against; China, India, Yemen abstaining)	Iraq
S/RES/687	661	03 April 1991	S/PV.2981	12-1-2 (Cuba against; Ecuador, Yemen abstaining)	Iraq
S/RES/700	661	17 June 1991	S/PV.2994	Adopted unanimously	Iraq
S/RES/706	661	15 August 1991	S/PV.3004	13-1-1 (Cuba against; Yemen abstaining)	Iraq
S/RES/712	661	19 September 1991	S/PV.3008	13-1-1 (Cuba against; Yemen abstaining)	Iraq
S/RES/713	N/A	25 September 1991	S/PV.3009	Adopted unanimously	Former Yugoslavia
S/RES/721	713	27 November 1991	S/PV.3018	Adopted unanimously	Former Yugoslavia
S/RES/724	713	15 December 1991	S/PV.3023	Adopted unanimously	Former Yugoslavia
S/RES/727	713	08 January 1992	S/PV.3028	Adopted unanimously	Former Yugoslavia
S/RES/733	N/A	23 January 1992	S/PV.3039	Adopted unanimously	Somalia
S/RES/743	713	21 February 1992	S/PV.3055	Adopted unanimously	Former Yugoslavia
S/RES/746	733	17 March 1992	S/PV.3060	Adopted unanimously	Somalia
S/RES/748	N/A	31 March 1992	S/PV.3063	10-0-5 (China, Cape Verde, India, Morocco and Zimbabwe)	Libya
S/RES/749	713	7 April 1992	S/PV.3066	Adopted unanimously	Former Yugoslavia
S/RES/751	733	24 April 1992	S/PV.3069	Adopted unanimously	Somalia
S/RES/752	713	15 May 1992	S/PV.3075	Adopted unanimously	Former Yugoslavia

Table 5
Chronological index of all¹ UNSC decisions and requests associated with arms embargoes

UN Document Symbol ¹	'Parent' Resolution Number	Date of Adoption	Provisional verbatim meeting record # ²	Voting record (in favour – against – abstention)	Relevant Territory/territories
S/RES/757	713	30 May 1992	S/PV.3082	13-0-2 (China, Zimbabwe)	Former Yugoslavia
S/RES/758	713	08 June 1992	S/PV.3083	Adopted unanimously	Former Yugoslavia
S/RES/761	713	29 June 1992	S/PV.3087	Adopted unanimously	Former Yugoslavia
S/RES/762	713	30 June 1992	S/PV.3088	Adopted unanimously	Former Yugoslavia
S/RES/764	713	13 July 1992	S/PV.3039	Adopted unanimously	Former Yugoslavia
S/RES/767	733	27 July 1992	S/PV.3101	Adopted unanimously	Somalia
S/RES/770	713	13 August 1992	S/PV.3106	12-0-3 (China, India, Zimbabwe)	Former Yugoslavia
S/RES/771				Adopted unanimously	
S/RES/775	733	28 August 1992	S/PV.3110	Adopted unanimously	Somalia
S/RES/777	713	19 September 1992	S/PV.3116	12-0-3 (China, India, Zimbabwe)	Former Yugoslavia
S/RES/780	713	06 October 1992	S/PV.3119	Adopted unanimously	Former Yugoslavia
S/RES/781	713	09 October 1992	S/PV.3122	14-0-1 (China)	Former Yugoslavia
S/RES/785	Preceded 864	30 October 1992	S/PV.3130	Adopted unanimously	Angola
S/RES/786	713	10 November 1992	S/PV.3133	Adopted unanimously	Former Yugoslavia
S/RES/787	713	16 November 1992	S/PV.3137	13-0-2 (China, Zimbabwe)	Former Yugoslavia
S/RES/788	N/A	19 November 1992	S/PV.3138	Adopted unanimously	Liberia
S/RES/793	Preceded 864	30 November 1992	S/PV.3144	Adopted unanimously	Angola
S/RES/794	733	3 December 1992	S/PV.3145	Adopted unanimously	Somalia
S/RES/804	Preceded 864	29 January 1993	S/PV.3168	Adopted unanimously	Angola
S/RES/811	Preceded 864	12 March 1993	S/PV.3182	Adopted unanimously	Angola
S/RES/813	788	26 March 1993	S/PV.3187	Adopted unanimously	Liberia
S/RES/814	733	26 March 1993	S/PV.3188	Adopted unanimously	Somalia
S/RES/819	713	16 April 1993	S/PV.3199	Adopted unanimously	Former Yugoslavia
S/RES/837	733	06 June 1993	S/PV.3229	Adopted unanimously	Somalia
S/RES/838	713	10 June 1993	S/PV.3234	Adopted unanimously	Former Yugoslavia
S/RES/841	N/A	16 June 1993	S/PV.3238	Adopted unanimously	Haiti
S/RES/851	Preceded 864	15 July 1993	S/PV.3254	Adopted unanimously	Angola
S/RES/861	841	27 August 1993	S/PV.3271	Adopted unanimously	Haiti
S/RES/864	N/A	15 September 1993	S/PV.3277	Adopted unanimously	Angola
S/RES/866	788	22 September 1993	S/PV.3281	Adopted unanimously	Liberia
S/RES/873	841	13 October 1993	S/PV.3291	Adopted unanimously	Haiti

Table 5
Chronological index of all¹ UNSC decisions and requests associated with arms embargoes

UN Document Symbol ¹	'Parent' Resolution Number	Date of Adoption	Provisional verbatim meeting record # ²	Voting record (in favour – against – abstention)	Relevant Territory/territories
S/RES/875	841	16 October 1993	S/PV.3293	Adopted unanimously	Haiti
S/RES/883	748	11 November 1993	S/PV.3312	11-0-4 (China, Djibouti, Morocco, Pakistan)	Liberia
S/RES/886	733	18 November 1993	S/PV.3317	Adopted unanimously	Somalia
S/RES/890	864	15 December 1993	S/PV.3323	Adopted unanimously	Angola
S/RES/897	733	04 February 1994	S/PV.3334	Adopted unanimously	Somalia
S/RES/917	841	06 May 1994	S/PV.3376	Adopted unanimously	Haiti
S/RES/918	N/A	17 May 1994	S/PV.3377	Part B 14-1-0 (Rwanda)	Rwanda
S/RES/919	418	25 May 1994	S/PV.3379	Adopted unanimously	South Africa
S/RES/923	733	31 May 1994	S/PV.3385	Adopted unanimously	Somalia
S/RES/928	918	20 June 1994	S/PV.3391	Adopted unanimously	Rwanda
S/RES/940	841	31 July 1994	S/PV.3413	12-0-2 (Brazil, China)	Haiti
S/RES/942	713	23 September 1994	S/PV.3428	14-0-1 (China)	Former Yugoslavia
S/RES/944	841	29 September 1994	S/PV.3430	13-0-2 (Brazil, Russia)	Haiti
S/RES/950	788	21 October 1994	S/PV.3442	Adopted unanimously	Liberia
S/RES/954	733	04 November 1994	S/PV.3447	Adopted unanimously	Somalia
S/RES/972	788	13 January 1995	S/PV.3489	Adopted unanimously	Liberia
S/RES/976	864	08 February 1995	S/PV.3499	Adopted unanimously	Angola
S/RES/985	788	13 April 1995	S/PV.3517	Adopted unanimously	Liberia
S/RES/997	918	9 June 1995	S/PV.3542	Adopted unanimously	Rwanda
S/RES/1001	788	30 June 1995	S/PV.3549	Adopted unanimously	Liberia
S/RES/1005	918	17 July 1995	S/PV.3555	Adopted unanimously	Rwanda
S/RES/1011	918	16 August 1995	S/PV.3566	Adopted unanimously	Rwanda
S/RES/1013	918	07 September 1995	S/PV.3574	Adopted unanimously	Rwanda
S/RES/1014	788	15 September 1995	S/PV.3577	Adopted unanimously	Liberia
S/RES/1020	788	10 November 1995	S/PV.3592	Adopted unanimously	Liberia
S/RES/1021	713/ Preceded 1160	22 November 1995	S/PV.3595	14-0-1 (Russia)	Former Yugoslavia/Kosovo
S/RES/1022				Adopted unanimously	
S/RES/1031	713	15 December 1995	S/PV.3607	Adopted unanimously	Former Yugoslavia
S/RES/1041	788	29 January 1996	S/PV.3624	Adopted unanimously	Liberia
S/RES/1053	918	23 April 1996	S/PV.3656	Adopted unanimously	Rwanda

Table 5
Chronological index of all¹ UNSC decisions and requests associated with arms embargoes

UN Document Symbol ¹	'Parent' Resolution Number	Date of Adoption	Provisional verbatim meeting record # ²	Voting record (in favour – against – abstention)	Relevant Territory/territories
S/RES/1059	788	31 May 1996	S/PV.3671	Adopted unanimously	Liberia
S/RES/1071	788	30 August 1995	S/PV.3654	Adopted unanimously	Liberia
S/RES/1074	713	1 October 1996	S/PV.3700	Adopted unanimously	Former Yugoslavia
S/RES/1076	Preceded 1333	22 Oct 1996	S/PV.3706	Adopted unanimously	Afghanistan
S/RES/1083	788	27 November 1996	S/PV.3717	Adopted unanimously	Liberia
S/RES/1100	788	27 March 1997	S/PV.3757	Adopted unanimously	Liberia
S/RES/1116	788	27 June 1997	S/PV.3793	Adopted unanimously	Liberia
S/RES/1127	864	28 August 1997	S/PV.3814	Adopted unanimously	Angola
S/RES/1132	N/A	8 October 1997	S/PV.3822	Adopted unanimously	Sierra Leone
S/RES/1156	1132	16 March 1998	S/PV.3861	Adopted unanimously	Sierra Leone
S/RES/1160	N/A	31 March 1998	S/PV.3868	14-0-1 (China)	Kosovo
S/RES/1161	918	09 April 1998	S/PV.3870	Adopted unanimously	Rwanda
S/RES/1171	N/A	5 June 1998	S/PV.3889	Adopted unanimously	Sierra Leone
S/RES/1173	864	12 June 1998	S/PV.3891	Adopted unanimously	Angola
S/RES/1181	1171	13 July 1998	S/PV.3902	Adopted unanimously	Sierra Leone
S/RES/1192	748	27 August 1998	S/PV.3920	Adopted unanimously	Libya
S/RES/1196	N/A	16 September 1998	S/PV.3927	Adopted unanimously	Sanctions/Arms Embargoes
S/RES/1199	1160	23 September 1998	S/PV.3930	14-0-1 (China)	Kosovo
S/RES/1203	1160	24 October 1998	S/PV.3937	13-0-2 (China, Russia)	Kosovo
S/RES/1209	N/A	19 November 1998	S/PV.3945	Adopted unanimously	Africa/Arms control
S/RES/1214	Preceded 1333	08 December 1998	S/PV.3952	Adopted unanimously	Afghanistan
S/RES/1220	1132/1171	12 January 1999	S/PV.3964	Adopted unanimously	Sierra Leone
S/RES/1221	864	12 January 1999	S/PV.3965	Adopted unanimously	Angola
S/RES/1227	Preceded 1298	10 February 1999	S/PV.3975	Adopted unanimously	Eritrea/Ethiopia
S/RES/1229	864	26 February 1999	S/PV.3983	Adopted unanimously	Angola
S/RES/1231	1132/1171	11 March 1999	S/PV.3986	Adopted unanimously	Sierra Leone
S/RES/1237	864	07 May 1999	S/PV.3999	Adopted unanimously	Angola
S/RES/1244	1160	10 June 1999	S/PV.4011	14-0-1 (China)	Kosovo
S/RES/1267	Preceded 1333	15 October 1999	S/PV.4051	Adopted unanimously	Afghanistan
S/RES/1268	864	15 October 1999	S/PV.4052	Adopted unanimously	Angola
S/RES/1294	864	13 April 2000	S/PV.4126	Adopted unanimously	Angola
S/RES/1295	864	18 April 2000	S/PV.4129	Adopted unanimously	Angola

Table 5
Chronological index of all¹ UNSC decisions and requests associated with arms embargoes

UN Document Symbol ¹	'Parent' Resolution Number	Date of Adoption	Provisional verbatim meeting record # ²	Voting record (in favour – against – abstention)	Relevant Territory/territories
S/RES/1298	N/A	17 May 2000	S/PV.4144	Adopted unanimously	Eritrea & Ethiopia
S/RES/1299	1132/1171	19 May 2000	S/PV.4145	Adopted unanimously	Sierra Leone
S/RES/1306	1132/1171	5 July 2000	S/PV.4168	14-0-1 (Mali)	Sierra Leone
S/RES/1333	N/A	19 December 2000	S/PV.4251	13-0-2 (China, Malaysia)	Afghanistan
S/RES/1336	864	2001	S/PV.4263	Adopted unanimously	Angola
S/RES/1343	N/A	7 March 2001	S/PV.4287	Adopted unanimously	Liberia/Sierra Leone
S/RES/1344	1298	15 March 2001	S/PV.4294	Adopted unanimously	Eritrea & Ethiopia
S/RES/1356	733	19 June 2001	S/PV.4332	Adopted unanimously	Somalia
S/RES/1363	1333	30 July 2001	S/PV.4352	Adopted unanimously	Afghanistan
S/RES/1367	1160	10 September 2001	S/PV.4366	Adopted unanimously	Kosovo
S/RES/1369	1298	14 September 2001	S/PV.4372	Adopted unanimously	Eritrea & Ethiopia
S/RES/1390	N/A	16 January 2002	S/PV.4452	Adopted unanimously	Terrorism
S/RES/1407	733	03 May 2002	S/PV.4524	Adopted unanimously	Somalia
S/RES/1408	1132/1171	06 May 2002	S/PV.4526	Adopted unanimously	Sierra Leone
S/RES/1409	661	14 May 2002	S/PV.4531	Adopted unanimously	Iraq
S/RES/1425	733	22 July 2002	S/PV.4580	Adopted unanimously	Somalia
S/RES/1436	1171	24 September 2002	S/PV.4615	Adopted unanimously	Sierra Leone
S/RES/1439	864	18 October 2002	S/PV.4628	Adopted unanimously	Angola
S/RES/1448	864	09 December 2002	S/PV.4657	Adopted unanimously	Angola
S/RES/1452	1333/1390	20 December 2002	S/PV.4678	Adopted unanimously	Terrorism
S/RES/1455	1333/1390	17 January 2003	S/PV.4686	Adopted unanimously	Terrorism
S/RES/1470	1171	28 March 2003	S/PV.4729	Adopted unanimously	Sierra Leone
S/RES/1474	733	08 April 2003	S/PV.4737	Adopted unanimously	Somalia
S/RES/1478	1132/1171	06 May 2003	S/PV.4751	Adopted unanimously	Sierra Leone
S/RES/1483	661	22 May 2003	S/PV.4761	14-0-0 (The Syrian Arab Republic did not participate in the voting.)	Iraq
S/RES/1493	N/A	28 July 2003	S/PV.4797	Adopted unanimously	DRC
S/RES/1506	748	12 September 2003	S/PV.4820 (Part II)	13-0-2 (France, USA)	Libya
S/RES/1511	661	16 October 2003	S/PV.4844	Adopted unanimously	Iraq
S/RES/1518	661	24 November 2003	S/PV.4872	Adopted unanimously	Iraq

Table 5
Chronological index of all¹ UNSC decisions and requests associated with arms embargoes

UN Document Symbol ¹	'Parent' Resolution Number	Date of Adoption	Provisional verbatim meeting record # ²	Voting record (in favour – against – abstention)	Relevant Territory/territories
S/RES/1519	733	16 December 2003	S/PV.4885	Adopted unanimously	Somalia
S/RES/1521	N/A	22 December 2003	S/PV.4890	Adopted unanimously	Liberia
S/RES/1526	N/A	30 January 2004	S/PV.4908	Adopted unanimously	Terrorism
S/RES/1533	1493	12 March 2004	S/PV.4926	Adopted unanimously	DRC
S/RES/1546	661	08 June 2004	S/PV.4987	Adopted unanimously	Iraq
S/RES/1552	1493	27 July 2004	S/PV.5011	Adopted unanimously	DRC
S/RES/1556	N/A	30 July 2004	S/PV.5015	13-0-2 (China, Pakistan)	Sudan
S/RES/1558	733	17 August 2004	S/PV.5022	Adopted unanimously	Somalia
S/RES/1564	1556	18 September 2004	S/PV.5040	11-0-4 (Algeria, China, Pakistan, Russia)	Sudan
S/RES/1572	N/A	15 November 2004	S/PV.5078	Adopted unanimously	Côte d'Ivoire
S/RES/1574	1556	19 November 2004	S/PV.5082	Adopted unanimously	Sudan
S/RES/1579	1521	21 December 2004	S/PV.5105	Adopted unanimously	Liberia
S/RES/1584	1572	01 February 2005	S/PV.5118	Adopted unanimously	Côte d'Ivoire
S/RES/1585	1556	10 March 2005	S/PV.5137	Adopted unanimously	Sudan
S/RES/1587	733	15 March 2005	S/PV.5142	Adopted unanimously	Somalia
S/RES/1588	1556	17 March 2005	S/PV.5143	Adopted unanimously	Sudan
S/RES/1590	1556	24 March 2005	S/PV.5151	Adopted unanimously	Sudan
S/RES/1591	1556	29 March 2005	S/PV.5153	12-0-3 (Algeria, China, Russia)	Sudan
S/RES/1592	1493	30 March 2005	S/PV.5155	Adopted unanimously	DRC
S/RES/1596	1493	18 April 2005	S/PV.5163	Adopted unanimously	DRC
S/RES/1607	1521	21 June 2005	S/PV.5208	Adopted unanimously	Liberia
S/RES/1609	1521	24 June 2005	S/PV.5213	Adopted unanimously	Liberia
S/RES/1616	1493	29 July 2005	S/PV.5243	Adopted unanimously	DRC
S/RES/1617	1333/1390	29 July 2005	S/PV.5244	Adopted unanimously	Terrorism
S/RES/1618	661/1333/1390	04 August 2005	S/PV.5246	Adopted unanimously	Iraq/Terrorism
S/RES/1627	1556	23 September 2005	S/PV.5269	Adopted unanimously	Sudan
S/RES/1630	733	14 October 2005	S/PV.5280	Adopted unanimously	Somalia
S/RES/1633	1572	21 October 2005	S/PV.5288	Adopted unanimously	Côte d'Ivoire
S/RES/1643	1572	15 December 2005	S/PV.5327	Adopted unanimously	Côte d'Ivoire
S/RES/1647	1521	20 December 2005	S/PV.5336	Adopted unanimously	Liberia

Table 5
Chronological index of all¹ UNSC decisions and requests associated with arms embargoes

UN Document Symbol ¹	'Parent' Resolution Number	Date of Adoption	Provisional verbatim meeting record # ²	Voting record (in favour – against – abstention)	Relevant Territory/territories
S/RES/1649	1493	21 December 2005	S/PV.5340	Adopted unanimously	DRC
S/RES/1651	1556	21 December 2005	S/PV.5342	Adopted unanimously	Sudan
S/RES/1653	1493	27 January 2006	S/PV.5359	Adopted unanimously	DRC
S/RES/1654	1493	31 January 2006	S/PV.5360	Adopted unanimously	DRC
S/RES/1663	1556	24 March 2006	S/PV.5396	Adopted unanimously	Sudan
S/RES/1665	1556	29 March 2006	S/PV.5402	Adopted unanimously	Sudan
S/RES/1672	1556	25 April 2006	S/PV.5423	12-0-3 (China, Qatar, Russia)	Sudan
S/RES/1674	N/A	28 April 2006	S/PV.5430	Adopted unanimously	SALW/Armed Conflict
S/RES/1676	733	10 May 2006	S/PV.5435	Adopted unanimously	Somalia
S/RES/1679	1556	15 May 2006	S/PV.5437	Adopted unanimously	Sudan
S/RES/1683	1521	16 May 2006	S/PV.5454	Adopted unanimously	Liberia
S/RES/1698	1493	13 June 2006	S/PV.5502	Adopted unanimously	DRC
S/RES/1699	N/A	31 July 2006	S/PV.5507	Adopted unanimously	Sanctions Committees/Interpol
<i>S/RES/1701</i>	<i>N/A</i>	<i>11 August 2006</i>	<i>S/PV.5511</i>	<i>Adopted unanimously</i>	<i>Lebanon</i>
S/RES/1706	1556	31 August 2006	S/PV.5519	12-0-3 (China, Qatar, Russia)	Sudan
S/RES/1708	1572	14 September 2006	S/PV.5524	Adopted unanimously	Côte d'Ivoire
S/RES/1721	1572	01 November 2006	S/PV.5561	Adopted unanimously	Côte d'Ivoire
S/RES/1724	733	29 November 2006	S/PV.5575	Adopted unanimously	Somalia
S/RES/1725	733	06 December 2006	S/PV.5579	Adopted unanimously	Somalia
S/RES/1727	1572	15 December 2006	S/PV.5592	Adopted unanimously	Côte d'Ivoire
S/RES/1730	N/A	19 December 2006	S/PV.5599	Adopted unanimously	Sanctions/Arms Embargoes
S/RES/1731	1521	20 December 2006	S/PV.5602	Adopted unanimously	Liberia
S/RES/1735	1333/1390	22 December 2006	S/PV.5609	Adopted unanimously	Terrorism
S/RES/1739	1572	10 January 2007	S/PV.5617	Adopted unanimously	Côte d'Ivoire
Other UNSC documents					
S/PRST/2001/14	1298	15 May 2001	S/PV.4320	-	Eritrea and Ethiopia

¹ Any omissions are the sole responsibility of the present author. *Those in italics represent the 22 resolutions which imposed arms embargoes.*

Table 6 – Results relevant to classifications¹

Discussion Point	Variations & order of frequency relative to other variations (‘1’ represents greatest frequency)	Type of Conflict									
		Internal ²		International ³		Mixed ⁴		Absent ⁵		All ⁶	
		out of 9 cases	%	out of 2 cases	%	out of 9 cases	%	Out of 2 cases	%	out of 22 cases	%
Target Addressees	Government(s)	3	33.3	2	100	0	-	1	50	6	27.3
	De facto authorities	1*	11.1	0	-	1	11.1	0	-	2*	9.1
	Parties to the conflict	2	22.2	0	-	2	22.2	0	-	4	18.2
	Non-state actors (NSA)	1	11.1	0	-	4	44.4	1	50	6	27.3
	Government(s)/De facto authorities + NSA	2	22.2	0	-	2	22.2	0	-	4	18.2
Legal Mandate											
	1 - A breach of international peace and security	0	-	1	50	0	-	0	-	1	4.5
	2 - A threat to international peace and security	2*	22.2	0	-	5	55.6	2	100	9*	40.9
	3 - A threat to international peace and security in the region	3	33.3	0	-	2	22.2	0	-	5	22.7
	4 - A threat to peace and security in the region	1	11.1	1	50	0	-	0	-	2	9.1
	5 - A threat to international peace and security and stability in the region	1	11.1	0	-	0	-	0	-	1	4.5
	6 - A threat to international peace and security in the area of x	1	11.1	0	-	0	-	0	-	1	4.5
	7 - A threat to international peace and security, in particular to the cause of y	1	11.1	0	-	0	-	0	-	1	4.5
	8 No explicit Article 39 determination	0	-	0	-	2	22.2	0	-	2	9.1

¹ Note, the results from the case of Southern Rhodesia are identified by the * symbol. To exclude this case from the data, reduce each starred number by 1 and amend the percentages accordingly. See Chapter Three for more details.

² Tables A

³ Tables C

⁴ Tables B

⁵ Tables D

⁶ A + B + C + D

Table 6 – Results relevant to classifications¹

Discussion Point	Variations & order of frequency relative to other variations (‘1’ represents greatest frequency)	Type of Conflict												
		Internal ²		International ³		Mixed ⁴		Absent ⁵		All ⁶				
		out of 9 cases	%	out of 2 cases	%	out of 9 cases	%	Out of 2 cases	%	out of 22 cases	%			
Objective type(s) ⁷														
	A (to control arms)	=7 (4)	1	11.1	0	-	0	-	0	-	0	-	1 (3.5)	4.5 (15.9)
	B (to promote peace)	=1 (1)	1	11.1	0	-	3	33.3	0	-	0	-	4 (7.5)	18.2 (34.1)
	C (to punish)	=1 (3)	0	-	1	50	1	11.1	2	100	2	100	4 (4.5)	18.2 (20.5)
	D (to bargain)	=4 (2)	2*	22.2	0	-	1	11.1	0	-	0	-	3* (6.5)	13.6 (29.5)
	A + B	=4	2	22.2	0	-	1	11.1	0	-	0	-	3	13.6
	A + D	6	1	11.1	0	-	1	11.1	0	-	0	-	2	9.1
	B + D	=1	1	11.1	1	50	2	22.2	0	-	0	-	4	18.2
	C + D	=7	1	11.1	0	-	0	-	0	-	0	-	1	4.5
Arms embargo exemptions														
	In original	1	5	55.6	1	50	4	44.4	0	-	0	-	10	45.5
	None ever	=2	2*	22.2	0	-	2	22.2	2	100	2	100	6*	27.3
	Only later	=2	2	22.2	1	50	3	33.3	0	-	0	-	6	27.3
Monitoring/enforcement arrangements														
	In original	1	5	55.6	2	100	7	77.8	2	-	2	-	16	72.7
	Only later	2	4*	44.4	0	-	2	22.2	0	-	0	-	6*	27.3
Other Chapter VII enforcement measures used concurrently with the arms embargo.														
	Yes	1	6*	66.7	1	50	6	66.7	2	100	2	100	15*	68.2
	No – standalone arms embargo	2	3	33.3	1	50	3	33.3	0	-	0	-	7	31.8

⁷ Numbers in bold parentheses represent the total usage of that objective = Individual use + combination use. These figures are deemed authoritative re: the greatest frequency of use.