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ANATOMY OF A SANCTIONS REGIME: A Case Study of Sixteen Years of Failed Efforts to Effectively Implement Sanctions in Somalia

This report examines in depth the longest running Security Council sanctions measure still in existence (16 years). We have chosen this case because the crisis in Somalia continues to be as serious as it has ever been since 1992. It remains on the Council's work programme and the humanitarian situation has dramatically worsened in recent months. Somalia is quite possibly the least successful example of Council-imposed sanctions. Historically, all sanctions regimes have presented challenges when it comes to implementation. But the arms embargo imposed on Somalia in 1992 has faced more difficulties than most. This report examines these difficulties. It suggests that some of the problem lay in the situation on the ground. There was no governmental entity with control over Somali territory. There was no customs or border control. But there were also problems the Council could have addressed, including weaknesses in design, unreasonable expectations of reliance on authorities in neighbouring countries to enforce the regime and lack of will to pursue diligently measures to enforce decisions or to adapt when the initial sanctions design proved wholly inadequate.

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1. Summary

Somalia is awash in weapons. For more than 17 years, there has been no viable central government. The ensuing clan-based and banditry fighting inflicted staggering hardships on the civilian population, including violence, displacement and starvation. By 2008, UN refugee officials estimated that, out of a population of nine million, there were about 457,000 Somali refugees outside Somalia with another one million internally displaced. Because most refugees are in neighbouring states this has put an enormous burden on the region.

In 1992, the Security Council imposed an arms embargo on Somalia, and this sanctions measure still remains on the books today. The Council has done little to enforce the sanctions. To the contrary, the quantities and variety of weapons entering the country have now reached their highest level since the early 1990s, UN-appointed monitors say.

In a sense it seems that for many years the arms embargo became a substitute for an active policy on Somalia following the failure of peacekeeping missions in the early 1990s. The main Council dynamic for more than a decade, after the withdrawal of the US military from Somalia in 1994 and the end of the UN peacekeeping mission in 1995, was one of neglect.

The Security Council threatened and cajoled, but until 2008 it did not seriously consider enforcement measures against violators such as financial or other targeted sanctions. It ignored many recommendations from its independent expert panel. Instead, it has resorted simply to repeating requests to member states to honour the embargo. At press time, the Council was discussing a new sanctions resolution that would impose targeted measures against peace spoilers and violators of the arms embargo. If this resolution is indeed adopted it will remain to be seen whether this measure will go beyond providing a new framework and whether a list of targets will follow.

Shortly after the Council adopted the arms embargo in January 1992 it created a Committee to oversee the sanctions. This group, composed of diplomats from all 15 Council members,

did little during the first eight years of its existence. It held only 15 formal meetings during that period. The Committee said it was waiting for cooperation from states and organisations in a position to provide pertinent information to it. There was no such cooperation.

Geography also worked against implementing the weapons ban. Somalia shares borders with Djibouti, Ethiopia and Kenya. It has a long, unpatrolled 3,200 kilometre coastline and a 1,600 kilometre frontier with Ethiopia, with limited border control on either side. Both Somalia and Ethiopia also have difficulty regulating unsecured airstrips through which arms can be transported. This lack of enforcement capacity still exists. And at times, neighbours and other regional states have turned a blind eye to arms transfers when it benefited their political allies in Somalia.

In the 1990s, the Council's Sanctions Committee took no steps to acquire direct knowledge of violations, despite overwhelming reports from the media and UN officials that weapons were flowing into Somalia unabated. Nor as the years went by did the Committee seek to employ techniques developed in other Council sanctions committees, such as those for the former Yugoslavia or even Iraq. At best, the Committee referred information it received to governments allegedly involved in smuggling arms. But these nations ignored it, or rejected the allegations.

In 2000, the Committee showed some signs of life and decided for the first time to seek the assistance of the Organization of African Unity (OAU) and the Intergovernmental Authority

on Development (IGAD), composed of North and East African nations. The Committee also noted it had no independent monitoring body and began to lobby for one, which the Council approved in 2002. (The 2001 terrorist attacks against the United States and reports from Afghanistan of Al-Qaida activities in Somalia may have stimulated some Council members to take the issues more seriously.)

In 2002, a two-person Team of Experts was created to make recommendations on a monitoring body after which the Council established a Panel of Experts, based in Nairobi. At first, the panel was limited in what it could investigate, but in July 2002, the Council redefined the arms embargo to prohibit "the direct or indirect supply to Somalia of technical advice, financial and other assistance, and training related to military activities." By 2004, the Panel of Experts was replaced by a Monitoring Group with the same mandate.

In 2002, the Committee began to hold more frequent meetings. It also began to review and discuss the reports of the monitoring mechanisms, which were submitted to the full Security Council. Its chairman at the time, Ambassador Stefan Tafrov of Bulgaria, pushed for visits to the region and led a delegation in November 2003. But the Committee—which operates by consensus, in effect giving each member a veto—was unable to agree on any recommendations to the Council.

In a March 2003 report, the Panel of Experts warned Council members of the prevailing "dismissive attitude," and reported that Somalis carried out "business as usual" because they

knew the Council did not enforce its actions. Its November 2003 report said that arms destined for Somalia originated from or were routed through Djibouti, Eritrea, Ethiopia, the United Arab Emirates and Yemen. Cargo of the 1,250 flights that arrived in Somalia each month between May 2003 and October 2003 was rarely inspected at either end of the journey. The experts warned that “transnational terrorists” had been able to obtain in Somalia portable air defence systems, light anti-tank weapons and explosives, and used Somalia as a base for some terrorist acts in Kenya in 2002. Most of the named countries denied the charge, and the Committee let the issues drop.

Since 2003, the Panel and then the Monitoring Group have identified many violators, including nations, individuals, entities and groups whose assets could be frozen. The experts also recommended that violators should be banned from receiving UN contracts. But no action was taken, and the Committee released no comprehensive list of culprits to the Council.

In a 2006 report (S/2006/229), the monitors said military materiel and financial support for weapons continued “to flow like a river.” It recommended a ban on two major sources of arms financing: charcoal exports and fishing fees by owners of foreign vessels.

In their November 2006 report, the Monitoring Group alleged that Syria, Iran, Djibouti, Egypt, Libya, Saudi Arabia and especially Eritrea had delivered weapons and other supplies to insurgent Islamists, while Ethiopia, Uganda and Yemen were supporting

the Transitional Federal Government, all in violation of the arms embargo. Most of the countries named issued denials. That same month, the Union of Islamic Courts (UIC) captured Mogadishu and held it for six months until it was ousted by Ethiopian forces.

In December 2006, in resolution 1725, the Council threatened to consider urgently ways to strengthen the embargo but did not follow up. And in its last report in April 2008, the Monitoring Group said that it had “found that the arms embargo has limited impact on the conflict.” It recommended that the Security Council “consider the imposition of additional individual sanctions on travel and the assets of key individuals, the posting of international technical assistance advisers in key locations outside and inside Somalia, and the provision of added means to States requesting such capacity-building support.”

All this suggests that the inaction of the Somalia Sanctions Committee during its first eight years, coupled with its inability to make substantive recommendations to the Council in the past eight years, tends to confirm that the arms embargo was only ever a fig leaf, and since the failure of the 1990s peacekeeping missions, the Sanctions Committee has really only been a proxy for strategy in Somalia.

The arms embargo may have had the unintended consequence of enhancing the status of underground arms dealers who profit from the continuation of hostilities and militarisation of society. In its April 2008 report the Monitoring Group addressed this issue as it identified military commanders, in addition to the existing arms dealers, who are

profiting from the conflict and the current “war economy.” “An end to the conflict is therefore not in their interest, as that would negatively impact their opportunity to make huge profits,” the report said.

At the time of writing, debate is underway regarding a possible new UN peacekeeping presence in Somalia. The ineffective role of the Security Council on the Somalia sanctions issue over the last 16 years suggests a need for a frank assessment of the path that has been forged to this point. The new sanctions measures, under discussion as of this writing, may be a step in that direction but only if these measures are matched to an even-handed list of actors as targets and if the Council can muster a political will to see that they are implemented.

2. Political and Regional Context

Political Context

The overthrow of Somali President Siad Barre in January 1991 left Somalia without a viable government. Fighting broke out, mainly between two major clans, with the support of a number of clan-based militias. By early 1992, the country’s humanitarian situation was dire with more than 300,000 people estimated to have died of hunger and disease and another 1.5 million in danger of starvation, according to UN agencies.

Against this background, in January 1992, the Security Council unanimously adopted resolution 733 under Chapter VII, imposing an arms embargo. In April 1992, the Council established United Nations Operation

in Somalia (UNOSOM) in resolution 751, initially as a small observer mission but subsequently as a security force to support the delivery of humanitarian assistance. By mid-1992, the media, especially US television, was reporting starvation in southern Somalia. With fifty unarmed observers and lightly armed infantry, UNOSOM proved unable to protect humanitarian aid. Shortly before he left office, US President George HW Bush initiated a US-led military operation, Unified Task Force (UNITAF), authorised by the Council in resolution 794, to guard and distribute relief supplies. The result was a short term improvement in security and a decline in deaths from starvation and malnutrition. However, the opportunity to convert this into a sustainable long term solution was missed.

Three months later in March 1993, under resolution 814, the operation was turned over to UN peacekeepers (UNOSOM II) without adequate resources or capacity and without a peace to keep. Armed conflict between Somali factions intensified and resistance to the UN began to emerge. On 5 June, a key warlord, General Mohamed Farah Aidid, in retaliation for UN plans to close down his radio station, sent his men to ambush Pakistani peacekeepers. Twenty-four were killed. The Council reacted with outrage, and in resolution 837 mandated UNOSOM to arrest General Aidid. This led to virtually open warfare between Aidid's forces and UNOSOM. The situation further deteriorated in October when American rangers—not part of UNOSOM and without the knowledge or consent of the UN—raided Aidid's area of control. Eighteen US troops

and hundreds of Somalis died; 75 US troops were wounded. As a result of the disaster, many in the US government blamed the UN. President Bill Clinton decided to pull out the US force in light of the domestic outcry over American soldiers being dragged through the streets of Mogadishu. Many other Western nations followed, and the US urged the UN to also withdraw its peacekeepers.

The UN force departed from Somalia in 1995 and a period of international abandonment followed until May 2000 when Somali civil groups—including local authorities, elders, women's groups and others—gathered in Djibouti to embark on a peace process. In August 2000, a Transitional National Assembly was formed and elected an interim president. The new Transitional National Government (TNG) initially attracted some international support but only as a transitional entity.

Over time it became clear that its lack of representative character was increasingly a problem, and it began to meet active resistance from various clans and militias.

In October 2004, the TNG was succeeded by the Transitional Federal Government (TFG) in talks mediated by IGAD, a regional bloc that includes Ethiopia, Eritrea, Uganda, Sudan, Djibouti, Kenya and Somalia.

In support of the TFG, IGAD decided to send a "peace support" mission known as IGASOM, an initiative sanctioned by the AU in May 2005. Council members, however, remained divided about whether to support IGASOM, with some seeing it as potentially risky and ineffectual.

In 2006, a new political and military force began to rise in Somalia, the Union of Islamic Courts. Little noticed initially, the UIC began to attract attention when it started a campaign to expand its controlled areas in Somalia. This led to strong concerns from key players, in particular Ethiopia and the US, especially about the UIC connections with terrorist networks and because of a perceived UIC interest in Ethiopia's ethnically Somali eastern region.

Following important UIC victories, including the seizing of Mogadishu, Kismayo and Jowhar, there was an increased fear that the UIC would eventually overthrow the TFG. Peace talks in June failed to produce a compromise.

The Council came under intensified pressure to support IGASOM, which it reluctantly did in December 2006 in resolution 1725. By then the TFG was confined to a sole outpost in Baidoa.

In late December, Ethiopia intervened without UN authorisation (and in apparent breach of the arms embargo) and by late January its forces had completely overrun the UIC.

The Council authorised in February 2007 an AU operation (AMISOM) as a means to allow the withdrawal of Ethiopian troops. However, troop generation proved difficult and contributions—besides Ugandan and Burundian contingents totalling some 2,500 troops—failed to materialise (AMISOM's authorised strength is 8,000 troops). Fighting between the Ethiopian-backed government and the opposition forces (in particular the Shabaab militia, an extremist splinter

group of UIC) has continued as the AU stepped up efforts to have the Council authorise a UN peacekeeping force. Members currently remain divided on the issue.

“Somalia remains a prisoner of the past, never forgiven for the violent actions carried out against the international community in the 1990s,” said Ahmedou Ould-Abdallah, the UN Special Representative for Somalia, when briefing the Council in March 2008.

On 9 June, the TFG and a wing of the opposition Alliance for the Re-liberation of Somalia (ARS) met for peace talks in Djibouti. An agreement (the Djibouti Agreement) was reached. After extensive delays it was signed on 18 August. The agreement envisaged a ninety-day renewable cessation of hostilities, the deployment within 120 days of a Security Council-authorized international stabilisation force, pledges to ensure unhindered humanitarian access and assistance, a statement by the ARS group condemning violence and disassociating itself from recalcitrant groups and the formation of two UN-chaired committees: the High Level Committee (which deals with political cooperation, justice and reconciliation) and the Joint Security Committee (which is tasked with implementing security arrangements). On 4 September the Security Council requested the Secretary-General provide a detailed and consolidated description of a feasible multinational force. However, despite some expectations that the Council might revert to the sanctions issue as well, at the time of writing action on the sanctions regime remained uncertain.

Regional Context

Strategically located in the Horn of Africa, Somalia shares borders with Djibouti, Ethiopia and Kenya.

An important practical point to note is that these neighbouring states have limited capacity for sanctions implementation and enforcement.

Somalia’s geographic location should therefore have been an important factor in considering the effectiveness of any arms embargo imposed by the Council. At the time of the imposition, there was, and still remains, no effective border control mechanism, customs administration or air traffic control in Somalia to deal with its largely unmonitored 1,600 kilometre frontier with Ethiopia, its unpatrolled 3,200 kilometre coastline, or its numerous uncontrolled remote airstrips and ports, which were and still are ideal for smuggling. In Ethiopia, for example, there was limited border control and limited capacity to oversee unregulated and unsecured airstrips through which arms were or could be transported into Somalia with ease. This lack of enforcement capacity is true of other countries in the region.

A second key aspect is that each of the states in the Horn of Africa has had important historical and political interests in Somalia. As a result, some sought to influence the military and political struggle that ensued following Siad Barre’s ouster. The flow of refugees also posed problems for the receiving states in the region.

At the time of independence in 1960, regional tensions emerged due to Somali claims over territories populated by ethnically Somali communities in Kenya, Djibouti and Ethiopia. At

least three separate instances of major fighting between Ethiopia and Somalia occurred up until the early 1980s. Political and military developments in Somalia are therefore a matter of ongoing concern in Addis Ababa and other regional capitals, as evidenced by Ethiopia’s swift and strong response to the UIC, a group which Ethiopia sees as associated with renewed Somali expansionism.

Regional tensions are also compounded by the ongoing border dispute between Eritrea and Ethiopia, who fought a major war in 1998, which culminated in a 2000 peace agreement mandating independent arbitration to determine the common border. Ethiopia refused to accept the results of the arbitration. Tensions have remained ever since. Observers note the unresolved situation has led both to fight a proxy war in Somalia, with Eritrea supporting anti-TFG elements.

As early as March 1992, then Secretary-General Boutros Boutros-Ghali, reported that the main Somali factions had claimed that the other side was receiving arms from countries in the region.

In a follow-up report in April 1992, the Secretary-General requested the Council consider putting in place appropriate arrangements to monitor the embargo. Another report by the Secretary-General in July 1992 again indicated that, “the situation regarding the flow of arms and ammunition from outside ... has not changed since my [the Secretary-General’s] last report.” But despite this advice the principle burden for effective implementation and enforcement of the arms embargo was left on the shoulders of the

neighbouring states. Accordingly, from the outset, the prospect of an effective arms embargo regime was tenuous.

3. Role of the Security Council

Brief History of Early Council Engagement

The Council convened its first meeting on Somalia on 23 January 1992. Formally it was in response to a request from the Chargé d'affaires of the Somalia UN mission, Ms. Fatun Mohamed Hassan. In her letter to the President of the Council, dated 20 January 1992, she advised that the Interim Prime Minister of Somalia, Mr. Omer Arteh Ghalib, wanted "to present the deteriorating situation of Somalia to the Security Council." (Attached was a copy of a letter Ghalib had written to the Secretary-General and the President of the Security Council. In it he referred to a letter sent by the President of the Organisation of Islamic Summit Conference (OIC) and asked that Somalia be put on the Council's agenda.) Letters outlining the positions of the OAU and the OIC with regards to those organisations' positions on the situation in Somalia were also sent to the Council.

In reality, the initiative to bring the situation in Somalia to the Council was driven, behind the scenes, by the media, international aid groups and by Boutros-Ghali, who came into office in 1992 and sought to give African conflicts a higher profile. But the Secretary-General was initially cautious, believing that it would be difficult to secure resources for a full fledged peacekeeping force.

On 23 January, the Council adopted resolution 733, the first of many resolutions on Somalia. The resolution imposed an arms embargo over the territory of Somalia. The Council noted in the resolution that it had heard the report of the Secretary-General on the situation in Somalia, including the dire humanitarian situation and the problems the conflict posed for the delivery of humanitarian assistance. Ever since 1992, resolution 733 has continued in force, although its scope was extended in 2002 by resolution 1425.

In addition to imposing the arms embargo in resolution 733, the Council requested the Secretary-General take whatever action necessary to increase humanitarian assistance by the UN and its specialised agencies to the affected population of Somalia, and for the Secretary-General to engage the parties to the conflict in an attempt to secure a cessation of hostilities. It also requested the Secretary-General report to the Security Council as soon as possible on the matter.

In his follow-up report on 11 March 1992, the Secretary-General detailed his efforts to secure a cessation of hostilities to allow for the delivery of humanitarian assistance and to help achieve a political settlement of the conflict. The report indicated that fighting had persisted in Mogadishu since November 1991, which had resulted in widespread death and destruction, forced hundreds of civilians to flee the city and brought about a grave threat of widespread famine.

The Secretary-General also stated in his report that both Somali factions had claimed that the other side was receiving arms from some of the

countries in the region. These allegations, if proven, would have been a clear violation of the arms embargo. The Council considered the report on 17 March 1992, but without comment on the implications for the arms embargo.

In a further follow-up report on 21 April 1992, the Secretary-General noted various reports on arms flowing into Somalia. He recommended that the Council put in place arrangements for the monitoring of the arms embargo. In response, the Council decided in April 1992, in resolution 751, to establish the Somalia Sanctions Committee.

The Council also decided in resolution 751 to establish the United Nations Operation in Somalia (UNOSOM, later known as UNOSOM I) including a "security force," and fifty military observers and other personnel to monitor ceasefire agreements signed in Mogadishu on 3 March 1992.

UNOSOM was mandated to monitor the ceasefire in Mogadishu and to provide protection and security for UN personnel, equipment and supplies at Mogadishu's seaports and airports and to escort deliveries of humanitarian supplies from these entry points to distribution centres in the city and its environs. The Council, in resolution 775 in August 1992 expanded and strengthened UNOSOM's mandate to protect humanitarian convoys and distribution centres throughout Somalia. It authorised up to 3,500 military personnel, but the maximum deployed by February 1993 was 54 military observers and 893 troops and support personnel.

In June 1992, UN Special Representative Mohamed Sahnoun of Algeria

said his talks with faction leaders on deploying UN peacekeepers were beginning to bear fruit. Cooperation fell apart, however, when an aircraft with apparent UN markings delivered military hardware and Somali currency to warlord Ali Mahdi Mohamed at his airfield in Mogadishu. The UN still has no explanation for this event, but it played an important role in the decision by Mahdi's rival, General Aidid, to refuse UN personnel access into areas he controlled.

A sharp deterioration in the security situation in Somalia followed with UNOSOM finding increasing attacks and blockage of its efforts to facilitate delivery of humanitarian supplies. By late 1992 the situation had become dire, leading to the decision by the US to initiate a coalition of the willing to intervene in Somalia. In December 1992, the US put forward a draft Chapter VII resolution to authorise the establishment of a multinational force to use "all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia". Resolution 794 initiated an operation which became known as the Unified Task Force (UNITAF). The US was expected to build a force of about 28,000 to be joined by 17,000 additional troops from other nations (though in practice the US deployed some 24,000 supplemented by 13,000 additional troops from 23 countries). The resolution authorised the Secretary-General and participating states to make arrangements for "the unified command and control" of the military forces that would be involved. UNITAF began its deployment in Mogadishu in December 1992, and, within a short period of time,

secured major relief centres to allow for resumption of humanitarian aid.

In March 1993, the Council approved a transition from UNITAF to a new peacekeeping operation, UNOSOM II, in resolution 814. The mission was established with a mandate under Chapter VII authorising it to use force—if necessary—in order to secure a stable environment for the delivery of humanitarian assistance. While UNITAF had patrolled less than half of the country with 37,000 well-equipped troops, UNOSOM II with the initially authorised 28,000 troops, was given the mandate to cover all of Somalia.

The presence of UNOSOM II, while facilitating humanitarian assistance, had limited effect on the overall security and stability of the country. Efforts to disarm the various factions proved unsuccessful, and the Somali factions began to test the resolve of the UN mission.

General Aidid's Radio Mogadishu between 1 May and 4 June 1993 accused UNOSOM II and the US of being aggressors trying to colonise Somalia. Aidid was aware of UNOSOM's intention to deal with the Radio Mogadishu issue and its possible seizure. On 5 June, after a Pakistani contingent had completed inspection of the station, which was classified as an authorised weapons storage site (AWSS), Aidid's faction attacked. A second Pakistani company was ambushed leaving a separate AWSS. Despite reinforcements arriving, by the end of the fighting 24 Pakistani soldiers were dead, 57 injured, six missing (one of whom died in captivity) and five were later released. As the Report of the Commission of Inquiry

(S/1994/653) stated: "The death of so many UNOSOM II forces in one day brought to light the enormity of the challenge that the United Nations faced in its mission to forcibly disarm Somalia."

The situation deteriorated from one in which the UN was essentially even-handed between the Somalis to one of virtual war between UNOSOM II forces and the Aidid clan.

The Council reacted vigorously. On 6 June, in resolution 837, it approved an extended application of the mandate under which apprehension and arrest of the persons responsible for attacks (widely understood as Aidid and his forces) became a major task. This led to virtually open warfare between Aidid's forces and UNOSOM. By July, UNOSOM II was having difficulty providing protection to the humanitarian agencies operating in Somalia.

The situation deteriorated dramatically on 3 October when troops from a separate US force, deployed in Mogadishu (outside UNOSOM and thus not under UN command and control), launched an operation to capture General Aidid without the knowledge or consent of the UN. Hundreds of Somalis died. Two US Black Hawk helicopters were shot down and 18 American soldiers were killed, some dragged through the streets; 75 US troops were wounded.

The operation had not been coordinated with the UN, and this delayed a UN rescue of the remaining US soldiers. Public reaction in the US was extremely hostile to the UN and led to pressure on the US to withdraw from Somalia. Pressure was put on other countries, particularly those from Western nations, to follow the US lead.

By early 1994, US troops had withdrawn from Somalia. UN troops began a drawdown in early 1994 and by March 1995, the remaining 14,000 UN peacekeepers were withdrawn.

The Sanctions Mandate

In resolution 733, the Council, acting under Chapter VII of the UN Charter, imposed “a general and complete embargo on all deliveries of weapons and military equipment to Somalia.” In the resolution the Council also expressed alarm at the deteriorating situation and heavy loss of human life and widespread material damage, as well as an awareness of the destabilising effect on the region posed by the conflict in Somalia.

Design and Scope

The arms embargo imposed on Somalia in January 1992 was very broad in scope and not specifically targeted at armed groups. Instead, the embargo was on the territory of Somalia as a whole and covered the delivery of all arms to Somalia. Curiously, it did not prohibit delivery of weapons to Somali-based, non-state actors outside of Somali territory. Nor were there any requirements for verifiable end-user certificates. Accordingly, traders could legitimately make sales outside Somalia to known Somali end-users. Most importantly, there were no provisions in the resolution targeting the arms embargo against defined armed groups operating within the territory. Nor did the Council consider trying to stop the flow of the arms to Somalia at the level of the suppliers.

The initial resolution did not establish a sanctions committee to monitor implementation of the embargo. After

a three-month hiatus and on the recommendation of the Secretary-General, the Council revisited the issue and in resolution 751, established a Committee consisting of all 15 Council members, but it imposed no obligations on states to report to the Committee. Effectively, the Committee could only “seek” information, but it had no authority backing such requests. And the only action it could take was to make recommendations to the Council based on information that came to its attention.

The arms embargo lacked enforcement measures. And there was no provision for secondary sanctions on violators—state and non-state actors alike.

Some countries in the region failed to implement the embargo, in part due to lack of capacity, but also due to a lack of political will, and, in some cases, perhaps influenced by their own political and security interests. The countries accused of violating the arms embargo routinely denied any involvement. Individuals and states violated the embargo with impunity. The Force Commander for UNOSOM II, in his briefing of the Security Council Mission to Somalia in 1994, said that, despite the arms embargo, the flow of arms into Somalia was continuing unabated. In the meantime, the political, security and humanitarian situation in the country continued to deteriorate.

The Council did adopt various resolutions and presidential statements during the 1990s calling on states to use such measures as might be necessary to ensure implementation of the arms embargo. However, no decisions were taken by the Council to strengthen the sanctions regime,

close loopholes and utilise new tools, especially targeting of sanctions, which it had been developing elsewhere. Except for granting exemptions for protective clothing, flak jackets and military helmets related to UN personnel and others in 2001, the Council took no significant action on the Somalia arms embargo until May 2002.

Council Dynamics

The principal dynamic in the Council with respect to Somalia prior to 1994 was the effort to respond to the humanitarian crisis and the acute security situation. However, following the withdrawal of the United States military presence in 1994 and the withdrawal of UN peacekeeping operations in 1995, the main dynamic was one of neglect.

It was evident to all that there was a constant flow of arms into Somalia in violation of the embargo. In presidential statements during this period, the Council repeatedly acknowledged the flow of arms into Somalia in violation of the embargo. Yet, Sanctions Committee reports indicate that no violations were reported.

This apparent inconsistency can be explained in part because the Committee had such a limited mandate which only allowed it to seek from all states information on action they had undertaken to implement the arms embargo. The members of the Council are regularly briefed by the Secretary-General (or his representative) on conflict situations, and each member also relies on information obtained outside of the Council to guide deliberations. During this period, the Council members would have been privy to information and reports,

including reports of the Secretary-General, from which it could have concluded that there were ongoing gross violations of the arms embargo. Yet, despite the obvious violations of the arms embargo, the Council repeatedly failed to take any remedial action. Instead, the Council's responses were to call on all countries to observe the arms embargo.

The Council's lack of effective response to the transparent violations of the arms embargo over the first ten years is contrasted with more decisive Council actions on sanctions elsewhere. This period, the aftermath of the end of the Cold War, saw a significant increase in the use of sanctions as appropriate non-military measures under article 41 of Chapter VII of the UN Charter. Cases included Iraq, the former Yugoslavia, Libya, Liberia, Haiti, Angola, Rwanda and Sierra Leone.

Changes, Renewals and Expansion of Mandates

In 2002, the Council undertook a relatively brief effort to consider options for improving implementation of the arms embargo. In this period, the Council took some note of the contradictions in the reports by the Sanctions Committee. On the one hand, there were no reported violations. On the other hand, there was overwhelming evidence to the contrary. In July the Council in resolution 1425 decided to establish a monitoring mechanism in the form of a Panel of Experts to generate independent information on violations of the arms embargo. In doing so, it was belatedly applying to Somalia the lessons of the utility of sanctions monitoring mechanisms, whose use started with resolution

1013 of 7 September 1995, which created a UN International Commission of Inquiry to monitor the Rwanda sanctions.

Earlier, in a press statement on 28 March 2002, the Council expressed "its determination to put in place concrete arrangements and/or mechanisms, by 30 April 2002, for the generation of independent information on violations and for improving the enforcement of the embargo."

Prior to establishing a monitoring mechanism for the Somalia arms embargo, the Council in resolution 1407 of 3 May 2002 first established a two-member Team of Experts to examine the feasibility and prospects for a monitoring mechanism. The Council asked the Secretary-General to appoint two experts with the mandate to examine the feasibility, form and mandate of a future monitoring mechanism.

Specifically, the Council asked the Team of Experts "to provide the Committee with an action plan detailing the resources and expertise that the future Panel of Experts would require to be able to generate independent information on violations and for improving the enforcement of the weapon and military equipment embargo." The Council indicated that the required expertise and resources of the future Panel of Experts should include the capacity to investigate all forms of violations; to assess the capacity of the states in the region to implement the arms embargo; and to provide recommendations to the Council on ways to strengthen enforcement of the arms embargo.

The Team of Experts concluded that there would be value in establishing

a monitoring mechanism, and it suggested guidance on the mandate and resource requirements.

The Team of Experts' July 2002 report also highlighted a number of problems with the past implementation of the arms embargo against Somalia and suggested ways the sanctions regime and its implementation might be improved. The Team noted that the past failure to enforce the arms embargo threatened to undermine attempts at a political settlement in Somalia.

The Team of Experts furthermore made a number of observations with regard to violations of the arms embargo:

- the volume of arms flow, while not constant, had continued since the collapse of the Siad Barre government;
- some governments supplied arms and military equipment to armed groupings inside Somalia to further political and strategic objectives;
- armed groups in Somalia took advantage of illicit arms trafficking networks for their supplies;
- arms supplies were financed in a number of ways, including through revenues generated by business activities in Somalia and through donations from foreign governments;
- effective enforcement of the arms embargo could not rest on actions by neighbouring states due to their limited technical capacities and the prevailing political atmosphere; and
- regional actors, after ten years of non-enforcement of the arms embargo, believed that the international community had the capacity but lacked the will to enforce the embargo effectively.

Council Engagement (2002-07)

In resolution 1425 of July 2002, the Council decided to expand the arms embargo and to establish a monitoring mechanism.

Compared to the original embargo, this new resolution added prohibitions on financing and other forms of assistance including military training, and it was an incremental development of the sanctions regime. However, it was a minor and largely ineffective increment since it still did not include provisions permitting targeting of the sanctions, provisions for an asset freeze to prevent the financing of arms purchases, and provisions for designating individuals for sanctions. And most significantly, no obligation was imposed on states to report to the Committee.

On the basis of the Team of Experts' report, the Council established a Panel of Experts consisting of three members to be based in Nairobi, Kenya, to investigate embargo violations and assist the Sanctions Committee in its monitoring functions. The Secretary-General was also requested to ensure that the Panel had access to sufficient expertise in the areas of armament and financing thereof, transportation modalities, regional affairs, and specialised knowledge of Somalia. The Panel was asked to follow up on the recommendations made by the Team of Experts, including issues related to strengthening of the arms embargo.

Finally, the Council promised to follow up reports from the Panel and any recommendations on possible practical steps for strengthening the arms embargo. As will be seen below, the Council follow-up consisted of

nothing more than repeating an intention to consider and act on recommendations by the monitoring mechanism. In fact, this became a ritual theme in subsequent resolutions; Council actions never matched its expressed intention.

The Panel's first report in March 2003 stated specifically that there were clear patterns of violation of the arms embargo with weapons, equipment, training of militia and financial support to Somali factions being given regularly by neighbouring states and others. It also said that Somali factions were able to purchase arms on the international arms market in clear violation of the embargo. Most importantly, the Panel reported that faction leaders—having not seen any enforcement of the arms embargo in the preceding 12 years—felt that they could continue their business as usual with impunity.

Further, the Panel wrote that, "The dismissive attitude to resolutions of the Security Council will continue to prevail if the international community does not show resolve in implementing a strict embargo regime or remain vigilant in investigating new violations of the embargo."

The Council responded to this first Panel report in resolution 1474 of 8 April 2003. The Council clearly acknowledged the negative effect of arms embargo violations on the peace and security efforts in Somalia—the Council's often stated objective. But it took no action and simply renewed the mandate of the Panel for an additional six-month period, asking it to investigate violations of the arms embargo, to make recommendations for effective implementation, to

identify violators and prepare a draft list for possible future Council action.

The Panel of Experts' second report, dated 4 November 2003, provided further details concerning violations of the arms embargo. The report highlighted the following:

- a continuous influx of small quantities of weapons and ammunition fed the local open arms markets and faction leaders' warehouses in Somalia and the constant microflow of weapons and ammunition represents hundreds of tons of arms in violation of the embargo over a six-month period;
- weapons shipments destined for Somalia tended to originate in or were routed through Djibouti, Eritrea, Ethiopia, the United Arab Emirates and Yemen;
- approximately 1,250 flights arrived in Somalia each month, mainly from neighbouring countries and other states in the region, and their cargo was rarely subject to inspection;
- transnational terrorists had been able to obtain small arms and man-portable air defence systems, light anti-tank weapons and explosives in Somalia, and those responsible for the terrorist acts in Kenya in 2002 (the bombing in Mombassa and the attempt to shoot down a Mombassa to Tel Aviv flight) brought missiles from Yemen via Somalia to Kenya;
- many of the frontline states and regional actors persisted in violations and few had taken active measures to curb commercial arms transfers to Somalia; and
- many neighbouring states lacked the tools to sufficiently monitor exports and/or transshipments through their ports, airports, land

border crossings, territorial waters and airspace.

The early findings of the Panel of Experts confirmed much of what had already been reported elsewhere on violations of the arms embargo. The Panel identified countries involved, the links between violations of the arms embargo and acts of terrorism carried out elsewhere with arms acquired in or transiting Somalia, and the lack of capacity of neighbouring states to implement and enforce the embargo.

The Council again side-stepped these issues and in resolution 1519 in December 2003 mandated the experts (now called a Monitoring Group) to follow up on the previous reports of the Panel of Experts; to investigate violations of the arms embargo and make recommendations; and to prepare a draft list of violators for possible future measures by the Council. The request to the four-member Monitoring Group to prepare a list of violators seemed to some to signal an intention to take action against the perpetrators. But almost five years later, the Council had still failed to follow through on this intention.

The Council did however step up its attempts to engage neighbouring states by requesting in December 2003 in resolution 1519 that they report quarterly to the Committee on their efforts to implement the arms embargo. This, however, did not seem to have any effect on the implementation of the arms embargo and the flow of arms to Somalia, and there was no discernable improvement in the reporting by neighbouring states to the Committee.

However, following the establishment of the Team of Experts in May 2002 and its report two months later, the Committee did become a little more active in its review of sanctions violations and in reporting to the Council. The Chairman of the Committee regularly briefed the Council following briefings by the expert panel and the discussions which had taken place in the Committee pursuant to the panel's reports. These briefings occurred in informal consultations of the whole, hence there is no public record.

Since 2004, the Monitoring Group's mandate included conducting investigations with a view to exposing the financial networks and sources that permit the purchases of arms and other forms and types of military support in violation of the arms embargo.

In response, the Monitoring Group identified the sources of finances for major actors in Somalia and drafted a list for a possible imposition of assets freeze on designated individuals and groups. While this list has been drafted and re-drafted, and the Monitoring Group has provided verifiable details on the violators and violations, the Committee has never requested the list from the Monitoring Group and the Council has taken no action against these violators.

The Council routinely issued presidential statements reminding states of their obligations under the relevant resolutions and calling on them to implement the arms embargo against Somalia, but still it took no steps to impose obligations on states to provide effective reporting or respond to violations by states. The Council also continued to repeat condemnations of the inflow of

weapons into Somalia. In a 2006 presidential statement, the Council reiterated its intention to urgently consider ways to strengthen the effectiveness of the arms embargo. But nothing materialised.

In its May 2006 report, the Monitoring Group stated that arms, military materiel and financial support continued "to flow like a river" in violation of the arms embargo. The Monitoring Group recommended "an integrated arms embargo" which would involve:

- reaffirming and effectively sustaining the arms embargo on Somalia;
- implementing a trade embargo on the export of charcoal originating in Somalia; and
- implementing a ban on foreign vessels fishing in Somali waters and an embargo on the export of fish taken in Somali waters.

The additional recommendations were aimed at addressing two major sources of financing of the arms purchases—charcoal exports and fees from foreign fishing licenses—by the various factions engaged in the conflict in Somalia. The idea of an "integrated arms embargo," therefore, was to cut off the sources of funds for the purchase of the arms in violation of the embargo.

Unlike most other sanctions cases where the Council has supported its arms embargoes by imposing other measures on the actors, such as assets freezes and travel bans, these options were never included in the sanctions regime for Somalia. In the case of Somalia, despite the Monitoring Group reports and the briefings to the Council by the Committee Chair, the Council's decision was to take no action.

Instead, the Council continued the pattern of simply renewing the mandate of the Monitoring Group for successive six-month periods. Each time, the Council mandated the monitoring mechanism to investigate and keep investigating; to refine its findings and keep refining and updating; to make recommendations and to keep making recommendations.

The Monitoring Group's November 2006 report brought to the fore new issues for the Council. It identified countries that it believed were violating the arms embargo by shipping weapons, related supplies and uniforms. It said Eritrea, Syria, Iran, Djibouti, Egypt, Libya and Saudi Arabia were supporting Islamists while Ethiopia, Uganda and Yemen were supplying the TFG. The report described the violations as aggressive. (Yemen had already publicly acknowledged to providing arms to the TFG, citing security concerns.)

Despite denials by most of these states, there was an abundance of evidence that the two main parties in Somalia—UIC and the TFG—had considerably increased their weaponry, military materiel and training. The report further stated that the UIC had also received a considerable amount of outside financial support. These violations contributed to the broadening of the conflict in Somalia. The report inferred that the Council's failure to act on earlier recommendations contributed to the level of military build-up and consequential deterioration in the security situation in Somalia and the region.

Again, the Monitoring Group made a number of recommendations for

possible Council action. These included:

- increasing the strength of the arms embargo through an all-border surveillance and interdiction effort involving a combination of sea, air and land military forces supported by relevant international organisations, intended to severely curtail or cut off arms, military materiel and other forms of military support;
- extensive international political and diplomatic initiative fully incorporating regional actors; and
- applying financial sanctions on significant Somali-owned businesses (intended to reduce the availability of monies and other financial resources for purchasing arms and military materiel).

However, the Group seemed clear that without an effectively enforced arms embargo and a substantially broadened and effective sanctions regime, including enforceable secondary sanctions, such as assets freeze and travel ban, any impact on the situation in Somalia could not be expected. The Monitoring Group further warned that the arms flows were part of a deliberate, ongoing and broader military build-up taking place on both sides. The report warned that this could be a precursor to an unnecessary war that could involve others in the region.

In December 2006, with the situation in Somalia approaching a crisis point, the Council yet again set aside the recommendations of the Monitoring Group and in resolution 1725 merely requested that all states—including those of the region—fully comply with the arms embargo. The Council established exemptions for IGASOM, and it also threatened to urgently consider

ways to strengthen its effectiveness through targeted measures in support of the embargo. However, this language was basically the same that was used in the presidential statement some six months earlier. And despite the expression of urgency by the Council in the earlier statement, again there was no follow-up.

In the period between November 2006 and the following Monitoring Group's report in July 2007, the situation in Somalia deteriorated even further. This culminated in a military intervention by Ethiopia in support of the TFG. The July report noted that the country "is literally awash with arms" that "continued to flow heavily" whose majority was "delivered or introduced into the Somali environment in violation of the arms embargo." Ironically, after some 15 years of an arms embargo in place, the Monitoring Group then concluded that the sheer numbers of arms currently in Somalia exceeded those in the country since the early 1990s. It is clear that the Council's arms embargo had completely failed to curb the flow of arms and thereby lessen hostilities in Somalia.

In its latest report, in April 2008, the Monitoring Group observed continued militarisation, an expansion of the conflict and arms embargo violations on all sides. Opposition groups have increased control of territory and the TFG security forces are increasingly fragmented. The group has noted that states (notably Ethiopia, Eritrea and Yemen) continue to be in violation of the embargo. The Group received information that various TFG, Ugandan and Ethiopian personnel have sold weapons and ammunition that originate in army stocks or are seized

following battles with insurgents. According to arms traders, Ethiopian and TFG commanders are the biggest suppliers of ammunition. Eighty per cent of the ammunition in the markets originates from their stockpiles. The report again concluded that “the Monitoring Group has found that the arms embargo has limited impact on the conflict, as the parties are still able to receive arms.”

In its April 2008 report, the Group recommended that the TFG and AMISOM take steps to gain control over the arms problem through putting in place efficient systems for managing and disposing ammunition and explosive stockpiles in accordance with international practices. It was recommended, in addition to addressing letters to states found to have violated the arms embargo, that the TFG, Ethiopia and AMISOM conduct independent investigations into participation by their personnel in the Somali arms markets. The Group also recommended that the Council consider expanding its mandate to include internal arms transactions.

The Permanent Mission of Uganda in a letter (S/2008/370) to the president of the Security Council responded to the allegations that the Ugandan contingent of AMISOM was selling weapons in the Somali arms markets. The letter stated that, “Uganda finds the allegation that Uganda People’s Defence Forces (UPDF) personnel sold arms to insurgents totally untrue and outrageous.”

The Monitoring Group’s report also referred to a letter from the Chairperson of the AU Commission to the Secretary-General of the UN, requesting

the Security Council to review the arms embargo against the TFG so it could establish its own defence forces. (The AU peacekeeping force AMISOM has been exempted from the embargo.) Because the line between TFG security forces and militias of TFG is “almost impossible to distinguish” the Monitoring Group did not recommend an exemption for the TFG, but did concede that “it may be possible to authorise official deliveries on a case-by-case basis.”

Additionally, the Monitoring Group, as in previous reports, recommended targeted sanctions and enhancing the capacity of states. But it also considered that the main element for improvement of the arms embargo “lies with the increased political will of States.”

The previous and current recommendations by the Monitoring Group (such as targeting sanctions and the integrated arms embargo, with provisions to cut funding of arms purchases and financing of the militias) remain unimplemented. Over the years, the Monitoring Group had advanced what it referred to as “a number of interrelated recommendations for Somalia” that would strengthen the arms embargo with the intention of curtailing or cutting off the flow of arms into Somalia. These would entail implementing a total border surveillance and interdiction effort involving a combination of sea, air and land military forces supported by relevant international organisations. It was also recommended that these measures be linked to extensive international political and diplomatic initiative fully incorporating regional actors. However, the Group seemed clear that

without an effectively enforced arms embargo and a substantially broadened and effective sanctions regime, including enforceable secondary sanctions, such as assets freeze and travel ban, there is hardly any impact that can be expected on the situation in Somalia.

Security Council’s Response in 2008

The Monitoring Group’s latest report of 24 April 2008, which stated that the “arms embargo has limited impact on the conflict”, offered no new strategy to deal with the arms embargo violations. The message remains basically as it has been for the past several years. The report noted that the militarisation and expansion of the conflict has increased, with opposition groups, particularly the Shabaab, enlarging their control over territory. As with previous reports, states (notably Ethiopia, Eritrea, and Yemen) continue to be in violation of the arms embargo. The Monitoring Group sent 38 letters to states identified in connection with information concerning possible violations, but received only ten substantive replies.

The Group’s response to violations remains basically as it has been for the past several years, reiterating the need for targeted sanctions and strengthening state capacity. It recommended that the Security Council “consider the imposition of additional individual sanctions on travel and the assets of key individuals, the posting of international technical assistance advisers in key locations outside and inside Somalia, and the provision of added means to States requesting such capacity-building support.”

In resolution 1811 of 29 April 2008 the Council once again stressed the obligations of all states to comply with the arms embargo without giving any specific indication of what action might be contemplated in the absence of compliance. Much like three prior reports of the Monitoring Group, the Council in reference to the findings of the Group's April 2008 report expressed its intention to consider specific action to improve implementation of and compliance with the arms embargo and specifically raised the possibility that such action could include targeted measures. The Council also re-established the Monitoring Group with basically the same mandate to continue its monitoring functions and to make recommendations to the Committee.

At press time the Council was discussing a new sanctions resolution whose goal would be to impose targeted measures against peace spoilers and violators of the arms embargo. However it will remain to be seen whether there is actually going to be agreement on imposing real measures or simply a framework, and whether the measures will be even-handed or only applied to anti-TFG factions.

4. Role of the Sanctions Committee

As outlined above, three months after establishing the Somalia arms embargo, the Council in April 1992 established the Somalia Sanctions Committee. It comprises all 15 members of the Council and is chaired by an elected (non-permanent) member, as are all sanctions committees.

The first Council sanctions committee was established by resolution 253 in 1968 to monitor the implementation of the sanctions measures adopted against Southern Rhodesia in 1966 and consisting of all of its members. The second such committee was formed in resolution 421 in 1977 to monitor the arms embargo imposed against apartheid South Africa by resolution 418.

In the resolutions imposing the sanctions measures on both Southern Rhodesia and South Africa, the Council requested, from the very outset, that the Secretary-General report to the Council on implementation of the measures. By contrast, with respect to Somalia, when it imposed sanctions in January 1992 in resolution 733, the Council did not request that the Secretary-General report to the Council on implementation of the arms embargo.

Curiously, the Council was not without recent and very detailed precedents when it considered the sanctions regime for Somalia in early 1992. In 1990, under resolution 661, it had set in place a comprehensive—and for many years very effective—sanctions regime against Iraq, supported by a very active sanctions committee.

Committee's Mandate

The Committee's mandate, set out in resolution 751, included the following:

- to seek information from all states on actions taken by them to implement the embargo;
- to consider information reported by states of violations and to make recommendations to the Council on ways to increase the effectiveness of the embargo; and

- to recommend appropriate measures in response to reported violations.

More recently, the Committee has also been tasked with considering requests for exemptions to the arms embargo, as mandated in resolutions 1356 and 1744.

Committee's Modus Operandi

One of the first acts of all sanctions committees is to establish guidelines that direct future work. These guidelines establish the decision-making process. Over the years, certain common basic standards for each sanctions committee have developed, and in December 2006, the Council adopted resolutions 1730 and 1732 which established additional standards for all sanctions committees. The text of the most recently revised guidelines of each sanctions committee is posted on each committee's website.

Prior to 2000, that is, during the first eight years of its existence, the Committee on Somalia was largely inactive and held a mere 15 formal meetings. Most of these meetings were held to deal with procedural matters rather than to discuss and act upon substantive issues such as violations of the arms embargo. The Committee's practice was to use informal meetings to hold preliminary discussions on substantive issues with a view to arriving at consensus before a formal meeting was convened. The Committee seldom held formal meetings unless there were decisions to be taken on which agreement had been reached prior to convening the meeting. The Committee communicated its decisions to UN member states through the use of letters, note verbales and press releases.

The guidelines for the Somalia Sanctions Committee, as is the case generally with all Security Council sanctions committees, specifies that the Committee will take its decisions by consensus, which may be arrived at through utilising a “no-objection procedure.” When the latter decision-making process is used, the members of the Committee are given a time period (usually five days unless in an emergency situation) to respond to the proposed decision, which is prepared after consultations and circulated by the Chairman of the Committee to all members. Unless there is an objection in writing from any member within the set timeframe, the Chairman is authorised to act on the basis of the consensus.

In the early stages when the Committee was essentially inactive, the consensus voting procedure had little, if any, bearing on the Committee’s decision-making process. However, in recent years, reaching consensus in this Committee (as with many other sanctions committees), a situation in which all fifteen delegates have a veto, has become more difficult. Increasingly, it seems the consensus rule tends to stymie the decision-making process and the Committee’s ability to act on information concerning arms embargo violations brought to its attention.

Effectiveness: The Committee 1992-99

Annual reports were formally instituted by the Council for all sanctions committees by the president in a note on 29 March 1995. It stated specifically that each sanctions committee should prepare an annual report providing a concise indication of each committee’s

activities. (The lack of an annual report by the Somalia Sanctions Committee prior to 1995 was therefore not unusual in the Council’s practice at the time.)

The Somalia Sanctions Committee’s first report, on 15 January 1996, was prepared and submitted to the Council in response to this note. The report presented “a factual summary of the Committee’s activities since its establishment in 1992 until 31 December 1995.”

In that report, the Committee noted that since its establishment it had experienced difficulties in obtaining information on violations, actual or suspected, of the arms embargo. Most pointedly, the report stated that “the effectiveness of the Committee in monitoring the arms embargo would continue to depend on the cooperation of all States and organizations in a position to provide pertinent information to it.” But there was no cooperation by states, in particular the neighbouring ones.

The Committee noted that from 1992 to 1995, it had held ten formal meetings. At only a few of these meetings were decisions taken on actions to be pursued by the Committee. These actions were, for the most part, to make broad appeals as well as targeted appeals to states and organisations for information on arms embargo violations.

- The fourth formal meeting of the Committee on 4 December 1992 authorised the chairman to issue a press release dated 10 February 1993 in which the Committee expressed concern about the lack of receipt of information from states with regard to arms embargo

violations and appealed to all national and international governmental and NGOs for information on violations or suspected violations of the arms embargo. The Committee also sent letters to all states in February 1993. Only two states responded and none reported any arms embargo violations.

- At the Committee’s sixth formal meeting on 24 February 1993, a decision was taken for the chairman to send individual letters to those states geographically neighbouring Somalia and other countries in the region (Djibouti, Ethiopia, Egypt, the Islamic Republic of Iran, Kenya, Saudi Arabia, the Sudan and Yemen) asking that they increase their vigilance through monitoring of air and sea traffic in the area with regard to the movement of goods across common borders with Somalia, and to monitor and identify the origin of the carriers destined for the ports of Somalia.
- Responding to the Council’s concerns about the continued flow of arms to Somalia and its request to the Committee to seek the cooperation of the neighbouring states, the Committee decided in its ninth formal meeting of 16 November 1994 to issue an appeal through a press release similar to the one mentioned above, to write to all states and to write individual letters addressed to the geographically neighbouring states and other countries in the region, again seeking their assistance in monitoring the arms embargo and identifying violators.

None of the neighbouring states responded to the Committee. As was common throughout the period, the

Committee received negligible responses to its letters from the wider UN membership and even less support in its monitoring functions. The Committee repeatedly reported to the Council that it had received no reports from states of any arms embargo violations. All this was happening against a backdrop of significant violations evidenced by the persistent fighting in Somalia, the seemingly unending supplies of arms, and claims by both sides that the other side was receiving arms from neighbouring states.

Despite the overwhelming evidence from media reports that arms were flowing into Somalia, in the absence of any formal reports of violations either from the Secretary-General or member states, the Committee had nothing to consider. A proactive committee could have sought information on arms embargo violations from UNOSOM or the Special Representative of the Secretary-General. Members of the Council with information could have made it available to the Committee. But it seems that there was little inclination to actively pursue alternate sources of information.

The Committee noted in its report covering the period from its inception in 1992 to 31 December 1995 that it had taken action on two alleged violations of the arms embargo. According to the report, the Committee took appropriate action with regard to these violations. But the report did not specify the sources of its information or the action taken.

In a similar vein, the Committee reported that in 1996 it had considered and taken action on a case of suspected violation of the embargo

that concerned the shipment of a consignment of military hardware and ammunition to one of the factions involved in the conflict. The governments allegedly involved were asked to investigate and report their findings to the Committee. But the governments identified simply denied the allegations.

This trend in the Committee's work continued. In 1997 and 1998, the Committee held one formal meeting each year merely to elect its bureau, while reporting no action taken during the period with regard to any aspect of its mandate. In its 1998 report, the Committee noted that it intended "to consider appropriate steps with a view to improving the monitoring of the arms embargo ... and to that end will establish channels of communication with relevant regional and subregional organizations and bodies." But there was no indication as to how it arrived at this decision or how it would be carried out, and there was no further reference to this proposal in the succeeding reports.

The lack of institutional memory in the staff of permanent missions in New York makes it difficult to determine today what unreported action may have been taken by the Committee in the aftermath of this and other decisions. However, it is safe to assume that if the Committee had acted on its decision, it would have been cited in its reports.

Also, in its 1999 report, the Committee noted the concerns raised by the Council in two presidential statements (27 May 1999 and 12 November 1999) on reports of illicit delivery of weapons and military equipment to Somalia. And the Committee stated that in its

fifteenth formal meeting there was an "exchange [of] ideas on effective implementation of the arms embargo... and on strengthening the work of the Committee." The report stated that the Committee considered several proposals (no details given) of which the succeeding chairman would be briefed.

The Committee: 2000-present

In 2000, the Committee began to show signs of increased activity in various aspects of its monitoring of the arms embargo. In contrast to the first eight years, in the period from 2000 through 2006 the Committee held 14 formal and 35 informal meetings. In its report to the Council covering its activities from January to 20 December 2000 the Committee admitted that it had no effective monitoring mechanism and had to rely solely on reports from member states.

In 2000, the Committee decided to seek the cooperation and assistance of the OAU and IGAD in the enforcement of the arms embargo. The chairman of the Committee wrote letters on 20 March 2000 to the Secretary-General of the OAU and the Executive Secretary of IGAD appealing to both organisations to provide the Committee, on a regular basis, any information they may have relating to any violations or suspected violations of the embargo.

This marked the first time that the Committee had specifically addressed these regional organisations on the issue of the Somalia arms embargo. This communication came eight years after the Committee was established.

The Committee convened a meeting in 2001 to consider amendments to its guidelines (originally adopted on 8 May 1992) for the conduct of its work in light of humanitarian exemptions that were now allowed pursuant to resolution 1356, and to consider humanitarian exemptions requests made by provider states.

In addition, the Committee issued a press statement on 20 August 2003 reminding states of their obligations to ensure strict implementation of the arms embargo and to seek the cooperation of the AU and IGAD. It also endorsed the chairman's proposal to undertake a fact-finding mission to neighbouring countries to assess the difficulties in implementing the arms embargo and to encourage member states in the region to cooperate with the Committee. A delegation visited the region from 11-21 November 2003.

Having operated for its first ten years without the assistance of a monitoring mechanism, the Committee repeatedly advised the Council in its annual reports, that it was handicapped by such lack of support. The Committee stated specifically that it "does not have any specific monitoring mechanism to ensure the effective implementation of the arms embargo and ... that it relies solely on the cooperation of States and organizations in a position to provide information on violations of the arms embargo." But as noted above, such cooperation from most states, in general, and neighbouring states, in particular, was not forthcoming.

Following the establishment of the Team of Experts in May 2002 and its subsequent report two months later,

the Committee continued to be more active. The chairman of the Committee regularly briefed the Council following briefings by the expert panel and the discussions which had taken place in the Committee pursuant to the panel's reports. These briefings occurred in informal consultations of the whole, hence no public record of the contents of these briefings are available.

Committee's Response to Sanctions Violations

Prior to 2002, without the aid of a monitoring mechanism and a dearth of reports on violations from member nations, the Committee's response to unverified reports of violations was the same—only stating that there were no sanctions violations reported. However, the Committee noted that the monitoring of the arms embargo was handicapped by the lack of its capacity for active monitoring and the need to rely solely on reports by the states, some of which by definition had to be involved, directly or indirectly, in sanctions violations. The Committee received no reports of violations and therefore offered no recommendations as it was required pursuant to its mandate.

At its nineteenth formal meeting of 28 May 2002, the Committee considered a letter it had received from the nascent Somalia Transitional National Government containing allegations that Ethiopia had violated and continued to violate the arms embargo. The Committee's response was to authorise the chairman to send a letter to Ethiopia to query about the alleged violation. This was followed by a note verbale to all states and

especially to neighbouring states appealing for their support. Letters were also sent to the OAU and IGAD seeking their cooperation.

In July 2002, the Committee received and considered the report of the two-person Team of Experts with the results of the feasibility study for the proposed monitoring mechanism. This report also noted gross violations of the arms embargo. The Team of Experts furthermore made a number of observations with regard to violations of the arms embargo that were later confirmed and documented by the Panel of Experts and later the Monitoring Group. These included:

- the volume of arms flow, while not constant, had continued since the collapse of the Siad Barre government;
- some governments supplied arms and military equipment to armed groupings inside Somalia to further political and strategic objectives;
- armed groups in Somalia took advantage of illicit arms trafficking networks for their supplies;
- arms supplies were financed in a number of ways, including through revenues generated by business activities in Somalia and through donations from foreign governments;
- effective enforcement of the arms embargo could not rest on actions by neighbouring states due to their limited technical capacities and the prevailing political atmosphere;
- regional actors, after ten years of non-enforcement of the arms embargo, believed that the international community had the capacity but lacked the will to enforce the embargo effectively; and
- failure to enforce the embargo probably had delayed the creation of a political framework.

After considering the report and recommendations of the two-member Team of Experts, the Council decided to establish a Panel of Experts with the appropriate mandate to assist the Committee in its monitoring functions. By 2004, the panel was replaced by a Monitoring Group.

In the period from 2002 to the present, the Committee has undertaken the review of ten reports submitted by the monitoring mechanisms and has received a number of “mid-term” or interim oral briefings by them. During these briefings and presentations of reports, members of the Committee have had the opportunity to engage the experts on all aspects of their observations, conclusions and recommendations. But it seems that for the most part, most Committee members have not taken advantage of the opportunities to address the issues raised with regard to violations of the arms embargo. Only a few Committee members have participated actively in the work and thus had any appreciable effect on the Committee’s outcomes.

The reports of the monitoring mechanisms have repeatedly identified sanctions violators and made a vast number of recommendations aimed to improve the effectiveness of the embargo.

All of these reports are discussed by the Committee and then submitted to the Council and published as documents of the Council. Ultimately, it is only the Council that has the authority and power to take meaningful action to enforce the embargo in response to the findings and recommendations. The Committee can make recommendations to the Council, but for this to

happen all 15 members must agree, as the Committee operates by consensus.

An illustration of the practical implications of this procedure can be found in the Committee’s 2003 annual report, which simply stated that the chairman provided “a factual report to the Council of the Committee’s discussions on the Panel’s report to the Security Council on 3 December 2003”. This language suggests that the Committee was unable to arrive at any decision, and consequently the Committee was not offering any recommendations to the Council regarding the violations identified and the recommendations made in the monitoring mechanism’s report. In this report, the Panel of Experts had identified a number of transit countries in the region through which arms destined for Somalia had passed. (The monitoring mechanism had recommended that a list of individuals and groups engaged in violating the arms embargo should be prepared with a view to possible future Security Council actions against them. The experts had also recommended that violators should be banned from receiving UN contracts.)

At various points the Committee did seek to be more proactive. In November 2003, a mission led by the chairman of the Committee visited countries in the region (Djibouti, Egypt, Eritrea, Ethiopia, Kenya and Yemen) as well as former colonial power, Italy. During this mission, the Committee met with government and military officials, representatives of Somali political parties and civil society and with heads of the African Union, IGAD and the League of Arab States.

The added importance of the meeting with IGAD was the fact that it was sponsoring the Somali national reconciliation process led by Kenya. The Committee could learn firsthand the expectations of the facilitators regarding the implementation of the arms embargo in the region and in turn the interlocutors in the region could be made aware of the Committee and the Council’s expectations and approaches. The African Union, also involved with the reconciliation process, had made a commitment to deploy a military observer mission to Somalia once a comprehensive agreement had been reached.

The Panel of Experts in its March 2003 report had made a number of recommendations aimed at improving the implementation of the arms embargo, including: measures to improve issuance, scrutiny and verification of end-user certificates for arms sales and transfers; preparation of a list for financial sanctions; targeted travel ban; and diplomatic sanctions.

These matters were beyond the Committee’s competence and the Committee sought the advice of relevant international organisations. The chairman, on behalf of the Committee, sent letters on 5 May 2003 to the African Union, League of Arab States, the International Civil Aviation Organisation (ICAO), the International Maritime Organisation (IMO), and the UN Department of Disarmament Affairs (DDA) seeking their views on the Panel’s recommendations.

In order to further improve communication between neighbouring states and the Committee, the Chairman invited neighbouring states (Djibouti,

Eritrea, Ethiopia, Kenya and Yemen) to meet directly with the Committee. While not unprecedented for affected states to meet with sanctions committees, this also marked another turning point in the Committee's assertiveness. Again, however, this did not seem to have any appreciable effect on the implementation of the arms embargo by these states.

Even though the Committee had become more active in engaging states on the implementation of the arms embargo, it failed to act on a series of recommendations offered by the monitoring mechanisms and failed to follow up on the provisions of resolution 1519 imposing reporting requirements. A key example is the failure to act on the draft list of those individuals and entities that were violating the arms embargo, and their active supporters. The Council, in resolution 1587 of March 2005 that re-established the Monitoring Group, mandated it to continue refining and updating information on the draft list for possible future measures by the Council. The draft list had been prepared earlier but had seen no action by the Committee and there were no recommendations to the Council in that regard.

Also in resolution 1587, the Council requested that the Committee consider and recommend to the Council ways to improve the implementation of and compliance with the arms embargo, including ways to develop the capacity of states in the region to implement the arms embargo. Yet while time and again the monitoring mechanisms have drawn attention to the lack of capacity and political will in neighbouring states to implement

the arms embargo, no recommendations have been made by the Committee in response.

While the Committee continued to consider the reports and recommendations of the Monitoring Group, there was no indication that it endorsed any of the Monitoring Group's recommendations or made any of its own (or if it has these were never made public).

Discussions in the Somalia Sanctions Committee have continuously been marked by a high degree of scepticism on the subject of targeted measures, in particular the freezing of financial assets and travel bans. A perennial argument has been that, given the lack of technical resources and capacity in Somalia and the region, or even widespread regular banking services, the measures would be largely ineffective. Another (very contested) argument has been that the majority of fighters in Somalia do not have bank accounts and do not travel internationally.

Political sympathy for the TFG also seems to have played a key role in the positions of some members.

Arms producing states have generally argued that they cannot be held responsible if the arms they produce are illegally diverted to Somalia—either directly or through black markets—by those to whom the arms are first sold. And those states in which black arms markets exist have generally argued lack of capacity or cognisance of such markets.

The same lack of response has been seen with repeated requests from the Council—most recently in resolution 1814 of May 2008—to the Committee

for recommendations on strengthening the sanctions regime. These seem to be largely pro-forma exercises, since members are very aware of the divisions and scepticism prevailing in the Committee—which after all comprises the same 15 countries as on the Council.

Relationship with Neighbouring and Other States

The Committee on at least two occasions (2 March 1993 and on 12-13 November 1993) addressed letters to those states geographically neighbouring Somalia and other countries in the region (Djibouti, Ethiopia, Egypt, the Islamic Republic of Iran, Kenya, Saudi Arabia, the Sudan and Yemen) appealing to them to monitor air and sea traffic in the area to increase their vigilance with regard to the movement of goods across common borders with Somalia, and to identify the origin of the carriers of the goods destined for the ports of Somalia. There is no indication that neighbouring states ever responded to these 1993 letters.

The two missions to the region led by the chairman of the Committee and described above, were meant to encourage neighbouring states to become more responsive and to actively seek information on the level of implementation of the arms embargo and to seek improved cooperation between these states and the Committee. There is no indication that these visits have in any way resulted in improved implementation of the arms embargo in the region. The reports of the Monitoring Group have suggested that these countries have not been implementing the arms embargo and that some of them have been implicated in arms embargo violations.

There were apparently no requests for exemptions to the arms embargo as stipulated in resolutions 1356 and 1744. There is nonetheless clear evidence of international assistance to TFG forces and the delivery of supplies of non-lethal military equipment intended solely for humanitarian or protective use. This clearly signals widespread disregard for the embargo even in those situations authorised by the Council.

Relationship to Regional and International Organisations

In its report to the Council for the year 1998, the Committee indicated that it would consider appropriate steps to improve the monitoring of the arms embargo and would establish channels of communication with relevant regional and subregional organisations and bodies. However, that channel was not formally established until March 2000, when, as discussed above, the chairman of the Committee wrote to the OAU and IGAD seeking the cooperation of those organisations in the implementation of the arms embargo. This was not surprising as the Committee hardly functioned in the pre-2000 period. Furthermore, while these two organisations regularly sent representatives to Council meetings and often sent letters to the Council on declarations and resolutions adopted by them with regard to Somalia, it was clear that these organisations had negligible influence over their members' lack of implementation of the arms embargo.

Also, as noted above, in 2003, the Committee sought the views of regional and international organisations (ICAO, IMO, DDA, African Union

and the League of Arab States) on recommendations of the Monitoring Group to impose targeted sanctions on arms embargo violators. It should also be noted that the Committee held discussions with the regional organisations during its missions to the region in 2003 and 2005. The purpose of these discussions was to urge the regional organisations to use their influence to help with the implementation of the arms embargo and to help in the peace facilitation process in Somalia. And, while the regional organisations have helped to facilitate the peace processes efforts, they have not been able to influence the effectiveness of the implementation of the arms embargo by their members.

Relationship with Other Council Subsidiary Bodies (Relevant Sanctions Committees)

The sources of arms supplies and the suppliers are often the same actors for different conflict situations. Arms move in and out of a country and in many cases have been known to move from one conflict situation to another. However, there is no evidence, including any mention of it in reports of the Somalia Sanctions Committee that would indicate that there has been any cooperation or coordination of activities with other sanctions committees or subsidiary bodies of the Security Council.

5. Role of the Monitoring Mechanism

The use of monitoring mechanisms to assist sanctions committees and the Council to improve on effective implementation of arms embargoes and

other targeted sanctions has been an important addition to the work of sanctions committees. The details of their recommendations and the Council's response have been covered above.

The expertise and the work of the monitoring mechanism (first the Panel of Experts and currently the Monitoring Group) has added a significant amount of capacity for the Committee to investigate violations and to formulate possible remedial actions. As noted in sections above, the Committee had for many years complained that it had to rely solely on states to report embargo violations, and that no state had done so.

Mandate of the Monitoring Mechanisms

The original mandate of the first Somalia sanctions monitoring mechanism was developed by taking into account the recommendations of the Team of Experts established in 2002. They carried out a feasibility study and made recommendations with regard to constituting the monitoring mechanism. As a result, the Council established the Panel of Experts with the appropriate expertise and resources to assist the Committee with the following mandate: to investigate all forms of violations, to assess the capacity of the states in the region to implement the arms embargo, and to provide recommendations to the Council on ways to strengthen enforcement of the arms embargo.

The mandate of the Panel of Experts was then expanded by resolution 1474 of 8 April 2003 to investigate specifically violations of the arms embargo covering access to Somalia by land, air and sea, and in particular to pursue

any sources that might reveal information related to violations, and to detail information and make specific recommendations to give effect to and strengthen the embargo in its various aspects. The Panel was also mandated to conduct field-based research in Somalia, neighbouring states and other states where appropriate and possible, and to assess the capacity of states in the region, including their customs and border control capacities, to fully implement the arms embargo. In addition, the panel was asked to identify arms embargo violators and provide the Committee with a draft list of them for possible future actions by the Council.

The Council in resolution 1519 of 16 December 2003 replaced the Panel of Experts with a four-member Monitoring Group with a similar mandate to that of its predecessor. All monitoring mechanisms are established under Chapter VII of the Charter. This strongly suggests that states are required to cooperate with the investigations carried out by them and to give them access as required in the conduct of their work.

The process of renewal of the mandates of each monitoring mechanism has followed a pattern in which the Council generally reassigned the same tasks to each succeeding panel. From time to time, the Council would add some new tasks, as it did in resolution 1630 of October 2005 where it asked the Monitoring Group to continue the tasks set in resolution 1587. It also broadened the mandate to allow the monitors to conduct investigations in coordination with relevant international agencies, including in the financial, maritime and other

sectors that generate revenues used to commit arms embargo violations.

Relationship of the Monitoring Mechanism to the Committee and the Council

The monitoring mechanism is an independent body of experts with a specific mandate from the Council and guidance from the Committee. It conducts its work independently of the Committee but is required to report to the Council through the Committee and to provide the Committee periodically with briefings on its work. It is essentially a support mechanism to improve the effectiveness of the Committee and its expertise is available to the Committee at all times.

As a matter of policy and practice the Monitoring Group (all of its members together) is available for consultations by individual Committee members. But in an effort to avoid undue influence of any particular member state over its work, it avoids meetings between individual Group members and individual Committee or Council members.

During briefings of the Committee and presentations of written reports, members of the Monitoring Group are available to address specific issues and recommendations included in the reports. In this way the expertise of the members of the Group is made available to members of the Committee, including those members with limited access to expertise in all areas covered in the reports. But as has been noted above, most members of the Committee rarely take advantage of this resource.

There is, however, no direct interaction between the Monitoring Group and

the Council. The line of reporting is through the Committee, and then the Council is briefed on the Monitoring Group's reports and recommendations by the Chairman of the Committee.

This buffer between the monitoring mechanism and the Council insulates the Council from specific findings, conclusions and recommendations of the Monitoring Group. The Council has the option to only deal with the recommendations coming from the Committee with regard to the Monitoring Group's work. But this tends to obscure the fact that the Committee is in reality the alter ego of the Council, and the insulation is essentially only procedural. However, members do seem to see the structure as shielding the Council from the realities of the Monitoring Group's findings and recommendations and perhaps absolving the Council from any requirement for meaningful response. The Council often refers to the findings in the reports without making reference to the recommendations or acting on them.

Modus Operandi, Including Standard of Proof

As laid out in the reports of the monitoring mechanisms, reasonable standards of proof (as opposed to judicial standards) are used to determine sanctions violations. As a matter of policy and practice, no individual, entity, group or state is identified in any of its reports as arms embargo violators without at least two sources of verifiable information, preferably documentary information.

The members of the monitoring mechanism, who are based in Nairobi, Kenya, visit countries in the region

regularly, and conduct interviews with government officials, representatives of regional organisations, NGOs and others on an ongoing basis. The monitoring mechanism also seeks documents from many sources to confirm the purchases and shipments of arms in violation of the embargo, and carries out verification of these documents as appropriate. But the reliability of the Group's findings has been routinely questioned by some Council members.

Problems Identified with Effectiveness of Sanctions/ Arms Embargo

Among the problems most frequently identified by monitors of the embargo is the lack of capacity of neighbouring states to implement the arms embargo. In some cases political will is also an issue. For some countries in the region their own geopolitical interests are served by facilitating or turning a blind eye to embargo violations.

As to the lack of capacity, there are administrative and operational problems with customs and border control. This is particularly true for Somalia itself which is without a central government exercising control over its territory, including access by land, air and sea. Similarly, the countries in the region are also often unable to exercise control over access to Somalia through their territories, even where they have some semblance of customs and border control mechanisms in place.

Observations by the Monitoring Mechanisms

The Monitoring Group, in order to improve on the implementation of the

arms embargo, has made a series of recommendations based on their findings and observations. One of these observations is that lack of follow-up action by the Council has led the violators to conclude that the Council has no intention of enforcing the embargo. Arms embargo violators therefore believe they can continue to violate the embargo with impunity.

In its March 2004 report, it warned, "the dismissive attitude to resolutions of the Security Council will continue to prevail if the international community does not show resolve in implementing a strict embargo regime or remain vigilant in investigating new violations of the embargo."

It should be noted that the reports of the monitoring mechanisms are published documents. Violators have access to them, they are aware of the observations and recommendations of the monitoring mechanisms, and, most importantly, they are aware of the dynamics of the Council which lead to a lack of meaningful action against them.

The Monitoring Group's 21 November 2006 report laid some of the blame for the deterioration in the security situation in Somalia on the Council. The Monitoring Group stated, "past recommendations ... were predicated both on the analysis of the information available and a sense of what measures might best serve to curb arms embargo violations ... however, no past recommendations have been implemented. Consequently—arguably—the security situation in Somalia has continued to deteriorate dramatically, resulting in an explosion of arms flows, wider militarization of society and,

eventually, the ongoing and broad military build-up of the two major contenders for control of Somalia, all in violation of the arms embargo." This statement, apparently overlooked by most observers, was essentially a clear warning about the need for action to enforce the effective implementation of the arms embargo on Somalia.

Since 2002, the monitoring mechanisms have largely fulfilled their mandates as set out by the Council, by conducting reasonably thorough investigations of arms embargo violations, identifying specific violations and violators and preparing a draft list of those violators. The monitors have made a series of recommendations to improve the effectiveness of the arms embargo, including recommendations for the Council to impose targeted sanctions—travel bans and assets freezes—on individual violators; and other measures designed to improve the scope of the arms embargo itself.

6. Role of the Secretariat

The work of the Somalia Sanctions Committee and the monitoring mechanism is supported by the UN Secretariat. In the case of the Committee, the Secretariat through its Sanctions Branch provides logistical and clerical support, including arranging meeting venues and notifying members of scheduled meetings, assistance in drafting of letters and reports, and related secretarial services. This service is of particular importance to small delegations which would not be able to cope with the

extra demands such as chairing a sanctions committee.

The Somalia Sanctions Committee has generally experienced professional and competent support from the Secretariat staff. Advice and guidance to members of the Committee, in particular to the chairing delegation, on the conduct of Committee business has generally been good. This also includes orienting new Committee members on the nature of the sanctions and the historical background of the Committee's work with regard to the particular sanctions regime. The Secretariat is often consulted by members of the sanctions committees, many of whom lack experience in dealing with sanctions. The Secretariat also facilitates meetings between the Committee and the members of the Monitoring Group as well as between individual members of the Committee and members of the monitoring mechanism.

The Secretary-General appoints the members of the Monitoring Group and the Secretariat provides logistical support, including travel and accommodations.

The administrative process following the authorisation by the relevant resolution to appoint a monitoring mechanism after the expiry of its mandate (usually every six months) does not allow for immediate appointments of the experts. There is, therefore, a period of some four to six weeks following the passage of the resolution when the monitoring mechanism is not on the ground. The Monitoring Group has indicated that there is usually an increase of arms flow in violation of the arms embargo during

this hiatus. From this observation, it would appear that the Council process leading to renewing mandates may significantly affect the efficiency of the sanctions regime.

The workload of the Secretariat in support of the sanctions committees and other Security Council subsidiary bodies has been growing steadily in the past several years with the increase in numbers of sanctions committees and monitoring mechanisms. However, the Secretariat's capacity to deal with this increase has not grown commensurately with this demand. While creating new sanctions regimes, sanctions committees and monitoring mechanisms, the Council has not provided support for an increase in the capacity of the Secretariat. Lack of such support for the Secretariat could contribute to deficiencies in the Committee's and monitoring mechanism's work.

7. Final Observations Regarding Implementation and Effectiveness of the Sanctions

This study draws attention to the Council's difficulty in making appropriate and timely decisions and especially its inability to change course when it becomes obvious that the initial measures are not having the desired effect.

The Council has imposed variations of arms embargoes in many conflict situations. Historically, all arms embargoes have proved difficult to implement.

But the arms embargo imposed on Somalia in 1992 at the outset confronted more difficulties than most. There was no governmental entity with

control over Somali territory. There was no customs or border control. From the very beginning the Secretary-General had made clear the difficulty of implementing an unsophisticated sanctions regime, especially if it relied heavily on authorities in neighbouring countries to enforce it. Not only did the neighbouring countries lack the administrative and operational capacities required in customs and border control, but some also had competing interests which ran counter to their compliance with and enforcement of the embargo.

Violations by some neighbouring countries have persisted over a long period of time and are well known to Council members. Yet, despite these warnings and its experience with much more sophisticated sanctions tool kits in other situations, the Council chose not to address these issues and put in place the limpest form of embargo imaginable.

This study clearly shows that lack of political will, national interests and lack of capacity, on the part of Council members and neighbouring states, made effective implementation of the Somalia arms embargo unlikely, if not impossible. The Council was fully aware of these problems. While it asked for assessments of the capacity of the neighbouring states to implement the arms embargo on Somalia, it did not react to findings of the monitors and has not facilitated assistance to those states that lacked the necessary capacity.

The Council instead resorted to expressing concern about the effect the arms flow to Somalia was having on the conflict situation. It seems that

in imposing the arms embargo, the Council wanted to give the impression that it intended to stem the flow of arms to Somalia and thereby create an environment conducive to a cessation of hostilities that would lead to a political settlement.

But even in the face of obvious failure of the embargo, the Council took no action for the first ten years to define more clearly the scope of the arms embargo or to enforce it. In most other cases where arms embargoes are in place, the Council has employed additional sanctions targeted at the financial assets of, and imposed travel bans against violators of the embargo. Sixteen years after the adoption of the arms embargo for Somalia, and with the situation becoming entangled in a wider regional conflict the Council is still to devise a tool-kit based on established best practices.

No effort was made to impose secondary sanctions on countries in the region that were identified as violators. Instead of acting upon the evidence that has been provided by the monitoring mechanisms to investigate and identify non-state actors responsible for arms embargo violations, the Council merely asked the monitors to continue investigating and refining the draft list of violators. This process has been going on for the past four years. As the Panel of Experts aptly pointed out in one of its reports, Somali faction leaders identified as violating the arms embargo, having not seen any enforcement action taken by the Council, have assumed that they can continue with business as usual.

Another conclusion to be drawn from the Somalia arms embargo experience

is that an arms embargo in and of itself is not sufficient to have a desired effect on a conflict situation. It is important that specific targets for enforcement action are identified and appropriate measures imposed against them. It is not sufficient for the Council to threaten repeatedly to impose targeted sanctions on specific individuals or groups and not carry out its threats. At the same time the absence of any carrots to counter-balance the sanctions, especially in the form of a serious commitment to a political reconciliation process, can be seen as a major weakness.

As Secretary-General Ban Ki-moon said in a speech to a symposium on Enhancing the Implementation of Security Council Sanctions on 30 April 2007, "while not a solution in themselves, sanctions can play an effective role among the panoply of measures to prevent and resolve conflict." He stressed their use in support of a holistic conflict resolution approach. However, the Security Council's experience with the Somalia sanctions stands in contrast with this approach.

In the case of the Somalia arms embargo, the inaction of the Somalia Sanctions Committee during the first eight years and its inability to make actionable recommendations to the Council in the past eight years tends to confirm that the arms embargo was only ever a fig leaf. After the failure of UNOSOM II in 1993 and 1994, sanctions became a proxy for strategy in Somalia.

Among the lessons that should be learned from the failure of the Somalia arms embargo is the risk of taking action which the Council does not intend

to enforce or which is understood from the outset to be unenforceable.

8. Other Relevant Information

Committee Chairs

Ambassador Yoshio Hatano of Japan (1992-93)
 Ambassador Salim Al-Khussaiby of Oman (1994-95)
 Ambassador Park Soo Gil of the Republic of Korea (1996-97)
 Ambassador Jassim Mohammed Buallay of Bahrain (1998-99)
 Ambassador Said Ben Mustapha of Tunisia (2000-01)
 Ambassador Nouredine Mejdoub of Tunisia (2001)
 Ambassador Stefan Tafrov of Bulgaria (2002-03)
 Ambassador Lauro L. Baja of the Philippines (2004-05)
 Ambassador Nassir Abdulaziz Al-Nasser of Qatar (2006)
 Ambassador Dumisani Shadrack Kumalo of South Africa (2007-08)

Team of Experts

23 May 2002: Ian Anthony (arms expert, Stockholm International Peace Research Institute) and Harjit Singh Sandhu (expert with Interpol investigative experience)

Panel of Experts

- 22 August 2002: Ernst Jan Hogendoorn (Netherlands), Mohamed Abdoulaye M'Backe (Senegal), Brynjulf Mugaas (Norway)
- 30 April 2003: Edward Howard Johns (USA), Mohamed Abdoulaye M'Backe (Senegal), Johan Peleman (Belgium) and Pavanjeet Singh Sandhu (India)

Monitoring Group

- 22 January and 23 August 2004: Melvin E. Holt, Jr. (USA), Li Changsheng (China), John E. Tambi (Sierra Leone) and Joel Salek (Colombia)
- 6 April and 2 November 2005 and 22 May and 15 December 2006: Melvin E. Holt, Jr. (USA), Harjit Singh Kelley (Kenya), Joel Salek (Colombia) and Bruno Schiemsy (Belgium)
- 28 September 2007: Bruno Schiemsy (Belgium), Gilbert Charles Barthe (Switzerland), Juliana Ruhfus (Germany) and Edwina Thompson (Australia)
- 13 November 2007: Charles M. Lengalenga (Zambia) replaced Edwina Thompson who did not assume her functions
- 10 June 2008: Gilbert Charles Barthe (Switzerland), Matt Bryden (Canada), Charles M. Lenalenga (Zambia) and Ignatius Yaw Kwantwi-Mensah (Ghana)

9. UN Documents

Selected Security Council Resolutions

- S/RES/1816 (2 June 2008) authorised foreign ships to enter Somali waters and use “all necessary means” to deter acts of piracy.
- S/RES/1814 (15 May 2008) requested recommendations from the Sanctions Committee on measures to strengthen the embargo.
- S/RES/1811 (29 April 2008) re-established the Monitoring Group for a period of six months

to continue with its prior mandate.

- S/RES/1801 (20 February 2008) renewed AMISOM for six months and emphasised the contribution of the arms embargo, demanded member states’ compliance and reiterated its intention to consider ways to strengthen its effectiveness.
- S/RES/1766 (23 July 2007) re-established the Monitoring Group for a period of six months to continue with its prior mandate.
- S/RES/1744 (20 February 2007) established AMISOM for a period of six months and authorised exemptions to the arms embargo.
- S/RES/1732 (21 December 2006) was the resolution adopting the report of the Informal Working Group on General Issues of Sanctions (S/2006/997).
- S/RES/1730 (19 December 2006) was the resolution establishing new de-listing guidelines for all sanctions committees.
- S/RES/1725 (6 December 2006) authorised the deployment of IGASOM, allowed exemptions to the arms embargo and signalled an intention to consider targeted measures to strengthen the embargo.
- S/RES/1724 (29 November 2006) re-established the Monitoring Group with a mandate similar to that of resolutions 1587, 1630 and 1676.
- S/RES/1676 (10 May 2006) re-established the Monitoring Group with a mandate similar to that in resolutions 1587 and 1630.
- S/RES/1630 (14 October 2005) re-established the Monitoring Group with a mandate similar

to that in resolution 1587.

- S/RES/1587 (15 March 2005) re-established the Monitoring Group to continue investigating and making recommendations and asked that it refined the draft list and assist the Committee to identify areas where the capacities of states in the region can be strengthened.
- S/RES/1558 (17 August 2004) re-established the Monitoring Group to continue investigating violations and make recommendations for additional measures.
- S/RES/1519 (16 December 2003) established the Monitoring Group to be based in Nairobi, Kenya to investigate violations of the arms embargo and make recommendations and prepare a draft list of violators subject to possible future measures by the Council.
- S/RES/1474 (8 April 2003) re-established the Panel of Experts to investigate violations, make recommendations, prepare a draft list of violators and assess capacities of states in the region to implement the embargo.
- S/RES/1425 (22 July 2002) elaborated on the scope of the arms embargo; established a Panel of Experts consisting of three members based in Nairobi, Kenya and mandated to investigate violations, assess states capacity, and provide recommendations to strengthen the embargo.
- S/RES/1407 (3 May 2002) established a Team of Experts comprised of two members to

explore feasibility of a monitoring mechanism.

- S/RES/1356 (19 June 2001) provided humanitarian and other exemptions to the arms embargo.
- S/RES/954 (4 November 1994) extended the mandate of UNOSOM II for a final period ending 31 March 1995.
- S/RES/885 (16 November 1993) established the Commission of Inquiry to investigate the armed attacks on UNOSOM II personnel 5 June 1993.
- S/RES/837 (6 June 1993) the Council approved an extended application of the mandate under which persons responsible for attacks on UN forces and personnel are held responsible.
- S/RES/814 (26 March 1993) established UNOSOM II with a Chapter VII mandate.
- S/RES/794 (3 December 1992) initiated an operation in Somalia which became known as the Unified Task Force (UNITAF).
- S/RES/775 (28 August 1992) expanded and strengthened UNOSOM's mandate to protect humanitarian convoys and distribution centres.
- S/RES/751 (24 April 1992) established UNOSOM and the Sanctions Committee.
- S/RES/746 (17 March 1992) supported the Secretary-General's proposal to send a technical team to Somalia.
- S/RES/733 (23 January 1992) imposed a general arms embargo on Somalia.
- S/RES/421 (9 December 1977) established a sanctions committee to monitor the arms embargo

against South Africa.

- S/RES/418 (4 November 1977) imposed an arms embargo against apartheid South Africa.
- S/RES/253 (29 May 1968) established the first Council sanctions committee to monitor the implementation of the sanctions measures in Southern Rhodesia.

Selected Presidential Statements

- S/PRST/2006/31 (13 July 2006) reiterated the Council's intention expressed in prior presidential statements and resolutions to consider urgently ways to strengthen the effectiveness of the arms embargo.
- S/PRST/2002/8 (28 March 2002) urged along the peace process and underlined the urgency to develop monitoring mechanisms that allowed legitimate financial transactions while preventing the flow of funds to terrorist groups.
- S/PRST/1999/31 (12 November 1999) raised concerns about the gross violations of the arms embargo.
- S/PRST/1999/16 (27 May 1999) raised concerns about the gross violations of the arms embargo.

Reports of the Monitoring Mechanisms

- S/2008/274 (24 April 2008) noted an increase in armed actions between the TFG and opposition groups and found that the arms embargo was having a limited impact on the conflict.
- S/2007/436 (17 July 2007) noted the gross violations of the arms embargo, including the invasion of Somalia by Ethiopia.

- S/2006/913 (21 November 2006) identified ten countries violating the arms embargo.

- S/2006/229 (4 May 2006) repeated the recommendation for "an integrated arms embargo".

- S/2005/625 (5 October 2005) first recommended the "integrated arms embargo."

- S/2005/153 (8 March 2005) first specified a draft list of possible targets for secondary sanctions to the Committee.

- S/2004/604 (11 August 2004) included recommendations on strengthening the capacity of the arms embargo,

- S/2003/1035 (4 November 2003) was the second report of the Panel of Experts

- S/2003/223 (25 March 2003) was the first report of the Panel of Experts which specifically identified clear patterns of arms embargo violations.

- S/2002/722 (3 July 2002) was the report of the Team of Experts.

Annual Reports of the Somalia Sanctions Committee

- S/2007/761 (26 December 2007)
- S/2007/154 (15 March 2007)
- S/2005/813 (19 December 2005)
- S/2004/1017 (30 December 2004)
- S/2003/1216 (31 December 2003)
- S/2002/1430 (30 December 2002)
- S/2001/1259 (21 December 2001)
- S/2000/1226 (14 December 2000)
- S/1999/1283 (28 December 1999)
- S/1998/1226 (28 December 1998)
- S/1997/16 (6 January 1997)
- S/1996/17 (15 January 1996) was the first report of the Committee and it covered the

period from its inception through 31 December 1995.

Selected Reports of the Secretary-General

- S/2008/466 (16 July 2008) was the latest report of the Secretary-General reiterating contingency planning for a possible UN peacekeeping force.
- S/2008/178 (14 March 2008) addressed contingency planning for a possible deployment of a UN peacekeeping force in Somalia.
- S/1994/839 (18 July 1994) was the report of the Secretary-General on the situation in Somalia highlighting arms flow to the country.
- S/24343 (22 July 1992) was on the situation in Somalia and highlighted arms flow to the country.
- S/23829 (21 April 1992) was on the situation in Somalia and highlighted progress made in implementing the arms embargo.
- S/23693 and Corr. 1 (11 March 1992) was prepared in response to Security Council request in resolution 733.

Selected Letters

- S/2008/378 (10 June 2008) was a letter from the Secretary-General appointing Gilbert Charles Barthe, Matt Bryden, Charles M. Lengalenga, Ignatius Yaw Kwantwi-Mensah as the experts for the Monitoring Group.
- S/2008/370 (6 June 2008) was a letter from the Permanent Representative of Uganda to the president of the Security Council dismissing allegations from the Monitoring Group's 24 April Report that Ugandan personnel

sold arms to insurgents.

- S/2007/667 (13 November 2007) was a letter from the Secretary-General appointing Charles M. Lengalenga to replace Edwina Thompson who did not assume her functions as an expert for the Monitoring Group.
- S/2007/575 (28 September 2007) was a letter from the Secretary-General appointing Bruno Schiemy, Gilbert Charles Barthe, Juliana Ruhfus, Edwina Thompson as the experts for the Monitoring Group.
- S/2006/986 (15 December 2006), S/2006/313 (22 May 2006), S/2005/695 (2 November 2005) and S/2005/229 (6 April 2005) were letters from the Secretary-General appointing Melvin E. Holt, Jr., Harjit Singh Kelley, Joel Salek and Bruno Schiemy as the experts for the Monitoring Group.
- S/2004/676 (23 August 2004) and S/2004/73 (22 January 2004) were letters from the Secretary-General appointing Melvin E. Holt, Jr., Li Changsheng, John E. Tambi and Joel Salek as the experts for the Monitoring Group.
- S/2003/515 (30 April 2003) was a letter from the Secretary-General appointing Edward Howard Johns, Mohamed Abdoulaye M'Backe, Johan Peleman and Pavanjeet Singh Sandhu as the Panel of Experts.
- S/2002/951 (22 August 2002) was a letter from the Secretary-General appointing Ernst Jan Hogendoorn, Mohamed Abdoulaye M'Backe and Brynjulf Mugaas as the Panel of Experts.

- S/2002/575 (23 May 2002) was a letter from the Secretary-General appointing Ian Anthony and Harjit Singh Sandhu as the Team of Experts.
- S/23445 (20 January 1992) was the letter from the Charge d'affaires of Somalia, Fatun Mohamed Hassan, requesting a meeting of the Security Council on the situation in Somalia.

Other Relevant Documents

- SG/SM/10968 SC/9010 (30 April 2007) Ban Ki-moon's speech to the Symposium on Enhancing the Implementation of Security Council Sanctions.
- SC/7849 (20 August 2003) was a press release reminding states of their obligations regarding the arms embargo and seeking cooperation of the OAU and IGAD.
- SCA/1/02(09) (7 June 2002) was the note verbale to all states reminding them of their obligations to implement the arms embargo, and seeking the assistance of neighbouring states.
- SC/7417 (29 May 2002) was the Committee's press release on the note verbale sent to states and letters sent to the OAU and IGAD.
- SC/6823 (13 March 2000) was the press release of the Committee in which it indicated its intention to send letters to all member states to remind them of their obligations to ensure strict implementation of the embargo; also on its decision to send letters to the OAU and IGAD seeking their cooperation; and endorsement of proposal to

undertake a fact-finding mission by the Chairman to neighbouring states.

- S/1995/234 (29 March 1995) was the note by the president of the Council formally establishing annual reports by, and improving the transparency of, all sanctions committees.
- SC/5960 SOM/62 (5 December 1994) was the press release by which the Committee issued an appeal to individuals, national and international organisations for information on embargo violations.
- S/1994/1245 (3 November 1994) was the report of the Security Council Mission to Somalia on 26 and 27 October 1994.

- S/1994/1194 (21 October 1994) was the Note by the President of the Council naming the members of the mission to Somalia on 26 and 27 October 1994.
- S/1994/653 (1 June 1994) was the report of the Commission of Inquiry established to investigate armed attacks on UMOSON II personnel on 5 June 1993.
- SC/5554 SOM/10 (10 February 1993) was the press release expressing the Committee's concern with the lack of receipt of information from states.
- S/PV.3039 (23 January 1992) was the verbatim record of the meeting of the Security Council at which resolution 733 was adopted.

10. Useful Additional Sources

Irrelevant or malevolent? UN arms embargoes in civil wars by Dominic Tierney Review of International Studies (2005), 31 645-664

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Background on UNOSOM I <http://www.un.org/Depts/dpko/dpko/commission/unosomi.htm>

Background on UNOSOM II <http://www.un.org/Depts/dpko/dpko/commission/unosom2.htm>

Website of the Somalia Sanctions Committee <http://www.un.org/sc/committees/751/index.shtml>

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