Remarks given by H.E. Mr. Paul Heinbecker
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IMPLEMENTING SANCTIONS

Introduction:

In the conclusion of their (IPA) book The Sanctions Decade, David Cortright and George Lopez state, inter alia, that "if the necessary changes are made, sanctions can serve as an effective policy tool for UN peacekeeping and peace enforcement in the next decade and beyond."

It is too early to conclude whether this hopeful assessment will be borne out by intractable reality.

As a former Council member, I must say the Council's performance in this area does not fill me with confidence.

Without a doubt, some of the Angolan lessons have been beneficially applied in the sanctions regimes on Sierra Leone and Liberia.

I also do not doubt that thanks to Corthright, Lopez and the IPA, there is a much broader understanding of what smart sanctions are and how to use them.

At the same time, it is hard to be confident that the Council corporately or in the actions and attitudes of some of its major members, will make all of "the necessary changes" Corthright and Lopez advocated.

Although some of the particulars have indeed been absorbed, permanent Council members appear unwilling to take the more fundamental steps that might limit their own latitude down the road, risk goaring one of their own foreign policy oxen or put one P5 member at cross purposes with another P5 member on major issues.

Whatever the reason, it appears that success of the sanctions instrument is going to depend at least as much on the serendipitous confluence of opportunity and personality as it is on lessons learned, corporate responsibility, and the resolve to take issues to their logical conclusions.

Perhaps it is a professional deformation of diplomats, who rarely live or die by their actions, but who almost always survive to "fight" another day or another mock battle.

Perhaps, it is a penchant for anticipating the requirements/interests of those who will also remain at the table for years to come.

Perhaps it is just circumspection to a fault.

Whatever the reason, one has the impression that some Council members still do not realize or prefer to ignore that in real life they are judged by their successes and failures, not by their efforts or eloquences.

Some, too many even, of our colleagues shrink from imposing sanctions on the UN membership, not just on the manifest “bad guys” in the bush, even when realizing full well that the only way they will succeed in changing the behaviour of the “bad guys” is to change the behaviour of “good guys” who turn a blind eye or an open palm to their illegal activities.

The Angola Sanctions Committee

Before going any further, a little history is in order.

The purpose of the UNITA sanctions was and is to diminish the rebels capacity to pursue their objectives through military means by targeting illicit diamonds and other sources of financial fuel for UNITA's war effort, by reducing UNITA's weapons procurement and access to petroleum supplies, and by limiting the ability of UNITA leaders to travel or be represented abroad.

The goal was/is to establish conditions for the resumption of negotiations.

Sanctions were imposed against UNITA incrementally, in reaction to repeated evidence of UNITA's determination to pursue their military campaign in defiance of the will of the international community and in violation of the obligations UNITA freely entered into in the Lusaka Protocol.

Resolution 864 (1993) had established the “Angola Sanctions Committee” but like most of the other sanctions committees, it had become a diplomatic fiction, even a whitewash. that was worse than nothing at all.

In 1998, SC resolution 1173 placed an embargo on the direct or indirect export of diamonds by UNITA.

The embargo had no significant effect.

When Canada was elected to the Council at the beginning of 1999, we sought the Angola sanctions Committee assignment on purpose.

We avoided Iraq deliberately, which we judged correctly would consume infinite amounts of Permanent Representative and staff time, yield few or no opportunities to make a difference on the Iraq file and impose inescapable, substantial costs in terms of opportunities on other files foregone.

Once we got the assignment, our then Permanent Representative, my predecessor, Bob Fowler visited Washington to confirm that the USA’s old relationship with Savimbi was truly over - it was**.**

He also solicited and received information and guidance from an array of other sources – from small NGOs to Interpol, from the diamond industry to intelligence agencies.

He travelled widely in Africa and Europe, as well.

Thus armed, and with Ottawa's explicit approval, Bob sought and received Council blessing for the creation of an independent Panel of Experts.

It is unlikely that many on the Council fully understood the paradigm shift they had thereby endorsed.

The logic of the decision was that the Council was henceforth going to take its sanctions mandate, rather than just its privileges, seriously.

Previously, the Council's relations with UN members had been akin to the old Soviet paradigm: the state enterprises pretended to employ the workers and the workers pretended to work.

In the UN's case, the Council pretended to impose sanctions and the UN members pretended to observe them.

The bankruptcy of the UN's approach to Angola sanctions had been total - - the chair of Secretariat-inspired Friends of Angola Sanctions was Gabon, whose President was implicated by the panel.

Togo, whose President was one of the major flouters of sanctions, was also a member.

It was also unlikely then, as it is now, that the Council fully comprehended what the logic of its decision required - and what the reputation of the UN demanded - viz., that it act against those countries that flout, or harbour those who flout Security Council decisions.

Because sanctions targeted on non-state actors are only effective when state actors willingly, or through coercion, respect them.

Action against states means diplomacy and pressure in the first instance: it also implies more resolute and vigorous follow-up action if diplomacy is unavailing.

The Panel of Experts and the Monitoring Mechanism

At Bob Fowler's urging **–** and, I am happy to say, with strong support around the table, including on the part of the Permanent Members **--** the Council adopted Resolution 1237 in May 1999.

That resolution created an independent, ten-member Panel of Experts, led by Swedish Ambassador Anders Mollander.

The Panel was mandated to establish how sanctions against UNITA were being violated, who was violating them and what could be done to make the sanctions more effective.

It is amazing, but apparently true, that this was the first time the Council had created a body of this kind.

On March 15, 2000, following much tense discussion with Ottawa, Bob Fowler introduced the report of the first experts panel on Angola.

Bob had sought and had been given the go-ahead by Ottawa to name and shame, and let the chips fall where they may.

These were acts of personal courage on Bob's part and political courage on Canada's part.

In the eyes of those with much at stake, especially in Angola, the Security Council had become a cynical exercise in diplomatic double talk.

Regrettably, but not surprisingly, the entire UN's reputation was sullied in the process.

Bob Fowler's statement to the Council encapsulated the issue: "Security Council sanctions against UNITA have not worked well.

More than a few people I have encountered in my travels as Committee Chairman have accused me of idealism in suggesting that these sanctions were ever intended to have any real impact.

Many regarded their imposition as a political gesture on which the Council had little intention of following through.

The result has been not only a culture of impunity regarding the violation of Security Council sanctions, but also a massive failure even to communicate the activities covered by sanctions and an imperfect understanding of what they were intended to achieve."

The Panel of Experts identified the sources and methods of violations of the sanctions against UNITA, named names of sitting heads of state as violators, and criticized the behaviour of certain Canadian allies, notably Belgium.

This was unprecedented in UN history.

The Panel laid out an entire panoply of actions to be taken to make the sanctions work.

To its credit, the Council adopted most of them, although implementation of quite a number of recommendations amounted to little more than lip service.

The Panel of Experts recommended that the Council ensure that it be able to monitor closely the further implementation of sanctions as well as follow up on information collected by the Panel.

To this end, the Security Council, after much skirmishing, adopted resolution 1295 in April 2000, establishing the first-ever sanctions Monitoring Mechanism.

Former Ambassador Juan Larraín of Chile was made chair.

The Mechanism was directed to acquire more information and to continue to focus attention on sanctions violations and violators.

Evidence of how much political will had materialized at that time was evident in the Security Council Summit declaration in the fall of 2000 that underscored their commitment to "continue to take resolute action in areas where the illegal exploitation and trafficking of high-value commodities contributes to the escalation or continuation of conflict".

Individual leaders also emphasized the importance of action.

President Nujoma of Namibia underscored the value of sanctions as a tool where wars and rebel atrocities are fuelled by the illegal trade in diamonds and other natural resources.

President Konare of Mali spoke in favour of targeted sanctions relating to the illegal exploitation of natural resources.

President Chirac of France called for the establishment, within the UN Secretariat, of a permanent body to control diamond trafficking and trafficking in rare precious metals.

And Prime Minister Jean Chrétien of Canada called for more vigorous action by the United Nations to sever the links between commodity revenues and war.

In any case, the Angola sanctions regime began, in fact as well as in theory, to be implemented.

On the issue of diamonds, for example, thanks to the Panel of Experts and Monitoring Mechanism and the work of NGO's, notably Global Witness, and a chastened diamond industry, the sanctions began to bite.

The Kimberley Process, led by South Africa, has subsequently established a basis for a certificate of origin scheme for diamonds.

Work is well along between governments and industry in creating a certification scheme, and if successful, will fulfil a key recommendation of the Panel of Experts.

I am pleased to acknowledge, in this house, the British government's strong support for the Kimberley Process – and, indeed, for the implementation of the Council's sanctions against UNITA.

The efforts of the Panel of Experts, of the Monitoring Mechanism and of the Council to bring to light the links between the illegal exploitation of resources,(and in particular the illegal trade in high value commodities such as diamonds), have thus served as a catalyst for regional and multilateral efforts that have sought to build on the specific sanctions adopted by the Council.

Most gratifying, they bit the people on whom they were targeted - Savimbi and the UNITA network in Angola and abroad.

Yet in its "final" report (it wasn't) submitted on 21 December 2001, the monitoring mechanism also highlighted two requirements that needed to be fulfilled if this progress in making sanctions work was to be lasting.

First, the Council should ensure the continuity of the monitoring of sanctions implementation, and;

Second, the Council should not shrink from imposing sanctions against states that intentionally violated the sanctions regime - i.e. the issue of "secondary sanctions"

Neither of these two points have been effectively assimilated, let alone implemented, by the Council.

It took political will to make the sanctions effective in their first stage.

Regrettably, it is political "won't" that is blocking the international community from taking the logical next steps.

Towards a Permanent Monitoring and Enforcement Capability:

At about the same time as I was tabling the Monitoring Mechanism's "final" report on Angola, in December 2000, I was also separately pitching the Council on the necessity of creating a permanent UN monitoring capability.

Our experience with the Angola Sanctions Committee had confirmed our belief that further action was required.

In response to the Monitoring Mechanism's recommendations, we proposed that a small, dedicated office be established that would serve both as a repository of institutional memory and as a centre of expertise for sanctions policy.

This office would make sanctions monitoring more effective and efficient.

Our argument was, and is, that it does not make sense to start from scratch each time a monitoring body is appointed.

Nor does it make sense to have two or more uncoordinated monitoring bodies operating simultaneously, duplicating each others efforts and travelling to the same capitals to talk to the same people about the same alleged perpetrators.

Unfortunately, the idea of a permanent mechanism - one with teeth - seems to have become lost in the mists of time.

Apparently, the Mission of France continues to pursue it, although I understand it has it has undergone significant changes as a result of the informal consultations that have been held over the last year, and is weaker both in proposed power and in scope.

This looks like another case of political "won't".

Perhaps it is time to name and shame Council opponents.

The purpose of sanctions monitoring is to ensure that the sanctions in question are being applied, that behaviour is being changed, and that loopholes are being closed.

In the face of defiance and continued violations, when the power of "naming and shaming" is no longer sufficient or effective, the Council should act to oblige compliance.

We believe, further, that the Council must be prepared to take action against both non-state entities and their states partners in crime.

It has been, and remains, the position of the Canadian Government that, to quote myself speaking to the council February 22, 2002, “the imposition of secondary sanctions targeting sanctions-busters is an entirely appropriate option”.

While in the troughs of despond, I should also comment on the fate of another Canadian sanctions initiative, one that owed its existence in part to the Corthright-Lopez book.

The “Chowdhury report” on smart sanctions that embodied our efforts has languished now 15 months since we left the Council, a victim of indifference and cynicism.

To be sure, the ideas were not lost and are in fact recognizable in certain subsequent resolutions.

It is nonetheless enormously disappointing that this report has never even been brought to the Council proper for consideration.

Non-State Entities and "Secondary Sanctions"

The Angola sanctions experience was groundbreaking in that it levelled sanctions against a non-state actor, UNITA.

The Council has shown that these types of sanctions can be implemented effectively, but require political will, international cooperation, heightened vigilance and effective intelligence and enforcement as groups such as UNITA seek to operate "under the radar".

Operationally critical, Council direction must be extremely clear when delineating exactly who and what we are sanctioning.

One of the questions the IPA asked me to address is "what are the consequences of imposing sanctions on a non-state entity?".

To some extent the language of the IPA question perpetuates a misunderstanding of the fundamental point.

Sanctions, to be effective, must be targeted not just at the buyer but also at the seller.

With sanctions, we are trying to prevent transactions that permit non-state entities to pursue their objectives outside of a legitimate political process.

Sanctions must entail consequences for both the buyer and seller.

It is likely only to be partially effective, when it is effective at all, to criminalize one end of a commercial transaction, e.g. the purchase of arms or the sale of diamonds or any other natural resource by non-state entities, and not the other end, the purchase or sale of prohibited goods by states member of the United Nations.

In some cases, e.g., diamond markets and arms exports, the embarrassment flowing from the exposure of cupidity and callous indifference to human suffering has been enough to change behaviour.

But not in all cases.

Specifically on Angola, there is plenty of evidence that to some people, including, perhaps to people at the highest levels, a buck is a buck, however bloodstained it might be.

In these cases, secondary sanctions are indispensable.

Sanctions, Non-State Entities and Terrorism

Through the use of modern technology, even geographically limited non-state actors such as UNITA were able to extend their global reach.

Efforts by UNITA to extend their global networks perhaps foreshadowed the radical change in the nature of sanctions regimes that resulted from the challenges of Sept.11.

For the first time we are now dealing with sanctions against Al-Qaeda, an organization of global reach and activity - without a single territorial base or source of funding.

Under these circumstances the requirement for effective international engagement and monitoring has become even more critical.

The mobilization and coordination of enforcement agencies and legislative bodies are essential for the success of sanctions.

The Afghanistan sanctions committee is still struggling to meet the definitional and evidentiary questions raised by this new reality.

The Counter Terrorism Committee

There is not much doubt in my mind that the Council's work on sanctions policy and the new Counter-Terrorism Committee are in some sense the progeny of the Angola sanctions effort.

The Counter-Terrorism Committee is, at its heart, a monitoring mechanism for an entirely new area of action by the Council.

Resolution 1373 was regarded as groundbreaking, even more so than that first report of the Angola Panel of Experts; its implementation poses significant challenges for many states.

A failure to implement 1373 implies continuing risk to us all.

The monitoring of its implementation is therefore a task that should concern us all.

UK Ambassador Jeremy Greenstock, the Chair of the CTC, has many times stated that the UN is in new territory, both for the Council and the wider membership of the UN.

One of those areas is clearly whether this means a new era for monitoring, for the recognition of its importance, and for its inclusion as an element in future Council resolutions.

The logic of monitoring compliance requires that action be taken to help those to comply who otherwise cannot, and ultimately to act against those who refuse to comply.

As Ambassador Greenstock has made very clear, there is a major capacity building job to be done.

But, perhaps further down the road, when it becomes clear that some countries will refuse to comply, the logic is
that action - - diplomacy, sanctions, or more robust measures - - will have to be taken.

Until this lesson is learned - for terrorism as for sanctions, the UN's promise will be unfulfilled and its word will be empty.

Role of Civil Society:

What is also clear from our experience on the Council is that the Council needs outside help if it is to acquit its responsibilities in implementing sanctions.

Civil society can and should play a contributory role in this process.

The engagement of civil society in the early identification of abuses, in the design of sanctions, in targeting them so as to minimize their humanitarian impact, and in supporting the work of monitoring and verification are critical to the overall success of sanctions as a tool.

I am speaking here of those NGO's who have extensive experience in the field and are well placed to identify abuses and recommend how they might be rectified.

They often have fewer political constraints than governments in making their voices heard.

Global Witness and Human Rights Watch were significantly instrumental in raising awareness of the issue in Angola and working collaboratively and with great effect with the Panel and the Monitoring Mechanism in strengthening the ultimate sanctions product.

The public interest they generated was nothing short of remarkable, and galvanized many reluctant governments into action.

Please note that I am not making a mindless pitch for NGO's - - all NGO's are not created equal.

I do believe the Council and its creatures can, indeed must, exercise considerable circumspection in selecting public collaborators.

We must also recognize that the private sector can be a willing ally - at least a necessary advisor, if the power and universality inherent in UN action are going to be complemented by the technical expertise and real world understanding needed to make them effective.

The example of the cooperation between the Angola Sanctions Committee, Global Witness and the diamond industry on the Kimberley process is an excellent one.

Similarly, NGO's such as Partnership Africa-Canada have worked together with governments, the "Just Mining" Initiative, and industry groups such as the Diamond High Council to deter the trade in conflict diamonds and other illegally-exploited resources in Sierra Leone.

It is clear that the advice and cooperation of industry is critical to effective regulation by governments.

It was entirely appropriate in this light that Council resolutions acknowledged the declarations made and the actions taken by the International Diamond Manufacturers Association, the World Federation of Diamond Bourses, the Diamond High Council and other representatives of the diamond industry, to free the diamond sector of any association with armed conflict.

Conclusion:

Without sanctions, the Council has only the options of issuing well-intended but not necessarily compelling statements and authorizing the use of expensive and risky military force.

Sanctions must therefore be preserved and enhanced as an effective, precise, credible and, above all, available diplomatic tool, and as a viable alternative to the choice between words and war.

The aim of sanctions is to change behaviour of wrongdoers, to deprive them of the resources to wage war and to brutalize the innocent.

A necessary corollary is that sanctions can and must be targeted to minimize harming the very people the sanctions aim to help.

In today's conflicts, this means more targeted sanctions, not only against abusive national elites, but terrorists, rebel movements, modern day warlords and other non-state actors who perpetuate or profit from human suffering.

It also means improving the use of smarter sanctions against them -- financial, travel and other restrictions.

It requires a monitoring mechanism so that the Council will know if the sanctions are working.

And, last but not least, it means whether they be UN member states or non-state entities acting against sanctions violators - - whoever they are.

The world has for long been a dangerous place - as the more than 500,000 Angolans who died in the civil war there could attest if they had not perished.

Fewer would have died if the Security Council had been more resolute in imposing sanctions from the beginning.

And now, the terrorist danger is coming to the UN’s very doorstep.

One of our crucial instruments in defeating it is sanctions - - so that we can progressively shake off the financial and other support that fuelled it.

That requires monitoring.

And, as with all sanctions, it demands finding the political will to act against those states who would evade them.

The proper response is to engage in the world, not seek to avert one’s eyes from the truth.

Our own security depends on it.