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A Primer on Subsidiary Bodies of Sanctions Committees Established by the U.N. Security Council

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EXECUTIVE SUMMARY

Under Article 29 of the United Nations Charter, the Security Council “may establish such subsidiary organs as it deems necessary for the performance of its functions.” Of the subsidiary organs established by the Security Council, sanctions committees—mandated with administering the sanctions regimes decided by the Security Council—are among the most active. The Security Council has established subsidiary bodies of those sanctions committees (SBSCs) to assist in monitoring the effective implementation of sanctions. SBSCs include groups of experts, panels of experts, and monitoring teams.

This document offers a primer on certain key aspects of SBSCs. As of June 2024, there are nine SBSCs supporting ten of the 14 currently active sanctions committees. The proliferation of SBSCs began in the 1990s, with the recognition that, alongside the Security Council’s imposition of sanctions regimes, there was a need for independent mechanisms to monitor those sanctions. These monitoring mechanisms were meant to serve as impartial sources of information, document violations, and offer recommendations to assist sanctions committees in ensuring the effective implementation of Council-decided sanctions regimes.

SBSCs are staffed by individuals with specialized knowledge or expertise. The mandate, size, and duration of each SBSC are typically determined by the Security Council. SBSCs’ mandates often entail assisting their respective sanctions committees with discharging their responsibilities, including by: collecting information on the implementation of sanctions; identifying and investigating alleged violations; providing updated information in respect of designated individuals and entities; recommending names of potential designees; apprising their respective sanctions committees of designated individuals who have died and of designated entities that have become defunct; and providing recommendations to improve the design and implementation of sanctions measures.

In U.N. classification, SBSCs are characterized as “special political missions” and are understood as “subsidiary organs” of the Security Council within the meaning of Article 29 of the U.N. Charter. SBSCs typically operate under the direction of their respective sanctions committees and are administratively supported by the U.N. Department of Political and Peacebuilding Affairs. Individual experts serving on SBSCs are hired as consultants rather than as U.N. staff, with a view to preserving their independence and impartiality. Accordingly, their conditions of service differ significantly from those of regular U.N. officials—a circumstance that has been criticized as potentially constraining the U.N. Secretariat’s ability to hire the best talent to serve on SBSCs. Conversely, it has been contended that SBSCs’ dependency on the U.N. for certain forms of support may undercut their ability to act independently and impartially.

Rather than a systematic set of codified rules, SBSCs follow ad hoc and flexible working methods, including with respect to evidentiary standards. SBSCs appear to rely on a combination of tools to collect information and document sanctions violations, including conducting field investigations, liaising with U.N. Member States, interviewing alleged violators, reviewing databases and secondary sources, and cooperating with other entities, as relevant.

A number of challenges concerning the functioning of SBSCs may be identified, including in connection with: the safety and security of SBSC members; the level and quality of support provided to SBSCs by the U.N. Secretariat; inconsistent cooperation from U.N. Member States; undue interference by U.N. Member States; inconsistent working methods and a potential lack of due process; and non-implementation of SBSC recommendations.

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About This Primer Series

Despite the extraordinary authority placed in the United Nations Security Council, relatively little is known about its day-to-day workings outside its five permanent members and UN support staff. Indeed, the permanent members benefit from decades of continuous experience, as well as relatively large teams in New York and at their respective capitals devoted to international law and policy matters. Members elected for a two-year term at the Council often do not possess equivalent expertise, resources, and personnel. In a series of primers, HLS PILAC seeks to help fill an arguable informational gap concerning international law and the Council between the permanent and elected members. Building off a 2020 general primer for elected members published by HLS PILAC, these new analyses are intended to furnish elected members with important additional information that they can use as they see fit. The primary target audience includes current and future elected members of the Council, in particular those States' legal and policy advisers. The series' objective is not to proscribe or prescribe particular approaches but, rather, to apprise States of certain key issues that may be borne in mind in navigating engagements with and at the Security Council.

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INTRODUCTION

Under Article 24 (1) of the Charter of the United Nations, the Members of the U.N. “confer on the Security Council primary responsibility for the maintenance of international peace and security”.¹ Pursuant to Article 29 of the U.N. Charter, the Security Council “may establish such subsidiary organs as it deems necessary for the performance of its functions.”² Further, pursuant to Rule 28 of the Provisional Rules of Procedure of the Security Council, the Council “may appoint a commission or committee or a rapporteur for a specified question.”³ Subsidiary organs established by the Security Council include sanctions committees mandated to administer specific sanctions regimes maintained by the Security Council.⁴ Especially since the late 1990s, the Security Council has established dozens of such sanctions committees to administer its sanctions regimes.⁵ As of June 2024, there are 14 such sanctions regimes, each administered by a sanctions committee.⁶

Alongside those sanctions committees, the Security Council has established a range of additional subsidiary bodies, staffed by individuals with specialized knowledge or expertise, to assist the Council and its committees in monitoring the effective implementation of Council-decided measures.⁷ Those subsidiary bodies include groups of experts (GoEs), panels of experts (PoEs), and monitoring teams. At least some of those bodies are charged with supporting the implementation of Council-decided measures other than sanctions.⁸ In this primer, however, we limit our focus to GoEs, PoEs, and

¹ U.N. Charter art. 24, ¶1.

² *Id.* art. 29. *See also id.* art. 7, ¶ 2.

³ U.N. Security Council, Provisional Rules of Procedure of the Security Council, U.N. Doc. S/96/Rev.7, rule 28 (Jan. 1, 1983).

⁴ *See* U.N. Department of Political and Peacebuilding Affairs, Subsidiary Organs of the United Nations Security Council Fact Sheet (2023), <https://perma.cc/M8LD-S5H7> [hereinafter “DPPA Fact Sheet”].

⁵ *See, e.g.*, U.N. Security Council, Sanctions, <https://perma.cc/G3ED-JRKR> [hereinafter “UNSC Sanctions Overview”]; U.N. Security Council, Terminated Sanctions Regimes, <https://perma.cc/KT5M-N67G>.

⁶ UNSC Sanctions Overview, *supra* note 5.

⁷ DPPA Fact Sheet, *supra* note 4, at 4.

⁸ Notably, the PoE on the Illegal Exploitation of Wealth and Natural Resources in the Democratic Republic of the Congo (DRC) was not established in connection with a country-specific sanctions regime; rather, it was established to investigate the linkages between natural resource exploitation and the continuation of conflict in the DRC. U.N. Security Council Presidential Statement, U.N. Doc. S/PRST/2000/20 (Jun. 2, 2000). *See also* S.C. Res. 1977 (Apr. 20, 2011), ¶ 5 (a) (requesting the U.N. Secretary-General to establish a group of experts to assist the 1540 Committee concerning the non-proliferation of nuclear, chemical, and biological weapons).

monitoring teams charged with assisting the Security Council’s sanctions committees in discharging their mandates.⁹ We refer collectively to such bodies as subsidiary bodies of sanctions committees (SBSCs). At the time of writing, there are nine SBSCs supporting ten of the 14 currently active sanctions committees.¹⁰ Unlike sanctions committees, which consist of all 15 members of the Security Council,¹¹ SBSCs are composed of individuals with specialized knowledge or expertise serving in a personal capacity, with time-limited mandates. The exact mandate, size, and duration of each SBSC may vary.

Despite being among the most active subsidiary organs established by the Security Council, relatively little is known about SBSCs, at least among those external to the Security Council and its membership. In this primer, our objective is to equip current and future Security Council members with information that may be useful in connection with one of the most laborious and politically complex aspects of their work—engaging with the Security Council’s intricate sanctions architecture.

Following this introduction, the primer is divided into six parts. First, we sketch the historical evolution of SBSCs. Second, we describe the typical characteristics and mandates of SBSCs. Third, we outline the legal status of SBSCs and the individual experts serving on SBSCs. Fourth, we set out the institutional arrangements that underpin the establishment and operation of SBSCs, including the processes by which individual experts are appointed to SBSCs. Fifth, we describe the ad hoc and flexible working methods of SBSCs. Sixth, we identify certain key challenges with respect to the functioning of SBSCs. We conclude by making observations regarding aspects that might be of particular consequence for U.N. Member States. We also attach an annex summarizing the nine currently active SBSCs.

In developing this primer, we relied on the following sources and methods. We reviewed a range of primary materials, including key texts of the U.N. Security Council, the U.N. General Assembly, and the U.N. Secretary-General; reports prepared by SBSCs; the *Repertoire of Practice of the Security*

⁹ See *infra* note 33 and accompanying text. GoEs and PoEs appear to be mutually interchangeable terms, with “no fundamental differences in function” between the two types of entities. Alix J. Boucher, *UN Panels of Experts and UN Peace Operations: Exploiting Synergies for Peacebuilding*, STIMSON CENTER 2 (2010). On the other hand, counterterrorism-related “Monitoring Teams” may bear more of a “watchdog”-type character as compared to other SBSCs. See *infra* notes 48–49 and accompanying text.

¹⁰ See *infra* Annex: SBSCs Active as of June 2024. See also UNSC Sanctions Overview, *supra* note 5.

¹¹ DPPA Fact Sheet, *supra* note 4, at 5.

Council; guidelines for sanctions committees established by the Security Council; guidance material from the U.N. Department of Political and Peacebuilding Affairs; and reports prepared by a number of other U.N. departments, organs, and agencies, including informal working groups, the U.N. Office of Internal Oversight Services, the U.N. Department of Operational Support, and the U.N. Secretariat. We analyzed sources of international law and reviewed core academic and policy literature pertaining to SBSCs. The following caveats may be borne in mind. Our research was carried out primarily in English. Further, while we consulted with a handful of specialists in the areas of sanctions implementation and Security Council practice, we have not served within the U.N. or on SBSCs and do not have access to detailed “insider knowledge” with respect to the U.N., the Security Council, or its subsidiary organs.¹²

1. HISTORICAL EVOLUTION

As early as 1963, the Security Council “[r]equest[ed] the Secretary-General to establish under his direction and reporting to him a small group of recognized experts to examine methods of resolving the [. . .] situation in South Africa”.¹³ The “small group of recognized experts” submitted its report to the Council in April 1964, recommending, among other actions, the imposition of economic sanctions in respect of South Africa if it failed to meet certain conditions.¹⁴ The proliferation of SBSCs apparently began in earnest in the 1990s, with the expansion of Council-decided sanctions and the desire to monitor States’ compliance therewith.¹⁵ Sanctions committees established by

¹² On “insider knowledge” among the members of the U.N. Security Council, *see, e.g.*, Vincent Pouliot, *The Gray Area of Institutional Change: How the Security Council Transforms Its Practices on the Fly*, 6 J. GLOBAL SEC. STUD. 1, 14 (2021). For example, according to an informal interview conducted over email on July 20, 2023, much of the information concerning SBSCs can be discussed “internally” but not shared “outside”. *See also* LORAINIE SIEVERS & SAM DAWES, *THE PROCEDURE OF THE UN SECURITY COUNCIL* 678 (4th ed. 2014) (“[E]ven where [the U.N. Security Council’s] procedures and working methods have been set out in writing, many are subject to unwritten interpretations.”).

¹³ S.C. Res. 182 (Dec. 4, 1963), ¶ 6.

¹⁴ U.N. Security Council, Letter Dated 20 April 1964 Addressed to the Secretary-General by the Chairman of the Group of Experts Established in Pursuance of Security Council Resolution of 4 December 1963 (S/5471) Transmitting Its Report, U.N. Doc. S/5658, at 40–41 (Apr. 20, 1964).

¹⁵ The first sanctions committee was established by the Security Council in 1968 to examine the reports of the Secretary-General on the implementation of the sanctions regime applicable in respect of Rhodesia and to seek information from U.N. Member States on trade or other activities that may constitute “evasion[s]” of the [Footnote continued on next page]

the Council reportedly struggled to monitor, from their New York headquarters, effective implementation of the measures that they were charged with administering.¹⁶ A perceived need for *independent* monitoring gave rise to the notion of reliance on external “experts”;¹⁷ theoretically, at least, independent experts would be able to “name and shame” violators.¹⁸ In 1995, the Council established the first modern SBSC-type mechanism, the U.N. International Commission of Inquiry on Rwanda (UNICOI), and mandated it to collect information and investigate reports pertaining to potential violations of the sanctions regime applicable in respect of Rwanda and to recommend measures to end such violations.¹⁹ The Council “[r]ecommend[ed]” that UNICOI be composed of “five to ten impartial and internationally respected persons” with the requisite expertise.²⁰ The Rwandan arms embargo went from being “virtually [un]enforce[d]” to closely observed and monitored by UNICOI experts.²¹

An arguable watershed moment arrived in 1999, when the former chair of the Angola sanctions committee, Robert Fowler, observed the lack of enforcement of sanctions against Angolan rebel group União Nacional para a Independência Total de Angola (UNITA) and commissioned an independent report on the implementation of those sanctions. In his letter to the President of the Security Council, Fowler recommended the establishment of two SBSCs, each with a six-month mandate, to “trace violations in arms trafficking, oil supplies and the diamond trade, as well as the movement of [. . .] UNITA [. . .] funds.”²² The Council established two PoEs, which were later

sanctions. S.C. Res. 253 (May 29, 1968), ¶ 20. See also Joanna Weschler, *The Evolution of Security Council Innovations in Sanctions*, 65 INT’L J. 31, 38 (2010); SIEVERS & DAWS, *supra* note 12, at 544.

¹⁶ Jeremy Farrall, *Should the United Nations Security Council Leave It to the Experts? The Governance and Accountability of UN Sanctions Monitoring*, in SANCTIONS, ACCOUNTABILITY AND GOVERNANCE IN A GLOBALISED WORLD 195 (2009).

¹⁷ See *id.* at 195–196.

¹⁸ See MAKING TARGETED SANCTIONS EFFECTIVE: GUIDELINES FOR THE IMPLEMENTATION OF UN POLICY OPTIONS 34–5 (Peter Wallensteen, Carina Staibano, & Mikael Eriksson eds., 2003).

¹⁹ S.C. Res. 1013 (Sept. 7, 1995), ¶ 1. See also Alex Vines, *Monitoring UN Sanctions in Africa: The Role of Panels of Experts*, VERIFICATION Y.B. 248 (2003); CARINA STAIBANO & PETER WALLENSTEEN, INTERNATIONAL SANCTIONS: BETWEEN WORDS AND WARS IN THE GLOBAL SYSTEM 48 (2005); SEC. COUNCIL REP., *UN Sanctions, Special Research Report*, at 7 (2013); SIEVERS & DAWS, *supra* note 12, at 525.

²⁰ S.C. Res. 1013 (Sept. 7, 1995), ¶ 2.

²¹ Vines, *supra* note 19, at 248.

²² U.N. Security Council, Letter Dated 4 May 1999 from the Chairman of the Security Council Committee Established Pursuant to Security Council Resolution 864 (1993) Concerning the Situation in Angola Addressed to the President of the Security Council, U.N. Doc. S/1999/509 (May 4, 1999).

merged to form one larger PoE, whose members included former UNICOI experts.²³ The PoE on Angola issued an impactful report in March 2000, “naming and shaming” a host of individuals and entities, from private companies to sitting heads of State in a number of African and European States.²⁴ According to a commentator, the PoE on Angola became a “blueprint” for Council-established PoEs and other SBSCs.²⁵ PoEs on Sierra Leone, Liberia, and Somalia soon followed, as did a monitoring mechanism in respect of sanctions against Al-Qaida and the Taliban.²⁶ Each was charged with monitoring the implementation of sanctions measures applicable in its respective context.²⁷ As of the time of writing, ten of the 14 sanctions committees established by the Council are assisted by an SBSC.²⁸ The decision to establish a sanctions regime and to set up its corresponding SBSC may be found within the same Security Council resolution.²⁹

2. CHARACTERISTICS AND MANDATES

According to the Informal Working Group of the Security Council on General Issues of Sanctions (IWG on Sanctions), SBSCs are “independent, expert and

²³ Vines, *supra* note 19, at 251.

²⁴ U.N. Security Council, Report of the Panel of Experts on Violations of Security Council Sanctions Against UNITA, U.N. Doc. S/2000/203 (Mar. 10, 2000); Vines, *supra* note 19, at 250–251; Colum Lynch, *Sunset for U.N. Sanctions?*, FOREIGN POLICY (Oct. 14, 2021), <https://perma.cc/3VYB-KXMD>; Boucher, *supra* note 9, at 1. See also Farrall, *supra* note 16, at 200–201; SIEVERS & DAWES, *supra* note 12, at 524.

²⁵ Lynch, *supra* note 24.

²⁶ In 2011, the Security Council bifurcated the previously joint sanctions regime applicable in respect of Al-Qaida and the Taliban into two regimes: one applying with respect to the Taliban and overseen by the Resolution 1988 (2011) sanctions committee, and the other applying in respect of Al-Qaida and associated individuals and entities and overseen by the Al-Qaida sanctions committee. S.C. Res. 1988 (June 17, 2011), ¶ 2; S.C. Res. 1989 (June 17, 2011), ¶ 2. In 2015, the Security Council expanded the Al-Qaida sanctions regime to apply also to “individual[s], group[s], undertaking[s] [and] entit[ies] [. . .] associated with ISIL” and renamed the Al-Qaida sanctions committee as the ISIL/Al-Qaida sanctions committee. S.C. Res. 2253 (Dec. 17, 2015), ¶ 3 (a), 1. A single SBSC, the Analytical Support and Sanctions Monitoring Team, currently monitors the implementation of sanctions applicable in respect of the Taliban, ISIL, and Al-Qaida, and, in that respect, assists both the ISIL/Al-Qaida sanctions committee and the Resolution 1988 (2011) sanctions committee. S.C. Res. 2255 (Dec. 21, 2015), ¶ 51; S.C. Res. 2610 (Dec. 17, 2021), ¶ 98.

²⁷ See, e.g., S.C. Res. 1306 (July 5, 2000), ¶ 19; S.C. Res. 1363 (July 30, 2001), ¶ 4 (a); S.C. Res. 1519 (Dec. 16, 2003), ¶ 2; S.C. Res. 1521 (Dec. 22, 2003), ¶ 22. See also SIEVERS & DAWES, *supra* note 12, at 544–545.

²⁸ See *infra* Annex: SBSCs Active as of June 2024; UNSC Sanctions Overview, *supra* note 5. See also DPPA Fact Sheet, *supra* note 4, at 4.

²⁹ Aurel Niederberger, *Investigative Ignorance in International Investigations: How United Nations Panels of Experts Create New Relations of Power by Seeking Information*, 69 BRITISH J. SOCIOLOGY 984, 993 (2018). See also S.C. Res. 1521 (Dec. 22, 2003); S.C. Res. 2127 (Dec. 5, 2013); U.N. Security Council, Report of the Informal Working Group of the Security Council on General Issues of Sanctions, U.N. Doc. S/2006/997, at 6 (Dec. 22, 2006).

non-judiciary [in] character”.³⁰ SBSCs typically have time-limited mandates³¹ and vary in size.³²

The Security Council generally tasks SBSCs with assisting sanctions committees in discharging their mandates.³³ In particular, that assistance may involve: collecting information on the implementation of sanctions measures decided by the Council (and being administered by the relevant committee);³⁴ identifying and/or investigating instances of violations of those measures;³⁵ providing updated information in respect of designated individuals and entities;³⁶ recommending potential designees meeting applicable designation criteria;³⁷ supporting the committee with annual reviews of the list of designees;³⁸ apprising the committee of designated individuals who have died and

³⁰ U.N. Security Council, Report of the Informal Working Group of the Security Council on General Issues of Sanctions, U.N. Doc. S/2006/997, at 10–11 (Dec. 22, 2006).

³¹ See, e.g., S.C. Res. 2374 (Sept. 5, 2017), ¶ 11; S.C. Res. 2444 (Nov. 14, 2018), ¶ 11. See also Charles Cater, *UN Sanctions, Panels of Experts and the Political Economy of Intrastate Conflict*, in *THE POLITICAL ECONOMY OF CIVIL WAR AND UN PEACE OPERATIONS* 90 (2023).

³² S.C. Res. 2094 (Mar. 7, 2013), ¶ 29; DPPA Fact Sheet, *supra* note 4, at 19. See *infra* Annex: SBSCs Active as of June 2024.

³³ See, e.g., S.C. Res. 2374 (Sept. 5, 2017), ¶ 11 (a); S.C. Res. 2127 (Dec. 5, 2013), ¶ 59 (a); S.C. Res. 1977 (Apr. 20, 2011), ¶ 5 (a); S.C. Res. 2399 (Jan. 30, 2018), ¶ 32 (a); S.C. Res. 1874 (June 12, 2009), ¶ 26 (a); Security Council Committee Established Pursuant to Resolution 2206 (2015) Concerning South Sudan, Guidelines of the Committee for the Conduct of its Work as revised and adopted by the Committee on 28 May 2019, at 1 (May 28, 2019) [hereinafter “South Sudan Sanctions Committee Guidelines”]. See also SEC. COUNCIL REP., *supra* note 19, at 7; DPPA Fact Sheet, *supra* note 4, at 4; Wallenstein, Staibano, & Eriksson, *supra* note 18, at 40; Nico Krisch, *Ch. VII Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Article 41*, in *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY* 1327, VOLUME II (Bruno Simma et al. ed., 3rd ed., 2012).

³⁴ See, e.g., S.C. Res. 2127 (Dec. 5, 2013), ¶ 59 (b). See also Cater, *supra* note 31, at 90.

³⁵ See, e.g., S.C. Res. 2060 (July 25, 2012), ¶ 13 (a).

³⁶ See, e.g., Security Council Committee Established Pursuant to Resolution 2653 (2022) Concerning Haiti, Guidelines of the Committee for the Conduct of its Work as adopted by the Committee On 8 February 2023, at 9 (Feb. 8, 2023) [hereinafter “Haiti Sanctions Committee Guidelines”]; South Sudan Sanctions Committee Guidelines, *supra* note 33, at 8; Security Council Committee Established Pursuant to Resolution 2140 (2014), Guidelines of the Committee for the Conduct of its Work, at 12 (Oct. 19, 2021) [hereinafter “Yemen Sanctions Committee Guidelines”]; Security Council Committee Established Pursuant to Resolution 1718 (2006), Guidelines of the Committee for the Conduct of its Work, at 6 (Dec. 31, 2014) [hereinafter “DPRK Sanctions Committee Guidelines”]. See also SIEVERS & DAWS, *supra* note 12, at 520–521.

³⁷ See, e.g., U.N. Security Council, Letter dated 5 October 2021 from the Chair of the Security Council Committee pursuant to resolution 751 (1992) concerning Somalia addressed to the President of the Security Council, U.N. Doc. S/2021/849, at 41 (Oct. 6, 2021); S.C. Res. 1533 (2004), ¶ 10 (g). See also Kiho Cha, Tilo Stolz, & Maarten Wammes, *Ensuring Fairness in the Listing and De-Listing Process of Individuals and Entities Subject to Sanctions*, *THE UNITED NATIONS SECURITY COUNCIL, SANCTIONS AND THE RULE OF LAW WORKSHOP PAPER SERIES* 10 (2011).

³⁸ See, e.g., South Sudan Sanctions Committee Guidelines, *supra* note 33, at 8; Security Council Committee [Footnote continued on next page]

of designated entities that have become defunct;³⁹ and providing recommendations to improve the design and implementation of sanctions measures.⁴⁰ SBSCs may additionally be tasked with assisting sanctions committee chairs with holding press conferences and briefings.⁴¹ In addition to directly making recommendations for designating individuals or entities that meet the designation criteria for specific sanctions regimes, SBSCs may also support listing proposals submitted by Member States. For example, SBSC reports may provide part of the evidentiary base for such proposals.⁴² SBSCs' tasks may additionally extend to: monitoring progress on conditions for sanctions termination and monitoring the “humanitarian and socio-economic” impact of sanctions (as with the now-disbanded PoE on Liberia);⁴³ monitoring the implementation of sanctions exemptions (as with the GoE on the Democratic Republic of the Congo (DRC));⁴⁴ and monitoring unintended consequences and unexpected challenges associated with sanctions (as with the Analytical Support and Sanctions Monitoring Team tasked with supporting the ISIL/Al-Qaida sanctions committee and the Resolution 1988 (2011) sanctions committee).⁴⁵ On these matters, SBSCs may be required to submit “progress updates” to the relevant sanctions committee.⁴⁶ SBSCs also prepare and submit interim and final reports and, occasionally, other periodic reports to the relevant sanctions committee or to the Council, as mandated in the Security

Pursuant to Resolutions 1267 (1999), 1989 (2011), and 2253 (2015) Concerning ISIL (Da'esh), Al-Qaida and Associated Individuals, Groups, Undertakings and Entities, Guidelines of the Committee for the Conduct of its Work, at 13–15 (Mar. 10, 2023) [hereinafter “ISIL/Al-Qaida Committee Guidelines”].

³⁹ See, e.g., U.N. Doc. S/2021/849, *supra* note 37, at Table 1: List of individuals under sanctions presumed deceased; ISIL/Al-Qaida Committee Guidelines, *supra* note 38, at 13–15; Security Council Committee Pursuant to Resolution 751 (1992) Concerning Somalia, Guidelines of the Committee for the Conduct of its Work, at 13 (Feb. 25, 2019) [hereinafter “Al-Shabaab Sanctions Committee Guidelines”].

⁴⁰ Security Council Committee Established Pursuant to Resolution 1591 (2005) Concerning the Sudan, Guidelines of the Committee for the Conduct of its Work, at 16 (Dec. 23, 2013).

⁴¹ See, e.g., DPRK Sanctions Committee Guidelines, *supra* note 36, at 11.

⁴² See, e.g., Yemen Sanctions Committee Guidelines, *supra* note 36, at 6; Security Council Committee Established Pursuant to Resolution 1970 (2011) Concerning Libya, Provisional Guidelines of the Committee for the Conduct of its Work, at 4 (Oct. 25, 2011).

⁴³ S.C. Res. 1521 (Dec. 22, 2003), ¶ 22 (b), (c).

⁴⁴ Security Council Committee Established Pursuant to Resolution 1533 (2004) Concerning the Democratic Republic of the Congo, Guidelines of the Committee for the Conduct of its Work as adopted by the Committee on 9 March 2023, at 3 (Mar. 9, 2023) [hereinafter “DRC Sanctions Committee Guidelines”] (mandated “to monitor, with the assistance of the [GoE], the implementation of paragraph 1 of resolution 2664 (2022)”).

⁴⁵ See *supra* note 26 and accompanying text; S.C. Res. 2199 (Feb. 12, 2015), ¶ 30; S.C. Res. 2610 (Dec. 17, 2021), Annex I, ¶ (a) (iii).

⁴⁶ See, e.g., S.C. Res. 2399 (Jan. 30, 2018), ¶ 32 (d).

Council decision establishing the SBSC.⁴⁷

It appears that counterterrorism-related “Monitoring Teams” may bear more of a “watchdog”-type character as compared to other SBSCs.⁴⁸ Like other SBSCs, Monitoring Teams consist of independent experts, collect information on sanctions violations, and recommend potential designees. Unlike other SBSCs, however, Monitoring Teams may also engage with Member States to assess domestic implementation. In particular, the Analytical Support and Sanctions Monitoring Team established in connection with the ISIL/Al-Qaida sanctions regime and the Resolution 1988 (2011) sanctions regime appears to have a more diverse and robust mandate than other SBSCs, including with respect to: pursuing case studies on its own initiative; reporting on the changing nature of the threat posed by ISIL, Al-Qaida, al-Nusrah Front, Boko Haram, and the Taliban, as well as measures to confront that threat; and developing a dialogue with relevant scholars, academic bodies, and experts.⁴⁹

In a nutshell, the core purpose of an SBSC is to serve as an independent source of information and verification of allegations to assist the Security Council and its sanctions committees in ensuring the implementation of Council-decided sanctions regimes.⁵⁰ Largely, SBSCs undertake a supportive rather than a dispositive role, offering recommendations that may or may not be—and, at least by some early accounts, typically were not—accepted.⁵¹ For example, while an SBSC provides updates on existing designees and suggests the names of potential designees to its respective sanctions committee, the final decision regarding whether to add or remove names from a sanctions-designations list rests with the sanctions committee or the Council, not with the SBSC.⁵²

⁴⁷ See, e.g., S.C. Res. 2374 (Sept. 5, 2017), ¶ 11 (c); S.C. Res. 2127 (Dec. 5, 2013), ¶ 59 (c); S.C. Res. 2662 (Nov. 17, 2022), ¶ 47 (c); S.C. Res. 2399 (Jan. 27, 2017), ¶ 32 (c).

⁴⁸ See, e.g., sources cited *infra* note 49.

⁴⁹ S.C. Res. 2610 (Dec. 17, 2021), Annex I, ¶¶ (h), (s). See also U.N. Sec. Council Rep., Counter-Terrorism: Vote on a Draft Resolution on the ISIL (Da’esh) and Al-Qaida Sanctions Regime: What’s In Blue: Security Council Report, <https://perma.cc/V7F7-KZHL> (noting certain Council members’ argument that “unlike other [SBSCs] [. . .], the [Analytical Support and Sanctions] Monitoring Team has an analytical rather than investigative mandate”).

⁵⁰ See Cater, *supra* note 31, at 86–87; U.N. General Assembly & Security Council, Compendium of the High-level Review of United Nations Sanctions, U.N. Doc. A/69/941–S/2015/432, at 25 (Jun. 12, 2015); Wallenstein, Staibano, & Eriksson, *supra* note 18, at 48.

⁵¹ Vines, *supra* note 19, at 258; Farrall, *supra* note 16, at 208; Boucher, *supra* note 9, at 1. See also U.N. Doc. S/2006/997, *supra* note 29, at 10–11.

⁵² DRC Sanctions Committee Guidelines, *supra* note 44, at 5–6; Cha, Stolz, & Wammes, *supra* note 37, at 10.

3. CERTAIN LEGAL ASPECTS

3.1. Certain Legal Aspects Concerning SBSCs

At the time of writing, the U.N. Department of Political and Peacebuilding Affairs (DPPA) classifies SBSCs as “special political missions” of the U.N.⁵³ Like other “special political missions”, SBSCs are “subsidiary organs” of the Security Council within the meaning of Article 29 of the U.N. Charter, established to assist the Security Council in discharging its primary responsibility for the maintenance of international peace and security.⁵⁴ While SBSCs are supported administratively by the Security Council Affairs Division (SCAD) of the DPPA, they operate under the direction of the relevant sanctions committees and report to those committees or to the Security Council, either directly or through committees.⁵⁵ SBSCs do not have judicial or subpoena powers.⁵⁶ It is reportedly not uncommon for SBSCs’ information requests to States to be fully or partially unfulfilled.⁵⁷ For example, in 2016, the PoE on the Democratic People’s Republic of Korea (DPRK) reported that about 40% of its requests to Member States remained unanswered.⁵⁸ Accordingly, SBSCs typically have to rely on information “supplied” to them by cooperative interlocutors, including States, as well as information available publicly.⁵⁹ For this

⁵³ U.N. Department of Political and Peacebuilding Affairs, Special Political Missions and Good Offices Engagements, <https://perma.cc/PJU6-HU4A> [hereinafter “DPPA Special Political Missions Overview”]; Cater, *supra* note 31, at 104; U.N. Office of Internal Oversight Services, Audit of support provided to cluster II special political missions by the Department of Political Affairs, Rep. 2018/074 (Jul. 27, 2018); U.N. Department of Political and Peacebuilding Affairs, Special Political Missions, at 44–45 (2023), <https://perma.cc/2F6B-9BK3>.

⁵⁴ SBSCs are classified as subsidiary organs in the Repertoire of Practice of the Security Council as well as on the website of the Security Council. *See, e.g.*, U.N. Security Council, Chapter V: Subsidiary organs of the Security Council, Subsidiary organs of the Security Council established or continuing during the period 1996-1999, at 148; U.N. Security Council, Subsidiary Organs: Overview, Sanctions and Other Committees, <https://perma.cc/Q385-7RFY>. *See also* Boucher, *supra* note 9; DPPA Special Political Missions Overview, *supra* note 53; Cater, *supra* note 31, at 104; U.N. Office of Internal Oversight Services, Rep. 2018/074, *supra* note 53.

⁵⁵ *See, e.g.*, S.C. Res. 2444 (Nov. 14, 2018), ¶ 54; S.C. Res. 1973 (Mar. 17, 2011), ¶ 24 (d); S.C. Res. 2611 (Dec. 17, 2021), Annex, ¶ (a); S.C. Res. 2610 (Dec. 17, 2021), Annex I, ¶ (a) (i). *See also* SEC. COUNCIL REP., *supra* note 19, at 8.

⁵⁶ Wallensteen, Staibano, & Eriksson, *supra* note 18, at 45.

⁵⁷ Harry Aitken, *Policing the Police: Security Council Monitoring of States’ Sanctions Implementation Obligations*, 51 NYU J. INT’L L. & POL. 705, 735 (2019).

⁵⁸ *See, e.g.*, U.N. Security Council, Report of the Panel of Experts established pursuant to resolution 1874 (2009), Annex 2: Correspondence with Member States, U.N. Doc. S/2016/157, at 79–80 (Feb. 24, 2016).

⁵⁹ *See, e.g., id.* at 9; U.N. Security Council, Report of the Panel of Experts established pursuant to resolution 1874 (2009), U.N. Doc. S/2014/147, at 10 (March 6, 2014).

reason, a “strong element of diplomacy” has been said to be crucial on the part of SBSCs to enable them to “solicit the good offices and cooperation of national authorities”.⁶⁰

3.2. Certain Legal Aspects Concerning Experts

Individual experts serving on SBSCs, who are meant to be impartial and independent in their work, are hired as “consultants” rather than as U.N. staff.⁶¹ Experts are hired on temporary, short-term contracts, usually for one year at a time.⁶² Detailed terms of reference, such as the “objectives and targets of the work assignment,” are incorporated into the contract, and the contract is subject to the U.N.’s General Conditions of Contracts for the Services of Consultants and Individual Contractors.⁶³ An administrative instruction issued by the U.N. requires that a “technical evaluation report” be appended to each contract indicating the basis for selection.⁶⁴ The short-term, contractual hiring of experts is intended to reinforce their objectivity and reduce the possibility of institutional dependence.⁶⁵ Experts serve in their “individual capacity and not as representatives of a [g]overnment or of any other authority external to the [U.N.]” and are not permitted to “seek []or accept instructions” from such entities.⁶⁶

In U.N. classification, SBSC members are accorded the status of “experts on mission” and are afforded privileges and immunities “as [. . .] necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions.”⁶⁷ This includes, among other aspects, immunity from personal arrest

⁶⁰ Wallensteen, Staibano, & Eriksson, *supra* note 18, at 42, 45. For example, preferring to preserve its relationships with government agencies charged with sanctions implementation—a key source of information—the Analytical Support and Sanctions Monitoring Team does not issue public assessments of individual States. See Aitken, *supra* note 57, at 731.

⁶¹ See DPPA Fact Sheet, *supra* note 4, at 41; Cater, *supra* note 31, at 104.

⁶² U.N. Doc. A/69/941-S/2015/432, *supra* note 50, at 38. See also Gregory Johnsen, *Russia Got Me Fired From the U.N.*, POLITICO MAGAZINE, Jul. 2018, <https://perma.cc/XKY8-524A>.

⁶³ U.N. Secretariat, Administrative instruction: Consultants and individual contractors, U.N. Doc. ST/AI/2013/4, §§ 3.2, 5.2, Annex I (Dec. 19, 2013).

⁶⁴ *Id.* § 4.6.

⁶⁵ See Alix J. Boucher & Victoria K. Holt, *Panels of Experts: Roles and Challenges*, TARGETING SPOILERS 48 (2009).

⁶⁶ U.N. Doc. ST/AI/2013/4, *supra* note 63, §§ 5.4, 5.5.

⁶⁷ Convention on the Privileges and Immunities of the United Nations art. VI, § 22, Feb. 13, 1946, I (4) U.N.T.S. 15 [hereinafter “CPIUN”].

or detention and immunity from legal process in respect of words spoken or written and acts done in the course of the performance of their mission, as well as inviolability of all documents.⁶⁸ SBSC members also have the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys, including immunity from seizure of their personal baggage.⁶⁹ Those privileges and immunities are granted to experts on mission “in the interests of the [U.N.] and not for the personal benefit of the individuals themselves.”⁷⁰ Where, in the U.N. Secretary-General’s opinion, the immunity of any expert “would impede the course of justice and [. . .] can be waived without prejudice to the interests of the [U.N.]”, the Secretary-General has “the right and the duty” to issue such a waiver.⁷¹ Further, as experts are not officials of the U.N., they are not issued U.N. “laissez-passers”.⁷² Instead, they are given “certificates” confirming that they are travelling on the business of the U.N.⁷³ SBSC members also do not have access to certain other benefits and entitlements available to regular U.N. staff, such as paid leave, medical insurance, and business-class travel.⁷⁴ It has been contended that those conditions of employment, characterized by a specialist in this area as a “constant” source of complaint,⁷⁵ may make it difficult for the U.N. Secretariat to attract highly qualified experts. The Secretariat has, on at least one occasion, denied that this was the case and has instead asserted that all SBSCs were sufficiently staffed.⁷⁶

⁶⁸ U.N. Secretariat, Secretary-General’s Bulletin: Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission, U.N. Doc. ST/SGB/2002/9, at 1 (Jun. 18, 2002); CPIUN, art. VI, § 22; U.N. Doc. ST/AI/2013/4, *supra* note 63, § 5.4.

⁶⁹ CPIUN, art. VI, § 22.

⁷⁰ *Id.* art. VI, § 23.

⁷¹ *Id.*

⁷² According to the U.N.’s Standard Operating Procedure on the Issuance of United Nations Travel Documents, “[t]he Laissez-Passer is the official travel document issued to [U.N.] officials who are required to travel internationally on official business.” Further, “[t]o be eligible to receive a Laissez-Passer, [an] applicant[] must be an ‘official’ of the [U.N.] or [a] related entity or [. . .] a Specialized Agency”. U.N. Department of Operational Support, Standard Operating Procedure on the Issuance of United Nations Travel Documents, Ref. No. DOS/2021.07 Amend 1, at 5–6 (Dec. 22, 2021).

⁷³ U.N. Doc. ST/AI/2013/4, *supra* note 63, at § 5.4. *See also* CPIUN, art. VI, § 22.

⁷⁴ Cater, *supra* note 31, at 104; U.N. Doc. A/69/941–S/2015/432, *supra* note 50, at 38; U.N. Doc. ST/AI/2013/4, *supra* note 63, §§ 5.16, 5.22.

⁷⁵ Consultation with an expert on Apr. 21, 2024.

⁷⁶ U.N. Doc. A/69/941–S/2015/432, *supra* note 50, at 38.

4. INSTITUTIONAL SETUP

4.1. Institutional Arrangements of SBSCs

The Security Council typically “[r]equests” the U.N. Secretary-General to establish an SBSC or to “take the necessary administrative measures” to establish an SBSC, which is mandated to perform certain tasks “under the direction” of the relevant sanctions committee.⁷⁷ The Security Council determines the mandate, size, and duration of the SBSC.⁷⁸ The Council may also set out the location where the SBSC will be based.⁷⁹ The Security Council may later adjust an SBSC’s mandate.⁸⁰ The decision to establish or renew an SBSC is a substantive decision that, as such, may be vetoed by a permanent member of the Council.⁸¹ Typically, the Security Council renews, or decides not to renew, the mandate of an SBSC on an annual basis.⁸²

SCAD, the U.N. DPPA’s division charged with providing “substantive and secretariat support” to the Security Council,⁸³ contains a Subsidiary Organs Branch that provides, in turn, crucial support to SBSCs.⁸⁴ According to one author, the Security Council and its subsidiary organs “would not function”

⁷⁷ See, e.g., S.C. Res. 2374 (Sept. 5, 2017), ¶ 11; S.C. Res. 2127 (Dec. 5, 2013), ¶ 59; S.C. Res. 2444 (Nov. 14, 2018), ¶ 12. Occasionally, this may be done by way of a presidential statement. See, e.g., U.N. Security Council Presidential Statement, U.N. Doc. S/PRST/2000/20 (Jun. 2, 2000).

⁷⁸ See, e.g., S.C. Res. 2444 (Nov. 14, 2018), ¶ 12; S.C. Res. 2374 (Sept. 5, 2017), ¶ 11; S.C. Res. 2127 (Dec. 5, 2013), ¶ 59. See also DPPA Fact Sheet, *supra* note 4, at 43.

⁷⁹ See, e.g., S.C. Res. 2444 (Nov. 14, 2018), ¶ 12 (requesting the U.N. Secretary-General to establish the PoE “to be based in Nairobi”).

⁸⁰ See, e.g., S.C. Res. 2399 (Jan. 30, 2018), ¶ 32 (updating the mandate of the PoE on the Central African Republic, which was initially set out in S.C. Res. 2127 (Dec. 5, 2013)); S.C. Res. 2360 (June 21, 2017), ¶ 6 (updating the mandate of the GoE on the DRC, which was initially set out in S.C. Res. 1533 (Mar. 12, 2004)).

⁸¹ INT’L PEACE INST., *Evaluating Mechanisms to Investigate Attacks on Healthcare: Panel of Security Council Experts Supporting Sanctions Regimes*, 5 (2017); U.N. Charter art. 27, ¶ 3; Press Release, Security Council, Veto by Russian Federation Results in Security Council’s Failure to Renew Travel Ban, Asset Freeze against Those Obstructing Mali Peace Agreement, U.N. Press Release, U.N. Doc. SC/15399 (Aug. 30, 2023).

⁸² See, e.g., S.C. Res. 2693 (July 27, 2023), ¶ 6; S.C. Res. 2648 (July 29, 2022), ¶ 6. See also SEC. COUNCIL REP., *supra* note 19, at 8.

⁸³ U.N. Department of Peacebuilding and Political Affairs, Security Council, <https://perma.cc/A7VQ-TNFB>. See also U.N. Security Council, Note by the President of the Security Council, U.N. Doc. S/2017/507, ¶ 110 (Aug. 30, 2017); UNITED NATIONS SECURITY COUNCIL CONFLICT MANAGEMENT HANDBOOK 207 (Haidi Willmot & Scott Sheeran ed., 2023).

⁸⁴ U.N. Secretariat, Secretary-General’s Bulletin: Organization of the Department of Political Affairs, U.N. Doc. ST/SGB/2009/13, at 9 (Oct. 1, 2009); U.N. Office of Internal Oversight Services, Rep. 2018/074, *supra* note 53, at 1.

in the absence of such support.⁸⁵ The Subsidiary Organs Branch provides, for example, orientations and guidance notes to SBSCs when their mandate begins, including with respect to the legal status of SBSCs and their members, the members' rights and duties as experts on mission, and their relations with respective committees as well as with the Security Council.⁸⁶ The orientations are carried out over a period of five to seven days and include presentations by relevant U.N. departments, such as the Office of Legal Affairs, the Ethics Office, and the Department of Safety and Security.⁸⁷ Certain officials within SCAD are assigned the role of "Committee Secretaries" to support Security Council committees and their respective SBSCs.⁸⁸ The names and contact details of Committee Secretaries are publicly accessible on the Security Council's website.⁸⁹ SBSCs may also receive substantive and logistical support from U.N. peacekeeping missions in the field.⁹⁰

SBSCs also receive "political and other support" from the respective sanctions committees under which they operate, but the extent of such support varies from committee to committee and may depend on the committee chair's capacity and interest.⁹¹ To reinforce the independence of SBSCs and reduce their dependency on individual chairs and their respective committees to steer their work, one expert within each SBSC is assigned the role of "coordinator" to coordinate the activities of the other members.⁹² According to a study published in 2010, PoEs were assigned "chairmen" while GoEs were assigned "coordinators";⁹³ this distinction appears to have subsequently

⁸⁵ Farrall, *supra* note 16, at 194. Similarly, one interviewee in an informal interview conducted on July 27, 2023 noted that SBSCs would be "lost" without Secretariat support.

⁸⁶ U.N. Doc. S/2006/997, *supra* note 29, at 12. *See also* U.N. Office of Internal Oversight Services, Rep. 2018/074, *supra* note 53, at 4–5; consultation with an expert on Apr. 21, 2024.

⁸⁷ U.N. Office of Internal Oversight Services, Rep. 2018/074, *supra* note 53, at 4–5; consultation with an expert on Apr. 21, 2024.

⁸⁸ INT'L PEACE INST., *supra* note 81, at 6; Boucher, *supra* note 9, at 14.

⁸⁹ U.N. Security Council, Secretariat Contacts Security Council Subsidiary Organs Branch (Nov. 2, 2022), <https://perma.cc/794J-278X>.

⁹⁰ Consultation with an expert on Apr. 21, 2024; S.C. Res. 1903 (2009), preamble (referring to "the announcement from the Department of Peacekeeping Operations of provisional guidelines on cooperation and information sharing between [] [U.N.] peacekeeping missions and the Security Council's Sanctions Committees' expert panels").

⁹¹ *See, e.g.*, Boucher, *supra* note 9, at 14, 35–36.

⁹² *Id.* at 35–36; U.N. Security Council, Letter dated 28 December 2022 from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/2023/44 (Jan. 17, 2023).

⁹³ Boucher, *supra* note 9, at 2.

disappeared, and both PoEs and GoEs are now typically headed by “coordinators.”⁹⁴

Most SBSCs are “home-based”, meaning that they are not mandated to work from a specific location.⁹⁵ The PoE on Somalia, however, is based in Nairobi, while the Analytical Support and Sanctions Monitoring Team and the PoE on the DPRK are based in New York. According to one author, the U.N.’s policy of paying a “cost of living allowance” to experts based in New York, and not to those based elsewhere, may be reflective of the relatively elevated status of the New York-based SBSCs in comparison to other SBSCs.⁹⁶ However, according to a specialist in this area, that policy is grounded instead in the arguable need to defray expenses for experts serving on New York-based SBSCs, who may confront higher costs of living than experts serving on home-based SBSCs.⁹⁷

According to a U.N. administrative instruction, the remuneration paid to experts is determined as per “the complexity of the assignment and the degree of specialization, knowledge, qualifications, experience and skills required” and shall be “the minimum amount necessary to obtain the services required.”⁹⁸ Experts, including those with comparable experience and qualifications, are reportedly paid disparately even within the same SBSC.⁹⁹

SBSCs are typically funded through the DPPA as part of the U.N.’s “regular budget.”¹⁰⁰ The DPPA formulates a proposed budget for each SBSC on the basis of “experience and past practice” and under the overall guidance of the

⁹⁴ See, e.g., U.N. Security Council, Letter dated 16 December 2022 from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/2022/981 (Dec. 19, 2022); U.N. Security Council, Letter dated 16 December 2019 from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/2019/977 (Dec. 20, 2019); U.N. Security Council, Letter dated 27 July 2023 from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/2023/567 (Jul. 28, 2023); U.N. Security Council, Letter dated 20 November 2015 from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/2015/898 (Nov. 20, 2015).

⁹⁵ See *infra* Annex: SBSCs Active as of June 2024; DPPA Fact Sheet, *supra* note 4, at 4; U.N. Office of Internal Oversight Services, Rep. 2018/074, *supra* note 53, at 2; U.N. Security Council, The Democratic Republic of Congo Sanctions Committee Group of Experts: Work and Mandate, <https://perma.cc/9QNE-U3X2>.

⁹⁶ Cater, *supra* note 31, at 104.

⁹⁷ Consultation with an expert on Apr. 21, 2024.

⁹⁸ U.N. Doc. ST/AI/2013/4, *supra* note 63, § 5.12, Annex III: Fee and remuneration levels for consultants and individual contractors. See *id.* at 23 for fee ranges.

⁹⁹ U.N. Office of Internal Oversight Services, Rep. 2018/074, *supra* note 53, at 6.

¹⁰⁰ Boucher & Holt, *supra* note 65, at 54. See also U.N. General Assembly, Contributions received for 2024 for the UN Regular Budget — Committee on Contributions, <https://perma.cc/QSQ3-FV43>.

U.N. Office of Programme Planning, Budget and Accounts.¹⁰¹ The exception is the Analytical Support and Sanctions Monitoring Team, which is funded through a U.N. trust fund toward which U.N. Member States may make voluntary contributions.¹⁰²

Experts serving on SBSCs are hired by the U.N. Secretariat and paid from the U.N. budget or a U.N. trust fund, though they are not U.N. staff. They have a mandate from the Security Council, a principal U.N. organ, and serve “under the direction” of Security Council committees,¹⁰³ but are expected to work independently of the U.N. Although they must remain impartial, their success depends at least in part on the strength of their relations with U.N. Member States and the cooperation they receive from them.¹⁰⁴ Against that background, the report of the 2015 High-Level Review of U.N. Sanctions (High-Level Review), co-sponsored by Australia, Finland, Germany, Greece, and Sweden, noted a “tension [. . .] between the role and character of [SBSCs], as envisaged in Security Council resolutions, and the contractual and administrative arrangements under which they operate.”¹⁰⁵

4.2. Appointment of Experts to SBSCs

At least some criteria and competencies for selection onto an SBSC may be identified. According to an “internal UN handbook”, in order to serve on an SBSC, an individual must be “an authority or specialist in an area directly related to the mandate of the expert group on which he or she is recruited to serve”.¹⁰⁶ Further, according to the High-Level Review, experts must possess “personal strength to endure the rigours of fieldwork in often dangerous environments and to maintain their independence and impartiality in the face

¹⁰¹ U.N. Office of Internal Oversight Services, Rep. 2018/074, *supra* note 53, at 8.

¹⁰² See S.C. Res. 1363 (July 30, 2001), ¶ 9.

¹⁰³ See, e.g., *supra* note 77 and accompanying text.

¹⁰⁴ See U.N. Doc. A/69/941-S/2015/432, *supra* note 50, at 39; UNITED NATIONS SECURITY COUNCIL CONFLICT MANAGEMENT HANDBOOK, *supra* note 83, at 206.

¹⁰⁵ U.N. Doc. A/69/941-S/2015/432, *supra* note 50, at 37. The High-Level Review “convened numerous Member States, the [U.N.] Secretariat, [. . .] other UN bodies and international organizations, [. . .] practitioners and experts from the public and private sectors” to produce a set of recommendations aimed at “refin[ing] [U.N.] sanctions and their implementation to better protect nations and victim communities, enhance the preventive benefits of sanctions, and shape targeted measures with even greater precision.” *Id.* at 5.

¹⁰⁶ Farrall, *supra* note 16, at 206 (quoting the *Handbook for members of Panels/Groups of Experts and Monitoring Groups/Mechanisms/Teams Established by the Security Council to Monitor Compliance with Sanctions Regimes* (2006), an internal U.N. document accessed by Farrall).

of political pressure.”¹⁰⁷ The Security Council, for its part, has “commit[ted] to ensuring that the relevant expert groups for sanctions committees have the necessary gender expertise”¹⁰⁸ and has “[e]ncourage[d] the Secretary General to ensure that [SBSCs] for sanctions committees include members with dedicated sexual violence and gender expertise.”¹⁰⁹ Citizens of all U.N. Member States are eligible for recruitment to SBSCs, but Security Council members sometimes “discreetly lobby” in favor of their own nationals.¹¹⁰

The U.N. Secretariat’s SCAD is responsible for the bulk of the hiring process.¹¹¹ According to one interviewee, this allows the Secretariat considerable discretion over SBSC appointments. Following the establishment of an SBSC by the Security Council, SCAD’s Subsidiary Organs Branch engages in an outreach process to identify potential candidates, conduct interviews, and prepare a draft list of experts.¹¹² Normally, the Security Council decision establishing the SBSC does not set out the precise areas of expertise required; instead, these aspects are determined by SCAD in consultation with Security Council members.

One key source for identifying potential candidates is SCAD’s “pool of experts.”¹¹³ Candidates can directly apply for inclusion on that roster¹¹⁴ or be nominated by other bodies, including States, academic organizations, and non-governmental organizations.¹¹⁵ A “dedicated team within SCAD” screens candidates for inclusion on the roster.¹¹⁶ While it is difficult to accurately and comprehensively identify the criteria used by SCAD to vet candidates for inclusion on the roster, relevant criteria include integrity, professionalism, and expertise in a number of fields relevant to sanctions monitoring, variously including

¹⁰⁷ U.N. Doc. A/69/941-S/2015/432, *supra* note 50, at 37.

¹⁰⁸ S.C. Res. 2242 (Oct. 13, 2015), ¶ 6. *See also* S.C. Res. 2374 (Sept. 5, 2017), ¶ 12; S.C. Res. 2399 (Jan. 30, 2018), ¶ 35.

¹⁰⁹ S.C. Res. 2467 (Apr. 23, 2019), ¶ 11. *See also* S.C. Res. 2662 (Nov. 17, 2022), ¶ 44.

¹¹⁰ *See* SEC. COUNCIL REP., *supra* note 19, at 8.

¹¹¹ DPPA Fact Sheet, *supra* note 4, at 4.

¹¹² *See* Farrall, *supra* note 16, at 207; Cater, *supra* note 31, at 91. *See also* U.N. Doc. ST/SGB/2009/13, *supra* note 84, at 9 (“The core functions of the [Secretariat’s] Security Council Subsidiary Organs Branch [include] [i]dentifying [and] recruiting [. . .] consultants who serve as members on panels of experts established by the Security Council.”).

¹¹³ *See* Farrall, *supra* note 16, at 207. Prior to the establishment of the roster, the Secretariat would directly propose candidate names to the Security Council, usually based on suggestions from Member States. Wallenstein, Staibano, & Eriksson, *supra* note 18, at 35.

¹¹⁴ DPPA Fact Sheet, *supra* note 4, at 43; U.N. Security Council, Security Council Affairs Division Pool of Experts, <https://perma.cc/SS43-XXRU> [hereinafter “SCAD Pool of Experts”].

¹¹⁵ U.N. Doc. S/2006/997, *supra* note 29, at 8.

¹¹⁶ DPPA Fact Sheet, *supra* note 4, at 43.

children and armed conflict, counterterrorism, finance, humanitarian affairs, human rights, or international law.¹¹⁷ The IWG on Sanctions has emphasized that “[s]election is based on the criteria of specialized expertise in the [relevant] area of competence and academic qualifications, with due regard to equitable geographic distribution, gender balance and references.”¹¹⁸ According to the Security Council’s website, SCAD pays particular attention to gender equality and geographic diversity in drawing up the roster,¹¹⁹ although it has reportedly found it “difficult” to achieve those goals.¹²⁰ As of 2020, only 36% of the experts ultimately selected to serve on SBSCs were women.¹²¹

As SCAD notes, however, inclusion on the roster is not a “guarantee or offer of employment.”¹²² Indeed, according to one interviewee, SCAD’s roster is one of many sources that may be consulted by SCAD. For example, SCAD may identify candidates through other, more ad hoc means, such as referrals from former panelists,¹²³ as well as nominations from Member States.¹²⁴ At least at the time of writing, typically, SCAD also identifies candidates through job openings for specific SBSCs in line with a U.N. administrative instruction requiring that, “[w]hen the services of a consultant or individual contractor are needed for more than six months, an opening shall be posted in the electronic platform provided for this purpose for a minimum of seven working days.”¹²⁵ The criteria and competencies set out in those job openings generally include: a minimum of ten years of progressively responsible experience, including a minimum of three years of field experience; an advanced university degree in international law, political science, international relations, relevant

¹¹⁷ SCAD Pool of Experts, *supra* note 114.

¹¹⁸ U.N. Doc. S/2006/997, *supra* note 29, at 8.

¹¹⁹ SCAD Pool of Experts, *supra* note 114. *See also* U.N. Department of Political and Peacebuilding Affairs, Women, Peace and Security Policy, at 15 (2023), <https://perma.cc/2VPR-LERA> (noting, as one of its “Women, Peace and Security Agenda Indicators”, the “[b]reakdown of [SBSCs] by gender, nationality, and area of expertise”).

¹²⁰ Boucher & Holt, *supra* note 67, at 48. *See also* SIEVERS & DAWS, *supra* note 12, at 544.

¹²¹ U.N. Women Data Hub, Women at the UN Security Council: a sea change in numbers (2022), <https://perma.cc/7TJ4-LVKB>.

¹²² SCAD Pool of Experts, *supra* note 114.

¹²³ *See, e.g.*, Boucher & Holt, *supra* note 65, at 45.

¹²⁴ U.N. Office of Internal Oversight Services, Rep. 2018/074, *supra* note 53, at 3 (“When the expert positions become available, DPPA issues notes verbales to Member States to propose qualified candidates.”).

¹²⁵ U.N. Doc. ST/AI/2013/4, *supra* note 63, § 4.2. *See, e.g.*, U.N. Careers, Job Opening, <https://perma.cc/2E88-A3FF> (for an armed groups expert to serve on the PoE for Mali) [hereinafter “Mali PoE Job Opening”]; U.N. Careers, Job Opening, <https://perma.cc/UA4E-MYK3> (for a non-proliferation and regional security expert to serve on the PoE on the DPRK); U.N. Careers, Job Opening, <https://perma.cc/X2CG-S3Q9> (for a finance expert to serve on the PoE for South Sudan).

technical field, or other relevant area, or, alternatively, a first-level university degree in combination with two additional years of qualifying experience; strong field research experience or investigative experience in the area of expertise; experience in writing high-quality reports; and proficiency and demonstrated drafting ability in English.¹²⁶ A number of other “desirable” criteria are typically included as well.¹²⁷

A draft list of candidates is drawn up by SCAD for each SBSC and then circulated to the relevant sanctions committee, on which all Security Council members are represented. A “no objection” process then follows, whereby any Council member may object to the appointment of a particular expert.¹²⁸ According to one interviewee, this is the key “filtration” step where candidates are accepted or rejected. One interviewee also noted that, when they do occur, objections are usually raised by one of the five permanent members of the Security Council (P5) (that is, China, France, Russia, the United Kingdom, and the United States) rather than by one of the ten non-permanent elected members (E10). The Security Council member raising the objection does not need to provide any reasons for objecting.¹²⁹ Once all names are approved, the Secretary-General issues a letter to the Security Council president with the names of the experts finally appointed to the SBSC.¹³⁰ While the finalized composition of each SBSC is available on the Security Council’s website,¹³¹ internal exchanges between Council members to finalize (or object to) potential appointments do not appear to be publicly accessible.

There appears to be no standardized performance-evaluation system for experts serving on SBSCs.¹³² An early source notes the prospect of “automatic re-appointment” of experts—potentially including underperforming experts—

¹²⁶ U.N. Doc. ST/AI/2013/4, *supra* note 63, § 4.2. *See, e.g.*, Mali PoE Job Opening; U.N. Careers, Job Opening, <https://perma.cc/UA4E-MYK3> (for a non-proliferation and regional security expert to serve on the PoE on the DPRK); U.N. Careers, Job Opening, <https://perma.cc/X2CG-S3Q9> (for a finance expert to serve on the PoE for South Sudan).

¹²⁷ Desirable criteria might include, for example, working knowledge of another official U.N. language, a demonstrated understanding of U.N. sanctions regimes, and knowledge of U.N. rules, regulations, and institutional structures. *Id.*

¹²⁸ Farrall, *supra* note 16, at 207.

¹²⁹ Johnsen, *supra* note 62; consultation with an expert on Apr. 21, 2024.

¹³⁰ *See, e.g., supra* note 94.

¹³¹ *See, e.g.*, U.N. Security Council, Al-Shabaab Sanctions Committee Panel of Experts: Appointments of the experts, <https://perma.cc/HYX5-MUU2>; Security Council, The Democratic Republic of Congo Sanctions Committee Group of Experts: Appointment of the experts, <https://perma.cc/Z62H-4J6L>.

¹³² Boucher & Holt, *supra* note 65, at 48.

upon mandate extension.¹³³ But the more recent High-Level Review notes that contract renewals for experts may instead be based on “re-interview[s]”¹³⁴

5. WORKING METHODS

5.1. Investigation and Reporting

To help support their independence, SBSCs are afforded flexibility in determining their own working methods, including with respect to evidentiary standards and requisite degrees of corroboration.¹³⁵ Accordingly, rather than conforming to an externally imposed set of codified rules, SBSC working methods reflect best practices developed over years.¹³⁶ It may therefore be unsurprising that much of the information concerning SBSCs’ working methods comes from interviews with former or current SBSC members¹³⁷ or works authored by former SBSC members.¹³⁸

To collect information as mandated, SBSCs rely on a combination of tools, including the following:

- “official correspondence”, that is, letters signed by the SBSC coordinator and dispatched by the U.N. Secretariat to the entity from whom information is being sought: States, individuals, corporations, for instance¹³⁹ (SBSCs can also reach out to Member States to seek clarifications or verifications);
- travelling to the relevant region(s) in order to conduct field investigations;¹⁴⁰
- interviewing potential violators, including those deemed eligible for designation under a relevant sanctions regime;¹⁴¹

¹³³ Vines, *supra* note 19, at 258.

¹³⁴ U.N. Doc. A/69/941-S/2015/432, *supra* note 50, at 39.

¹³⁵ See INT’L PEACE INST., *supra* note 81, at 2; consultation with an expert on Apr. 21, 2024.

¹³⁶ See U.N. Doc. S/2006/997, *supra* note 29, at 7.

¹³⁷ See, e.g., Boucher & Holt, *supra* note 65.

¹³⁸ See, e.g., Cater, *supra* note 31; Johnsen, *supra* note 62; Vines, *supra* note 19.

¹³⁹ Cater, *supra* note 31, at 92. See also U.N. Security Council, Final Report of the Panel of Experts on the Sudan Established Pursuant to Resolution 1591 (2005), Annex 4: Summary of Panel Correspondence (12 February-29 November 2015), U.N. Doc. S/2016/805, at 63 (Sept. 22, 2016).

¹⁴⁰ See, e.g., S.C. Res 1591 (Mar. 29, 2005) ¶ 3 (b); ISIL/Al-Qaida Committee Guidelines, *supra* note 38, at 21; Cater, *supra* note 31, at 92.

¹⁴¹ Cha, Stolz, & Wammes, *supra* note 37, at 8.

- reviewing publicly available databases and secondary sources;¹⁴²
- reviewing “media, including social media, on [relevant] issues and cases”;¹⁴³ and
- cooperating with a range of other entities as relevant, including the International Civil Aviation Organization, Interpol, the Financial Action Task Force, the World Customs Organization, and peacekeeping operations deployed in relevant States, as well as the U.N. Special Representatives on Children in Armed Conflict and on Sexual Violence in Armed Conflict.¹⁴⁴

Evidentiary standards followed by SBSCs are ad hoc and may vary. According to one author, SBSC investigations do not need to adhere to “the highest legal standard of ‘[proof] beyond a reasonable doubt’ but rather something closer to a ‘preponderance of evidence.’”¹⁴⁵ Arguably, however, it is in the interest of SBSCs to ensure that their findings are substantiated by sufficient and credible evidence. That is partly because a perception of a lack of rigor in the methods adopted by an SBSC could cast doubt upon the accuracy and reliability of the report and, possibly, even the legitimacy of the sanctions regime.¹⁴⁶ Furthermore, findings in SBSC reports have propelled investigations and prosecutions at the domestic level on at least some occasions.¹⁴⁷ The U.N. Office of Legal Affairs reportedly advises SBSCs to ensure that their allegations are supported by at least two degrees of corroboration—that is, through two independent, verifiable sources—but it is not clear whether this recommendation has been consistently followed.¹⁴⁸ For its part, the IWG on Sanctions has called for the establishment of “clear guidelines” for investigation

¹⁴² See, e.g., DRC Sanctions Committee Guidelines, *supra* note 44, at 12; Cater, *supra* note 31, at 92.

¹⁴³ See, e.g., Mali PoE Job Opening, *supra* note 125.

¹⁴⁴ See S.C. Res. 2610 (Dec. 17, 2021), Annex I, ¶ (u); DPPA Fact Sheet, *supra* note 4, at 4, 8, 13, 15, 21, 27, 29, 31; Boucher, *supra* note 9, at 2; consultation with an expert on Apr. 21, 2024.

¹⁴⁵ Cater, *supra* note 31, at 92.

¹⁴⁶ See U.N. Doc. S/2006/997, *supra* note 29, at 7; Wallensteen, Staibano, & Eriksson, *supra* note 18, at 35–6.

¹⁴⁷ See, e.g., Hof’s-Hertogenbosch 21 april 2017, Rechtspraak.nl 2017 (defendant name pseudomized) (Neth.) (“The defendant was [. . .] mentioned in a negative sense in the December 2000 report drawn up by the ‘Panel of Experts’ appointed by the [. . .] Security Council, which among other matters investigated ‘the link between trade in diamonds and trade in arms and related materials’ with regard to Sierra Leone.”); Arms dealer and timber trader Guus Kouwenhoven found guilty of breaking a UN arms embargo, Global Witness (2006), <https://perma.cc/62KS-42NN> (noting that an SBSC report, among other sources, “directly led to an investigation by the Dutch Ministry of Justice into the activities of [the accused]”); Alex Vines, *Can UN Arms Embargoes in Africa Be Effective?*, 83 INT’L AFFAIRS 1107, 1114–1115 (2007) (noting the reliance of Belgian authorities on SBSC reports to “achieve[] a successful prosecution”). See also U.N. Doc. S/2006/997, *supra* note 29, at 10–11; Boucher, *supra* note 9, at 4; Boucher & Holt, *supra* note 65, at 61; SIEVERS & DAWS, *supra* note 12, at 545.

¹⁴⁸ Consultation with an expert on Apr. 21, 2024. See also Wallensteen, Staibano, & Eriksson, *supra* note 18, at 42.

and reporting by SBSCs.¹⁴⁹ The IWG on Sanctions has set out, in this connection, a number of suggested improvements regarding SBSC working methods, including with respect to identifying sources insofar as possible, corroborating findings through “credible sources,” and offering those named as violators in SBSC reports a “right of reply.”¹⁵⁰ At the same time, several experts surveyed for the High-Level Review stated that such efforts to standardize SBSC working methods may compromise experts’ “dexterity and [. . .] independence,” particularly in view of the differences in mandates among different SBSCs.¹⁵¹ Notably, the IWG’s recommendation that SBSCs set out their respective methodologies in their reports seems largely to have been followed.¹⁵² According to an interviewee, while neither the relevant sanctions committee nor individual Member States can compel an SBSC to change an element of its report, the SBSC may, either on its own initiative or in light of certain external pressures, decide to adjust certain elements.¹⁵³

5.2. Information Management

SBSCs regularly handle information of a politically sensitive nature, which may partly explain the opacity with which they operate.¹⁵⁴ Yet at least some SBSCs reportedly rely on “[un]sophisticated” information-management systems, and sources might therefore be unwilling to share confidential or sensitive information with them.¹⁵⁵ SBSCs also lack a centralized information-management system, meaning that information collected during one SBSC’s mandate may be transmitted to subsequent iterations of the same SBSC in

¹⁴⁹ U.N. Doc. S/2006/997, *supra* note 29, at 7. *See also* Wallenstein, Staibano, & Eriksson, *supra* note 18, at 35–6, 42.

¹⁵⁰ U.N. Doc. S/2006/997, *supra* note 29, at 11–12; Wallenstein, Staibano, & Eriksson, *supra* note 18, at 47.

¹⁵¹ U.N. Doc. A/69/941–S/2015/432, *supra* note 50, at 26.

¹⁵² *See, e.g.*, U.N. Security Council, Joint report of the Counter-Terrorism Committee Executive Directorate and the Analytical Support and Sanctions Monitoring Team pursuant to resolutions 1526 (2004) and 2253 (2015) concerning Islamic State in Iraq and the Levant (ISIL) (Da’esh), Al-Qaida and the Taliban and associated individuals and entities on actions taken by Member States to disrupt terrorist financing, prepared pursuant to paragraph 37 of Security Council resolution 2462 (2019), U.N. Doc. S/2020/493, at 4 (Jun. 3, 2020); U.N. Security Council, Letter dated 1 September 2022 from the Panel of Experts on Somalia addressed to the Chair of the Security Council Committee pursuant to resolution 751 (1992) concerning Somalia, U.N. Doc. S/2022/754, at 6 (Oct. 10, 2022). *See also* U.N. Doc. S/2006/997, *supra* note 29, at 11.

¹⁵³ *See, e.g.*, Johnsen, *supra* note 62; consultation with an expert on Apr. 21, 2024. *See infra* Section 6: Key Challenges.

¹⁵⁴ *See* Astrid Forberg Ryan, *Sanctions Implementation and the UN Security Council: The Case for Greater Transparency*, INT’L PEACE INST. 5 (2014).

¹⁵⁵ U.N. Doc. A/69/941–S/2015/432, *supra* note 50, at 40.

an unsystematic manner.¹⁵⁶ This issue, which the Stockholm Process on Targeted Sanctions identified in 2003, appears to persist.¹⁵⁷ Guidelines for certain sanctions committees, however, provide that their respective SBSCs shall store information on a database accessible by both the relevant committee and the SBSC itself.¹⁵⁸ Similarly, experts have recommended the establishment of detailed hand-over processes between outgoing experts and incoming experts.¹⁵⁹

There is currently no formal mechanism for the exchange of information or ideas among SBSCs. One recommendation in the High-Level Review concerned the creation of cross-SBSC “contact groups” for each area of expertise (for example, natural resources or finance).¹⁶⁰ Such cross-pollination mechanisms might arguably enhance SBSCs’ efficiency and effectiveness—for example, by helping ensure that one SBSC does not duplicate the work of another.¹⁶¹

6. KEY CHALLENGES

Security challenges. The Security Council has “[u]rge[d]” States to ensure the safety of SBSC members.¹⁶² Yet, at least according to one expert, “[e]xperts are sent to some of the most dangerous and difficult locations in the world for their work [and yet] [t]heir conditions of travel are the worst of anyone engaged by the [U.N.]”¹⁶³ Potentially insufficient safety arrangements by the U.N. may be particularly concerning in light of the threats to physical security faced by SBSC members travelling to violent or otherwise unstable settings to collect information, including risks of reprisal from individuals or entities under investigation.¹⁶⁴ For example, in 2017, two members of the PoE on the

¹⁵⁶ Cater, *supra* note 31, at 101.

¹⁵⁷ *Id.* See also Wallenstein, Staibano, & Eriksson, *supra* note 18, at 36.

¹⁵⁸ See, e.g., DPRK Sanctions Committee Guidelines, *supra* note 36, at 6; ISIL/Al-Qaida Committee Guidelines, *supra* note 38, at 12; Al-Shabaab Sanctions Committee Guidelines, *supra* note 39, at 13.

¹⁵⁹ U.N. Doc. A/69/941-S/2015/432, *supra* note 50, at 39 n.10.

¹⁶⁰ *Id.* at 23.

¹⁶¹ Wallenstein, Staibano, & Eriksson, *supra* note 18, at 36.

¹⁶² See, e.g., S.C. Res. 2374 (Sept. 5, 2017), ¶ 15; S.C. Res. 2127 (Dec. 5, 2013), ¶ 60.

¹⁶³ U.N. Doc. A/69/941-S/2015/432, *supra* note 50, at 38.

¹⁶⁴ *Id.* at 39; Cater, *supra* note 31, at 102; Colum Lynch, *Congolese Cover-Up*, FOREIGN POLICY (Nov. 27, 2018), <https://perma.cc/EU7C-KKAA>.

DRC were killed while conducting field investigations in a village in Kasai.¹⁶⁵ A board of inquiry's finding that the experts had been "murdered" by "militia members"¹⁶⁶ was considered an insufficient response by some observers.¹⁶⁷

Insufficient support from the Secretariat. In its report on general issues of sanctions, the IWG on Sanctions recommended that the Security Council ensure, in relevant decisions, that SBSCs have sufficient "logistical and budgetary support [. . .] to fulfil their mandates".¹⁶⁸ However, capacity limitations at the U.N. Secretariat coupled with the proliferation of SBSCs in recent years have reportedly constrained the Secretariat's ability to provide the necessary support to SBSCs.¹⁶⁹ In particular, better orientation processes at the initiation of an SBSC's mandate, including with regard to the "terms and conditions of experts' contracts", reportedly may be needed to enable SBSCs to function efficiently.¹⁷⁰ One author described the Secretariat's approach to addressing these limitations as "complacent".¹⁷¹ A 2018 review by the U.N.'s internal oversight body concluded that such "[s]upport [. . .] was adequate and effective" while also identifying certain challenges, including a lack of consistency in the orientations provided to SBSCs.¹⁷²

Lack of cooperation in investigations. The Security Council has repeatedly urged States, U.N. bodies, and other interested parties to cooperate with SBSCs, including by sharing information relevant to the implementation of Council-decided measures and facilitating their access to relevant sites.¹⁷³ Yet a number of States have refused to cooperate with SBSCs for purportedly meddling in their internal affairs.¹⁷⁴

Potential conflicts of interest and interference by States. Certain States have expressed concerns about a lack of adequate checks and balances with respect to safeguarding against conflicts of interest on the part of SBSC

¹⁶⁵ Lynch, *supra* note 164.

¹⁶⁶ U.N. Security Council, Report of the United Nations Security Management System Board of Inquiry on the critical security incident resulting in the deaths of two members of the Group of Experts in Kananga, Democratic Republic of the Congo, U.N. Doc. S/2017/713, at 5 (Aug. 16, 2017).

¹⁶⁷ Cater, *supra* note 31, at 102.

¹⁶⁸ U.N. Doc. S/2006/997, *supra* note 29, at 4–5.

¹⁶⁹ See Boucher, *supra* note 9, at 4; U.N. Doc. A/69/941–S/2015/432, *supra* note 50, at 39; Cater, *supra* note 31, at 102.

¹⁷⁰ U.N. Doc. A/69/941–S/2015/432, *supra* note 50, at 39.

¹⁷¹ Cater, *supra* note 31, at 103.

¹⁷² U.N. Office of Internal Oversight Services, Rep. 2018/074, *supra* note 53.

¹⁷³ See, e.g., S.C. Res. 2680 (Mar. 23, 2023), ¶ 6; S.C. Res. 2627 (Mar. 25, 2022), ¶ 6.

¹⁷⁴ See, e.g., Boucher, *supra* note 9, at 4. See also *infra* note 179 and accompanying text.

members.¹⁷⁵ For example, according to one interviewee, experts serving on an SBSC may, but do not have to, recuse themselves in the event of a potential conflict of interest, including in contexts where their State of nationality is implicated. In that connection, one former member of the PoE on Yemen has observed that, while the notion of “independence” may appear to suggest that “members of the Security Council don’t get a say on what makes it into the various [SBSC] reports, [. . .] that doesn’t stop many [Council members] from trying.”¹⁷⁶ Indeed, pressure by Member States, in particular by members of the P5, aimed at persuading SBSCs to weaken or strengthen certain claims in their reports, has been characterized as “common” by a specialist in this area.¹⁷⁷ The “independent” operation of SBSCs may be further undermined by Council members seeking to block the transmission or publication of SBSC reports containing critical references. For example, States—particularly members of the P5—have sometimes sought to delay the transmission of reports accusing them or their partners of complicity in sanctions violations.¹⁷⁸ Disgruntled Council members have also relied on the consensus-based decision-making system of sanctions committees to indefinitely block the appointment of members of certain SBSCs.¹⁷⁹

Non-standardized working methods. SBSCs’ ability to “name and shame” violators, coupled with their arguably non-standardized working methods and evidentiary standards, has occasionally given rise to concern. Several European and African States that had been named in a report by the PoE on Angola challenged that PoE’s methodology.¹⁸⁰ Further, there was a “public backlash” against the PoE on Illegal Exploitation of Wealth and Natural Resources in the DRC in the wake of its report “naming and shaming” specific

¹⁷⁵ See, e.g., U.N. Doc. A/69/941-S/2015/432, *supra* note 50, at 37.

¹⁷⁶ Johnsen, *supra* note 62.

¹⁷⁷ Consultation with an expert on Apr. 21, 2024. See also Colum Lynch, *Russia Blocks U.N. Report Linking Alleged Sudanese War Criminal to Gold Profiteering*, FOREIGN POLICY (Apr. 4, 2016), <https://perma.cc/2CNU-WC8A>.

¹⁷⁸ See, e.g., Lynch, *supra* note 177; *Russia blocks UN report on Darfur militia mining*, FRANCE 24, Apr. 5, 2016, <https://perma.cc/GVN3-85AH>; U.N. Doc. S/2016/805, *supra* note 139; Louis Charbonneau, *U.N. Council Gets Sudan Report That Infuriated China*, REUTERS, Nov. 12, 2010, <https://perma.cc/7X4W-L32G>. See also SIEVERS & DAWS, *supra* note 12, at 527–528.

¹⁷⁹ Cater, *supra* note 31, at 91; SEC. COUNCIL REP., *supra* note 19, at 8. See also Johnsen, *supra* note 62; Chad O’Carroll, *Future of North Korea Sanctions Panel in Limbo Amid U.N. Security Council Dispute*, NORTH KOREA NEWS, May 3, 2023, <https://perma.cc/Y8HS-TTKR> (describing a recent clash among the P3, Russia, and China on the role of a U.K. expert on the PoE on the DPRK, resulting in delays in the continuation of the PoE).

¹⁸⁰ Vines, *supra* note 19, at 250–251.

companies for alleged involvement in fueling the conflict in the DRC.¹⁸¹ States consulted for the High-Level Review also expressed concerns about the evidentiary standards of SBSC reports.¹⁸² Further, in the absence of standardization, there may be room for internal disagreements between the members of an SBSC regarding the interpretation of that SBSC's mandate and working methods. On the PoE for the DPRK, for example, experts reportedly clashed on whether the PoE is primarily a body meant to document misdeeds (including with a view to the potential institution of legal proceedings at the domestic level) or a neutral, information-gathering mechanism.¹⁸³ From time to time, there have also been disagreements on whether to apply a heightened majority or a consensus rule so as to avoid indefinite gridlocks caused by one member of the SBSC.¹⁸⁴

Lack of due process. While the addition and removal of designees to and from sanctions lists is primarily the prerogative of the Security Council and its sanctions committees, SBSCs routinely name non-state actors characterized as being involved in sanctions violations.¹⁸⁵ Potentially undue reputational, legal, and financial risks to those individuals and entities may be particularly noteworthy in view of SBSCs' arguably ad hoc methodologies and inconsistent evidentiary standards, as well as the inconsistent availability of a "right of reply."¹⁸⁶ Further, SBSCs' reports may name individuals or entities subject to ongoing investigations; such individuals or entities may never be cleared in subsequent SBSC reports despite the SBSC terminating the investigation, including for reasons of insufficient evidence.¹⁸⁷

¹⁸¹ Boucher, *supra* note 9, at 1.

¹⁸² U.N. Doc. A/69/941-S/2015/432, *supra* note 50, at 25. See *supra* note 105 and accompanying text.

¹⁸³ Jeffrey Lewis, *Assessing the DPRK Panel of Experts*, 38 NORTH (Jul. 17, 2012), <https://perma.cc/8TF7-XT78>. The United States' briefings to that PoE on how best to conduct its work, which excluded Russian and Chinese experts serving on the PoE, reportedly further contributed to that uncertainty. *Id.*

¹⁸⁴ Consultation with an expert on Apr. 21, 2024.

¹⁸⁵ See, e.g., U.N. Doc. S/2022/754, *supra* note 152; U.N. Doc. S/2021/849, *supra* note 37. See also S.C. Res. 1533 (Mar. 12, 2004), ¶ 10 (g).

¹⁸⁶ Consultation with an expert on Apr. 21, 2024; U.N. Doc. A/69/941-S/2015/432, *supra* note 50, at 29; Boucher & Holt, *supra* note 65, at 61; U.N. Doc. S/2022/754, *supra* note 152, at 101; Luciana T. Ricart, *Due Process of Law in the Fact-Finding Work of the Security Council's Panels of Experts: An Analysis in Terms of Global Administrative Law*, 8 INST. FOR INT'L L. & JUST. EMERGING SCHOLARS PAPER 14 (2008); SIEVERS & DAWES, *supra* note 12, at 545. The Security Council has, for its part, adopted several measures concerning a right of reply, in addition to establishing certain review mechanisms, but SBSCs' efforts to do the same might not be considered adequate. On the suggestion that SBSCs should accord to "potential violators of sanctions [. . .], to the extent possible, [. . .] the 'right of reply'", see Cha, Stolz, & Wammes, *supra* note 37, at 8.

¹⁸⁷ Consultation with an expert on Apr. 21, 2024.

Lack of follow-up on SBSCs' recommendations. Member States, as well as experts serving on SBSCs, have expressed disappointment at the Security Council's lack of implementation of recommendations made in certain SBSC reports.¹⁸⁸ According to one author, SBSC recommendations concerning intrastate conflicts are particularly neglected in comparison with those pertaining to counterterrorism; in part, this may be due to the P5's relative agreement on certain counterterrorism aspects compared to a difference of views among some of its members on certain country-specific conflicts.¹⁸⁹ Another potential reason may concern the characterization of certain SBSC reports as overly "vague" in terms of actionable steps.¹⁹⁰ To address the gap in implementation, the IWG on Sanctions suggested that, where deemed appropriate, the Council provide reasons for non-implementation of SBSC recommendations.¹⁹¹ It is not clear whether the Council has directly followed that suggestion; a review of several recent texts renewing the mandates of SBSCs reveals that while the Council has adopted at least some SBSC recommendations,¹⁹² on other occasions the Council has simply "tak[en] note" of or "[r]ecall[ed]" relevant SBSC reports.¹⁹³

CONCLUDING OBSERVATIONS

While SBSCs do not themselves have the power to make decisions that bind Member States, their reports have proven capable, on certain occasions, of contributing to significant impacts in several respects. In 2012, for example, an SBSC report accusing Rwanda of violating an arms embargo resulted in the United States, Sweden, the Netherlands, the United Kingdom, and the

¹⁸⁸ Boucher, *supra* note 9, at 37. See also Cater, *supra* note 31, at 95–6, 101 (describing the "lack of uptake" of SBSC recommendations as "astonishing"); David Cortright, George A Lopez, & Linda Gerber-Stellingwerf, *Integrating UN Sanctions for Peace and Security*, SANCTIONS & SEC. RESEARCH PROG. 11–12 (2010).

¹⁸⁹ Cater, *supra* note 31, at 101.

¹⁹⁰ Wallenstein, Staibano, & Eriksson, *supra* note 18, at 44; Boucher, *supra* note 9, at 33; U.N. Doc. S/2006/997, *supra* note 29, at 14. A potential reason for such "vagueness" may concern capacity constraints. SBSCs often spend the bulk of their time investigating violations and collecting information and may not have sufficient capacity to guide States on implementation. U.N. Doc. A/69/941–S/2015/432, *supra* note 50, at 21.

¹⁹¹ U.N. Doc. S/2006/997, *supra* note 29, at 8.

¹⁹² See, e.g., S.C. Res. 2676 (Mar. 8, 2023), pmbl. (incorporating, at least implicitly, a recommendation by the PoE on Sudan by "encouraging the Government of Sudan to [. . .] operationaliz[e] the Joint Specialized Technical Committee"). See also U.N. Security Council, Final report of the Panel of Experts on the Sudan, U.N. Doc. S/2023/93, at 34 (Feb. 7, 2023).

¹⁹³ See, e.g., S.C. Res. 2713 (Dec. 1, 2023), pmbl.; S.C. Res. 2662 (Nov. 17, 2022), ¶ 2; S.C. Res. 2688 (Jun. 27, 2023), pmbl. See also Boucher, *supra* note 9, at 4.

European Union suspending aid to Rwanda.¹⁹⁴ Conclusions from a report by the PoE on Sierra Leone provided the basis for the establishment of a new sanctions regime in respect of Liberia.¹⁹⁵ Further, on at least some occasions, national authorities have relied on information documented in SBSC reports to institute criminal proceedings at the domestic level.¹⁹⁶ SBSC reports are also among the only publicly available U.N. sources of information concerning certain conflict situations.¹⁹⁷ As such, it is arguably important for SBSCs, in order to effectively discharge their mandates, to operate transparently, collect information rigorously, and base allegations of non-compliance on verified evidence. Several States have expressed the need for better due process in connection with allegations set out in SBSC reports, including by way of mechanisms to engage with SBSCs to correct or update reports after publication.¹⁹⁸ Certain non-Council members, for example, may be relatively ill-equipped to defend themselves in the face of potential allegations in SBSC reports. In that connection, Rwanda's objection to certain allegations made by the PoE on the DRC, which linked Rwanda with the M23 rebel group in the DRC, might be considered; without a seat on the Council, Rwanda was unable to prevent the PoE from publicly releasing those allegations.¹⁹⁹ A P5 member, on the other hand, can wield the veto to restrain SBSC reporting concerning information critical of a particular State, including itself.²⁰⁰ In 2023, for example, Russia, which has reportedly conducted certain military activities in Mali, proposed the dissolution of the PoE on Mali and, after that proposal was rejected, vetoed the renewal of the sanctions regime in respect of Mali.²⁰¹

Also relevant is the potential for information asymmetry between the P5 and the E10. According to one interviewee, the most important basic details of the ad hoc, inconsistent ways in which SBSCs conduct their work are best

¹⁹⁴ Louis Charbonneau, *Rwanda Refuses Visas for Two U.N. Congo Sanctions Experts*, REUTERS, Mar. 19, 2013, <https://perma.cc/5H6P-U69W>.

¹⁹⁵ STAIBANO & WALLENSTEEN, *supra* note 19, at 45; Vines, *supra* note 19, at 255.

¹⁹⁶ See *supra* note 147 and accompanying text.

¹⁹⁷ Alix J. Boucher, *U.N. Panels of Experts: They're About More than Just Monitoring Sanctions*, STIMSON CENTER 1 (2009).

¹⁹⁸ U.N. Doc. A/69/941-S/2015/432, *supra* note 50, at 25–6.

¹⁹⁹ SEC. COUNCIL REP., *supra* note 19, at 8; U.N. Security Council, Addendum to the interim report of the Group of Experts on the Democratic Republic of the Congo (S/2012/348) concerning violations of the arms embargo and sanctions regime by the Government of Rwanda, U.N. Doc. S/2012/348/Add.1 (Jun. 27, 2012).

²⁰⁰ See sources cited *supra* note 81.

²⁰¹ U.N. Press Release SC/15399, *supra* note 81; SEC. COUNCIL REP., *Mali: Vote to Renew the Sanctions Regime* (Aug. 30, 2023), <https://perma.cc/E58T-RZ49>.

known to the P5, who observe the functioning of SBSCs year after year. E10 members join the Council with relatively limited knowledge of SBSCs and are sometimes forced to play “catch up” during their tenure. According to one consultation, much of the information concerning SBSCs can be discussed internally among SCAD and Council members but not shared “outside”.²⁰² While SCAD holds multiple trainings for States after they are elected to the Council, prospective Council members likely lack access to those trainings and the information shared therein until the months leading up to assuming their position on the Council. Theoretically, at least, this means that prospective Security Council members cannot begin preparing comprehensively for effective engagement with SBSCs prior to their election. Certain States may be able to minimize this information asymmetry. It is also conceivable that E10 members with sufficient resources may, at least in theory, be able to obtain targeted legal and policy advice concerning the working modalities of the Security Council, including as pertains to SBSCs. Other E10 members, particularly those that face greater resource constraints, are thus less likely to have immediate access to practicable knowledge in this respect.

By many accounts,²⁰³ the process of hiring experts for SBSCs is both complex and opaque. One interviewee described SBSCs as “institutionalized cartels”, with informal “referrals” and automatic re-appointments functioning in lieu of a more transparent hiring process. This reportedly occurs despite a U.N. administrative instruction to the contrary.²⁰⁴ Similarly, it has been observed that resigning experts are regularly replaced by experts from the same State.²⁰⁵ The E10, in particular, have reported that the hiring process occurs without any meaningful substantive consultations.²⁰⁶ Several States consulted for the High-Level Review expressed concerns about purportedly undue P5 influence over the hiring process.²⁰⁷ Unlike the P5, certain E10 members may lack the capacity to dedicate institutional resources to track and influence SBSC appointments. One interviewee noted that sanctions departments in several African States are particularly understaffed, in notable contrast to most P5 States. According to another interviewee, Council members often

²⁰² This consultation was conducted over email on July 20, 2023.

²⁰³ See *supra* Section 4.2: Appointment of Experts; *supra* note 179 and accompanying text.

²⁰⁴ U.N. Doc. ST/AI/2013/4, *supra* note 63, § 5.8.

²⁰⁵ Ryan, *supra* note 154, at 5–6.

²⁰⁶ *Id.*

²⁰⁷ U.N. Doc. A/69/941-S/2015/432, *supra* note 50, at 37.

need to field over a hundred emails relevant to the Security Council portfolio in a single day; this likely requires considerable resources. Under-resourced States may not be able to engage as actively with SCAD with respect to the composition of SBSCs.

Theoretically, SBSC composition could be much more geographically varied than the composition of the corresponding sanctions committee, which reflects Security Council membership. In practice, however, despite a stated commitment to “geographic diversity”,²⁰⁸ SCAD has historically found it “difficult” to ensure such variation in SBSC composition.²⁰⁹ According to one interviewee, there is a perpetual P5 presence on SBSCs addressing matters concerning non-proliferation and counterterrorism.²¹⁰ For example, two of the five experts appointed to the PoE on Somalia in December 2022 were from P5 members;²¹¹ similarly, the eight members of the PoE on the DPRK always include experts from each P5 member, based on an “informal understanding” during the negotiation of Security Council resolution 1874 (2009) setting up the PoE.²¹²

²⁰⁸ SCAD Pool of Experts, *supra* note 114.

²⁰⁹ Boucher & Holt, *supra* note 65, at 48.

²¹⁰ *See* Ryan, *supra* note 154, at 5.

²¹¹ U.N. Doc. S/2022/981, *supra* note 94. The composition of the Analytical Support and Sanctions Monitoring Team, however, does not appear to be publicly accessible. *See, e.g.*, Secretary-General, Letter dated 26 January 2022 from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/2022/56 (Jan. 26, 2022).

²¹² Lewis, *supra* note 183; Lynch, *supra* note 24. *See also* S.C. Res. 1874 (June 12, 2009), ¶ 26; U.N. Security Council, Letter dated 27 June 2011 from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/2011/391 (Jun. 27, 2011).

ANNEX: SBSCs ACTIVE AS OF JUNE 2024

| | SUBSIDIARY BODY OF A SANCTIONS COMMITTEE | CORRESPONDING SANCTIONS COMMITTEE(S) | SIZE | LOCATION |
|----|---|--|---------------|-----------------|
| 1. | Analytical Support and Sanctions Monitoring Team | <ul style="list-style-type: none"> • ISIL (Da'esh) & Al-Qaida Sanctions Committee • Resolution 1988 (2011) Sanctions Committee | Ten experts | New York |
| 2. | Group of Experts on the Democratic Republic of the Congo | Democratic Republic of Congo Sanctions Committee | Six experts | Home-based |
| 3. | Panel of Experts on Libya | Libya Sanctions Committee | Six experts | Home-based |
| 4. | Panel of Experts on Somalia | Al-Shabaab Sanctions Committee | Six experts | Nairobi |
| 5. | Panel of Experts on South Sudan | South Sudan Sanctions Committee | Five experts | Home-based |
| 6. | Panel of Experts on Sudan | Sudan Sanctions Committee | Five experts | Home-based |
| 7. | Panel of Experts on the Central African Republic | Resolution 2127 (2013) Sanctions Committee | Five experts | Home-based |
| 8. | Panel of Experts on the Democratic People's Republic of Korea | Resolution 1718 (2006) Sanctions Committee | Eight experts | New York |
| 9. | Panel of Experts on Yemen | Resolution 2140 (2014) Sanctions Committee | Five experts | Home-based |

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