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INTRODUCTORY NOTE TO UNITED NATIONS SECURITY COUNCIL RESOLUTION 2288

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Introduction

On May 25, 2016, the UN Security Council terminated an arms embargo against Liberia by unanimously passing UN Security Council Resolution 2288. Resolution 2288 is deceptively simple: a brief resolution that ends a complex and long-standing UN sanctions regime. Liberia has been the subject of three different sanctions episodes: the first set of sanctions lasted from 1992 to 2001, the second set followed from 2001 to 2003, and the third set was applied between 2003 and 2016 in support of the Comprehensive Peace Agreement of 2003. Two features are particularly noteworthy about the most recent measures: their long duration and the Security Council's forward-looking effort to prospectively regulate the peace. The UN sanctions on Liberia demonstrate a new robustness in Article 41 of the UN Charter.

Background

Liberia faced two consecutive civil wars, from 1989 to 1997 and from 1999 to 2003.[1] After a 2003 peace agreement, the situation began to stabilize due in part to UN sanctions whose objective was to assist the government with post-conflict reconstruction and institution building.[2] The 2003 sanctions were imposed by UN Security Council Resolution 1521, which included standard measures like an arms embargo and a travel ban.[3] These measures sought to curb the illicit flow of weapons to individuals and nonstate actors, and to prevent transit of individuals who were considered a threat to the peace process in Liberia. In later resolutions, the Council added an asset freeze[4] and modified the arms embargo, excluding "limited supplies of weapons and ammunition . . . intended for use by members of the Government of Liberia police and security forces who have been vetted and trained since the inception of the United Nations Mission in Liberia (UNMIL) in October 2003."[5] In 2009, UN Security Council Resolution 1903 lifted the arms embargo on the Government of Liberia for a trial period of one year, although the arms embargo on nongovernmental entities and individuals continued through 2016.[6]

Resolution 1532 also contained nonstandard measures like a ban on exporting the country's diamonds and timber.[7] Significantly, it made numerous references to the necessity of governmental reforms, including the importance of establishing oversight mechanisms for the timber industry to encourage responsible business practices, transparent auditing, and accounting mechanisms, and ensuring revenues were used for legitimate purposes for the benefit of the people.[8] Here, the Council was reacting to Liberia's former president Charles Taylor's misappropriation of funds and property, and sought to create regulations that would ensure resource management in the public interest.[9] Due to the national government's lack of control over diamond mines and forests in the early 2000s, and ex-combatants' simultaneous monopolization of them, there was concern that these natural resources would fuel conflict.[10] Ultimately, through these sanctions, the Council linked resource management to the common good, while encouraging the government to adopt policies that would promote accountability.[11]

Over the years, the measures imposed by the Security Council were progressively repealed. The Council terminated the measures on timber and diamonds in 2006 and 2007, respectively,[12] on the condition that the government restructure its administrative infrastructure.[13] The travel bans and asset freezes were terminated in September 2015.[14] The arms embargo lasted the longest and was lifted in 2016. This slow process of dismantling sanctions was always the subject of discussion. For example, in 2005, the Panel of Experts recommended that the diamond and timber sanctions be lifted, finding that the government's progress in managing its natural resources was "sufficiently steady."[15] Over the years, there was a general sentiment that the sanctions had outlasted their usefulness, although insiders noted the unusual dynamic in which the government of Liberia was not opposed to UN sanctions because they helped the government to maintain control. In the last few years of their existence, the sanctions were renewed for a number of reasons unrelated to their initial imposition. The insecurity caused by West Africa's 2014 Ebola outbreak,[16] Liberia's lack of a sufficient legal framework to regulate the importation and possession of munitions, the

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struggle to secure the country's borders with Sierra Leone and Guinea, and the cross-border violence with Côte d'Ivoire were all reasons for renewing the arms embargo until 2016.[17]

Conclusion

When the sanctions were finally lifted, Liberia was in a much more stable position than it was when the United Nations first intervened. There is little question that the sanctions helped to create an environment that enabled the Comprehensive Peace Agreement to succeed. Moreover, the objectives of the sanctions evolved in line with domestic circumstances, beginning with the immediate goal of conflict management and ending with measures that created a legal basis for the United Nations to encourage domestic reform in key industries like natural resource management. In this sense, the sanctions on Liberia can be understood as a form of regulation.[18] The sanctions in Liberia were representative of a new phase in the Council's use of Article 41, in that the Council adopted measures that not only addressed the immediate goal of conflict management, but also mapped out future structures of good governance. Moreover, the Council and related bodies sequenced the application of sanctions to increase responsiveness, such that the imposition of negative ex post measures was combined with the incentive of their lifting in order to achieve other regulatory goals.[19] Liberia is an example of how UN sanctions have moved away from being solely punitive measures toward being tools that the Council uses to prospectively manage risks to peace and security. The sanctions on Liberia are thus illustrative of how the UN Security Council has emerged as a jus post bellum actor in its own right.[20]

The Panel of Experts reported that Liberians were generally supportive of sanctions as a method for establishing long-term peace, and noted that sanctions had helped to stabilize the situation in Liberia.[21] On the other hand, because of their long duration and the sentiment that certain measures should have been wound down far earlier,[22] the Liberian sanctions raise the questions of what criteria should be applied to the termination of UN sanctions and what design features would implement these. There are strong arguments for short sanctions in that clear criteria for their termination are related to efficiency.[23] In practice, the Council uses three models of termination: sunset clauses, indefinite sanctions, and sanctions under "continuous review," which have sunset clauses combined with a "delisting" process that operates on the individual level (such as an Ombudsperson-type office) United Nations.[24] What is interesting about the Liberia case is that the Council continually adopted resolutions with twelve-month sunset clauses, which were renewed on an annual basis.[25] The sunset clause model did not, in this instance, deliver short sanctions. Furthermore, given the regulatory objectives of later sanctions on Liberia, it is interesting that the Council chose the sunset clause model rather than the "continuous review" that has become prevalent in many modern sanctions regimes and that would have seemed most appropriate for long-term regulatory type sanctions.[26] These observations suggest that there continues to be little correlation between termination models and sanctions objectives, suggesting that further research is needed on path dependence and rational choice models in UN sanctions regimes.

While punitive measures continue to be the most frequently applied under Article 41 of the UN Charter, Liberia serves as a solid case study into the UN's developing role as a regulator of peace.

ENDNOTES

1 UNMIL Background, UNITED NATIONS, *at* http://www.un.org/en/peacekeeping/missions/unmil/background.shtml (visited May 29, 2017).

2 Enrico Carisch & Loraine Rickard-Martin, *Implementation of United Nations Targeted Sanctions*, *in* TARGETED SANCTIONS: THE IMPACTS AND EFFECTIVENESS OF UNITED NATIONS ACTION 150 (Thomas Biersteker et al. eds., 2016) (noting that sanctions were accompanied by a peacekeeping mission, mediation, international judicial prosecutions, financial aid, and micromanagement of all vital government functions, all of which was unprecedented and required strong politico-economic management).

3 S.C. Res. 1521 ¶¶ 2, 4 (Dec. 22, 2013).

4 S.C. Res. 1532 ¶ 1 (Mar. 12, 2004).

5 S.C. Res. 1683 ¶¶ 1, 2 (June 13, 2006).

6 S.C. Res. 1903 ¶¶ 3–5 (Dec. 17, 2009). For commentary, see *UN Arms Embargo on Liberia*, STOCKHOLM INT'L PEACE RES. INST., *at* https://www.sipri.org/databases/embargoes/un_arms_embargoes/liberia (May 27, 2016).

7 *Id.* ¶¶ 6, 10.

8 S.C. Res. 1521, *supra* note 3, ¶¶ 7, 13.

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9 JEREMY MATAM FARRALL, UNITED NATIONS SANCTIONS AND THE RULE OF LAW 1, 420 (2007).

10 Global Witness, *Cautiously Optimistic: The Case for Maintaining Sanctions in Liberia* (June 2006), *at* https://www.globalpolicy.org/images/pdfs/06cautiously.pdf.

11 FARRALL, *supra* note 9, at 421 (2007).

12 Rebecca Brubaker & Dr. Thomas Dörfler, *How Can Sanctions Contribute to the Prevention of (Intra-state) Conflict?*, 10 (draft on file with author); S.C. Res. 1753 (Apr. 27, 2007); S.C. Res. 1689 (June 20, 2006).

13 Brubaker & Dörfler, *supra* note 12.

14 S.C. Res. 2237 (Sept. 2, 2015).

15 Brubaker & Dörfler, *supra* note 12.

16 Gary Wilson, *Collective Security, Threats to the Peace, and the Ebola Outbreak*, 6 J. PHIL. INT'L L. 1, 17 (2015).

17 Security Council, Letter Dated 19 November 2014 from the Panel of Experts on Liberia, UN Doc. S/2014/831, ¶¶ 13, 31 (Nov. 19, 2014).

18 Kristen E. Boon, *U.N. Sanctions as Regulation*, 15 CHINESE J. INT'L L. 543 (2016).

19 *Id.*

20 Kristen Boon, *Obligations of the New Occupier: The Contours of a Jus Post Bellum*, 31 LOY. L.A. INT'L & COMP. L. REV 57 (2009) (on the concept of jus post bellum).

21 FARRALL, *supra* note 9, citing Security Council, Letter Dated 1 June 2004 from the Chairman of the Security Council Committee, UN Doc. S/2004/396, ¶ 127 (June 1, 2004); Security Council, Report of the Secretary-General on the United Nations Disengagement Observer Force, UN Doc. S/2005/379, ¶ 146 (June 10, 2005); Security Council, Letter Dated 13 June 2005 from the Chairman of the Security Council Committee, UN Doc. S/2005/360, ¶ 46 (June 13, 2005).

22 ANDREA CHARRON, UN SANCTIONS AND CONFLICT: RESPONDING TO PEACE AND SECURITY THREATS 80–81 (2011) ("In the Panel's opinion, the critical issue was now not whether sanctions should be lifted but rather how the post-conflict situation could be managed so that sanctions were no longer required.").

23 *See* Thomas Biersteker, Sue Eckert & Marcos Tourinho, *Designing United Nations Targeted Sanctions: Evaluating Impacts and Effectiveness of UN Targeted Sanctions*, TARGETED SANCTIONS CONSORTIUM (TSC) (August 2012), 23, *at* http://graduateinstitute.ch/files/live/sites/iheid/files/sites/internationalgovernance/shared/PSIG_images/Sanctions/Designing%20UN%20Targeted%20Sanctions.pdf.

24 This argument is developed in my book chapter on terminating UN sanctions. Kristen Boon, *Timing Matters: Termination Policies on UN Sanctions*, *in* HANDBOOK ON UN SANCTIONS (L. Van den Herik ed., forthcoming 2017).

25 S.C. Res. 1521, *supra* note 3.

26 *See generally* Boon, *supra* note 24.

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UNITED NATIONS SECURITY COUNCIL RESOLUTION 2288*
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United Nations S/RES/2288 (2016)

Security Council

Distr.: General
25 May 2016

Resolution 2288 (2016)

Adopted by the Security Council at its 7695th meeting, on 25 May 2016

The Security Council,

Recalling its previous resolutions and statements by its President on the situation in Liberia,

Welcoming the sustained progress made by the Government of Liberia in rebuilding Liberia for the benefit of all Liberians,

Commending the work of the Committee established pursuant to resolution 1521 (2003) ("the Committee") and *expressing its gratitude* to the Panel of Experts established pursuant to paragraph 22 of resolution 1521 (2003),

Having considered the report of the United Nations Panel of Experts on Liberia (S/2016/348) as well as the briefing to the Security Council by the Chair of the Committee on 13 May 2016,

Having also considered the Secretary-General's letter, dated 31 July 2015 (S/2015/590), updating the Security Council on progress made by the Government of Liberia to implement the recommendations on the proper management of arms and ammunition, including enacting the necessary laws, and on facilitating the effective monitoring and management of the border regions between Liberia and Côte d'Ivoire, while *stressing* the need that such progress continue in order to further contribute to the peace and stability of Liberia,

Recalling that responsibility for controlling the circulation of small arms within the territory of Liberia and between Liberia and neighbouring States rests with the relevant governmental authorities in accordance with their obligations under the Economic Community of West African States Convention on Small Arms and Light Weapons of 2006,

Encouraging the Government of Liberia to expedite the adoption and implementation of remaining appropriate arms and ammunition management legislation and to continue to take other necessary and appropriate steps to establish the necessary legal and administrative framework to combat the illicit trafficking of arms and ammunition,

Noting the positive role that the Security Council's imposition of targeted measures has played in responding to the conflict in Liberia and supporting Liberia's stabilization,

Affirming that the Government of Liberia bears primary responsibility for protecting all populations within its territory, *stressing* that lasting stability in Liberia will require the Government of Liberia to sustain effective and accountable government institutions, particularly in the rule of law and security sectors, including capable, professional, and

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efficient military, police and border security forces, and, in this regard, *welcoming* the relevant assistance of bilateral partners and multilateral organizations,

Underlining that the transparent and effective management of natural resources is critical for Liberia's sustainable peace and security,

Recalling the Council's readiness to terminate the measures imposed by paragraphs 2 (a) and (b) of resolution 1521 (2003) upon its determination that the ceasefire in Liberia is being fully respected and maintained, disarmament, demobilization, reintegration, repatriation and restructuring of the security sector have been completed, the provisions of the Comprehensive Peace Agreement are being fully implemented, and significant progress has been made in establishing and maintaining stability in Liberia and the subregion, and determining that those conditions have been met,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* to terminate, with immediate effect, the measures on arms, previously imposed by paragraph 2 of resolution 1521 (2003) and modified by paragraphs 1 and 2 of resolution 1683 (2006), by paragraph 1 (b) of resolution 1731 (2006), by paragraphs 3, 4, 5 and 6 of resolution 1903 (2009), by paragraph 3 of resolution 1961 (2010), and by paragraph 2 (b) of resolution 2128 (2013);

2. *Decides* further to dissolve, with immediate effect, the Committee established by paragraph 21 of resolution 1521 (2003) and the Panel of Experts established pursuant to paragraph 22 of resolution 1521 (2003), and subsequently modified and extended, including in paragraphs 3 and 4 of resolution 2237 (2015).

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