

Issue Brief: August 2009

UN Panels of Experts: They're About More than Just Monitoring Sanctions

By Alix J. Boucher

On 12 January 2009, the Stimson Center hosted a workshop to mark the launch of a new report, *Targeting Spoilers: The Role of UN Panels of Experts* by Alix J. Boucher and Victoria K. Holt. In March 2009, Holt and Boucher also published an article in *International Peacekeeping* that discusses how Panels of Experts and UN peace operations could better work together to analyze and counter transnational crime in post-conflict states. This issue brief introduces the report's findings and recommendations, highlights discussions from the launch event, and suggests next steps for improving Panels of Experts and their integration with UN rule of law and peacebuilding initiatives.¹

Why Panels Matter

Panels of Experts don't just monitor the implementation of targeted sanctions: they are sometimes one of the few sources of publicly available information on a given conflict. Indeed, Panels of Experts have long provided histories of the conflict, structures of the forces fighting in a conflict, dynamics behind the trade in key commodities, and details on the roles of key players in that country's conflict. While they monitored sanctions, they provided concrete examples of how and when sanctions were violated and how doing so made continuing war easier. This often led to diplomatic crises: the findings sometimes shed light on the role of neighboring or sponsoring member states in ways that had previously not been publicized. In most cases however, while the information was useful, it was only rarely used to devise assistance programs or pressure parties into changing their behavior.

In December 2008, however, the Group of Experts on the Democratic Republic of Congo (DRC) published an explosive report that detailed Rwanda's ongoing support to forces of the rebel CNDP and described how that aid helped to rout government forces trying to take control of Eastern Congo.²

According to the report, extensive and frequent phone communication between CNDP and the Rwandan government, including senior military leaders and the office of the Rwandan president indicated ongoing Rwandan support for the CNDP. The Group conceded that "while [it] cannot be sure of the content of the telephone calls, they are frequent and long enough to indicate at least extensive sharing of information." More, CNDP supply trucks were registered in Rwanda and funds used to purchase CNDP supplies were held in Rwandan bank accounts.³

Something different happened when the DRC report was released: Rwanda's donors, in particular Sweden and the Netherlands, froze their direct budget support to Kigali, while the UK and other EU countries

¹ This issue brief should be considered a companion not just to the report, but also to the article, and reflects Stimson's ongoing research in this area.

² CNDP stands for "Congrès national pour la défense du peuple." United Nations, *Report of the Group of Experts on the DRC*, S/2008/773, 12 December 2008.

³ S/2008/773, paras. 61–68.

asked for an explanation.⁴ When it became apparent that the Group was well-informed, these governments demanded more: an immediate stop to all Rwandan support to the CNDP.

The International Crisis Group also reports that the Panel's findings had another effect. They led Rwanda, in an effort to restore its image in the wake of the report, to seek an alliance with the DRC government to combat the FDLR and in a stunning reversal of support, arrest the CNDP's leader, Laurent Nkunda, and force the CNDP to agree to integrate their forces with the Congolese government army, the FARDC.⁵

The events following the release of the DRC Group's report show that when Panels produce well-documented reports, and particularly if their findings have strategic implications and give the impression that member states may in fact be fuelling conflict and insurgency, there can be consequences.⁶ Put simply, the report pushed Kigali to drastically alter its relationship with Kinshasa, and encouraged the Congolese authorities to take more decisive steps against the FDLR and to resume a (certainly flawed) process for integrating CNDP into the FARDC. In short, this report played an important role in changing conflict dynamics and encouraging regional actors to change their behavior.

Launching the Report: *Targeting Spoilers: The Role of United Nations Panels of Experts*

The 12 January 2009 event began with a brief presentation of the Stimson report by the authors, as summarized in Box 1.

Box 1

Targeting Spoilers: Summarizing the Report

Findings

- Panels are a popular sanctions-monitoring mechanism but they do not receive sufficient support from the UN Secretariat.
- Panel findings and recommendations are largely ignored and not integrated with wider UN efforts to build the rule of law.
- Panels and UN peace operations could better work together to build the rule of law in post-conflict states.
- UN Member States could better use Panel findings and base assistance on relevant Panel recommendations to better fight crime, deter spoilers, and build peace.

Recommendations

- Increase organizational, administrative, and financial support for Panels from the Secretariat and the Security Council:
 - Improve professional capacity at DPA;
 - Improve orientation, recruitment, and performance evaluations for Experts.
- Clarify methodology and standards of evidence for inclusion in reports.
- Improve cooperation between member states and Panels and consider sanctioning member states that don't cooperate or even impede Panel work.
- Create a system to match the gaps in institutional capacity that Panels identify with member state or international organizations willing to provide such assistance
- Expand Panel mandates to monitor progress towards requirements for lifting sanctions (create those requirements where they don't exist).
- Extend cooperation between UN Peace Operations and UN Panels of Experts.
- Encourage UN peace operations, when appropriate, to implement Panel recommendations.

⁴ International Crisis Group, "Congo: Five Priorities for a Peacebuilding Strategy," Africa Report n. 150, 11 May 2009, 9.

⁵ Ibid.

⁶ Ibid.

The report presentation was followed by two discussion sessions (Box 2). The first included former members of UN Panels who made a number of points about the Stimson report and about the wider use of Panels of Experts and the challenges they faced in implementing their Security Council mandates. A representative from the UN Department of Political Affairs then detailed the support that her office provides to the Panels. The second discussion panel offered perspectives from “consumers” of Panel reports.

Box 2

Workshop Discussion Sessions

Session I: Perspectives from Current and Former Panel Members and the UN Sanctions Staff

Alex Vines, Royal Institute of International Affairs, former Panel member (Liberia) and former Chair, Group of Experts on Côte d’Ivoire

Art Blundell, President, Natural Capital Advisors, LLC, former Chair, Panel of Experts on Liberia

Wynet Smith, Natural Resources Expert, Coordinator of the Panel of Experts on Liberia

Loraine Rickard-Martin, Senior Political Affairs Officer, UN Department of Political Affairs

Session II: Perspectives from “Consumers” of Expert Reports

Sue Eckert, Senior Fellow, Watson Institute for International Studies, Brown University

Sue Saarnio, Deputy Director for Multilateral Trade Affairs, US Department of State; former Special Advisor for Conflict Diamonds

John Smith, Associate Director, Program, Policy and Implementation, US Department of Treasury, Office of Foreign Assets Control

UN HQ Support to Panels of Experts

During the workshop, several participants pointed out that the report did not sufficiently emphasize the shortcomings in DPA support to Panels of Experts. Participants agreed that DPA performance needed to improve, but that given the expansion in staff work—the number of Panels has risen from two in 2000 to seven today but the Sanctions Branch within Security Council Affairs Division remains at just eight professional and eleven support staff members—an increase in staff would also be helpful. In particular, participants agreed the DPA needs to provide better and more systematic orientation, expedited logistical support, and better guidance for dealing with suspected violations.

Similarly, DPA should be consistent in the support it provides to publicize Panel reports. Not all reports are accompanied by press releases or press conferences. Experts should have an opportunity to meet with the media (and not just with members of the Security Council). Finally, when experts make mistakes, it is important to note them, perhaps by issuing a press release or placing a correction in a subsequent report.

Participants agreed that the DPA Sanctions Branch needs to develop better mechanisms first for recruitment of experts, and second for evaluating their performance. While a roster of experts exists, it needs to be improved for ease of use. Participants also agreed that systems for hiring experts and evaluating their performance also need to be improved and a formal system for performance evaluation and related human resource decisions also needs to be created.

During the workshop, participants discussed whether it would be appropriate for the Sanctions Committee to play in role in such discussions. Some participants expressed concern that doing so would allow member states to retaliate against experts who had found evidence damaging to a member state’s image or reputation, thus putting into question the experts’ independence and freedom of action. Others argued that limited consultation with the Committee would allow for more comprehensive evaluation of expert performance. Evaluating experts’ performance is thus both necessary, to justify their continued

employment, but also tricky. Because panel work is so political (member states have reportedly pressured experts not to include findings in reports), creating a performance evaluation system requires making sure that experts are evaluated on the quality of their work, including its methodology and the reliability and validity of findings. Overall, the performance evaluation mechanisms must ensure that experts are not dismissed for doing their jobs too well.

One important new step already taken has been the development of an information database, which is currently being tested. One participant explained that the database currently under development will help both Panel members and DPA manage and share data. It will improve information storage, feature an online system for experts to share information in the field, and facilitate cross referencing of different Panel investigations.

Standards of Evidence and Maintaining Integrity of Evidence

Participants stressed the need for quality, thoroughness, and fairness in Panel reports. Current and former Panel members desired better guidance from DPA on how much supporting/validating detail to include in their reports and on how to present that detail (e.g. in footnotes or annexes). Government participants also noted that reports needed to be more consistent in structure, with executive summaries, tables of contents, annexes, and other materials. Because Panel reports can lead to prosecution by member states and also can affect Security Council sanctions lists, participants emphasized the importance of high standards of evidence for Panel reports.

Several participants expressed concern that, due to insufficient guidance from DPA and the UN's Office of Legal Affairs (OLA), Panels do not treat evidence with the care needed for it to be admissible in a court of law. They recommended that experts be given clear directions concerning these standards and that experts also keep in mind the need to avoid tainting evidence during investigations, so that it can later be used by member states' prosecutorial authorities. One expert pointed out that doing so would require additional training because not all experts have sufficient legal background to know what *not* tainting evidence might entail.

User Perspectives on Panels of Experts Reports

Second session panelists emphasized that Panel recommendations are most useful when they are concrete. Panel reports are used in formulating policy towards targeted states, particularly in determining what kind of assistance they might need. In Liberia, for example, the recommendations of the Panel on building capacity in the Liberian diamond sector were used as the basis for a US assistance program. Panel findings are most useful, panelists emphasized, when they are detailed and provide information as to the reliability of findings. Concerning financial sanctions in particular, details are important since broad allegations may not be sufficient to trigger follow up action by governments, and mechanisms are lacking for relevant ministries to get in touch with experts and ask for additional information. In such cases, however, many experts reportedly do not know how much they can share, leading to inconsistencies in information sharing. Experts also pointed out that protecting the identity of some sources was important, not just to ensure continued access but also for the security of the sources themselves, some of whom might fear persecution if it were known that they had divulged information about powerful individuals in their home countries.

Sanctions and Due Process

Workshop participants also discussed the current broader challenges that sanctions implementation faces with UN member states. In participants' views, targeted sanctions are under threat. Many member states have expressed the view that the implementation requirements of numerous (and increasing) sanctions regimes are too onerous. Some argue that the sanctions have no discernible effect on preventing trade in targeted commodities. Others argue that sanctions simply lead to further criminalization of the networks

that organize trade in targeted commodities, perpetuating conflict and impeding efforts to normalize trade and build the formal economy of the sanctioned state and its immediate neighbors. Such concerns are important and valid but the biggest challenge may come from those who view targeted sanctions as potentially illegal and unenforceable, largely because of their perceived failure to afford due process rights to those targeted. One participant noted that member states view the lack of due process as the Achilles' heel of sanctions implementation.

Individuals, particularly in the EU, have challenged the legality of these sanctions and the lack of UN responsiveness in the face of evidence that may exonerate targeted individuals. Such objections are not new; Panels of Experts have long interviewed individuals subject to travel bans and assets freezes. These individuals have repeatedly argued that such sanctions are unfair. While the Council has responded with humanitarian exemptions and the creation of focal points for de-listing within the Secretariat, legal challenges are a concern and could conceivably lead the Council, in the long term, to abandon at least assets freezes and travel bans. Doing away with them would have its costs, however, since third parties tend to stop dealing with targeted individuals, for fear of being associated with targeted entities.

Box 3

Meeting Conclusions: Additional Research Areas?

- Cooperation between Panels and UN operations needs to be more systematic, particularly when such cooperation could lead to improved rule of law programming. Indeed, participants emphasized that such cooperation could lead to more successful peacebuilding.
- Panels of Experts require clearer guidelines in terms of methodology. Better documentation of Panel findings will then allow potential consumers of Panel reports, particularly member state officials who want to determine policy toward a targeted state or determine whether prosecution, based on actions described in the reports, would be warranted, to be more effective.
- Research could investigate whether a system to match capacity gaps identified by panels of Experts with donor assistance would be useful. Such systems are being tested in the context of counter-terrorism and non-proliferation but their effectiveness remains uncertain.

Panels and Peace Operations: Working with JMACs and Embargo Cells

One of the main challenges the UN faces in building the rule of law in post-conflict states is coordinating the activities of the various operational tools at its disposal in these areas. Panels, because they gather information on belligerents and provide recommendations for dealing with spoilers, could be better used to inform the efforts of corresponding peace operations.

Workshop participants agreed about the overlap in Panels' and peace operations' mandates concerning the rule of law and welcomed the increased cooperation between the Panels and missions' Joint Mission Analysis Cells (JMACs). Nonetheless, they cautioned against expanding peace operations' mandates to include sanctions monitoring, not just because it would overburden already overstretched contingents, but because it would affect the mission's impartiality.

The report, as well as the workshop, and subsequent conversations with UN officials have highlighted wide variations in levels of cooperation between the Panels and UN operations. In the DRC, for example, the JMAC and the Panel have long shared information. In 2008, however, the Panel reported that some MONUC components were not aware of the mission's mandate to monitor the implementation of the sanctions, including provisions to inspect cargo at border crossings.

Box 4 *The UNOCI Embargo Cell: An Imperfect Model for Cooperation and Effectiveness*

According to Panel reports, the effectiveness of the UNOCI embargo cell is limited in large part due to its working methods. For example, the cell provides three to six days of notice before conducting any inspections, but both government and rebel forces often refuse to allow the cell to conduct inspections. In many cases, UNOCI only examines documents after the goods they refer to have been released. Finally, the Panel has long reported that the embargo cell is not adequately staffed: the cell does not have a full time weapons expert.

Nonetheless, recent reports from the groups on Sudan and DRC have noted the work of the UNOCI embargo cell and recommended the creation of similar cells in their own countries. The Sudan Panel also suggested that embargo cells or monitoring cells should be created in UNMIS, UNAMID, and MINURCAT, which have mandates to share information and work together. The Sudan Panel report argued that such cooperation would lead not just to improved border security in those missions' areas of operation but also to better knowledge about the various combatants and their activities.

The Stimson report found that mandates for such cooperation, whether amongst the Panels themselves or between Panels and peace operations, lacked sufficient clarity to create systematic cooperation.⁷ When examining strategies for peacebuilding in a war-torn region, the Council should therefore tailor mandates of each tool, order such cooperation, and request that the various actors develop mechanisms to ease the sharing of information and conduct of relevant work.

Peacebuilding: Sanctions for Leverage and Sanctions for Assistance

The experts from the Liberia Panel who attended the Stimson workshop discussed the role that the Panel played in monitoring Liberia's progress towards meeting the conditions the Council had set for lifting its sanctions.⁸ The conditions the Council stated for removal of the sanctions on Liberian timber and diamonds were nonetheless quite clear, their achievement could be measured, and the Panel played an important role in identifying areas where Liberia needed assistance to meet those conditions. It also called for donors to offer such assistance. The Security Council, however, has not provided this kind of clarity for other sanctions regimes. The experience of the Panel of Experts on Liberia, and the complex role that the Panel played there, shows that where such clarity does exist, there is potential for sanctions to be used as leverage in peacebuilding processes and for Panels to play a role not only in their enforcement but in their progressive elimination as states meet measurable performance benchmarks.

Develop mechanisms to match assistance with Panel-recognized needs?

The Monitoring Team for Al Qaida and the Taliban benefits from additional support. Indeed, in this case, the associate Counter-Terrorism Committee within the Secretariat works to match the gaps in institutional capacity identified by the Monitoring Team with donor assistance. To start, the Counter-Terrorism's Committee's website features an assistance tab which includes a technical assistance matrix and information about requesting and receiving assistance in efforts to implement counter-terrorism capacity building programs.⁹ Such a system to match assistance with gaps identified by Panels of Experts in Africa could be useful to improving targeted states' ability to implement the rule of law.

Conclusion

Sanctions, when properly targeted and applied, can be a useful tool for building the rule of law in post-conflict states. Indeed, when Panels of Experts monitor the implementation of sanctions, they can play an important part in identifying areas where the targeted state and its neighbors could use help to ensure they

⁷ Boucher and Holt, *Targeting Spoilers*, 67-71.

⁸ *Targeting Spoilers* includes a case study of the Liberia Panel of Experts.

⁹ <http://www.un.org/sc/ctc/index.html>

are abiding by their Security Council-imposed obligations. The efforts of the Liberia Panel to monitor Liberia's progress towards meeting conditions for lifting the timber and diamond embargoes are an important example of how sanctions can provide a useful incentive for host states to work with the international community to build the rule of law in their countries and how Panels can monitor and publicize their progress.

The recent report of the Group of Experts on the DRC, particularly its emphasis on the support the Rwandan government was providing to the CNDP in Eastern Congo, had important impact. It led several key member states to suspend assistance to Rwanda until the authorities there could guarantee they were no longer playing an active role in contributing to instability in the region. According to the International Crisis Group, the light shed on Rwanda's role by the Panel report was a major incentive for Rwanda to join forces with the Congolese government to remove Laurent Nkunda from leadership of the CNDP and to encourage CNDP integration with the Congolese government's armed forces. While the long term effects of joint DRC-Rwanda military operations remain to be seen, Rwanda's change in posture has had important strategic implications for the region as a whole.

Panels of Experts play an important role in identifying criminal networks and illicit trade networks, and the information they gather could be better used by the UN as it develops comprehensive efforts to build peace in increasingly regionalized conflicts. While the Panels for Liberia and Côte d'Ivoire have worked together to monitor those countries' compliance with the Kimberley Process, shared information across the various UN peace operations in the region, and contributed to building capacity of the governments there, it does not seem that such cooperation and integration of efforts is part of any deliberate UN peacebuilding strategy. The situation is similar in the DRC, Sudan, and Somalia, where interlinked conflicts could benefit from synergy in planning and implementing initiatives to build the rule of law and deal with criminal networks bent on impeding peace processes. The UN Security Council should more purposefully direct peace operations and Panels of Experts to find ways to systematically use the information they gather and the analysis they produce to develop effective rule of law and institution building strategies.