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# United Nations Sanctions and the Rule of Law

JEREMY MATAM FARRALL



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*by*

Jeremy Matam Farrall



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## United Nations Sanctions and the Rule of Law

The United Nations Security Council has increasingly resorted to sanctions as part of its efforts to prevent and resolve conflict.

*United Nations Sanctions and the Rule of Law* traces the evolution of the Security Council's sanctions powers and charts the contours of the UN sanctions system. It also evaluates the extent to which the Security Council's increasing commitment to strengthening the rule of law extends to its sanctions practice. It identifies shortcomings in respect of key rule of law principles and advances pragmatic policy-reform proposals designed to ensure that UN sanctions promote, strengthen and reinforce the rule of law. In its appendices, *United Nations Sanctions and the Rule of Law* contains summaries of all twenty-five UN sanctions regimes established to date by the Security Council. It forms an invaluable source of reference for diplomats, policy-makers, scholars and advocates.

JEREMY MATAM FARRALL is a Research Fellow at the Centre for International Governance and Justice, in the Regulatory Institutions Network at the Australian National University. He worked for the United Nations from 2001 to 2006, serving as a political officer in the UN Security Council in New York, on the UN Secretary-General's Mission of Good Offices in Cyprus and with the UN Mission in Liberia. He received his Ph.D. in International Law from the University of Tasmania Faculty of Law, where he has also worked as a Postdoctoral Research Fellow.

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Comparative law is increasingly used as a tool in the making of law at national, regional and international levels. Private international law is now often affected by international conventions, and the issues faced by classical conflicts rules are frequently dealt with by substantive harmonisation of law under international auspices. Mixed international arbitrations, especially those involving state economic activity, raise mixed questions of public and private international law, while in many fields (such as the protection of human rights and democratic standards, investment guarantees and international criminal law) international and national systems interact. National constitutional arrangements relating to 'foreign affairs', and to the implementation of international norms, are a focus of attention.

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## Preface

This book began life as a doctoral thesis. I originally expected the thesis to focus less on the UN Security Council's sanctions practice and more on theoretical questions arising from the Council's application of sanctions. However, early in my research I discovered that most books on UN sanctions analysed sanctions from a broad policy perspective and did not pay too much attention to the finer print of the provisions of Security Council resolutions that establish and modify each UN sanctions regime. Although there were valuable studies of this type concerning individual sanctions regimes, there was no central source tracing the evolution of the Security Council's many sanctions regimes. I thus began to prepare the summaries of UN sanctions regimes that feature in Appendix 2. Once I had completed these summaries, I moved on to the challenging assignment of describing and analysing the contours of the UN sanctions system.

Just as I did not originally set out to describe the UN sanctions system, neither did I intend to explore the relationship between those sanctions and the rule of law. I had planned to analyse the legitimacy of sanctions, which I still consider to be an extremely important theme. But on 24 September 2003 I witnessed a Security Council debate on justice and the rule of law, culminating in the adoption of a Security Council presidential statement affirming the vital importance of the rule of law in the Council's work. I immediately began to wonder whether the Council's commitment to the rule of law might be said to extend to its own sanctions system. How would the Council's sanctions practice measure up when viewed through a rule of law lens? What lessons might be learned from such an analysis and how might they be used to strengthen the Council's future sanctions policy and practice?

This book therefore has two basic aims: to describe the evolution of UN sanctions and to examine the relationship between sanctions and the rule of law. The book's practical goal is to advance policy proposals for improving the rule of law performance of UN sanctions. But my major hope is modest: I hope that readers find the following pages interesting and helpful, whether they are seasoned sanctions policy-makers or students engaging with sanctions for the very first time.

I am indebted to many people, whose support, guidance and inspiration have helped to shape this book. I owe a particular debt to the University of Tasmania Faculty of Law and my PhD supervisors: Professor Stuart Kaye, for his exemplary mentorship; Professors Donald Chalmers and Margaret Otlowski, for their kind and generous support; and Professor Ryszard Piotrowicz, for his guidance with early research. I would also like to thank my PhD examiners, Professors Ivan Shearer and Gerry Simpson, for their helpful suggestions on improving the manuscript.

My writing and thinking have benefited from the thoughtful and challenging feedback of colleagues and friends. Warm thanks are due to Nehal Bhuta, Michael Bliss, Hilary Charlesworth, Gino Dal Pont, Peter Danchin, Laura Grenfell, John Langmore and Fred Soltau. My practical understanding of Security Council decision-making was enriched by working in the UN's Security Council Affairs Division from 2001 to 2004. My comprehension of how sanctions apply on the ground was deepened by working with the UN Mission in Liberia from 2004 to 2006. I learned an enormous amount from UN colleagues, including Ademola Araoye, Babafemi Badejo, Tatiana Cosio, Comfort Ero, Susan Hulton, Nicole Lannegrace, Aleksandar Martinovic, Linda Perkin, Joseph Stephanides, James Sutterlin, Satya Tripathi and Raisedon Zenenga.

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*Australian National University, Canberra, January 2007*



# Abbreviations

<b>AJIL</b>	American Journal of International Law
<b>AMIS</b>	African Union Observer Mission in Sudan
<b>AU</b>	African Union
<b>AYBIL</b>	Australian Yearbook of International Law
<b>BYIL</b>	British Yearbook of International Law
<b>CPPCG</b>	Convention on the Prevention and Punishment of the Crime of Genocide
<b>CSCE</b>	Conference on Security and Cooperation in Europe
<b>CTC</b>	UN Counterterrorism Committee
<b>CY</b>	Conference on Yugoslavia
<b>DJILP</b>	Denver Journal of International Law and Policy
<b>DPRK</b>	Democratic People's Republic of Korea
<b>DRC</b>	Democratic Republic of the Congo
<b>EC</b>	European Community
<b>ECOMOG</b>	Monitoring Group of the Economic Community of West African States
<b>ECOWAS</b>	Economic Community of West African States
<b>EJIL</b>	European Journal of International Law
<b>EU</b>	European Union
<b>FRY</b>	Federal Republic of Yugoslavia
<b>FRYSM</b>	Federal Republic of Yugoslavia (Serbia and Montenegro)
<b>GA</b>	General Assembly
<b>GEMAP</b>	Governance and Economic Management Assistance Program
<b>GIA</b>	Governor's Island Agreement
<b>GRL</b>	Goods Review List
<b>GYIL</b>	German Yearbook of International Law

<b>HILJ</b>	Harvard International Law Journal
<b>IAEA</b>	International Atomic Energy Agency
<b>IATA</b>	International Air Transport Association
<b>ICAO</b>	International Civil Aviation Organization
<b>ICC</b>	International Criminal Court
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICFY</b>	International Conference on the Former Yugoslavia
<b>ICIR</b>	International Commission of Inquiry on Rwanda
<b>ICISS</b>	International Commission on Intervention and State Responsibility
<b>ICJ</b>	International Court of Justice
<b>ICLQ</b>	International and Comparative Law Quarterly
<b>ICRC</b>	International Committee of the Red Cross
<b>ICTR</b>	International Criminal Tribunal for Rwanda
<b>ICTY</b>	International Criminal Tribunal for Yugoslavia
<b>IFOR</b>	Multinational Implementation Force
<b>IGAD</b>	Intergovernmental Authority on Development
<b>ILJ</b>	International Law Journal
<b>ILM</b>	International Legal Materials
<b>ILR</b>	International Law Review
<b>JIL</b>	Journal of International Law
<b>KFOR</b>	International Security Forces in Kosovo
<b>LAS</b>	League of Arab States
<b>LR</b>	Law Review
<b>LURD</b>	Liberians United for Reconciliation and Democracy
<b>MODEL</b>	Movement for Democracy in Liberia
<b>MONUC</b>	United Nations Organization Mission in the DRC
<b>NATO</b>	North Atlantic Treaty Organization
<b>NJIL</b>	Nordic Journal of International Law
<b>NPT</b>	Treaty on Non Proliferation of Nuclear Weapons
<b>NTGL</b>	National Transitional Government of Liberia
<b>NYUJILP</b>	New York University Journal of International law and Politics
<b>OAS</b>	Organization of American States
<b>OAU</b>	Organization of African Unity
<b>OFFP</b>	Oil-for-Food Programme
<b>OHCHR</b>	Office of the High Commissioner for Human Rights

<b>OIP</b>	Office of the Iraq Programme
<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>PCASED</b>	Economic Community of West African States Programme for Coordination and Assistance for Security and Development
<b>Res.</b>	Resolution
<b>RUF</b>	Revolutionary United Front
<b>SADC</b>	Southern African Develop Community
<b>SAM</b>	Sanctions Assistance Mission
<b>SAMCOMM</b>	Sanctions Assistance Missions Communications Centre
<b>SC</b>	Security Council
<b>SCOR</b>	UN Security Council Official Records
<b>SICI</b>	Sudan International Commission of Inquiry
<b>SLA</b>	Sudan Liberation Army
<b>TLCP</b>	Transnational Law & Contemporary Problems
<b>UK</b>	United Kingdom
<b>UN</b>	United Nations
<b>UNAMSIL</b>	United Nations Assistance Mission in Sierra Leone
<b>UNASOG</b>	United Nations Aouzou Strip Observer Group
<b>UNCC</b>	United Nations Compensation Commission
<b>UNCLOS</b>	United Nations Convention on the Law of the Sea
<b>UNCIO</b>	United Nations Conference on International Organization
<b>UNGA</b>	United Nations General Assembly
<b>UNGAR</b>	United Nations General Assembly Resolution
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNIIC</b>	United Nations International Independent Investigation Commission
<b>UNITA</b>	National Union for the Total Independence of Angola
<b>UNITAF</b>	United Task Force
<b>UNMAS</b>	United Nations Mine Action Service
<b>UNMICI</b>	United Nations Mission in Côte d'Ivoire
<b>UNMIH</b>	United Nations Mission in Haiti
<b>UNMIK</b>	United Nations Mission in Kosovo
<b>UNMIL</b>	United Nations Mission in Liberia
<b>UNMIS</b>	United Nations Mission in Sudan
<b>UNMOVIC</b>	United Nations Monitoring Verification and Inspection Commission
<b>UNOCI</b>	United Nations Operation in Côte d'Ivoire

<b>UNOL</b>	United Nations Office in Liberia
<b>UNOMIL</b>	United Nations Observer Mission in Liberia
<b>UNOMSIL</b>	United Nations Observer Mission in Sierra Leone
<b>UNOSOM</b>	United Nations Operation in Somalia
<b>UNPREDEP</b>	United Nations Preventive Deployment Force
<b>UNPROFOR</b>	United Nations Protection Force
<b>UNSC</b>	United Nations Security Council
<b>UNSCOM</b>	United Nations Special Commission
<b>UNSCR</b>	United Nations Security Council Resolution
<b>UNSG</b>	United Nations Secretary-General
<b>US</b>	United States
<b>VJIL</b>	Virginia Journal of International Law
<b>WCO</b>	World Customs Organization
<b>WEU</b>	Western European Union
<b>WMD</b>	Weapons of Mass Destruction

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