Tono Eitel New York, November 14, 2000
Security Council Working Group on General Issues on Sanctions

Mr. Chairman, (Amb. Anwarul Karim Chowdhury of Bangla Desh) it is a great honour for me to be called before your Committee; I am very grateful to you, and I enjoy being here again and under your chairmanship.

Sanctions are undoubtedly a most important tool in the Security Councils (SC's) arsenal when working for international peace and security. They are the sharpest instrument short of armed force. Since the mustering of combat troops has become more and more difficult, it is sanctions that the Council likes to turn to when harsh measures seem to be needed in order to redress a dangerous situation or to coerce an aggressor into withdrawal and reparations. This is legal and legitimate. In order to keep this instrument available and sharp, it has to be used only where appropriate. Otherwise it loses not only its justification but also its efficiency. I shall come back to this.

In my presentation I shall deal, in a personal capacity, only with UN-SC-Sanctions. I want to discuss **first** procedural, **second** substantial questions, ~~and~~ **third**, briefly, what I personally have been doing in this field through the German Foreign Ministry in cooperation with the UN-Secretariat, and fourth, make a few proposals where we could go from here.

1. Procedural questions are important not only in a court of law, but certainly also in a context where coercive measures are decided. I have some remarks to make regarding each of the 3 phases in which the SC is dealing with a sanctions régime: **a)** the imposition, **b)** the administration, and **c)** the termination of sanctions.

a) I have just said that sanctions are a sharp instrument, actually the sharpest short of the use of force. This makes the imposition of a sanctions régime upon a state a decision which is of the highest importance to the state targeted, to its allies, its trade partners, even its adversaries. It is therefor necessary for the targeted state and those states that take an interest in it to be able to interact with the Council already in the decision-making process. The drafters of the Charter and the Provisional Rules of Procedure (PRoP) must have been aware of this, since according to them the Council "unless it decides otherwise ... shall meet in public" (Rule 48 of the PRoP). Public meetings with "participation" of non-members whose "interests ... are specially affected" (Art. 31, 32) were meant to be the rule, non-public ones the exception. Due to a grave change of procedure it is now the other way around: The Council meets daily in its socalled 'Informal Consultations' behind closed doors, inaccessible to those who may have a vital interest in the sanctions project discussed. Only decisions that have been agreed upon to the last comma are taken to the 'Council Chamber' and are there publicly adopted, and only there interested members of the UN that are not members of the Council have a chance to address the Council - of course too late to change anything. The possibility for them to address the Council

in corpore during the crucial phase of decision-making has been completely lost. The poor Permanent Representatives (PR)of the targeted or interested states have to get their information through back-channels and then have to run to the PRs of all 15 Council members individually to plead their cause. This procedure does not violate the letter of any Charter Article or Rule of Procedure; Council members must be free to meet informally. The complete loss, however, of transparency and of the right of the concerned parties, e.g. the targeted state, to address the Council in corpore while it is still in the process of deliberation cannot, in my view, be reconciled with what the Charter calls "the principle of sovereign equality of all its (the organisations) Members" (Art.2 para 1). Here, as elsewhere, reform is urgently needed.
An other procedural requirement when deciding on the imposition of sanctions is clearness, above all in the wording and political will. I personally have witnessed in the Council the PRs of two Permanent Members disagreeing on the conditions for the termination of a certain sanctions régime, imposed some years before. This can and has to be avoided by precise and unambiguous drafting. Here is not the place for compromising 'constructive ambiguity', since the consequences are soon showing and are too grave.

b) The second procedural phase to which I want to turn now is the administration of sanctions, after their imposition has been decided upon.
Let me begin by saying that I greatly welcome the pro-active role the Chairmen of Sanctions Committees have been able to claim for themselves and their committees. It is them that are given the task of overviewing the implementation and they have to be informed, consulted even and to go, if necessary, to the region and other relevant places. When I was here the Secretariat gave information to certain Delegations, even consulted them, but explicitly refused to inform the chairman of the respective Sanctions Committee. He had to complain to the Secretary-General in order to get the promise that this would not happen again.
Another defect which apparently still prevails is the de facto veto of each of the 15 members of the Sanctions Committee on every decision concerning the target. In my experience, however, it were only Permanent Members that made use of the veto in a frequency that I felt was grossly exaggerated. And this what I would call 'veto in a wider sense' was employed actively and passively: There were 'Holds' and 'Blocks' whose reasoning did not convince me - and possibly others - at all. I recall the blocking of the bringing into Iraq of camera films which were to be used under a UNESCO project that intended to document losses in Iraqi archaeological museums caused by war and theft. In UNESCOs, and my, view this project was of high importance to the retrieval of Iraqi cultural assets, but it was not considered 'humanitarian' by all delegations. As far as a 'passive' use of the veto is concerned I recall a Swiss request of information regarding payments into and out of an escrow account; this question was not answered by the Sanctions Committee because two Permanent Members could not agree on a common position, while the other Committee members, including myself, could have waived behind either position.

After each session of the Sanctions Committee the Swiss had to be told that a reply could not (yet) be given. Other cases remained 'under scrutiny' in a capital for an indefinite period, thereby condemning the Committee to inertia. This need for consensus even in a subsidiary organ (Art. 29) is not only superfluous but doing great harm to "the performance of ... (the) functions" of the Sanction Committees. It is not prescribed by the Charter and should be discontinued. In order to be realistic one could foresee the referring back of sensitive cases of veto or inertia to the Council itself by either the respective delegation or the Chairman. This requirement of an appeal to the Council may discourage the abusive use of the veto. If this hope turned out to be false, more thorough solutions would have to be looked for.
Finally, I want to compliment the Chairmen of the Sanctions Committees for what they have achieved so far in enhancing the transparence of the Committees' work. Whatever seems feasible to let interested states and firms know earlier what the Committee intends to do is well done. It would also enhance the chances of interested firms whose state is not a member, to say nothing of permanent member, of the Committee to participate in allowed commercial transactions with the target.

c) In the last part of my procedural remarks I want to address the sensitive question of termination of sanctions. I shall come back to it in my chapter on substance, but here I want to draw your attention to a disturbance in vetos being used against the imposition of sanctions or against a termination that sometimes seems to be overlooked.
If a 'No!', formally expressed as a veto or indicated in the informal consultations, bars sanctions from being levied, no activity of states in implementing a sanction is required (and if they want, they may even impose sanctions, or what they think necessary, unilaterally or regionally). If, however, a 'No!' prevents sanctions from being lifted, all states have to continue burdensome administrative and other activities which they may deem unnecessary or even unjust and which regularly entail damage to their own interests. This must have effects on the compliance and may lead to the erosion of implementation and to sanctions busting. That this does harm to the Councils credibility and standing we have seen in the case of Iraq to which I shall return later. Thus, a veto may have different consequences regarding the Councils standing, depending on its being cast against an imposition, or against a termination of sanctions.

2. Turning now to the questions of substance I want to repeat what I said earlier: Sanctions are coercive, i.e. Art. 41 of the Charter gives them the only task of bending a state's, better a government's, will and behaviour. Sanctions are not, and absolutely not, a punishment. This is well known, but sometimes forgotten, if the sanctioned state, or again better its government, is deemed particularly repulsive. Moreover, sanctions are subject to international law which means they have to be proportional to the goal to be achieved. It would be illegal to lay waste to a country for a comparatively minor

goal. This is just another way to say that the collateral damage caused by sanctions must be weighed against their achievements. In short, sanctions have to be efficient in coercing and proportionate in damage.

a) A special kind of damage is the one done to states and people outside the targeted state. I refer here especially to Art. 5o of the Charter. The "right to consult the Security Council" has, as far as I see, not led to greater results. Sometimes, preferential treatment by a Sanctions Committee was all that was done, in the Iraq case the Compensation Commission is engaged in some relevant fields. The Council is not a juridical body, but it is not above the law either. Some sort of responsibility for damage caused by its action to outsiders - not to accomplices - must be acknowledged in a more efficient way than by just recommending the innocent victim to the charity of the international community. I think, the awareness of this need has been growing and I want only to register my support for efforts in this direction.

b) Damage, direct or collateral, suffered by the target or by outsiders, must be assessed before the imposition of the sanction and has to be followed and then reassessed from time to time. If the review leads to certain insights, consequences must be drawn, be they liked or not. Here I come to the case of Iraq. The Iraq sanctions régime has been modified several times, but has basically remained in place for about 10 years now. Although the 'operation desert storm' must have additionally weakened the country, the Iraqi government and administration appear totally unbent, even unimpressed and are busy enriching themselves. The population, on the other side, is suffering to an extent hard to imagine for the want of food, medical supplies and other humanitarian goods, to say nothing about education and culture. Iraq had been a thriving country, it is true in the Third World, but there it was positioned on the upper echelon. It is now among the poorest countries with high infant mortality and the like. Whose fault is this? It is, of course, the government of Saddam Hussein that has to be blamed. There is no being mistaken about that.

But this is not my point. My point is that the sanctions have proven, over ten years and a gruesome war, their inefficiency. After what I have said earlier, it is difficult for me to see how inefficient sanctions may be justified. But worse, they are not only inefficient as to Iraqi compliance, they make people suffer who quite clearly have no influence on the course of events. This collateral humanitarian damage is in view of the lack of the hoped-for result completely out of proportion. If not already their almost complete futility, then at least this hitting the wrong people leaves the Iraq sanctions, with or without 'Oil for Food', in my view in dire need of justification.

Of course, not only Saddam Hussein, also the United Nations Security Council has a face to lose. But two questions pose themselves in this context: First, does the Council lose its face by acting according to the Charter and general international law or rather by disregarding both? Second, even if there were a loss of face, is face saving a valid basis for extremely harsh

In the use of a metaphor: You want to shorten a rod of unknown material, you take your saw and notice that it does not work - the saw breaks but does not saw through the rod. The saw is an unfit tool for this particular task! You then put away this saw and look for another tool. But not so with the sanctions. There you continue sawing, thereby destroying the saw, which you should have needed for work of an entirely different kind?

Council action or better, inactivity?

c) There is another sanctions régime which makes me wonder about the Councils ability to target its sanctions against the real culprit: The sanctions against the Taliban. If I understand the relevant resolution (1267 (1999) of 15 October 1999) correctly, the real object is Usama bin Ladin, a rich man who is alleged to finance terrorism. What one, at least I, would expect is that this man's finances would be disentangled, ordered frozen, his assets sequestrated and his financial credit to the extent possible destroyed. Having taken him the means to do further damage, I might turn to bringing him to justice. In the Taliban sanctions, however, the major part of a large country is subjected to an aviation ban, but no word seems to be lost on Usama bin Ladin's finances. I find this hard to grasp.

Requests for extradition are a common fact of international relations. Some of the political or non-political criminals being wanted without success are allegedly responsible for the killing and torturing of hundreds or even thousands of people and to have thereby threatened or broken the peace. I therefor support the Councils interest in prominent extradition cases. However, to impose an aviation ban without freezing the wanted individual's finances seems in my view to cry out for a better targeting of sanctions.

3. I have always advocated reform of the SCs procedure and structure. But I am aware that this reform will take time. Targeting of the Council's sanctions, however, does not need time, does not need structural or procedural changes - it just needs the will to do it.

I have been involved in two more organized efforts in this field: The so-called 'Interlaken-Process' and the so-called 'Bonn-Berlin-Process'. They have been called 'Process' in order to signal an on-going enterprise and have been initiated at the request and undertaken with the continued assistance of the Secretariat. I want here to pay tribute to Director Joseph Stephanides and Ms. Tatiana Cosio for their encouragement, participation, and invaluable advice and help over the years. I can't think of my work without them.

a) The 'Interlaken-Process' was organized, by the way excellently and with international participation, by the Swiss government, in particular by the Swiss Federal Office for Foreign Economic Affairs under it's very active director Ambassador Rolf Jeker with 2 Seminars in Interlaken (Switzerland) and Working Groups' meetings between these Seminars. The 'Interlaken-Process' dealt with the targeting and the implementation of financial sanctions. In 1999 the Swiss published their so far final report which I can only recommend as a very helpful tool as far as drafting and implementing these sanctions are concerned. I understand that Rolf Jeker and others have briefed you here in person. That is why I can limit myself to an expression of admiration and gratitude.

b) The 'Bonn-Berlin-Process' could not do better than to

copy structure and procedure from the 'Interlaken-Process' to which it is in so far greatly indebted. It began with a seminar in Bonn in late 1999 and will, for the time being, be terminated with a seminar to be held in Berlin in about two weeks time. I am very sorry, Mr. Chairman, that apparently you are unable to make it to Berlin. You will be missed. I hope that Mr. Stephanides and other members of the Secretariat will be able to attend. The 'Bonn-Berlin-Process' has been organized under the auspices of the German Foreign Office by the 'Bonn International Center for Conversion'. The Process has devoted itself to two only losely connected topics: Arms embargoes on the one and travel and aviation bans on the other side. The arms embargo side has been chaired by Ambassadors Monteiro, Dahlgren and Peggy Mason. Antonio Monteiro has been with your Committee and explained their work. I shall therefor limit myself to a couple of remarks. As far as arms embargoes are concerned,

First remark: Arms embargoes are the SCs most frequently used instrument of coercion. It has been imposed in practically every sanction case. In my judgment it has rarely worked, because, first, of lacks and leaks in the implementation. You only have to look at the Afghanistan Sanction Committee's reports about the replies received from states on the implementation of Res. 1267 (1999). The United States replied almost 4 months after the adoption of the Resolution, the European Union, not being a state, does not reply - it's members do - but needed more than seven months after the adoption of the Resolution for its implementation. Moreover, a common feature of arms embargoes is sanction busting. Secondly, arms embargoes are normally imposed on a region of conflict, often without distinguishing aggressor and victim. This was, for example, the case with Bosnia and Herzegowina. Since the aggressor was well stocked in arms, the victim was — even more at a disadvantage and curtailed in its inherent right of self-defence (Art. 51). A permanent member of the Council tried, with some success, to help the aggressed Bosniacs to overcome this evidently unjust and illegitimate situation. This goes to show how important the work on arms embargoes in the 'Bonn-Berlin-Process' is. It is in the best hands, where I now shall leave it.

The 'Working Group on Travel and Aviation Bans'is chaired by myself. Michael Brzoska who is one of the two Rapporteurs, (the main Rapporteur being Koenraad van Brabant) has already been heard by you. The Working Group has been greatly helped by the UK authorities to whom I want to express my appreciation. Our report will get it's final touch in the Berlin meeting. Let me just highlight a few points.
We have drafted for Travel Bans and Aviation Bans separately language for SC Resolutions and added Comments on the reasons of our choice including other options where this seemed advisable. We have then looked into national implementation which is generally late and often poor. Following suggestions from Interlaken we are going to recommend a socalled 'Framework Law' for states and a 'Common Position' according to the Treaty of Maastricht (Art. 15, in the renumbering by the Treaty of Amsterdam) for the European Union whose unimpressive performance

in the case of the Taliban sanctions I have mentioned. This 'Framework Law' (and 'Common Position') would cover all future sanction cases and is meant to facilitate the implementation in each subsequent individual sanction case. For this implementation we shall also give some advice.
One point of special interest to the Working Group was the recommendation to be made to the SC regarding the requirement for a termination or suspension of the sanctions. We felt that the more comprehensive a sanction régime is, the greater ~~is~~ will be the damage done to the sanctioned country by an unjustified prolongation and the more urgent is therefor the need to provide for an objective termination (suspension) procedure like the one foreseen in the Eritrea/Ethiopia Resolution (1298 of 17 May 2ooo). On the other side, the more a sanctions régime is focused and targeted, the less probable is an unjustified prolongation - the result of the sanctions is more easily assessable - or, at ~~least~~, ~~it~~ is less harmful. This should, in my view, mean that e.g. an aviation ban is in greater need of an objective termination clause, like the one in SC Res. 1298 (2ooo), than a travel ban targeting a list of people.

4. Where should or could we go from here?

The report of my Working Group on Travel and Aviation Bans exists at present in a tentative manuscript of some 4o pages and will come out together with the reports of the Arms Embargoes Working Groups sometime early next year.

Questions which come to my mind and which could need an organized multilateral research by government experts and knowledgeable people frm NGOs and Academia and, of course, the help again of the Secretariat ~~are~~ could be the following three:

a) Sanctions not dealing with certain activities (e.g travel) or deliveries into the region, but dealing with commodities exported by a sanctioned régime, like oil or diamonds;
b) exemtions or exceptions for certain activities, ~~like cultural or religious events that might be considered 'humanitarian'~~;
c) secondary sanctions, i.e. consequences of sanction busting by states ~~and~~ or individuals.

The reputation of sanctions has somewhat suffered over the last years. We have to do all we can to give it back it's credit; we can't do without sanctions and a wide support for them.

Mr. Chairman, I thank you and the members of your committee for having listened to me. Of course, I am most willing to discuss points which you may find interesting or in need of correction.