



UN sanctions expert panels and monitoring mechanisms: Next steps

HUMAN SECURITY RESEARCH AND OUTREACH PROGRAM



Foreign Affairs
Canada

Affaires étrangères
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May 2006

Preface	1
Expert participants	2
Executive summary	3
Final report	5

Preface

This Fast Talk Team report draws upon the findings of an expert consultative process conducted by the Human Security Research and Outreach Program, supported by the Human Security Policy Division (GHS) of the Department of Foreign Affairs and International Trade (DFAIT). The Fast Talk Team concept was developed to provide DFAIT with a timely and flexible means to access high quality policy-relevant research with the objective of:

- generating perspectives on new or emerging issues;
- refreshing thinking on existing issues; or
- enhancing the effectiveness of conferences and workshops by developing a pre-conference dialogue which helps to frame issues, focus discussion, and build expert consensus.

Fast Talk Teams bring together officials seeking policy development input with prominent Canadian and international experts through a three-stage consultation process that can be completed in a time frame as short as 1-2 weeks. First, 4-6 experts are identified and asked to provide short 3-5 page written responses by e-mail to specific policy questions developed by DFAIT officials. Secondly, the officials and experts review the responses and participate in a 2-3 hour conference call to discuss them. Finally, a report summarizing the key findings of the written submissions and the conference call discussion is provided to all Fast Talk Team members for final comment and then circulated to officials.

The purpose of Fast Talk Teams is to generate policy-relevant research. They do not attempt to establish new policies for DFAIT or the Government of Canada. **Thus, the views and positions provided by this paper are solely those of the contributors to this research project and are not intended to reflect the views and positions of DFAIT or the Government of Canada.**

The Human Security Policy Division would like thank the Fast Talk Team leader, Charles Arnott, DFAIT colleagues, as well as the expert participants for their contributions to this Fast Talk Team effort.

Expert participants

Four experts participated in the March 2006 Fast Talk:

David Angell

High Commissioner for Canada to the Federal Republic of Nigeria

Ambassador of Canada to the Economic Community of West African States (ECOWAS)

Department of Foreign Affairs and International Trade (Canada)

David Cortright

President

Fourth Freedom Forum (USA)

Alex Vines

Head of the Africa Programme

The Royal Institute for International Affairs (Chatham House) (UK)

Peter Wallensteen

Professor, Department of Peace and Conflict Research

Uppsala University (Sweden)

Executive summary

With the mixed success of sanctions regime implementation and monitoring phases over the past decade, the Human Security Policy Division (GHS) at the Department of Foreign Affairs and International Trade (DFAIT) conducted a Fast Talk on UN sanctions expert panels and monitoring mechanisms in March 2006. Four experts were engaged to provide insight on this topic.

While monitoring has been strengthened considerably with the advent of independent monitoring mechanisms and expert panels, these groups have often underperformed due to unnecessary duplication of effort, a failure to capture institutional knowledge, and a lack of procedural guidelines. This Fast Talk sought to determine whether a permanent or semi-permanent monitoring mechanism would remedy these problems, or whether they would be best addressed by other means.

In general there was little support among the experts for a permanent or semi-permanent monitoring capacity for UN sanctions. One expert did argue in favour of the creation of a group with an 18-24 month mandate that would examine cross-cutting issues that affect all expert groups. Nevertheless the Fast Talk quickly moved away from the discussion of a permanent monitoring mechanism on to other methods of addressing the above-mentioned difficulties. Issues examined included the potential (or lack thereof) for engagement of certain actors -- including regional organizations, like-minded states, non-governmental organizations (NGOs), private firms, and peace support operations -- as well as various potential initiatives that could remedy problems with monitoring, such as the development of an information management system, the improvement of legal and evidentiary standards, and the creation of a Sanctions Coordinator.

Fast Talk results

Regional organizations often cannot tolerate the robust approach required for effective sanctions monitoring, and their capacity to play a meaningful part in the process is questionable. Even if their capacity was augmented, the crux of the problem would nevertheless remain political as many organizations do not want to become associated with monitoring groups and the controversy that they can incite. Sanctions regimes would be strengthened, however, if contiguous states were treated in a more holistic fashion by the Security Council.

While certain characteristics of **peace support operations** (PSOs) make them attractive as sanctions monitors, the peace support and sanctions monitoring mandates are often incompatible because PSOs cannot actively target sanctions violators if they are parties to a cease-fire agreement or peace process. In addition, PSOs often lack the capability to properly function in a monitoring capacity.

Civil society and private firms could be engaged either to conduct independent evaluation of the panels and their work, or to monitor the violations themselves. The experts strongly supported the former function, as there is little capacity in the UN Secretariat to engage in this type of activity and past work by groups such as Human Rights Watch has proven to be very useful to expert panels. The second function, however, received a much less positive review as it was felt that such activities would be especially vulnerable to litigation by targeted sanctions busters, and that there would be a significant risk for conflict of interest.

One proposal that received significant attention both in the written responses and during the conference call was the creation of an information management system or database. The archival procedures for the monitoring groups at present is antiquated and dysfunctional, and an **information management system** that could help retain institutional memory and cross-reference information would help discern common patterns of violation and improve coordination among monitoring groups.

There was concern among the experts that the **legal jurisdiction and liability** of monitoring groups pose significant difficulties. The legal jurisdiction of the groups is problematic as they are often required to name specific actors yet lack any form of legal or political authority to compel cooperation. Furthermore, expert groups are often the targets of legal grievances, and require greater legal training and assistance, especially with regard to the evidentiary standards to back up their claims.

It was also suggested that the work within the Secretariat could be better harmonized through the creation of a **Sanctions Coordinator** who would conduct in-house monitoring activities, coordinate the efforts of the Secretariat, and be the focal point for all sanctions activities with the goal of improving the lessons learned process.

Final report

This final report is the summary of the key ideas raised both in the written submissions of our experts, and in the subsequent conference call.

Monitoring performance

Are current monitoring arrangements for UN sanctions functioning adequately?

While the experts generally agreed that the effectiveness of monitoring groups has been improving, there was divergence among them over the degree of this progress. One expert described the working conditions of the expert groups as “extraordinarily difficult,” and argued that:

The professionalism of the monitoring teams is high, as is the quality of the information presented... The reports of the various monitoring teams are a treasure trove [of] expert analysis and primary source [of] information on the political, economic, and social conditions of countries subjected to sanctions, and on the degree of international compliance, or lack thereof, with Security Council sanctions.

A second expert suggested that “Panel reporting has improved and, judging from the recent Liberia report... the coverage of issues has become extensive.”

Others were less sanguine about the performance of monitoring groups. One argued that recent changes have come about “mostly due to sub-standard reports and litigation threats,” and that sanctions monitoring remains “an area of weakness.”

In what circumstances are they working or not working?

One of the major impediments to effective monitoring is the lack of cooperation between states and expert groups on the ground. One expert suggested that deficiencies in expert group reporting “result primarily from the lack of cooperation by states and non-state actors, not from institutional deficiencies at UN headquarters.” Monitoring groups are continuously stymied by the unwillingness of government officials, private companies and other actors to comply with requests for information on arms exports, customs

revenues or other related matters. According to the expert, "no amount of rearranging of institutional procedures within the sanctions committees or at UN headquarters will alter this problem."

Are there gaps in thematic or cross-cutting areas that all sanctions regimes need to address?

Thematic issues and problems related to monitoring included:

- **Legal jurisdiction and liability:** Legal jurisdiction is a concern for monitoring teams since they find themselves in a situation characterized by one expert as a "legal limbo," wherein they are often required to name specific individuals, corporate entities or states, yet lack any form of subpoena power, right to compel compliance, or recourse to the political authority of the Security Council. While Security Council resolutions and sanctions committees do request that states cooperate with monitoring groups, this is often insufficient to engender compliance.

Further difficulties surround the issue of the legal liability of the expert groups. Groups that are named as sanctions busters sometimes object to being included on lists of violators. While these "decisions belong to the Security Council ... and complaints should be addressed to it," the recommendations of the panels sometimes spur Security Council decisions, and as such the panels can become the targets of grievances. To date there have been a number of litigation "near misses," and only the impenetrability of the UN has protected it thus far.

As such, the evidentiary standards of the sanctions process and of the panel reports must be strengthened in order to address the legal vulnerability of the panels. It was suggested that panels should provide all of their evidence in their reports and that they should include detailed annexes to back up their claims (this does occur in certain instances, but should be more systematic and all annexes should be included in on-line reports). Secrecy of evidence should be discouraged, since the work of the panels must be transparent, and clear guidelines should be created to determine what information can be released immediately and what information should be subject to a "cooling off" period. Due diligence should be practiced not only for the naming of states as violators (as is the current practice), but also for claims made about commercial entities and individuals. In general, experts need better information and training on legal liability and evidentiary standards, which could manifest itself in the form of a Special Legal Advisor or a lessons learned document.

- **Institutional knowledge:** One deficiency that received significant attention both in the written responses and during the conference call was the lack of an information management system or database for expert panels. While certain panels have begun to exhibit good filing practices, there is no systematic storage or archiving of files and the current practices of the monitoring groups remain “antiquated and dysfunctional”:

Records of the many investigative panels and monitoring mechanisms established over the past decade are scattered about in numerous locations and are generally unavailable to new investigators. The former Al-Qaida/Taliban monitoring mechanism (Chandler group) left few or no files for the successor group. One Secretariat staff complained of unopened “boxes in the conference room.” A former expert panel member described “files sitting in my family’s apartment.”

It was unanimously felt that the creation of an information management system would be greatly beneficial to monitoring and enforcement. While one expert said that the process would “require perhaps two years of concerted effort” and “considerable financial investment,” others felt that it could be created fairly easily and for a fairly moderate cost. This type of system could not only provide panels with a means to retain institutional memory, but could also co-ordinate, mine and cross-reference information. This would provide guidance for Council decisions by discerning common patterns of sanctions violations and non-cooperation, and would improve coordination among monitoring groups by sharing information across groups investigating the same individuals or organizations. As one expert pointed out:

A review of various monitoring team reports from particular cases, or from separate cases in the same region ... reveals common patterns of sanctions violations, such as the same countries of origin and companies providing illegal arms shipments, or the same local officials and groups refusing to comply with information requests.

The identification of such patterns of non-cooperation through an information management system or database would mean that “monitoring teams would not have to start from scratch in their investigations of sanctions violations.”

- **Standardized reporting:** One suggestion for a costless and easily achievable initiative was to encourage the standardization of reporting formats. This could include the standardization of labels and titles so that reports could be more easily incorporated into the proposed database, as well as the standardization of presentation of reports and findings since “recommendations [in the panels’ reports] are not always easily discernible.”
- **UN bureaucracy:** One expert noted that the work of the experts is seriously hampered by the fact that it is extremely difficult for them to change their flights or rent 4x4 vehicles, and that experts often must lend each other travel money because of the difficulty in receiving reimbursement for costs incurred. This has a significant detrimental effect on the operational capabilities of the panels.

Solutions to monitoring challenges

What would be the benefits of a permanent or semi-permanent monitoring capacity? How would a permanent capacity differ from a semi-permanent capacity, which would be preferable and why? Is there a case to be made for a single, unified committee model rather than a regime-specific model?

While there was a general distaste among the experts for a permanent monitoring mechanism, one expert did suggest that a group of experts could be hired on an 18- or 24-month non-extendable contract to examine “big picture” issues. The group could conduct specific work on neglected sanctions regimes like Sierra Leone and Rwanda, and could offer suggestions about the future of the sanctions regime in Liberia. It could also perform advocacy functions for past reports, update databases, and engage in other work that addressed all sanctions regimes.

Another expert argued that the staff of the Sanctions Branch of the Secretariat already provide “a kind of permanent monitoring capacity” as they currently “provide political and substantive advice, serve as liaison with investigators in the field, provide support for missions, perform research, read and comment on draft reports, circulate reports, summarize findings for the sanctions committees, facilitate information-sharing among groups, and follow up on recommendations approved by the sanctions committees.” It was suggested that the largest risk associated with the creation of a semi-permanent mechanism is that it would “be more quickly corrupted by the UN culture of consensus.”

Implementation and follow-up

How could more systematic Security Council follow-up be encouraged?

The experts lamented the fact that the Security Council has rarely responded in a significant way to the recommendations and findings of the panels, despite the fact that the reports are filled with creative proposals and recommendations. According to one expert, "the fault for this lack of attention to implementing proposals for improved sanctions monitoring lies primarily with the Security Council, and the failure of sanctions committee chairs to spur the Council into action. The greatest need is for improved political decision-making on policy issues at the Council." Another expert argued that in fact a number of States that participate in the sanctions committees "would rather not have hard quality from expert group reports and this is an incentive for generic reporting rather than hard investigation."

How can the expertise necessary for monitoring panels best be developed and retained?

The quality of expertise on the panels received differing reviews. One expert argued that while the subsidiary organs branch has set up a database, "you can usually track appointments as being from recommendations of people already serving on panels and this isn't at times healthy." This problem is compounded by the fact that experts have often received extended tenure with rolling extensions that have "resulted in [panels'] effectiveness being blunted over time as consultancy [syndrome] kicks in and individuals become addicted to being involved for financial and prestige reasons." This provides one rationale for implementing time limits for consultants as well as for implementing some type of independent evaluation of these groups.

Another expert suggested, however, that panel members are increasingly drawn from a larger sector of expertise, and that the overlapping expertise among panels in fact provides an element of continuity to their work.

Alternatives to a permanent or semi-permanent capacity

If a permanent or semi-permanent monitoring capacity can not be realized, what should be done to improve monitoring?

One expert suggested that work within the Secretariat itself could be better harmonized through the creation of a Sanctions Coordinator who would conduct in-house monitoring activities, coordinate the efforts of the

Secretariat, and be the focal point for all sanctions activities with the goal of improving the lessons learned process.

Another expert suggested that sanctions committee chairs be encouraged through the provision of financial resources and administrative and research support to engage more fully in monitoring activities. Once provided with improved resources and support, chairs would be better placed to actively participate in the monitoring and enforcement process by traveling to the regions and meeting with representatives of governments, the UN, NGOs, international institutions, and the private sector. This would follow the example set by former Canadian Ambassador to the UN Robert Fowler who "as a senior diplomat and member of the Security Council... [brought] the prestige and authority of his position to bear in ways that contract investigators never could."

Are there other actors (NGOs, regional institutions, government actors, etc.) that could be engaged more effectively with regard to monitoring?

Other actors that could be engaged include:

- **Civil society and private firms:** The discussion concerning the engagement of civil society groups and private firms centered around two types of independent monitoring: evaluation of the panels and their work (a so-called "Sanctions Watch" function), and monitoring of actual sanctions violations.

Support for the first function was universal among the experts. The UN Secretariat does not maintain the expertise to effectively evaluate expert groups, especially in terms of the evidence they present before making allegations against a named country or individual. Past work by groups such as Human Rights Watch has been very useful to expert panels, and it was felt that further timely and well-researched reports and briefings could raise public awareness, provide committees with better information, and pressure experts and the Secretariat to improve the quality of reporting.

With regard to the monitoring of actual sanctions violations, one expert suggested that the UN could employ a consultancy company that specializes in the provision of monitoring services, since "the fact that a particular firm has had the contract earlier means it develops some institutional memory, but the likely competition at the same time ensures efficiency and quality in the operations."

Other experts, however, gave a much more tepid review to the idea of having NGOs, think tanks, or private organizations conduct monitoring activities. According to them, such activities would be particularly vulnerable to litigation, and it would therefore be very difficult to find organizations or individuals with the courage to take the bold approach required for meaningful monitoring. Additional concerns surrounded the creation of a contractual relationship between NGOs and governments, which would be too restrictive and would impinge upon the freedom of manoeuvre that is the inherent advantage of these organizations. The use of private firms in such functions was also described as problematic, as the contracting of financial tracking functions to a private firm by the Expert Panel on Angola produced results of questionable quality and raised concerns over a potential conflict of interest. Finally, private firms generally do not carry the moral sway of an independent expert panel.

- **Regional organizations:** Regional organizations often cannot tolerate the robust approach required for effective sanctions monitoring, and in fact are at times content to be excluded from such activities entirely. Their capacity to play a meaningful part in sanctions monitoring is questionable, and even the European Union -- the strongest such organization -- has had difficulty supervising its own sanctions outside its territory. Despite increasing recognition by bodies such as the Counter-Terrorism Committee that regional organizations can be targeted by capacity-building initiatives, the crux of the problem remains political since many organizations do not want to become associated with monitoring groups and the controversy that they can incite.

All experts felt that sanctions regimes would be strengthened if contiguous states were treated in a more holistic fashion by the Security Council. According to one expert, "the EU approach is to have one special representative for the Mano River region, thus bringing in such connections. So far, no sanctions panel has had that type of a regional orientation." Mandated cooperation between monitoring groups is one useful approach that has been used by the UN, and it may encourage coordination and suppress the competition that may occur amongst monitoring groups.

- **Peace support operations:** Certain characteristics of peace support operations (PSOs) make them attractive as sanctions monitors, including the considerable length of time that they remain in-theatre (thus building institutional memory), the fact that they often have their own legal experts, their ready access to governmental officials, and the increased authority and legitimacy garnered from monitors in uniform. Nevertheless, peace support and sanctions monitoring mandates can be inherently incompatible, since PSOs cannot actively target sanctions violators -- a task essential for monitoring success -- if those violators are parties to a

cease-fire agreement or peace process. Giving a PSO a secondary monitoring mandate could therefore risk the severe erosion of its capacity to implement its primary mandate of supporting the peace. What is more, PSOs often lack the capacity to properly function in a monitoring capacity. The strength of the relevant structures within PSOs are highly variable, and where they are weak (such as is the case in Côte d'Ivoire), proper investigation is only done when an expert panel is present.