International arms embargoes

By Ken Epps

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About this Paper
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Preface

The prolonged humanitarian crisis in Iraq has had a profound impact on the perceived legitimacy and effectiveness of multilateral sanctions. Economic sanctions have been severely discredited by the Iraqi experience. For more than a decade, broad economic sanctions have inflicted much more damage on the mainstream civilian population of Iraq than on the regime that is the intended target. Under such circumstances it is persuasively argued that economic sanctions are not a non-violent alternative to military action to discipline a regime, but instead perpetrate a vicious violence against those least able to protect themselves.

Even so, human rights advocates regularly and appropriately argue that the international community must have access to, and use, non-military means of disciplining regimes and groups which are perpetually and severely out of step with human rights and other global norms. It is obviously not appropriate for the international community to treat outlaw regimes in a business-as-usual manner. At the very least, arms control and disarmament advocates argue, such regimes must be denied access to the weapons that facilitate and exacerbate repression and human rights violations. Furthermore, on a planet that perpetually hosts some three dozen shooting wars, there is an urgent need to develop effective means of preventing the shipment of weapons of war to regions of ongoing political tension and existing or imminent armed conflict.

The purpose of this paper is to explore the utility of mandatory international arms embargoes as a means of enforcing compliance with international laws and standards and of preventing war. To what extent can arms embargoes be further developed as “targeted” or “smart” sanctions to focus pressure on recalcitrant regimes without harming civilian populations? The paper surveys current analysis in United Nations, NGO, and academic sources, and draws in particular on the recent ‘Bonn-Berlin Process’ organized by the Bonn International Center for Conversion which, in consultation with the UN Secretariat, sought to improve UN arms embargoes and travel-related sanctions as a means of producing ‘smart’ sanctions.

The paper also examines the extent to which existing Canadian export control guidelines and procedures ensure that transfers of Canadian military goods do not breach international arms embargoes. (See Appendix B.) What loopholes exist and how might they be closed?

International peace and security depend on the willingness of states to operate in a rules-based international environment in which the rights and well being of people are honoured and in which the peaceful settlement of political disputes is practised. And when states show themselves to be unwilling to function according to such norms and standards, the international community needs effective and lawful means of compelling compliance. Arms embargoes are a necessary element of any compliance mechanism and we are pleased to offer this paper to advance public policy discussion in support of developing arms embargoes toward that end.

Ernie Regehr
Director, Project Ploughshares
Denying arms transfers – mandatory and other sanctions

Mandatory international arms embargoes are declared by resolution of the United Nations Security Council. These are imposed under Chapter VII of the UN Charter in response to a “threat to the peace, breach of the peace, or act of aggression.” Although it does not explicitly identify them, Article 41 of the Charter provides for arms embargoes as one of the “measures not involving the use of armed force” which “may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations” (Charter of the United Nations). UN Security Council arms embargoes are binding on all UN member states.

According to the Stockholm International Peace Research Institute, since 1945 only the UN Security Council has imposed mandatory international embargoes (SIPRI 2001, p. 347). Non-mandatory or “voluntary” multilateral embargoes are also declared by the UN Security Council (for example, on Afghanistan in 1996-2000 and Eritrea and Ethiopia in 1999-2000) when it “calls upon” or “strongly urges” member states to end the supply of weapons to states or groups but stops short of the language (“decided that all states shall”) which defines mandatory embargoes. Other non-mandatory initiatives have been introduced by regional groups and organizations, such as the non-binding agreement by neighbouring states to deny weapons to Burundi during the period 1996-99. In recent years the European Union has approved several voluntary initiatives to refuse weapon transfers to states and combatants (17 since 1996), as has the Organization for Security and Cooperation in Europe (related to Nagorno-Karabakh), and the Commonwealth (on Nigeria). (See Table 1.)

Individual states also prohibit arms transfers to other states through national export controls. Apart from the well-known and long-standing example of US sanctions against Cuba (which extend beyond weapons supplies to other trade), the United Kingdom observes “embargoes … imposed on a national basis,” including against Argentina (beginning in 1982) and Iran (beginning in 1993) (Lloyd 1998). In Canada, denial of the export of military goods to specified countries is administered via the Area Control List (ACL) of the Export and Import Permits Act. Countries are added to or deleted from the ACL by the federal Cabinet at the recommendation of the Minister of Foreign Affairs. Exports of Canadian military goods to any country on the ACL are prohibited and all Canadian exports to the specified country require export permits. As of October 2001, two countries were on the ACL: Angola and Myanmar (Burma).

Although national and regional measures are available to prevent or reduce the supply of military goods and services to specified targets, it is apparent that multilateral arms embargoes which are binding on the largest number of states will have the greatest legitimacy as well as greatest likelihood of choking off arms supplies to a targeted state or group. A United Nations mandatory arms embargo is the sole existing instrument capable of fulfilling this role. Below we look more closely at its structure and record.

UN mandatory arms embargoes

Since the end of the Cold War the UN Security Council has declared 14 mandatory arms embargoes in response to external aggression of a sovereign state, civil war, persistent breaches of peace accords, humanitarian crises, egregious violations of human rights, coups, support of terrorism, and inter-state war (Bondi 1998). The Security Council has stressed the importance of...
arms embargoes in responding to armed conflict in at least one resolution which calls on member states to do more to meet embargo obligations and which emphasizes the need to strengthen arms embargoes “as a means to diminish the availability of arms with which to pursue armed conflicts” (UN Security Council 1998).

An embargo resolution typically includes demands on the targeted entity, such as direction to the Taliban to “turn over Usama bin Laden to appropriate authorities” (UN Security Council 2000c) or to the states of Ethiopia and Eritrea to “immediately cease all military action” (UN Security Council 2000b). The duration of mandatory embargoes may be defined – as in the one-year period set for the embargo declared against Eritrea and Ethiopia in May 2000 – or more commonly undefined, as in the embargo imposed without a specified time frame and with other sanctions against Iraq in August 1990. Most UN embargoes have been imposed on state governments. Otherwise the targets have been armed opposition groups. In the cases of Rwanda and Sierra Leone, an embargo against the state was lifted at the time an embargo against the opposition was imposed.

The UN Security Council has sole responsibility for imposing mandatory international arms embargoes as measures intended to “maintain or restore international peace and security.” Security Council resolutions establishing arms embargoes (as with other sanctions resolutions under Chapter VII of the UN Charter) typically also establish a Sanctions Committee to act on behalf of the Security Council to oversee implementation of the embargo. Recent monitoring tasks of these Committees routinely include:

• seeking information from all States on embargo implementation measures;
• considering information concerning violations;
• periodic reporting on violations and violators to the Security Council;
• considering requests for humanitarian exceptions;
• providing guidelines for implementation; and
• making information publicly available through media (BICC 2001b, p. 5).

Operating as independent bodies, Sanctions Committees have had independent records.

Some have accomplished little more than appealing to member states for reports on violations (as in the case of Somalia), while others have been very active, sending their Chairs to conduct fact-finding missions and engaging external experts to examine relevant aspects of the embargo (as in the case of Angola). Officially, each Committee receives the support of the Secretary-General and his office, but political and economic realities have varied the extent of the support. On the whole, commentators view Sanctions Committees as understaffed and underfunded, presenting a tangible sign that the Security Council is not sufficiently serious about enforcing arms embargoes (BICC 2001b, p. 9).

Despite their source in the single institution of the UN Security Council, there is no standard language or resolution format to define the objectives, scope, or implementation instruments of embargoes. The details and requirements of Security Council embargo resolutions have varied significantly, in part because of obvious differences in political context (including whether the embargo is part of a larger sanctions regime), but also due to variations in resources and commitment to the embargo. These in turn have contributed to variations in embargo effectiveness.

To provide a standard for UN Security Council resolutions on embargoes, a Working Group of the Bonn-Berlin Process organized by the Bonn International Center for Conversion (BICC 2000) drafted model text and commentary in December 2000. According to its introduction, the proposed resolution was modelled after the most recent relevant resolutions establishing arms embargoes against Eritrea and Ethiopia and against Sierra Leone.

The model resolution argues first for greater clarity in defining the objective of the embargo, with text to indicate how the embargo would contribute to the objective as well as to specify an “exit strategy” or embargo time frame. It also underlines the need for detailed definition of the scope of any arms embargo. The embargo should apply not only to the “equipment specifically designed for military or paramilitary purposes” but also to associated technology transfer, training, and technical support. An embargo resolution should include text similar to that of
recent resolutions which refers to both nationals and national territory as the responsibility of each state. It also may require additional wording to widen the embargo target to states caught up in a conflict or states with weak embargo implementation.

One significant scope-related challenge to implementation of a UN arms embargo is the lack of an agreed international definition of the specific military equipment to be the subject of embargoes. With the exceptions of small arms and light weapons and the conventional military equipment covered by the UN Arms Register, which is limited to seven classes of major weapons systems, there are no standard lists of weapons acceptable within the UN system. The Expert Working Group notes the Security Council could adopt the Munitions and Dual-Use lists of the Wassenaar Arrangement, but recognizes that political practicality would argue for the development of new lists. In any case, in order to develop and promote standards for the equipment encompassed by arms embargoes, the Working Group recommends that the Security Council develop “a model list or menu of lists” for use in future embargo resolutions.

**Implementation and effectiveness of UN mandatory embargoes**

The primary responsibility for the implementation of international arms embargoes rests with UN member states. Under the obligations of a Security Council embargo resolution, each UN member state must ensure that appropriate national legislation is in place to make violation of an embargo a criminal offence. (See Appendix B.) Many Security Council resolutions “encourage” the adoption of such legislation. The recent Sierra Leone embargo resolution (S/RES/1306 [2000]) reminds states of their obligations to implement fully the embargo measures and “calls upon them, where they have not already done so, to enforce, strengthen or enact, as appropriate, legislation making it a criminal offence under domestic law for their nationals or other persons operating in their territory to act in violation of the measures….”

The effectiveness of UN embargoes is dependent on the ability of member states to monitor, implement, and enforce the Security Council embargo resolutions. Yet, not all member states have existing legislation or the capacity to enforce legislation that is consistent with obligations under UN arms embargoes. The variation in member legislative capacity is a fundamental weakness of the existing UN embargo system which those seeking to circumvent arms embargoes have manipulated to their advantage. Effective UN embargoes therefore will require consistent national legislation from all member states which, at a minimum, integrates implementation of arms embargoes into state legal systems and provides for the seizure of illegally traded goods and the criminal prosecution of those who would breach an arms embargo. To fulfill their responsibility for embargo implementation, states would also benefit from access to a standard international list of goods under embargo, greater sharing of information within government departments, improvements to customs procedures and personnel training, and stronger licensing and end-use certification measures.

In its January 2001 report, Expert Working Group II of the Bonn-Berlin Process suggested additional measures which would strengthen international arms embargoes by strengthening national implementation. These included:

- technical and financial assistance to states willing to support an embargo but with limited capacity to do so, especially those states in close proximity to the subject of the embargo;
- regional offices, mandated by the United Nations, and placed in “proximate” states, to monitor and assist with the implementation of embargoes; and
- improved information exchange among states, facilitated by the UN Secretariat, and including sustained reporting on sanctions violations by sanctions committees.

While it is the role of member states to implement the day-to-day measures necessary to enforce a UN embargo, the UN must provide the oversight needed to assess the effectiveness – or lack thereof – of the embargo. The Security Council typically calls on member states to report to the Sanctions Committee on how they have
implemented an embargo. Along with information from sources such as the media, the Committee forwards member state reports to the Security Council. Recent investigative initiatives of Sanction Committees have been the exception, and UN oversight has more often been passive than proactive. The weak record of Sanction Committees has led to calls for improvements to the operations of the Committees – such as institutionalizing investigations by Expert Panels – and also to the idea of creating a permanent Sanctions Unit within the UN Secretariat. The purpose of the Unit would be to strengthen the information-sharing, investigation, and enforcement functions of the UN as an important means of making arms embargoes more effective.

Apart from the requirement that member states implement the embargo, and the establishment of a Sanctions Committee, there are few common measures to ensure the effectiveness of UN arms embargoes. For example, recent implementation instruments may or may not have included:

- a panel of experts to collect information, investigate reports, and make recommendations;
- monitoring mechanisms to collect information beyond the panel of experts; and
- additional embargoes on resources and materials linked to arms supplies (UN Sanctions Secretariat 2001).

In July 2001, the Security Council voted to create two new offices to strengthen the arms embargo and other sanctions imposed against the Taliban regime in Afghanistan. With the exception of Iraq, the new offices – consisting of a Monitoring Group of five experts based in New York and a Sanctions Enforcement Support Team of 15 located in neighbouring states – were the first established to monitor an arms embargo (Jane’s Defence Weekly 2001, p. 12). Such examples illustrate the ad hoc nature of embargo structures and instruments and underline the variation in purpose and commitment brought to each embargo by the Security Council and member states.

### Violations, monitoring, and enforcement of UN embargoes

The common criticism of international arms embargoes is that they are ineffective. David Cortright and George Lopez have noted that arms embargoes “have been the least effective of UN sanctions over the past decade.” Many would argue that the proliferation of weapons, especially small arms and light weapons, and the surfeit of global suppliers, both legal and illegal, make the task of creating an effective arms transfer *cordon sanitaire* around a sanctioned state or group next to impossible. Certainly, there are many examples of embargo breaches and failings. Recently, the case of UNITA gained notoriety from the March 2000 report of the Panel of Experts established by the Security Council pursuant to resolution 1237, more commonly known as the Fowler Report after its Canadian chair, Robert Fowler.

The Fowler Report documented violations of the Security Council sanctions against UNITA, the opposition group led by Jonas Savimbi which has been battling the Angolan government since 1975. The report contained findings on sanctions busting on arms and military equipment as well as details of violations in four other sanctions categories – oil, diamonds, finances, and travel. According to the report (UN Security Council 2000a):

> The Panel sought to find out how arms and military equipment were procured and from where; how this equipment reached UNITA and how it was paid for; which governments, individuals and/or companies helped facilitate the acquisition of arms and military equipment by UNITA; and the nature of any military cooperation between UNITA and other political entities, including governments.

The report drew attention for its willingness to “name and shame” governments, agencies, and individuals which had directly or indirectly violated UN sanctions on UNITA. It provided details of the specifics of the success of UNITA in breaking the UN arms embargo, noting that UNITA was able to import large quantities of arms and military equipment as a result of four key factors.
First has been the willingness of certain countries in Africa to provide their end-user certificates to UNITA and to facilitate the passage of arms and military equipment through their territory to UNITA – most notably Zaire under Mobutu, Togo, and Burkina Faso. Second has been the willingness of some arms supplying countries, officially or unofficially, to sell weapons with little or no regard for where those arms would actually end up – in this case, most notably Bulgaria. Third has been the eagerness of international arms brokers and air transport carriers to act as intermediaries between UNITA and the suppliers of the arms and military equipment. A fourth factor has been the capacity of UNITA to continue to pay for what it wants (UN Security Council 2000a).

The Fowler Report was closely followed in December 2000 by the Report of the Panel of Experts on Sierra Leone sanctions which included an evaluation of the arms embargo on the Revolutionary United Front (RUF). Like its predecessor, the Sierra Leone report (UN Security Council 2001) was willing to name embargo violators including Liberia, Burkina Faso, Niger, and the Ivory Coast.

Arms embargo violations by UN member states have not been limited to middle-tier suppliers and neighbouring states acting as conduits. In her 1998 paper on arms embargoes, Loretta Bondi cites two outstanding cases of embargo breaches involving covert supplies sponsored by permanent members of the UN Security Council. (The two cases were US support for a covert Iranian arms pipeline to Bosnian Muslims in 1994 during the war in former Yugoslavia, and British support for the covert supply by Sandline International in 1997 to the government of Sierra Leone during its civil war.) As Bondi points out, although US and UK government justification of the embargo violations (in the name of justice and restoration of an elected leader to power respectively) resonated with other states, the ad hoc encouragement and tolerance of breaches obviously undermine the legitimacy and effectiveness, such as they are, of international arms bans. In other cases, member state violations have not even been motivated by ostensibly principled goals. France’s shipment of arms to Rwanda after the imposition of UN sanctions in 1994 is only one example of state violations motivated solely by the pursuit of profit.

The substantial profit opportunities created by international arms embargoes, coupled with sanction regimes which are short on rigorous implementation and enforcement measures, have given rise to a significant industry of private suppliers, brokers, and transport agencies willing and able to violate the embargoes. The Panel Reports on UN sanctions against UNITA and the RUF offered insights into the sanctions-busting operations of groups and individuals with access to weapons supplies, compliant government officials, and flexible financing arrangements (including, for example, the exchange of diamonds for weapons). Private operators are experts in assessing and using the weak links in embargo regimes, especially lax or corrupt customs and border controls. The centrality of private brokers and shipping agents to the illicit arms trade and the circumvention of arms embargoes has provoked calls for better national arms controls such as registration, licensing, and standardization of regulatory requirements.4

In theory, it is possible to prevent or redress embargo violations with an adequate system of monitoring and enforcement. The UN is tasked with “providing effective strategic oversight in order to assess the level of implementation, to identify gaps or breaches in the regime and to devise ways to close them” (BICC 2001b, p. 11). Oversight begins with monitoring and reporting, the main tasks typically given to the Sanctions Committees. Security Council resolutions regularly require member states to provide reports to Sanctions Committees on how they are implementing embargoes. In practice, and for a variety of reasons, states do not provide all the information needed for “effective strategic oversight” and the UN must draw on media and NGO reports, as well as expert panels or missions, to piece together a picture of implementation on which to base recommendations for embargo enforcement.

When embargo violations occur, member states have the responsibility through national legislation to impose penalties on those responsible for the
violations. Many states such as Canada provide for fines or imprisonment of individuals found guilty of acting to circumvent an arms embargo. If a state cannot or will not impose such penalties, the UN Security Council must seek compliance through other means. Although there do not appear to be set procedures for such Security Council measures, the following options (BICC 2001b) are available, depending on the pressure required to advance member state compliance:

- provide evidence to provoke the prosecution of individual violators;
- technical assistance to states lacking the capacity to enforce an arms embargo;
- publication and circulation of mission reports, especially in countries where violations have taken place;
- compilation and distribution of Black List of individuals and companies involved in violations;
- formally declaring offending states to be sanctions breakers;
- discouraging member states from supporting UN posts for nationals from offending states;
- banning UN conferences and meetings within offending states; and finally
- imposing “secondary” sanctions, including an arms embargo, on offending states.

The additional sanctions imposed by the UN on the state of Liberia in May 2001 are an illustration of the use of secondary sanctions. The sanctions – bans on the import of diamonds from Liberia and travel by senior Liberian officials – were added to the arms embargo on Liberia in place since 1992. They are in response to reports of Liberian support for the Revolutionary United Front (RUF), the rebel group opposed to the government of Sierra Leone which has been subject to a UN arms embargo since 1998.

Can arms embargoes achieve their goals?

The record of international arms embargoes has shown they can have a measurable impact on the circumstances of a target state or group. In the case of South Africa, for example, the arms embargo forced the state to pay significant markups for weapons on the black market, left it with dated equipment, and contributed to its failure to win its war in Angola (see Davis 1995, p. 180). Internal changes in state conditions or practice imposed by arms embargoes need not produce compliance with international demands however, since, as the example of Iraq has demonstrated too well, even comprehensive sanctions do not guarantee the success of political goals.

There is also no doubt that improvements to the effectiveness and enforcement of arms embargoes will strengthen their operation and improve the prospects for international pressure on the embargo target. Nevertheless, even better structured and implemented arms embargoes do not ensure they will achieve their political goals. How can we increase the likelihood that arms embargoes will produce, or at least contribute to, compliance with demands by the international community?

Many analysts point to the need to clearly define the political objectives of an arms embargo and to make its implementation open to assessment. As the UN Security Council (1998, p. 3) has stressed, “arms embargoes established by the Council should have clearly established objectives and provisions for regular review of the measures with a view to lifting them when the objectives are met.” More than one commentator has noted that arms embargoes often are imposed as a gesture to “do something” without an understanding of how they may contribute to the end of a conflict or a reduction in repression. Before an embargo resolution is approved, attention should be given to the specific manner in which the embargo will achieve the objectives of the resolution as well as to a process by which the embargo will be lifted once the objectives are achieved. The embargo resolution should include an agreed “exit strategy” or a “sunset clause” which requires the Security Council to revisit and reassess the embargo and decide whether to suspend it, modify it, or adopt further measures.

To increase effectiveness in achieving objectives, the arms embargo should also be part of a larger diplomatic strategy to enforce compliance of the target with the resolutions of the Security Council. It is unlikely that an arms embargo in isolation will achieve significant political goals.
Rather, it should be contained within a larger process designed to reach clearly defined political objectives for which there is an agreed understanding of success. The strategy should include the introduction of additional measures, including further targeted sanctions, which may be needed should the arms embargo not produce the desired results within a set period.

Conclusion

International arms embargoes remain an important multilateral tool for responding to armed conflict and other grievous violations of international norms. As a non-military, targeted multilateral instrument, arms embargoes can exert pressure on states and non-state actors with minimal impact on civilian populations. They constitute an early and basic component in the hierarchy of options available to the international community to sanction a target that is seriously out of step with accepted international behaviour. Arms embargoes are worthy of a focused effort to make them more effective and enforceable.

Several obvious improvements are needed immediately. The United Nations Security Council should give greater attention to the design of embargo resolutions, to the operations of the Sanctions Committees, to creating a permanent Sanctions Unit, and to assisting member states to meet their obligations towards the arms embargo. Member states need to ensure they have in place adequate national laws and policies, including strong arms export controls which allow for close monitoring of weapons transfers. Arms embargoes need to be imbedded within wider political strategies for conflict prevention and resolution, reinforced by concerted international efforts to harmonize definitions and standards for the control of weapons transfers. Beyond attending to these immediate suggestions, arms embargo regimes would benefit from close consideration of the many detailed and compelling recommendations made from within the UN system as well as by external experts. (See Appendix A.)

The recommended improvements to the design, implementation, and enforcement of international arms embargoes would not produce an instrument to address all, or even most, grievous breaches of international norms. They will, however, sharpen a tool which is an important early multilateral response to armed conflict and other crises. As with many other pressing issues in an increasingly global political environment, the challenge is finding the political will to put the necessary pieces in place.

Notes

1 The Export and Imports Permits Act states, “Subject to subsection (2), except with the authority in writing of the Minister, no person shall knowingly do anything in Canada that causes or assists or is intended to cause or assist any shipment, transhipment or diversion of any goods included in an Export Control List to be made, from Canada or any other place, to any country included in an Area Control List” (Export and Imports Permits Act, 15 [1] available at http://laws.justice.gc.ca/en/E-19/48737.html#rid-48803).

2 Cited in BICC 2000.

3 Cortright and Lopez (2000, p. 15) go on to state, however, “the ineffectiveness of arms embargoes stems not from shortcomings of the instrument itself, we believe, but from flawed enforcement and inadequate implementation. No embargo can seal off weapons trafficking completely, especially the trade in easily concealed small arms and weapons components. But concerted enforcement efforts can make enough of a difference in reducing the availability of weapons to influence the military outcome and political dynamics of a conflict.”

4 See Wood and Peleman 1999.
References

United Nations


Other


The Bonn-Berlin Process (Bonn International Center for Conversion)

(All Bonn-Berlin Process papers available from www.smartsanctions.de.)


Table 1
UN Security Council Mandatory Arms Embargoes

<table>
<thead>
<tr>
<th>State or group embargoed</th>
<th>SC resolution establishing Sanction Committee and date of entry into force of embargo</th>
<th>Date Lifted</th>
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<tr>
<td>South Africa</td>
<td>UNSCR 421 November 1977</td>
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<td>Iraq</td>
<td>UNSCR 661 August 1990</td>
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<td>Somalia</td>
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<td>Liberia</td>
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<td>UNITA (Angola)</td>
<td>UNSCR 865 September 1993</td>
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<td>Sierra Leone</td>
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<td>FRY, Kosovo</td>
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UN Security Council Non-Mandatory Arms Embargoes

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<td>Afghanistan</td>
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<td>Eritrea/Ethiopia</td>
<td>UNSCR 1227 February 1999</td>
<td>May 2000</td>
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Sources:


Appendix A

Summary of recommendations to strengthen international arms embargoes

A. Design of international arms embargoes

1. The UN Security Council should ensure that the text of arms embargo resolutions includes:
   • the goals of the embargo;
   • clear demands upon the targeted government or non-state actor;
   • specific guidelines for the Sanctions Committee, Member States, and the Security Council in such areas as reporting and monitoring procedures; and
   • an agreed “exit strategy” or “sunset clause” to define the duration of the embargo.

2. The resolution should also make explicit the scope of the embargo by defining the proscribed goods, including dual-use goods. The embargo should extend to military assistance and military services.

B. Implementation of international arms embargoes

Responsibilities of Member States

1. Arms embargoes must be enacted through national legislation which includes provisions that:
   • criminalize breaches of the embargo;
   • provide a list of controlled goods, including as necessary military and dual-use equipment; and
   • develop a preventive capacity for goods at risk of diversion.

2. Governments should agree to register, licence, and monitor the activities of arms brokers. The information collected should be stored in national databases that could be made available to other governments, regional organizations, and international organizations as appropriate. The sale of arms to private dealers as final sales should be forbidden.

3. Arms-exporting countries should strengthen arms export control systems, in particular through improved verification of relevant documents. Arms imports also should be subject to adequate legislation; the responsibilities of all agencies and officials involved should be clearly defined.

4. All government arms transfers should provide for mandatory authentication and reconciliation of end-user certificates and verification of the stated transfers. This would be aided by:
   • a standard system of support and security to prevent the forgery of end-use documents;
   • an international system of end-use certificate information exchange and verification through measures such as designated contact authorities for both arms exports and imports.

5. National oversight bodies or “national focal points” should be created to oversee and coordinate action and collect information on arms embargoes within all pertinent government agencies and departments.

Responsibilities of the UN system

6. In considering future arms embargo regimes, the United Nations Security Council should provide assistance to Member States by:
   • authorizing an early Assessment Mission to identify needs among states proximate to the embargo target and to provide recommendations to the Security Council. Visits by Chairpersons or delegations of Sanctions Committees could provide the same functions at later stages of the embargo;
   • urging countries neighbouring an embargoed state or hosting embargoed forces to incorporate an embargo into their national laws;
   • establishing arms embargo Assistance Offices – staffed by UN personnel and funded by the UN regular budget – in neighbouring states to monitor and implement the operation of the embargo, to collect information and assess the impact of the embargo, to report to the Security Council, and to assist investigations of alleged breaches; and
   • providing special training programs on inspection and monitoring for national law enforcement and security agencies, as well as for airport, border, and customs personnel.
7. The Security Council should establish a permanent mechanism, such as a Sanctions Unit, to provide capacity within the UN Secretariat for on-going coordination and monitoring of Security Council sanctions and embargoes.

8. The UN Secretariat should be given the necessary means to establish a reliable database on embargo violations and violators. The Sanctions Committees should forward to the Secretariat information on violations from all available sources, including non-governmental organizations and the media. The Secretariat could draw upon the database to analyze and assess the effectiveness of an arms embargo.

9. To strengthen arms embargo implementation, the Security Council should seek cooperation with and advice from relevant international bodies. For example, the World Customs Organization should be asked to share its views on improving the monitoring and detection of weapons. Analysis of recovered or intercepted weapons should be undertaken with Interpol’s International Weapons and Explosives Tracking System (IWETS) to identify supply lines.

10. The Security Council should consider the deployment of UN observers at key airfields, ports, and border points in and around embargoed countries once embargo violations are reported.

11. The UN should promote and coordinate information and intelligence exchange relevant to effective embargo implementation. This should include:
   - sharing information with Member States on arms traffickers who have violated arms embargoes and providing the information to the IWETS database;
   - a website on each current arms embargo including details on the resolution, the scope of the embargo, and links to other information sources, such as research and NGO sites; and
   - maintaining lists of national experts available to provide technical assistance.

Responsibilities of regional organizations

12. Regional organizations should strengthen international arms embargoes by:
   - adopting conventions to harmonize arms transfer licensing procedures among members, including measures to mark weapons at the point of manufacture and import;
   - training a regional force of customs, intelligence, and enforcement officials; and
   - establishing embargo Assistance Offices (as above) in countries neighbouring embargoed states or hosting embargoed forces.

C. Enforcement of international arms embargoes

Member States

1. Governments should adopt legislation which allows:
   - the prosecution of offenders who supply or aid in the supply of weapons to embargoed entities;
   - the seizure of goods and proceeds from illegal deliveries; and
   - application to violations committed on foreign soil.

2. In cases where aircraft are used to breach embargoes, the aircraft should be deregistered. Governments also should de-license pilots known to be violating UN arms embargoes.

UN system

3. The Security Council should apply sanctions against leaders and governments found to have been deliberately violating arms embargoes. These might include an arms embargo for a defined period, followed by a period of probation.

4. The Security Council should address the export of weapons from specific suppliers into areas under UN embargo. In addition to “naming and shaming,” consideration should be given to placing an embargo on weapons exports from such countries.
The recommendations are summarized from the following papers and reports:


Appendix B
Canadian Law and Arms Embargoes

The United Nations Act governs Canadian participation in United Nations arms embargoes and other sanctions under Article 41 of the UN Charter. The Act provides for the Governor in Council to “make such orders and regulations” as deemed necessary for Canada to apply the measures called for by the UN Security Council. The Act stipulates penalties for contraventions of UN sanctions, including fines up to $5,000, imprisonment up to five years, and seizure of merchandise. All orders and regulations under the Act must be laid before Parliament; the Senate and House of Commons may jointly annul any of them within forty days.

Following a UN Security Council resolution establishing an arms embargo, the Canadian Minister of Foreign Affairs recommends regulations for Canadian measures to implement the embargo. Under a title such as “United Nations Eritrea Regulations” these lay out the definitions and details of embargo measures as well as the punishments for their contravention. The regulations apply to everyone within Canada as well as all Canadians outside Canada.

Under typical regulations, Canadians are prohibited from selling or supplying to the UN-embargoed state or group “arms and related material” defined as “any type of weapon, ammunition, military vehicle or military or paramilitary equipment, and includes their spare parts.” More recent embargo regulations have extended the controls to prohibit the provision of “technical assistance” and “technical data” related to weapons, ranging from training to computer software. The regulations also prohibit the transfer by Canadians of arms or related material “wherever situated,” suggesting that they apply to any Canadian weapons broker operating inside or outside Canada who may wish to move weapons to the embargoed region from any point on the globe.

If a non-UN international organization of which Canada is a member imposes economic sanctions or an arms embargo against a state, the Canadian government may implement the multilateral decision through the Special Economic Measures Act of 1992. The Act also provides for unilateral action by Canada against foreign states “where the Governor in Council is of the opinion that a grave breach of international peace and security has occurred that has resulted or is likely to result in a serious international crisis.” Among other provisions, the Act allows the government to restrict or prohibit “the exportation, sale, supply or shipment by any person in Canada or Canadian outside Canada of any goods wherever situated to that foreign state or any person in that foreign state, or any other dealing with any person in Canada or Canadian outside Canada in any goods wherever situated destined for that foreign state or any person in that foreign state.” The government may also restrict or prohibit the transfer of “technical data” as well as “financial services or any other services.” Penalties under the Act include fines up to $25,000 and imprisonment up to five years.

In 1998, the Canadian government used the Special Economic Measures Act to annex regulations against the Federal Republic of Yugoslavia.

Note
In November 2001 Project Ploughshares and the ecumenical partnership Kairos hosted a one-day forum in Toronto to explore the effectiveness of arms embargoes as disciplinary tools available to the international community. The forum gave particular attention to the case of Iraq where an arms embargo has been implemented within a much broader economic sanctions regime which has had a devastating impact on the civilian population. Participants in the forum were invited from a range of ecumenical and non-governmental organizations with interest and experience in the forum themes. The event also benefited from presentations by David Cortright, President of the Fourth Freedom Forum in Indiana, who has written extensively on UN sanctions and embargoes, and Rick McCutcheon, who is completing a PhD dissertation on the Iraq War and who has recently lived and worked in Iraq.

A draft of this working paper was circulated in advance to forum participants as a background document. The papers from which the two forum resource people drew their remarks also have been published as Project Ploughshares Working Papers 02-2 and 02-3. The following notes are intended to provide the key points of the forum discussion.

A. International arms embargoes

1. EMBARGO DESIGN, OBJECTIVES, AND GOALS

It was noted that arms embargoes are instruments available to the international community to restrict access to military goods by human rights violators or by states and groups in breach of the peace. They are tools of international norm-building which, if effectively applied, demonstrate a measurable capacity to reduce and restrict the supply of weapons. They may even provide political moments for NGOs and others to draw attention to the actions and responsibilities of targeted regimes.

Even so, it was suggested that arms embargoes are limited instruments which work best when combined with other measures, including incentives which may provide a “bargaining dynamic” with the targeted regime. They may be presented as an early step in a “check-list” of increasingly punitive measures up to and including war, or as a “stick” in a set of “carrots and sticks” designed to promote negotiation. With other sanctions, arms embargoes also may be seen as a means of buying time, as in the case of Iraq where they are intended to slow the acquisition of weapons of mass destruction.
UN sanctions, including arms embargoes, are now considered more precise and focussed. Recent initiatives (Afghanistan and Liberia) involved humanitarian assessments early in the process which were intended to protect against broad humanitarian costs. Yet, the design of international arms embargoes would benefit from other considerations. Suggestions included:

- the drafting of a typology of conditions under which embargoes would be imposed, with embargoes and supporting measures designed accordingly;
- attention to the strength of civil society in the targeted regime, whether it supports sanctions, and the extent to which it may influence the regime;
- since there are side-effects to all sanction regimes, the means of measuring embargo consequences against goals;
- restricting arms embargoes to cases where weapons shipments are, or are at risk of, “fuelling the fire” of conflict and human rights violations. Elsewhere, other tools and targeted sanctions may be more effective.
- the definition of clear embargo goals. The effectiveness of an embargo can be measured at the level of supply (how has the embargo affected the volume of arms shipments?) and at the level of political behaviour (how has the embargo changed actions by the targeted regime?). The challenge is to design an effective trade embargo with realistic political goals.

It also was suggested that international arms embargoes, like sanctions generally, currently fall into a grey area where international humanitarian and human rights law is not necessarily taken into account. There is no codified basis for embargoes. This has contributed to the variations in the design and effectiveness of the embargo regimes established by the UN Security Council.

2. MAKING EMBARGOES MORE EFFECTIVE

Despite their status as the most frequently invoked form of UN sanctions, international arms embargoes are probably the least effective. Of the five instances since 1990 when arms embargoes have been established as “stand-alone” measures, there were no cases of “substantial evidence of impact,” according to recent research. Even where they may be implemented with reasonable effectiveness, embargoes may not achieve their objectives. Or their effective implementation may be dependent on a regime of larger constraints. The question thus arises as to whether arms embargoes can be useful tools for the international community to meet obligations to deny states instruments of aggression.

Forum participants noted a number of means by which arms embargoes could be made more effective. These included:

- improvements to the UN system, such as a permanent sanctions secretariat which could provide institutional memory and comparative analysis of expert panel reports;
- a greater monitoring role for NGOs. An international network of NGOs (similar to the Landmine Monitor network) could assist the Security Council with embargo monitoring as well as provide technical assistance to governments.
- universalization and harmonization of export control standards and regimes. The membership of multilateral regimes such as the Wassenaar Arrangement and the Missile Technology Control Regime (MTCR) should be broadened and standards applied equally to all members.

3. ENFORCEMENT OF EMBARGOES

The standard critique of arms embargoes as “feel good measures” that are rarely enforced is being challenged by recent developments. In Angola, for example, UNITA is facing setbacks in part because of reduced access to weapons. Here the UN has demonstrated a willingness to monitor and enforce an embargo, including “naming and shaming” heads of state implicated in breaches. Similar UN efforts have enforced recent arms embargoes on Liberia, Sierra Leone, and Afghanistan.

Despite recent improvements to UN enforcement of arms embargoes, national capacities, upon which enforcement ultimately depends, need to be strengthened. Only 15 countries are viewed at present to have the full legal capacity to enforce sanctions and arms embargoes. Suggested methods to improve enforcement included:
• building national government capacity to monitor and enforce embargoes through improvements to border and customs procedures, regulation of brokers and shippers, and other measures. Many governments will require aid to implement these improvements.
• reinforcing arms embargoes with larger programs which include additional targets (for example, states or heads of state implicated in embargo breaches) or additional targeted sanctions as required.

4. GLOBALIZATION
The issue of globalization, which has come to impact many spheres of activity, even reshaping our thinking, was raised by several forum participants. On the negative side, sanctions may contribute to a globalized system of structural, economic, and physical violence within which many are blind to massive suffering. In this interlocked system, isolated responses were viewed to be insufficient. Instead, threats and challenges should be addressed in accordance with analysis of the extent and impact of globalization. As one example of the impact of globalization, the UN and other systems based on nation-state sovereignty are challenged by non-state actors capable of activities on a global scale. As another, the modern commercial and military economies are intertwined to an unprecedented degree, posing additional hurdles to the design, monitoring, and enforcement of international arms embargoes.

On the positive side, globalization may provide opportunities for improved multilateralism and more effective application of international law, including the use of sanctions. There also may be non-punitive international tools, such as debt cancellation, available to the global community as alternatives to sanctions and embargoes. Universal arms control and disarmament measures would offer global restrictions not tied to the “good behaviour” of individual states and groups, and not subject to double standards.

B. The case of Iraq
1. LESSONS-LEARNED FROM IRAQ
It was suggested that the international arms embargo on Iraq is a case where an embargo, as part of a set of comprehensive sanctions, has had a dramatic impact on a state’s military capacity. The arms import “deficit” of Iraq since sanctions were imposed in 1990 has been estimated at US $48-billion. At the same time, the embargo has had little political impact on the regime at which it is aimed while the wider sanctions have weakened and impoverished Iraqi civil society.

The debate on replacing comprehensive with targeted sanctions on Iraq centres on how to prevent the regime’s access to weapons of mass destruction without invoking measures which continue to severely impact the civilian population. (It was noted that the Iraq arms embargo has not been aimed at, nor has it prevented, internal repression.) Enforcement of the arms embargo is seen to be tied to maintaining the UN escrow account which controls Iraqi revenues. The concern is that the revenue control viewed to be necessary to enforce the embargo, and prevent Iraqi remilitarization, also has a profound impact on development programs within Iraq.

It was argued that the current UN sanctions regime in Iraq is irredeemable. Sanctions are a component of a system of violence, indeed war, on Iraq that after 11 years and hundreds of bombing runs by Western powers has received scant international attention. Moreover, there is no internal Iraqi support for international sanctions. Even if economic sanctions were replaced by a targeted arms embargo, the proposed extensive list of banned dual-use items (items with both civilian and military application) would continue to damage crucial civilian social and economic activities such as the operation of hospitals.

Other views were raised. To prevent the widespread effects of dual-use restrictions, the embargo could be applied only to military goods. Of perhaps greater concern, if all sanctions, including the arms embargo, were lifted from Iraq, the end of the sanctions regime could be interpreted as a defeat for the UN. Apart from the possible rearmament of Iraq, and the human rights impact this might have, the consequences of a sanctions “defeat” could provoke an irreparable discrediting of the UN system.
2. TAKING A REGIONAL APPROACH

Forum participants noted the importance of the regional context to Iraqi sanctions. Embargoes aimed at the disarmament of Iraq are likely to be ineffective in the longer term without a regional program of disarmament. Unless neighbouring states demonstrate a willingness to disarm, Iraq will rearm the moment an arms embargo is lifted. There are supply and demand approaches to disarmament in the Middle East. On the demand side, regional states will need to negotiate a process of disarmament which could include a moratorium on arms imports like that of the ECOWAS nations in West Africa. Concurrently, arms suppliers should demonstrate greater restraint in selling and transferring weapons to the region; in particular, the US should be more discriminating in the military support programs (of training and equipment) it uses to influence other governments.

It was suggested that other initiatives, if applied on a regional basis, could support or even replace arms embargoes. Countries in the region need to be engaged in international action on Iraq such as second track diplomatic efforts. Experience has shown that health initiatives may offer diplomatic opportunities. A human rights monitoring regime (which could draw on NGOs) may be more acceptable to Iraq if it is also accepted by other states in the region.
Project Ploughshares is an ecumenical agency of the Canadian Council of Churches with a mandate to carry out research, analysis, dialogue, and public education on peace and security issues in Canada and the world. It is affiliated with the Institute of Peace and Conflict Studies at Conrad Grebel University College, University of Waterloo.

… and they shall beat their swords into ploughshares, and spears into pruning hooks; nation shall not lift up sword against nation; neither shall they learn war any more. (Isaiah 2:4)

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