

UN Panel of Experts A peace-building tool?

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INTRODUCTION

Viewed in relative terms, Southern Africa is enjoying a peaceful environment compared to its more turbulent history of the 1970s to late 1980s. Several factors are responsible for this, not least the end of the Cold War and the successful conclusion of the armed struggles in Mozambique, Angola, Zimbabwe, Namibia and South Africa.

Apart from these two dimensions, however, another factor continues to influence positively the current stable environment in the region, although its prominence appears to have been conveniently forgotten. That factor is the United Nations (UN) Panel of Experts mission deployed separately in Angola and the Democratic Republic of the Congo (DRC) during 1999 and 2002 respectively.

The introduction of the UN Panel of Experts in conflicts, almost inevitably leads to a major reduction in the intensity of conflict, a similar contraction in the supply of arms (which were shipped generally in contravention of existing protocols), and the revival of and adherence to signed peace agreements. This impact generally continues in the post-conflict and reconstruction phase, serving as an important dimension contributing to the absence of a return to war and violence.

Despite the obvious advantages inherent in the UN Panel of Experts mechanism, its place in the repertoire of available instruments relevant for consideration in the post-conflict reconstruction phase has been largely ignored. Why?

Part of the explanation lies in the traditional low esteem accorded UN achievements by its own member states. According to this school, any achievements are the direct result of states' own actions. There is also an unstated fear – especially among UN Security Council (UNSC) member states

armed with veto powers – towards supporting an independent body operating at the international level that enjoys neutrality and unmistakable independence. By implication, the UN Panel of Experts is perceived as a competitor.

Appreciating the importance of the panel but intimately aware of the difficulties in establishing their own commission, the Panel of Experts on the DRC submitted a recommendation with their telling submission, calling for:

The establishment of a permanent panel of experts' commission that investigates and monitors illegal trafficking of natural resources in armed conflicts and prosecutes individual companies and government officials whose economic and financial activities directly or indirectly harm powerless and weak economies.¹

There is therefore an urgent need to recognise the mechanism of the UN Panel of Experts; the reasons why will become apparent in the discussion below.

One of the compelling reasons for this call is the fragility of post-conflict and reconstruction programmes in the majority of states on the African continent, most of which relapse and degenerate into yet more protracted conflicts within, on average, the first ten years of reaching a peaceful agreement.²

Even more worrying is the difficulty in enforcing neat and tidy agreed-to ceasefires and in ending conflicts. As Charles King has correctly pointed out, "precisely when a civil war ends can be anything up to 20 years".³

Against this background, and taking into account the unique advantages of the UN Panel of Experts

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mechanism, its survival is crucial to future peace and stability especially on the African continent.

This research is part of an effort that draws attention to some of the important building blocks which contribute to the consolidation of post-conflict reconstruction and settlement – and in the end avoiding regression – as we march towards peace, security and development.

In attempting to make such a contribution, the paper focuses on analysing the impact of the two UN Panel of Experts missions deployed in the Southern African countries of Angola and the DRC between 1999 and 2002.

DEFINITION

The setting up of a UN Panel of Experts normally follows persistent and contradictory reports related to violations of an agreed-to peace treaty, international law or UNSC resolution, associated with a particular conflict by actors. It also follows the lack of clarity on who is involved and, by extension, what punitive action may be taken by the UNSC in furtherance of peace and security, threatened by conditions around a particular event.

Against this background, the UNSC establishes a sub-committee comprising experts who boast international credibility. The purpose of the sub-committee is to investigate, confirm and report back the facts. The sub-committee, constituted as a panel, is given a specific time frame and resources to facilitate its work.

The UN Panel of Experts mechanism deployed in both Angola and the DRC was a sub-committee of the UNSC. Both panels drew their authority, mandate and operational parameters, including time frames, from the specific UNSC resolutions establishing their existence.⁴

When established, a panel enjoys the legal immunity normally associated with parliaments and the UNSC. A panel does not have powers of arrest and can only make recommendations that become subject to adoption by the UNSC. The main purpose of a committee is to provide clarity on issues related to a specific conflict and other tasks, as defined in the resolution. This is based on collating and analysing verifiable information that is in the public domain, and which has been subjected to cross-checking before presentation.

The work of the Panel of Experts is, however, full of contradictions. For starters, information being

analysed concerns states, multinational corporations or even individuals, all of which have extensive links with member states. Trying to unearth misdemeanours by these actors normally draws the ire of targeted states, translating into a major challenge and constraint on the effectiveness of the mechanism. It is also true to say that the work of the panel is viewed sometimes as entering the realm of intelligence – an area that the UN as a whole has traditionally found difficult to engage in.

There is also the question of composition of the membership of a panel. While it is expected that members be drawn from persons of integrity, neutrality and even-handedness, the reality always turns out to be somewhat different. For instance, some countries – clearly with interests in the issue being investigated – will leap at the opportunity to deploy their people amongst the group. Where this happens, it often results in the integrity of the whole group being compromised.

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The mechanism remains an ad hoc committee of the UNSC, denying it any structural or sustained relevance outside the limited mandate and temporary existence that has characterised its use so far. Appointing a panel of experts is a singular achievement as it reflects the failure of the UNSC intelligence community to agree and form consensus on a particular issue. Consequently, once established a panel, in practice, has to contend with the active interference of the same intelligence community.

It is also true that the integrity and purpose of the mechanism is sometimes compromised by the undue influence and demands of key UNSC members who have veto powers.

In the second case study in this paper, the Panel of Experts deployed in the DRC ‘enjoyed’ extra support from some UNSC member state intelligence organisations which ‘provided’ the panel with incriminating evidence related to some of the actors. Although accurate, the evidence provided appeared to be motivated by intentions that went beyond assisting the panel.

Furthermore, a panel of experts has no powers either to compel witnesses to come forward or, after finding incriminating evidence, to take appropriate action – except to make recommendations to the

UNSC. Panel members are sometimes exposed to personal danger and even public ridicule by defensive-minded actors. The members have no clear guarantees of protection, except the general UNSC legalistic provisions.

Finally, UNSC member states only provide what they perceive as adequate resources and mandates for the committee and do not necessarily respond to demands on the ground in a top-down fashion. Taken together, these are major constraints on the utility of the mechanism.

ANGOLAN CASE STUDY

The first peace agreement related to this study was amongst Angolans. Struck in 1991, the Bicesse Peace Accord (*Acordos de Paz*) was signed between the *Movimento Popular de Libertacao de Angola* (MPLA) and the *Uniao Nacional Para a Independencia Total de Angola* (UNITA). The Bicesse Peace Accord created the entry point for the UN Monitoring Mission in Angola (MONUA), and provided for the supervised presidential and parliamentary elections of September 1992. In these elections, MPLA President dos Santos secured 49.6% of the vote against UNITA President Jonas Savimbi's 40.7%. In the legislative poll, the MPLA secured 54% of the seats compared to 34% in the case of UNITA.

While the international community was prepared to entertain constitutional challenges to the areas in dispute, the UNSC did not expect UNITA to return to war after the poll in order to gain political advantage beyond the election results.

In 1993, the UNSC passed its first set of sanctions – Resolution 864 of 15 September – against a defiant UNITA, seeking to encourage UNITA to abandon the military option. The same resolution established an Angolan Sanctions Monitoring Committee within the UN system.

The restrictions imposed, focused on limiting supplies of arms, military equipment and fuel to UNITA. On 20 November 1994 the Southern African region also lent its weight towards the peace settlement in Angola by facilitating the Lusaka Protocols on the Peace Accord.

After three years of growing UNITA military capacity and defiance to observe the peace protocols agreed to, the UNSC passed a second set of additional sanctions intended to freeze UNITA bank accounts, ban foreign travel of its senior officials and shut

down overseas UNITA offices. The move was designed to lower the rebel movement's international posture, curb its financial ability, and especially denude its still growing military capacity.

Within a year, it was clear that the measures were not having any effect, and in June 1998 the UNSC moved to impose a third set of sanctions through Resolution 1173, prohibiting the purchase of diamonds from UNITA or the areas it controlled, as well as over-flights in the same zones.

Already, however, a pattern had become established in the conflict, demonstrating the ability of UNITA to identify and work with those willing to violate the international community's demands as long as they remained anonymous.

Also clear were the shadowy dealings of profiteers in the exploitation of natural and moveable resources under UNITA control, and, finally, the unscrupulous neighbouring states and officials, multinational companies and other privateers who supported UNITA's war aims against the peace protocols.

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From these aspects, an extensive network of arms, fuel, ammunition, military foreign assistance and communications emerged and provided the foundations for the growing rebel military capacity.

An important year was 1999, as it again showed that the international sanctions regime was ineffective. Almost in defiance of the sanctions, UNITA was able to establish a diamond-funded multimillion dollar rearmament programme. Both the UN

Angola Monitoring Committee and the rest of the international community turned a blind eye. From these proceeds, UNITA's military capacity had reached its peak, with conventional units estimated at 60,000 soldiers, organised as motorised artillery units, mobile infantry and armour. Based on this military capacity, UNITA was in effective control of nearly 75% of Angolan territory, confining government forces to the capital, Luanda, and areas around the coastline.

Meanwhile, the impact of the war on the humanitarian situation was dramatic and foreboding, producing conditions bordering on genocide. On 17 December 1998, *Forces Armadas de Angola* (FAA) Chief of Staff, General Joao de Matos, acknowledged that "UNITA is better equipped than ever before".⁵

Additionally, UNITA's renewed military capacity was now making a direct impact on the ability of the UN

mission to stay in Angola. In June 1998, UN Special Representative, Ambassador Alioune Blondin Beye, was killed in a mysterious air crash that many believed was engineered by UNITA.⁶

Faced with the UN's inability to respond to persistent UNITA violations, a situation of strained relations developed between the government of the Republic of Angola and the UN. Furthermore, the UN became increasingly frustrated at its lack of impact. As a result, in January 1999 the UN announced that "because there was no peace to keep" it was pulling out of Angola. According to UN Secretary General Kofi Annan:

... the root causes of this deeply regrettable state of affairs are well known. They lie in UNITA's refusal to comply with basic provisions of the Lusaka Protocol which demanded that it demilitarise its forces and allow state administration to be extended throughout the national territory.⁷

Following the above decision, in March 1999 the UN formally lowered its MONUA flag and left Angola. This was unprecedented. UNITA's military action impacted not only on the Angolan government but on the UN as well.

The announcement to abandon the UN mission in Angola placed in question the UN's credibility and its conflict management role as part of its mandate. This was a development coming from the challenge of a rebel movement enjoying the support of shadowy figures who were clearly benefiting handsomely from the human suffering in the conflict. Meanwhile, the government in Luanda was increasingly being posited as under siege and unable to control its own territory.

It was in this context that thoughts regarding the deployment of a panel of experts mission emerged. The motivation for this development was linked with the appointment of Canadian Ambassador, Robert Fowler, to the chair of the Angola Sanctions Committee at the beginning of 1999.

Acting within the existing mandate and with the objective of improving the effectiveness of the sanctions regime on UNITA – including curbing its military capacity while creating opportunities for UNITA to comply with the peace treaty – Fowler undertook a series of fact-finding missions to the conflict zone, Africa and to Europe.

Fowler was given the opportunity to address the

UNSC between June and July. In his submission, based on 19 recommendations arrived at after wide consultations, Fowler argued for "studies to trace violations in arms trafficking, oil supplies and diamond trade, as well as movement of UNITA funds."⁸ In order for this to be executed under the direct authority of the UNSC, Fowler motivated that a panel of experts be established to undertake the task. This was duly approved. The ten members under the chairmanship of Ambassador Anders Mollander of Sweden were to report back by March 2000.

The selection and appointment of members to each panel seems to be a source of considerable conflict. As things stand, the process sometimes adopts a traditional peacekeeping mode in which the conflict scenario participants are consulted and can veto particular members chosen. However, it is also true that some members of the UNSC hold sway as to who is appointed, who chairs, etc. – reflecting an area that would benefit with the permanent appointment of a commission and not the ad hoc arrangements that are currently the norm.

The panel was tasked with the following:

- Discover how UNITA had amassed its conventional armoury against the prevailing sanctions regime.
- Ascertain how regular supplies of fuel, ammunition, spares and expert personnel/ mercenaries were solicited.
- Determine how UNITA financed its operations.
- Establish knowledge of the networks that continued to give sustenance to UNITA and its war-related activities.

A cursory examination of the tasks reflects that the panellists were not asked to undertake extensive, exhaustive or detailed investigations but merely to record an understanding of the dynamics, and to confirm and corroborate information already in the public domain. A secondary task of the panel that is not explicitly stated was, of course, "raising awareness" about the sanctions.⁹

In carrying out its task, the Panel of Experts was divided in two, with one half focusing on the 'financing and blood diamonds' dimension, while the other half examined the military equipment, training, purchase and smuggling aspects. Both groups undertook extensive travelling, visiting "over 30 countries, some several times, [meeting] with the diplomatic

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community, non-governmental organisations, police and intelligence services, government officials, commercial companies, journalists and others".¹⁰

The impact of the Panel of Experts on Angola was dramatic. The investigations by the UNSC instrument also coincided with the international campaign against 'blood-diamonds', whereby diamonds were now the currency that continued to fuel the conflicts in Africa. The focus of the global campaign was to criminalise this activity and force the withdrawal of key actors – both on the African continent and traders, as well as consumers in Europe and North America; areas that represented the biggest diamond markets.

UNITA was intricately linked to diamond mining and selling in order to raise funds for its military activities. Within the Southern African Development Community (SADC) region, officials and multinational corporations with business interests elsewhere in the region rushed to disassociate themselves from their illegal activities with UNITA. For instance, Antwerp diamond dealers David and Maurice Zollman – based in Rundu, Namibia and in Johannesburg, South Africa – were forced to publish an open letter in the press addressed to one of the foremost activists, British Member of Parliament Peter Hain, protesting their innocence. In their submission, they pointed out: "My brother and I have not breached UN sanctions by trading in diamonds with UNITA since 28 February 2000."¹¹

Also fearing the backlash, diamond giant De Beers adopted an 'ethical' stance, rejecting 'dirty blood diamonds'; but significantly only after 1999 and following the intervention of the Panel of Experts. Before this, as De Beers itself admitted to the panellists, it had received parcels of diamonds coming from UNITA-held areas and processed them into the international market.

Without ready access to millions of dollars, UNITA's military capacity was immediately affected.

The contribution by the other half of the panellists on military equipment and related components also created a level of transparency that witnessed the scurrying away of mercenaries and other merchants of death previously working closely with UNITA.

All pilots are registered with the International Aviation and Transport Association (IATA), and when the panellists threatened to de-register any pilot found violating the sanctions regime, the result was the wholesale abandonment of secret air shuttle

services that were the backbone of weapons, fuel and ammunition re-supply and reinforcement for UNITA. Consequently, UNITA's capacity to sustain its conventional forces was immediately eroded.

Significantly, the reversal in terms of finances and weaponry is that it was permanent, projecting itself into the post-conflict and reconstruction phase. This aspect is the single most important contribution derived from the intervention of the Panel of Experts, and which was almost forgotten when the war ended.

It is also true that the Panel of Experts' views either legitimise or de-legitimise particular causes or courses of actions by individuals, governments or companies. Consequently, when it is deployed and entities appear to go against the remonstrations of the panel, they suffer the danger of their causes being criminalised. This is an effective weapon that ultimately assists in the strengthening of actors observing and adhering to existing protocols and provisions.

In this case study, UNITA's cause was criminalised and its legitimacy as a liberation movement consistent with international perceptions was sacrificed.

In conclusion, it must be admitted that despite the impact of the Panel of Experts' intervention, the local dimension of the military deployment of a rejuvenated FAA from September 1999 was also partly responsible in accelerating UNITA's defeat. Without the air power contribution from outside in UNITA's favour and with UNITA's networks destroyed, the FAA quickly seized ammunition dumps and

numerous airstrips that had been part of the movement's logistical chain.

When Savimbi was eventually killed in the small town of Luena in February 2002, UNITA was a shadow of its former self, and this event only served to entrench the reversal that had been introduced by the earlier intervention of the Panel of Experts.

THE DRC CASE STUDY

In the interests of brevity, similar aspects of the significance of the panel of experts' instrument identified above will not be repeated here. This section will focus on why, how and to what effect the same entity was deployed in the DRC in 2000.

The conflict in the former Zaire, now DRC, for our purposes, begins with the 1996 march by the Alliance of Democratic Forces for the Liberation of

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Congo-Zaire (ADFL), which was assisted and supported by, among others, Angola, Tanzania, Burundi, Rwanda and Uganda.¹² This event was successful in toppling the sitting president, Mobutu Sese Seko, by May 1997. However, within a year relations between members of the ADFL and the group of countries cited deteriorated, resulting in an all-out war by June/July 1998.

Armies from more than seven African countries were soon involved. SADC members Angola, Namibia and Zimbabwe ranged against Burundi, Rwanda and Uganda. Meanwhile, the ADFL splintered into various factions, each supported by neighbouring states: the Rally for Congolese Democracy (RCD) led by Professor Wamba dia Wamba was the first splinter, which soon fractured further into RCD-Goma based in the border town of Goma and supported by Rwanda; RCD-Kisangani/Liberation Movement supported by Uganda, and the Movement for the Liberation of Congo.

The conflict that involved governments and the various rebel factions was eventually resolved when a ceasefire was reached in Lusaka in July 1999. Here, the Lusaka Ceasefire Agreement on the DRC was secured, supported by the UN. The Lusaka Agreement was later augmented by various subsequent bilateral understandings, such as the Sun City, Pretoria and Luanda agreements.

In line with the provisions of these agreements, the UN deployed a monitoring mission designed to allow dialogue and negotiations to prevail as the country marched towards scheduled supervised elections. This was later upgraded to a full peacekeeping mission in the Congo, known by the French acronym of MONUC.

However, in spite of key actors signing up to the agreements, fighting did not ebb nor was the ceasefire observed. To this end, implementation of the provisions of the agreements appeared tardy, especially by the rebel movements that continued to press for a military solution against the background of a weakened central government in Kinshasa.

Reports indicated that some actors did not wish to see an end to the war, since it provided a veil for the looting of natural resources on a massive scale. Given the huge mineral resources in the DRC, some actors were therefore profiting greatly from the conflict.

By 2000, the humanitarian impact of the war in the DRC was enormous, with an estimated three million

people dead either directly from the war or indirectly as a result of destroyed infrastructure and the level of insecurity that prevailed.

In early January 2000, President Laurent Desire Kabila was assassinated, threatening to plunge the country into chaos. A sense prevailed in the international community that parties in the DRC conflict were prepared to ignore exhortations from the UNSC to desist from pursuing the military option but operate within the confines of the protocols of existing agreements. Furthermore, it was clear that violations were being committed with impunity and that this was now contributing directly to a difficult environment for ordinary people.

Six months later, in June, the UNSC motivated for the establishment of a panel of experts to investigate "the illegal exploitation of natural resources and other forms of wealth in the DR Congo for a period of six months".¹³ The mandate of the commission was to:

- follow up on reports and information on all activities of illegal exploitation of natural resources and other forms of wealth of the DRC, including the violation of the sovereignty of that country;
- research and analyse the links between the exploitation of natural resources and the continuation of conflict in the DRC; and
- revert to the UNSC with recommendations.¹⁴

Using a similar methodology as established in the Angolan case study, the panel in the DRC unearthed astonishing evidence.

Exploitation had occurred in two phases, representing "mass-scale looting and the systemic and systemic exploitation of natural resources" in the country.¹⁵ During the first phase, anything that was not bolted down was removed and quickly transferred across the borders, including "stockpiles of minerals, coffee, wood, livestock, money" and even emptying of the treasury in Kinshasa. The loot was then transferred or exported to international markets from the neighbouring states identified in the UN report.

The first phase occurred before the stalemate set in by October 1998. Thereafter, the second phase began, characterised by "systematic and systemic" planning and organisation for the continued exploitation of natural resources and other forms of

An overall picture of the looting had been documented by a credible and neutral organisation and the picture that was painted was extremely disquieting

wealth. Diamonds, hard timber, gold, and the lucrative cassiterite minerals required for mobile phones were available to the networks and illegal merchants. Most of this was exploited through:

... elaborate planning and systemic exploitation of natural resources, characterised by confiscation, extraction, forced monopoly and price-fixing ... arbitrary territorial tariffs were levied by different controlling interests as was the general plunder of anything of value that was portable.¹⁶

According to the panel, the result of the illegal exploitation had been twofold:

- The massive availability of financial resources and individual enrichment of military commanders and civilians.
- The emergence of illegal networks providing the link between exploitation and the continued fuelling of conflict.

The entry of the Panel of Experts in the DRC conflict and the comments it made were not entirely new as aspects had emerged in reports elsewhere that were available in the public domain. Consequently, most of what the panel said was already commonplace. What was new, however, was that for the first time “an overall picture of the looting had been documented by a credible and neutral organisation and the picture that was painted was extremely disquieting”.¹⁷ This was the view of French Ambassador, Jean-David Levitte, and the European Union statement reacting to the report, read by the Swedish diplomat. British UN Ambassador, Sir Jeremy Greenstock, concurred, stating that “one of the most important things that the panel had achieved was to bring the problem to the surface”.¹⁸

This is significant and provides an explanation of the unique contribution and characteristics associated with the instrument of the panel of experts. No other mechanism in the world boasts the same attributes. It is even more significant if cast against what the DRC minister of foreign affairs and international cooperation stated. In his view, the findings of the commission merely:

... confirmed what we had been saying all along – that those found in the dock – carrying out the shameless looting of Congolese natural wealth – have lost legitimacy and their cause criminalised. This

had been going on since 1998. Secondly, the link between exploitation and military adventure as well as capacity from the DRC had also been established.¹⁹

The impact made by the Panel of Experts’ intervention has been dramatic and long lasting. For example, when the panel’s report was submitted, a spat was going on between Britain and Zimbabwe, with Zimbabwe insisting that the UNSC return to reflect on allegations that had been cast against it. This led to the production of the Addendum, as fully cited. Its mandate was to:

- update relevant data, analysis and information;
- include in the data aspects not available;
- address responses and reactions of those cited by the panel; and
- draw conclusions on whether progress (in relation to the recommendations made in the initial report) had been made.

Stated differently, the expected impact of the report was in fact diluted by the new demand, whose import in a sense suspended action on the recommendations now before the UNSC.

Despite this obvious setback, we can still isolate important elements that reacted strongly to the reports. The first reaction was by multinational companies that had strong lobby links with the UNSC member states. These implored their governments to ensure their company names were not

published while they disengaged from the DRC conflict.

Although this means that many will never know the full extent of the involvement of those unnamed multinational companies, it was gratifying to see the almost immediate impact their withdrawal had in lowering the intensity of the conflict. For example, while fighting still continues (mainly confined to the volatile eastern parts of the country in the Kivus), blatant arms supply lines, illegal exploitation and trade in minerals, forestry and fisheries have been drastically reduced. Only small-time players remain.

In terms of financing the war from minerals, not only did the ‘blood diamonds’ campaign witnessed in the Angola case study have an effect insofar as cassiterite was concerned, the exposure removed externally generated demand. Most international companies turned towards the Australian market, and were

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prepared to pay the market prices for legally acquired cassiterite. Once this happened, the cassiterite price in the DRC dropped dramatically from over US\$300 a kilogram to less than US\$20, effectively shutting down the illegal market that had emerged.

A further confirmation of the impact of the panel is how it provided credibility to information already in the public domain that was not being taken seriously – when the UN Panel of Experts reports repeat the same claims, the international community tends to take notice. In this case study, when the panel confirmed the claims already in the public domain, this resulted in corrective action by those named in the draft report. The exposed operators rapidly disengaged, closed shop and allowed the intensity of the conflict to wither, thereby creating space for possible solutions.

In the case of the conflict in Angola, for instance, the Panel of Experts report recommended invoking international law and the involvement of Interpol and IATA, targeting, among others, pilots used in the transportation of arms. The recommendation was that such pilots' licences be cancelled and the individuals jailed for their actions, while their cases would be published on an international website under the sanctions information campaign. This call had an almost immediate impact, denying the fighting groups opportunities to harness unscrupulous external support.

In the case of the DRC, the Panel of Experts criminalised the illegal exploitation of natural resources from that country. In the view of the panel, proceeds from these commodities were clearly fuelling the ability of the said countries to prosecute the war. The panel also recommended that the World Bank and International Monetary Fund (IMF) should consider suspending their budgetary support to Rwanda and Uganda, and that they should freeze bank accounts of named individuals in those countries who had amassed and stashed in overseas banks millions of dollars from the conflict. The same individuals continued to operate in the systematic illegal exploitation activities. Furthermore, the panel recommended the imposition of an immediate weapons and military equipment embargo, since these were continuing to flow openly towards the mushrooming quasi-rebel groups that had strong links with the governments. Overall, the panel also recommended:

For the SC, to consider establishing and monitoring illegal trafficking of natural resources in armed conflicts and prosecute

individual companies and government officials whose economic and financial activities directly or indirectly harm powerless and weak economies.²⁰

The impact of the Panel of Experts on the complex and widespread conflict in the DRC was, and continues to be, significant. First, a number of multinational companies that had been operating in the rebel-held areas rushed (through diplomatic lobbying among UNSC members) to have the names of their companies expunged from the report. Meanwhile, they were also effectively cutting ties and any overt links with the actors in the conflict. Second, commodities that had assumed characteristics of fuelling the conflict suddenly fell out of favour with buyers, mainly based and operating within the international market system. For instance, as mentioned, prices for the mineral cassiterite plummeted against a background of criminalisation of the practice in the ongoing 'blood tantalum' campaign. Multinational companies abandoning the illegal exploitation of the DRC natural resources and minerals then turned towards sourcing columbite in Australia. With mineral prices at rock bottom, cassiterite and other minerals were removed from acting as commodities fuelling the conflict. This development had a direct effect on the weapons, ammunition and foreign assistance networks whose presence had increased the intensity of the conflict. What have remained active since are local interests that have managed to keep the pot boiling on a level of non-war and non-peace.

The second featured response to the report was noted during the two-day presentation before the UNSC following the standard prior consultation with those implicated in the report. An important caveat that emerged was the confirmation by the report of what had always been in the public domain regarding the conflict. This point was emphasised by the DRC Minister of Foreign Affairs and International Cooperation in his political lament of "looters of Congolese natural wealth as the root cause of the conflict ... a process that had been going on since 1998".²¹ For our purposes, however, the important point to draw is that the panel merely confirmed existing facts and knowledge – and this advantage is not necessarily found in many structures of the UN system. The second feature of the response lay in the official response to the allegations and questions raised by the Panel of Experts.

The Ugandan Minister of State for Foreign Affairs and Regional Cooperation, Amama Mbabazi,

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announced the establishment of an independent judicial commission to investigate the allegations. According to Mbabazi: “a code of conduct had been implemented and actively enforced, prohibiting high ranking Uganda military personnel and their families from engaging in any trade in the DRC.”²² This was a significant response, although a parallel questioning of the credibility of the report mediated the statement.

Meanwhile, Rwanda issued a belligerent denial and did not respond to direct and quoted individuals and institutions that had perpetrated and benefited from the illegal exploitation.

Burundi Minister of Finance, Charles Nihangaza, also announced the establishment of an independent inquiry in order to determine the “level of presence of own troops”,²³ in a development that had ostensibly been dictated by rebel presence on the border with his country. Again here the bottom line was public state response to questions raised by the Panel of Experts.

The responses from Burundi, Rwanda and Uganda also came against a background of strong recommendations made by the panel, essentially suggesting sanctions or punishments as an alternative to be meted out by the World Bank and IMF if countries failed to desist from the illegal activities cited. The result of this arm-twisting by the Panel of Experts occurred at an opportune moment as the DRC peace process had stalled with implementing provisions of the Inter-Congolese Dialogue.

CONCLUSIONS AND RECOMMENDATIONS

Stemming from its involvement in the conflict situations, the UN Panel of Experts mission made an impact in the following areas:

- Restating information already in the public domain within a framework that provided the same with an official, international endorsement.
- Creating possibilities of naming and shaming, resulting in the rapid disengagement of foreign powers, neighbouring states, government officials, formal and informal military organisations, multinational corporations and private individuals benefiting from the war, who cut their links after the world spotlight was focused on their activities.
- The withdrawal of external players in any of the conflicts as a result of the UN Panel of Experts’

involvement had a direct influence, reducing the military capacity of ‘rebels’ and their ability to act as spoilers.

- The same development curtailed the illegal economic activities that were fuelling the wars and providing incentives.

The Panel of Experts mechanism has several clear phases, each of which represents a forum of struggle constituting battlegrounds that result in delays, a weakened commission or even one that does not enjoy the integrity and support of the majority of the international community.

The first is obtaining and managing a decisive vote in the UN to enable an effective mandate and adequate resources to be provided. The second area of concern is the selection of the panel, its methodology based on constraints of time and money, as well as taking into account a desire to make a positive impact on the situation. Third, there is always a struggle at report stage as to what is to be included and what should be left out, depending on actors outside the panel itself. The ability of the panel to name and shame, for example, is limited. As a standard and protocol, UN reports are circulated before publication, inviting comment and responses, and it is during this period that intense lobbying and diplomatic clout can influence what is said – that is, what remains in the report. Finally, it is also true that adoption of the report and implementation of recommendations is an area that still needs attention.

For now, however, we acknowledge the important contribution made by the Panel of Experts commissions deployed at separate periods in Angola and the DRC and the peace that currently exists in Southern Africa, especially the contribution made in “bringing ... problems to the surface”.²⁴ If we are correct in this assessment, then the establishment of a permanent independent panel of experts is long overdue.

NOTES

- 1 UN Security Council, *Press Release SC/7057, Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo*, 3 May 2001, p 3.
- 2 See C Clapham, *Africa and the international system*, Cambridge University Press, New York, 1996; C Clapham, *Rethinking African states*, *African Security Review* 10(3), 2001 <<http://www.iss.co.za/Pubs/ASR/10No3/Clapham.html>>; RI Rotberg, *The failure and collapse of nation states: Breakdown, prevention*

The panel provided credibility to information already in the public domain that was not being taken seriously

- and repair, in RI Rotberg (ed), *When states fail*, Princeton Univ. Press, Princeton, 2004, pp 5-9; W Reno, *African weak states and commercial alliances*, *African Affairs* 96(383), pp 165-85.
- 3 C King, *Ending civil wars*, *Adelphi Papers* 308, International Institute for Strategic Studies, 1997, p 19.
 - 4 These four reports form the basis of this paper: *Report of the Panel of Experts on Violations of Security Council Sanctions Against UNITA*, also known as the *Robert Fowler Report* – UN Security Council Press release, 7057, 3 May 2001, <<http://www.un.org>> (24 March 2005); *Waiting on Empty Promises: The Human Cost of International Inaction on Angolan Sanctions* (Action for Southern Africa – ACTSA, February 2000) <http://www.actsa.org/Angola/waiting_on_empty.htm.htm>; *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo* (S/2001/357), <<http://www.reliefweb.int/w/Rwb.nsf/vID>> (10 January 2005) and the *Addendum to the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, 13 November 2001, <<http://www.un.org>> (10 January 2005).
 - 5 ACTSA report, *Waiting on Promises*, op cit, p 6.
 - 6 Ibid, p 5.
 - 7 Ibid, p 2.
 - 8 S/1999/644 and S/1999/829 cited in *Report of the Panel of Experts on Violations*, op cit, p 4.
 - 9 *Report of the Panel of Experts on Violations*, op cit, p 5.
 - 10 Ibid.
 - 11 ACTSA report, *Waiting on Promises*, op cit, p 16.
 - 12 *Report Panel of Experts on the Illegal Exploitation*, op cit, p 7.
 - 13 Ibid, p 1.
 - 14 This aspect simply emphasised the point made about the sub-committee being part of the decision making process of the UNSC.
 - 15 Report of the Panel of Experts on the Illegal Exploitation, op cit, p 2.
 - 16 Ibid, p 1.
 - 17 UN Security Council, press release SC/7057, op cit.
 - 18 Ibid.
 - 19 Ibid.
 - 20 Ibid, p 3.
 - 21 Ibid, pp 3-4.
 - 22 Ibid.
 - 23 Ibid.
 - 24 Comment by British Ambassador to the UN, Sir Jeremy Greenstock, during the UN Security Council deliberations on the Expert Panel Report on the Democratic Republic of Congo, 5 May 2002, p 7.

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About this paper

Africa is beset by conflict in which it takes time to distinguish actors and perpetrators – while casualties of ordinary peoples, especially women and children, escalate to sometimes genocidal proportions. While the early warning mechanism that is supposed to trigger international automatic reaction has failed to operate, there is an alternative. This is the Panel of Experts mechanism, a sub-committee of the UN Security Council. These panels provides credible and reliable information gathered independently and by a group that enjoys international respect. In its final report to the UN Security Council, the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo called for the establishment of a permanent panel of experts. The mechanism would be aimed at curbing the activities of local and international actors bent on quick and rapid profits, gained through the creation of chaos and conflict, and responsible for immense human suffering before they withdraw once international attention is turned on their activities. This paper seeks to pursue that call further, previously ignored by the UNSC in spite of over three million people dying in the DRC as a result of the direct impact of conflict. In order to reinforce the veracity of the call, the research has deliberately focused on two case studies – the conflicts in Angola and the DRC – in an effort to press home the point and recommendation made of making the Panel of Experts a feature of the reformed African Union, although continuing to be mandated by the UNSC for the next decade, so that peace and stability can be consolidated on the African continent.

About the author

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