

SWP Comment

NO.23 MAY 2020

Implementing and Enforcing UN Arms Embargoes

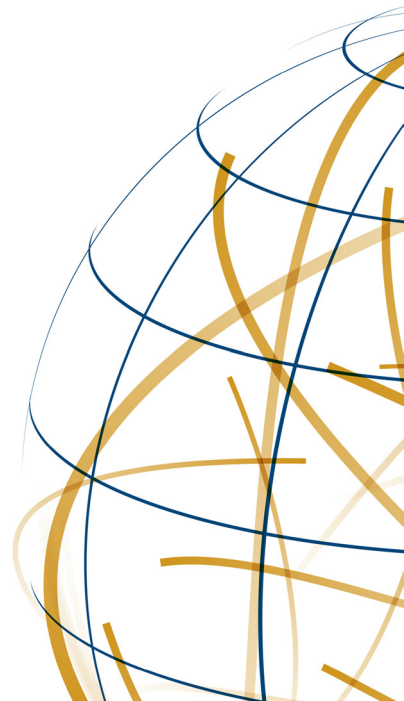
Lessons Learned from Various Conflict Contexts

Judith Vorrath

The Berlin Conference on Libya in January 2020 was held to support United Nations (UN) conflict-resolution efforts. The participating states' commitment to the existing arms embargo garnered particular attention. But hopes of meaningful progress were quickly dashed, with the embargo violated yet again shortly after the conference. Indeed, the implementation and enforcement of UN arms embargoes is fraught with challenges, especially prominently in the case of Libya. But closer examination of existing embargoes in the context of armed conflict also reveals opportunities for making better use of the measure, which is the most frequently used form of UN sanctions. It goes without saying that no arms embargo can save a peace process on its own, however tightly it is monitored. But the instrument can be applied to greater effect as part of an overall package of conflict resolution measures.

The Head of the United Nations Support Mission in Libya (UNSMIL), Stephanie Williams, complained in February that the UN arms embargo had “become a joke”. In fact, UNSMIL had just reported on flights landing advanced weapons, armoured vehicles and fighters at airports in the western and eastern parts of the country. While such violations are in principle nothing new, these incidents occurred right after the Berlin conference where the twelve participating states committed to fully respecting and implementing the existing arms embargo. This appeared to confirm long-standing criticisms of UN sanctions. There can be no doubt that repeated and more or less open violations harm the credibility of

the embargo — and of the responsible states. But the lessons from Libya cannot simply be transferred to other situations, particularly as arms embargoes are the type of sanctions most frequently imposed by the UN Security Council. Nine of the ten current conflict-related sanctions regimes include arms embargoes (Somalia, Iraq, Democratic Republic of the Congo, Sudan, Libya, Taliban, Central African Republic, Yemen, South Sudan). One reason for this may be that restricting the conflict parties' access to arms and related materiel is such an obvious response. Furthermore, arms embargoes — like other UN Security Council sanctions — must be observed by all member states, but rarely have negative



humanitarian impacts. This is probably why the debate about the Berlin Conference conclusions — which actually covered a wide range of aspects concerning conflict resolution in Libya — initially revolved largely around the UN arms embargo. Ultimately the member states are, of course, responsible for deficiencies in the implementation and enforcement of embargoes, as in the Libyan case. But there are possible courses of action at UN level.

Deadlock in the Security Council, above all among permanent members, is usually seen as the main obstacle here. But closer examination of all current UN arms embargoes in conflict contexts reveals a more differentiated picture, with starting points for action in three areas.

Adapt Embargoes to Dynamic Conflict Situations

Arms embargoes prohibit the supply or transfer of arms and related materiel to specific areas or actors. They often remain in force for longer periods: the arms embargo on Somalia has been in place since 1992. They entail direct obligations to act on UN member states — unlike travel bans for example, which have to be imposed individually. But unless their objectives and reach are adjusted to keep pace with dynamically evolving situations, arms embargoes risk becoming purely symbolic.

Over time UN arms embargoes have tended to become more comprehensive and more precise. In Libya for example many of the conflict parties are today applying different military means than they were in 2011, and increasingly make use of foreign fighters. But today's UN arms embargoes include arrangements for such developments.

While the embargo imposed on Iraq in 2003 simply prohibits the “the sale or supply to Iraq of arms and related materiel”, all other current arms embargoes in conflict contexts also cover technical advice, financial assistance, and training related to military activities. The arms embargo on Libya — like those on South Sudan and

Central African Republic — also explicitly prohibits the provision of armed mercenary personnel.

The Security Council also modifies individual UN arms embargoes with substantial changes and reference to the conflict situation in the target area. The now widespread practice of time-limiting sanctions is helpful for this. They require regular extensions and therefore, a constant review of the situation on the ground.

There can be deadlocked situations. The arms embargo against Sudan/Darfur was tightened slightly but never expanded to cover Sudan as a whole, largely on account of Chinese objections. Thus, it was almost impossible to control and largely ineffective. But that is not the normal case. Despite the controversial nature of the Western intervention in Libya, the Security Council was still able to agree on relevant changes to the open-ended arms embargo — relaxations in 2011 and 2013 and a renewed tightening after fighting flared up again in 2014.

In most cases Security Council amendments are designed to differentiate the embargo, above all through exemptions. These exist in all conflict-related regimes today, with the exception of the measures against the Taliban. Exemptions allow for deliveries of non-lethal equipment for humanitarian purposes for example, or military supply to peace operations, but also for the capacity-building of national security forces. In almost all cases, such a possibility to support and train national security forces — which otherwise would be covered by the embargo — is foreseen. The arms embargo on DR Congo has generally applied only to non-state actors since 2008.

Such an easing is often justified by the Security Council with reference to changes on the ground, for example the installation of a civilian transitional government or largely free and fair elections held. So actual events do matter, but they are naturally interpreted by the Council. Where miscalculations occur it may become impossible to implement an embargo effectively.

Even if adjustments are timely and appropriate, they are not easy to implement and monitor. Exemptions may create new loopholes. Moreover, their conditions may be complex, as is the case with the widespread requirement to notify the relevant sanctions committee or seek its advance approval. If arms embargoes are to have the intended impact, alterations and their objectives must be clearly formulated and communicated to the member states, especially those in the affected region.

Using the Mechanisms in the UN Sanctions System

Not all UN member states possess sophisticated systems for controlling the export and transit of goods. Yet, this is a crucial prerequisite for effective sanctions regimes, alongside translating Security Council sanctions into national law and involving the private sector. Furthermore, law enforcement in many UN member states is ill-equipped to pursue violations.

It is therefore crucial to strengthen these capacities in member states. This already occurs fairly comprehensively in relation to measures against terrorism and nuclear proliferation, but in the case of sanctions designed to contain or resolve conflicts much work remains to be done. Relevant starting points can still be found in the outcomes of the Bonn-Berlin Process, which Germany initiated in 1999 to support national implementation of UN arms embargoes.

But it is a fine line between inadequate capacity and conscious evasion and violation. Therefore, mechanisms to improve the implementation and enforcement of sanctions have been put in place within the UN system. First of all, arms embargoes are no longer configured as stand-alone measures. Since that approach proved largely ineffective, they are now usually imposed in conjunction with commodity bans and/or asset freezes, to hinder the financing of arms purchases.

In Libya for example a ban on illicit exports of crude oil and refined petroleum

products is part and parcel of the sanctions regime. But conflict parties that receive direct military support from third states are less dependent on such sources of funding. The sometimes open interventions by Rwanda and Uganda in DR Congo, thus, triggered a Security Council decision on aviation and customs controls at the country's eastern borders. And in 2009 secondary sanctions were imposed on Eritrea for assisting Al-Shabaab in Somalia. But such firm Security Council responses to violations by states are relatively rare, especially when the interests of permanent members are involved.

Another approach is listing individuals and entities involved in breaching an embargo. Almost all the nine current arms embargoes provide for the possibility to respond to violations with travel bans or asset freezes. But very few individuals and entities are actually listed on these grounds: to date three for Somalia, one for Sudan and four for the Taliban. Only in the case of DR Congo has a larger number been listed for this reason, partly because until the end of 2005 violating the arms embargo was the only criterion available for listing. Today the tendency is to establish more and more differentiated listing criteria. But it would also be important to actually apply the existing criteria in the UN sanctions system when violations occur.

Identify Violations and Respond

Listing of individuals and entities is usually carried out by the sanctions committees established by the Security Council. However, the reason why violations often have little consequence is not simply that the committees are composed of the same fifteen member states as the Security Council. Because the committee makes its decisions by consensus, each member – not just the permanent ones – possesses an effective veto. Additionally, decision-making is more rule-based in the committees than in the Security Council, where package solutions are often negotiated. So non-permanent

© Stiftung Wissenschaft und Politik, 2020
All rights reserved

This Comment reflects the author's views.

The online version of this publication contains functioning links to other SWP texts and other relevant sources.

SWP Comments are subject to internal peer review, fact-checking and copy-editing. For further information on our quality control procedures, please visit the SWP website: <https://www.swp-berlin.org/en/about-swp/quality-management-for-swp-publications/>

SWP
Stiftung Wissenschaft und Politik
German Institute for International and Security Affairs

Ludwigkirchplatz 3 – 4
10719 Berlin
Telephone +49 30 880 07-0
Fax +49 30 880 07-100
www.swp-berlin.org
swp@swp-berlin.org

ISSN 1861-1761
doi: 10.18449/2020C23

Translation by Meredith Dale

(English version of
SWP-Aktuell 32/2020)

members potentially have greater influence in the committees, but they require solid information if they are to introduce proposals. It is therefore significant that almost all the sanctions committees are today supported by UN panels of experts, which monitor implementation of sanctions with their own investigations and also include arms experts. Where the panels uncover incidents of non-compliance there can be an impact even without listing, for example if those responsible subsequently adapt their behaviour or when national authorities draw on information from the reports. It can of course be difficult to prove violations of arms embargoes beyond doubt, especially given the numbers of weapons already circulating in conflict regions. And the panels of experts frequently find themselves under financial and political pressures.

Other monitoring approaches are therefore relevant, such as international customs cooperation. That was the path pursued by the European Union in the 1990s to improve the monitoring of sanctions against former Yugoslavia. Sanction Assistance Missions deployed customs experts to the borders of states neighbouring Serbia and Montenegro and connected them to the UN sanctions committee via a communications centre in Brussels. That cannot simply be replicated elsewhere, especially given the vital importance of cooperation by neighbouring states. But the example does demonstrate that the question of feasibility is principally political, and not foremost a matter of capacity.

This is somewhat different for UN peace operations, which are sometimes specifically mandated to monitor arms embargoes, as in the cases of Central African Republic and DR Congo. But it is hard to uphold systematic controls in the face of inadequate funding, where their priority is low. Within UN missions there is also often scepticism over the usefulness of sanctions. Apart from increased resources, better coordination of the different UN measures – which are ultimately all pursuing the same goal – is required.

Where control of sea routes is a relevant option, the Security Council also authorises operations by states and regional organisations, as in the case of the embargoes on Somalia and Libya. For example EU Operation Iriini, mandated in early April 2020, is to monitor the UN arms embargo on the high seas off the coast of Libya using aerial, satellite and maritime assets. Although the debate is often narrowed to controls and seizures of weapons at sea, Operation Iriini's information-gathering role is likely to be much more important. This includes collecting and storing evidence, as the German draft mandate outlines. It therefore makes sense for Germany to participate in the operation. Yet, the central point is that any findings must be exploited for containing the conflict via the UN sanctions system and diplomatic processes. As chair of the sanctions committee on Libya, Germany is in a position to encourage that. In relation to other armed conflicts the German government should work to improve implementation and enforcement of UN arms embargoes as part of a comprehensive approach to conflict resolution – above and beyond its current membership in the Security Council.

Dr. Judith Vorrath is Senior Associate in the International Security Division.