

# Making Targeted Sanctions Effective

## Guidelines for the Implementation of UN Policy Options

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*Results from the Stockholm Process on the  
Implementation of Targeted Sanctions*

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## THE STATUS OF THIS REPORT

This Report represents the output of a yearlong study of targeted sanctions. The participants of the three Working Groups are government officials, experts from the private sector and non-governmental organizations, members of the United Nations Secretariat, and academics. The content of this report does not express the unified view of the participants, but rather, offers ideas that many found useful for consideration. The responsibility for the content rests with the overall coordinator of the process and other involved researchers of the Department of Peace and Conflict Research, Uppsala University. Furthermore, the Report suggests, but does not attempt to impose, proposals for consideration by various segments of the international community (the Security Council, Sanctions Committees, Expert Panels, Member States and implementing authorities). These proposals are not meant to encroach on the authority of the Security Council to determine the measures it may wish to impose in any given situation under the Charter of the United Nations.

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## Executive Summary

### Making Targeted Sanctions Effective: Guidelines for the Implementation of UN Policy Options

Final Report of the Stockholm Process on the Implementation  
of Targeted Sanctions

#### Background

The international community is in need of peaceful ways to react to international threats against peace and security. There must be effective actions “between words and wars.” The use of economic sanctions is one of the instruments available to the UN Security Council that has been used under Chapter VII of the UN Charter. Recent experiences of *comprehensive* sanctions have not been encouraging, however. The search has continued for more refined approaches and *targeted* sanctions is one such option. Targeted sanctions are directed against significant national decision-makers (political leaders and key supporters of a particular regimes) and resources that are essential for their rule.

Targeted sanctions have been the subject of an international diplomatic and academic process, which was initiated by Switzerland focusing on financial sanctions, the *Interlaken Process*. This was followed by the initiative of Germany, the *Bonn-Berlin Process*, dealing with arms embargoes, aviation sanctions and travel bans. These processes brought together experts, academic researchers, diplomats, practitioners and non-governmental organizations. Two volumes with practical suggestions were presented to the UN Security Council in October 2001. At this occasion, Sweden announced the start of a similar, third process, the *Stockholm Process*, concentrating on the *implementation* of targeted sanctions.

## Purpose of the Stockholm Process

The Stockholm Process proceeds from the assumption that to make targeted sanctions effective, they have to be implemented through a chain of actions involving all levels of decision making: the Security Council, its Sanctions Committees, the Member States and their administrative agencies. International governmental organizations, the private sector and non-governmental organizations also have roles to play. Particularly important is that the measures hit the defined targeted actors. This requires that Council action can be adapted to the evasive strategies that will be used by the targets. In the Stockholm Process three Working Groups dealt with these matters, resulting in a host of recommendations. The main recommendations from each group are summarized in twelve boxes. In addition, specific proposals are made for different types of targeted sanctions (sanctions on arms, finances, aviation, travel and certain commodities). Below, the results of the Stockholm Process have been summarized under ten headings. In parenthesis references are made to the parts and boxes of the Stockholm Report.

## RECOMMENDATIONS

### 1. Design Sanctions Resolutions with Implementation in Mind

It is important at the earliest stage of drafting a resolution to anticipate what will be required in order to implement the agreed measures. The purpose and the targets must be clear from the outset. Many participants in the Stockholm Process recommend an early assessment of the likely impact of the sanctions. This also means establishing a sanctions committee with necessary authority – in particular a reporting mechanism – to follow through on the decisions. The role of the chairperson of the sanction committee is important and requires considerable support from the Council and from the UN Secretariat. (Part II and IV.)

### 2. Maintain International Support for the Sanctions Regime

Sanctions are to be implemented by Member States. Thus, it is im-

portant that they are fully informed of the rationale of the measures, from the early stages and throughout the sanctions regime. In this way, Member States are included in the sanctions policy, which will ensure political support and maintain their “political will” to implement measures. This helps to make clear that the sanctions regimes are “owned” by the international community. Furthermore, transparency is important so that the goals and measures are properly translated into action by all UN members. The media must also be kept updated on the sanctions and their implementation. Targeted sanctions are designed to minimize detrimental humanitarian effects. To maintain international support it is important to ensure that such effects are avoided. (Parts II, III and IV.)

### 3. Monitor, Follow Up and Improve the Measures throughout the Sanctions Regime

The Stockholm Report draws attention to the innovation of Expert Panels and Monitoring Mechanisms for the follow-up of sanctions implementation. Thus, specific and common guidelines are suggested for the work of such panels (Part II, Box 8). They point, *inter alia*, to the importance of Panels having the competence and authority to perform in-depth investigations and that Panel reports meet the highest evidentiary standards. The significance of such reporting is particularly evident when systematic sanctions evasion arises. (Parts II, IV.)

### 4. Strengthen the Sanctions Work of the UN Secretariat

The UN Secretariat has considerable experience in sanctions implementation. There is a need for an in-house information database on sanctions, as a service to Sanctions Committees, Member States, Expert Panels and Monitoring Mechanisms. This is a way of systematizing lessons learned. Also, the UN should operate a continuously updated, public research database on current sanctions regimes. The issue of a special UN sanctions coordinator is raised in this Report for further discussion. These measures for improving sanctions implementation will not occur without sufficient allocation of budgetary resources. (Part II.)

5. Although Different, Much Can Be Learned from the  
UN Counter-Terrorism Committee

The setting up of a special committee to inform and support Member States on how to counter terrorism suggests novel ways to conduct sanctions implementation. In particular the creation of contact points in all Member States, the continuous reporting of activities, and the development of ideas for capacity-building are directly relevant. Thus, the Stockholm Report suggests Practical Guidelines for Effective Implementation of Sanctions. (Part III, Box 10.)

6. Effective Sanctions Requires Capacity-Building and  
Training Programs

The implementation of targeted sanctions is a strain on state capacity for many Member States. It requires training of staff and institutional development. In the long-run, improved government administration may also be beneficial for national development. Thus, national training programs – and support by Member States and international organizations – are encouraged in areas of sanctions implementation (police, customs, transportation services, financial controls, etc., Part III).

7. Implementation Can Be Enhanced through a Model Law

The Reports suggest a model for sanctions legislation that can be useful for Member States when developing their legal frameworks for sanctions implementation. Two versions are presented, one for common law countries and one for civil law countries. (Part III, Box 11.)

8. Implementation Will Vary Depending on the Type of Sanctions

Throughout the Stockholm Report targeted sanctions are discussed with respect to arms flows, financial resources, travel and aviation connections and specific export commodities. The measures needed to implement such sanctions will vary. Thus, recommendations are made for different types of sanctions with respect to national implementation (legal framework, administrative agency, information, monitoring, enforcement, etc., Part III) and for strategies to count-

er evasion (by having precise definitions of targeted actors, maintaining commitment, considering complementary measures, etc., Part IV).

#### 9. Maintaining Accuracy in Sanctions Targeting Is Crucial

A sanctions regime faces different challenges at different stages, but the actions in each stage can improve the performance in the next. The planning of sanctions is important for the operations of sanctions, which in turn requires vigilant follow-up procedures. It is necessary to expect retaliation against neighboring countries and thus positive inducements should be available. Also strategies of socially and politically isolating the targeted actors in their own state have to be considered. Processes for listing individuals and entities as targets and for removing them from such lists (delisting) are crucial. (Part IV.)

#### 10. Reporting on Sanctions Implementation

In order to assist Member States in their duties, this Report suggests a special questionnaire to be addressed to Member States on matters of sanctions implementation. It asks questions on contact points, specifies measures for particular types of sanctions, asks about the type of assistance that is needed and encourages Member States to identify available resources for such support. (Part IV, Box 12.)



## Preface

IN CARRYING OUT its responsibility for the maintenance of international peace and security, after the end of the Cold War, the Security Council has more frequently used sanctions as an instrument.

In a way, sanctions can be described as an effective measure “between words and war.” When words alone are not sufficient, and while the use of force is seldom desirable, the importance of targeted sanctions can not be underestimated. This report deals with an international effort to make such sanctions more useful.

The Stockholm Process on the Implementation of Targeted Sanctions is the third step in a series of such efforts to reform the sanctions instrument. The overall ambition has been to enhance the prospect of sanctions achieving their stated objectives, while minimizing unintended consequences.

The first meetings to improve targeted sanctions were initiated by Switzerland. That initiative, which became known as the Interlaken Process, focused on financial sanctions. It was followed by Germany and the Bonn-Berlin Process, dealing with arms embargoes, travel bans and aviation related sanctions.

This manual – the Stockholm Report – is the result of a yearlong process which has engaged experts from academia, national governments, non-governmental and international organizations, the UN Secretariat, and practitioners with expertise in the field of sanctions implementation. I have followed the work of these participants closely, and I have seen them display a high degree of devotion to the objective of strengthening the instrument of targeted sanctions.

One essential factor in the chain of measures leading to effective implementation of sanctions is the requirement to monitor and report on the status of implementation throughout the sanctions regime. It is important that the Sanctions Committees receive the



support they need to implement and monitor sanctions. These factors are addressed in the Stockholm Report, which includes specific recommendations on how to strengthen the United Nations in its efforts to design and implement sanctions.

Successful targeted sanctions generally require the full commitment by Member States to implement them. That is why the capacity and the political will among Member States to make sanctions work is crucial. This is addressed in the Stockholm Report, through recommendations on national implementation and on strengthened state capacity.

During the last decade, there has been increasing concern over the negative effects of economic sanctions on vulnerable populations and overall societies, and on collateral effects of sanctions in third states. We have also seen how key actors, intended to be targeted by sanctions, have evaded and circumvented these measures by different means. That is an increasing problem, and it is being dealt with in the Stockholm Report through recommendations on improving accuracy and on managing sanctions evasion.

The overall purpose of the Stockholm Process has been to produce practical guidelines and ideas on how to strengthen the implementation of targeted sanctions, and to present possible ways of action. It is my hope that these concrete and user-friendly recommendations will be of value to implementers in national governments, to policymakers in the United Nations, and to other international actors involved in carrying out effective targeted sanctions.

Stockholm in January 2003

A handwritten signature in black ink, appearing to read 'Hans Dahlgren', with a stylized, cursive script.

Hans Dahlgren, Sweden's State Secretary for Foreign Affairs



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## Part I: Choosing Targeted Sanctions

- § 1 THIS REPORT IS devoted to the subject of targeted UN Security Council sanctions. The purpose is to suggest concrete improvements to this instrument, which can play a critical role in assisting the Security Council to maintain international peace and security. It focuses on the chain of needed actions to ensure that sanctions resolutions are implemented in as logical and as coherent a manner as possible. This increases the likelihood that sanctions will bring about compliance of the target with the relevant Security Council resolutions.
- § 2 This report – The Stockholm Report – constitutes one element in a series of efforts by the international community in its search for new policy options in a world facing severe internal conflicts, terrorism and the continuous threat of inter-state war. Earlier efforts in this series were conducted as the Interlaken and Bonn-Berlin processes, initiated by the Governments of Switzerland and Germany, resulting in the *Interlaken Report* and the *Bonn-Berlin Report*.<sup>\*</sup> As the current effort has been initiated by the Ministry for Foreign Affairs of Sweden, it has been labeled the Stockholm Process. The Process involved experts from governments, international organizations, non-governmental organizations, universities and institutes,

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<sup>\*</sup> These are the names used for these reports throughout the Stockholm Report. The full citations are, respectively, *Targeted Financial Sanctions: A Manual for the Design and Implementation. Contributions from the Interlaken Process*, coordinated by Prof. Thomas Biersteker (Providence, R.I.: Thomas J. Watson Jr. Institute of International Studies, Brown University, 2001), and *Design and Implementation of Arms Embargoes and Travel and Aviation Related Sanctions: Results of the “Bonn-Berlin” Process*, edited by Dr. Michael Brzoska (Bonn: Bonn International Center for Conversion, 2001).

in all 123 persons from 35 countries (see the List of Participants). This Report, while presenting the fruits of the Stockholm Process as a whole, is not binding on the participants or their governments.

- § 3 Article 41 of the Charter provides for “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.” This reference is merely enumerative, and does not preclude other measures that the Security Council may wish to decide upon short of committing the use of armed force. Targeted sanctions are aimed at government officials and their supporters as well as non-state entities, and are designed to have minimal, if any, humanitarian impact. As sanctions measures may run counter to domestic legislation in Member States, the primacy of States’ obligations under the Charter is made clear in Article 103.
- § 4 The events of September 11, 2001 set in motion a number of extraordinary actions by the United Nations, such as the imposition of measures against global terrorism and the creation of a committee for overseeing such measures, the Counter-Terrorism Committee (CTC). Innovations related to the CTC have inspired new thinking regarding improvements to United Nations sanctions regimes. Thus, the experience of the CTC permeates the recommendations contained in this report.

#### Targeted Sanctions Are Necessary

- § 5 It is important to reiterate why targeted sanctions are needed, the significance of implementation and feedback, the conditions under which such sanctions are appropriate and plausible sanctions strategies.
- § 6 Targeted sanctions are needed for the following reasons:
- The international community must have at its disposal the means to react and address situations that threaten international peace and security, other than military action or declaratory statements.
  - Targeted sanctions, if applied effectively, can be less costly than other options (e.g. military) and can be tailored to specific circumstances.

- Comprehensive sanctions involve unintended negative effects, which the international community is unwilling to tolerate. The trend towards targeting sanctions shows that the international community has learned from this negative experience and is willing to move in new directions.
- Targeted sanctions are directed against particular political leaders and members of their regimes whose actions constitute a threat to international peace and security, in an effort to bring about behavioral change.
- Targeted sanctions, by affecting the leaders, as well as their key supporters, family members, important institutions under their control or specific flows of goods and services, can convey the message of the international community in a direct manner.

§ 7 Since the end of the Cold War, the United Nations Security Council has gained experience in applying targeted sanctions, covering a vast array of measures, which are described in this report. Although this Report does not attempt to analyze the record of success and failure, it builds on the idea that such sanctions can be made increasingly effective.

§ 8 A key lesson drawn from the Stockholm Process is the importance of ensuring that decisions involving sanctions are translated into action, that is, implementation. Actors against whom sanctions are imposed will be concerned only if they are personally exposed to pressure in the form of a direct impact on their bank accounts, prospects for travel, access to particular goods or diplomatic representation. In the absence of vigorous implementation of sanctions, targeted individuals are likely to dismiss the measures along with the need to change their behavior.

§ 9 It follows, therefore, that for sanctions to have the desired effects and avoid unintended consequences, Member States must effectively pursue decisions of the Security Council, and the measures must be monitored by the United Nations system.

### Implementation Is as Strong as the Weakest Link

§ 10 In order for targeted sanctions to have the intended effects and to increase the likelihood of compliance by the targeted actor, a chain of measures, stretching from the Security Council to the immediate surroundings of the targeted actor, and varying depending on the situation, must be in place. In the Stockholm Process, three Working Groups have been devoted to the key elements in the chain of implementation, each reporting in a separate part of the Report:

- The United Nations system: Sanctions Committees, Expert Panels, the Secretariat, other international organizations, non-governmental organizations and the private sector (Part II).
- Member States: principles of implementation and measures for particular types of sanctions; legal considerations, including the need for a model law for States and the strengthening of state capacity in implementation of sanctions (Part III).
- Accuracy of targeting: correct identification, measures to counter typical evasion strategies for types of sanctions, and ways for Member States to provide information to the Security Council and the Secretariat (Part IV).

While for the most part, the three Working Groups dealt separately with their issues, some sessions were held with the participation of all Working Groups in order to facilitate information exchange. Plenary meetings were held in Gimo and Stockholm in Sweden. Two joint meetings of the Working Groups took place at Uppsala University. Separate Working Group meetings were held in New York and Brussels. For more information on the Process and other materials, see <[www.smartsanctions.se](http://www.smartsanctions.se)>. The Index of this Report helps to identify the issues and proposals, as they were developed by the different Working Groups.

### Feedback Is Essential for Sanctions Efficiency

§ 11 For sanctions regimes to be assessed and modified to ensure that objectives are properly met, an unhindered flow of information,

transparency and a willingness to act early in the light of new events are required. Furthermore, all sanctions regimes require monitoring of their humanitarian effects in order to minimize their unintended consequences. Thus, the three Working Groups have, from different angles, explored the issues of feedback and information flow.

### Not All Situations Are Appropriate for Targeted Sanctions

§ 12 While this Report aims to improve the utility of targeted sanctions as an instrument for international diplomacy and political action, it does not assume that sanctions will always be the appropriate course of action. Ascertaining whether or not the sanctions instrument is the appropriate one to be applied requires thorough analysis of each situation. Such an analysis should include the following general propositions, and build on empirical evidence and accumulated experience.

- The more credible the threat of sanctions, the less likely it will be that sanctions will have to be imposed.
- The more implementable the sanctions, the more impact they will have on the targeted actor, and thus the more likely that the targeted actor will comply.
- The more dependent the targeted actor on a particular commodity and international trade, the more likely that the targeted actor will comply.
- The more internally challenged a regime threatened by sanctions, or on which sanctions are imposed, the more likely that the target will comply.
- The more international and regional consensus surrounding threatened or imposed sanctions, the more likely that the target will comply.

### There Is a Choice among Different Types of Targeted Sanctions

§ 13 In this Report targeted sanctions range from visa restrictions on particular individuals to arms embargoes on States. Such sanctions vary

in terms of their “implementability” and accuracy. Some measures are easier to implement, as procedures and institutions already are in place in Member States and international organizations. Others may require special legislation, or even the creation of new institutions for implementation and monitoring. There is also variation in the ability of measures to actually hit the target. The accuracy achieved will depend on the type of measures used as well as their implementability. Some forms of sanctions are easier to evade than others. Thus, it is important for the international community when making decisions to consider the ease of implementing sanctions, their accuracy, the chances of quick feedback on the effects of sanctions and the ability to adjust sanctions as the real situation changes.

#### There Is a Need for a Sanctions Strategy

- § 14 There are arguments in favor of developing a strategy of flexible targeted sanctions, including a) gradually increasing the number of persons, institutions, etc. on the list of targeted actors, or b) gradually adding new types of sanctions to the original regime. If credible, such a sanctions strategy may provide incentives for earlier compliance. The use of sequencing of targeted sanctions has so far been rare, and might provide a new element in sanctions policy.
- § 15 In sum, this Report focuses on choices to be made by the Security Council in reacting to threats to international peace and security. While sanctions (specifically targeted sanctions) should be high on its list of options, it should not always be the choice made. To date, the Security Council has imposed sanctions in fifteen conflict situations. At the same time, there have been more than one hundred armed conflicts, which the Council has discussed and decided on a course of action. Thus, sanctions are used selectively. The Stockholm Report provides guidance for how such a selection can be done at various phases of a crisis. It is done in the hope that targeted sanctions will be an effective measure in maintaining international peace and security.

## Part II: Measures to Strengthen the Role of the United Nations in the Implementation of Targeted Sanctions

### 1. Introduction

- § 16 THE PURPOSE OF Part II is to recommend practical and effective policy options that may contribute to strengthening the role of the Sanctions Committees of the Security Council and the UN Secretariat in the implementation of targeted sanctions. Thus, it seeks to identify major strengths and weaknesses for both the Secretariat and the Sanctions Committees that have an impact on their ability to contribute to the implementation, monitoring, and enforcement of targeted sanctions.
- § 17 While primary responsibility for implementing targeted sanctions enacted by Security Council resolutions rests with Member States, effective implementation depends on strong coordination and communication between the UN and Member States. The Sanctions Committees of the Security Council and the UN Secretariat play a critical facilitating role, both in establishing a framework of procedures for sanctions implementation, and providing support to Member States. The Committees, increasingly assisted and strengthened by affiliated Panels of Experts and Monitoring Mechanisms, are the main bodies tasked with monitoring Member State compliance with UN Security Council sanctions resolutions, identifying violations of sanctions resolutions, and recommending to the Security Council ways to improve follow up action where poor compliance

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Part II is the result of Working Group 1 in the Stockholm Process. Chair: Ambassador Andrés Franco, Permanent Mission of Colombia to the United Nations, New York. Working Group Rapporteur: Karen Ballentine, International Peace Academy, New York (Rapporteur for the February and April meetings: Michael Page, International Alert, London).

is discovered. Within the UN Secretariat, the role of providing substantive advice and technical and administrative support to the Sanctions Committees falls to the Security Council Subsidiary Organs Branch (SCSOB, Sanctions Branch) of the Security Council Affairs Division (SCAD), within the Department of Political Affairs (DPA).

- § 18 Overall, there was a consensus among participants that improved implementation is both necessary and desirable. While various options were explored, it was generally agreed that the goal of enhancing implementation of UN targeted sanctions should proceed, wherever possible, by rationalizing and upgrading current capacities and working methods, rather than by the creation of a new and elaborate institutional apparatus. By better utilizing the existing capacity and resources of the UN system and by developing synergies among the Security Council, Sanctions Committees, the Secretariat, and specialized UN agencies and field operations, the UN can achieve more systematic and coordinated implementation.

## 2. The Security Council and Sanctions Committees

### The Capacity and Working Methods of the Sanctions Committees

- § 19 Sanctions Committees (SACOs) have the lead role in monitoring the implementation of Security Council resolutions on targeted sanctions. The tasks commonly assigned to the Sanctions Committees center on reviewing measures taken by Member States to implement sanctions (including through the solicitation and receipt of periodic reports), and monitoring sanctions violations. Sanctions Committees have also been tasked with maintaining lists of sanctioned individuals and entities. In those instances where an independent Panel of Experts or a Monitoring Mechanism is also established, the Sanctions Committees provide support to the experts, ensuring that their investigations proceed in accordance with rel-



evant Security Council resolutions, receive and deliberate reports of their findings, and present those findings to the Security Council. They may also solicit the assistance of specialized UN agencies, such as requesting assessments of the humanitarian impact of specific sanctions regimes. Customarily, Sanctions Committees also are assigned the task of considering requests for humanitarian and other exemptions to the sanctions measures. Finally, the Sanctions Committees are the UN's public face on sanctions, responsible for making available to the general public all relevant information regarding their respective sanctions mandates, including through Internet websites.

- § 20 To their credit, Sanctions Committees have, in recent years, shown both ingenuity and dedication in their efforts to ensure these tasks are performed effectively. However, even under the best of circumstances, this is a tall order to fulfill. Like peacekeeping, sanctions are a key tool by which the Security Council seeks to maintain international peace and security under Chapter VII of the United Nations Charter. However, sanctions implementation has no institutional equivalent to the Department of Peacekeeping Operations (DPKO). Typically, Sanctions Committees must proceed with numerous political, administrative and time constraints, which are sometimes exacerbated by poorly specified or incomplete Security Council mandates. Most often, the core tasks of sanctions monitoring – soliciting and receiving reports of sanctions measures undertaken by Member States and reviewing the work of the independent Expert Panels – have taken priority over those of broader coordination and information dissemination.

#### Coordination among UN Actors and Ownership by Member States

- § 21 To promote effective implementation, sanctions should be integrated into a broader diplomatic strategy of conflict prevention and conflict resolution that includes, good offices, mediation, and where necessary, the threat or use of force in accordance with Chapter VII of the United Nations Charter. An integrated strategy requires more effective coordination both among the key sanctions bodies and

between them and other relevant UN agencies and departments. Despite some notable exceptions, including the recent informal meetings between the Sanctions Committees concerning Sierra Leone, Liberia and Angola/UNITA, coordination among the Sanctions Committees remains sporadic. Coordination between Sanctions Committees, the Secretariat and other relevant UN agencies is likewise *ad hoc*. Among the Sanctions Committees and Expert Panels, this lack of systematic coordination can lead to unnecessary duplication of work, whereby Experts monitoring different sanctions regimes sometimes inadvertently pursue similar leads, make use of the same sources and make uncoordinated approaches to the same technical or regional organizations. While Sanctions Committees have undertaken periodic consultations with humanitarian agencies, the full potential of other UN agencies and departments to assist in sanctions implementation and the implications of sanctions implementation for their own work has not been fully explored.

- § 22 Likewise sporadic are Sanctions Committee efforts to engage Member States, both directly, through briefings and consultations, and indirectly, through dissemination of information to the broader public and the mass media, in support of UN sanctions implementation. In the absence of continuous and effective public communication, UN sanctions efforts remain vulnerable to myriad misperceptions including active anti-sanctions propaganda campaigns, which can erode commitment among Member States. Indeed, maximal transparency of all aspects related to the sanctions process (from imposition, through implementation, to lifting) was identified as one of the most critical components for improved sanctions implementation.
- § 23 States that are not members of the Security Council feel excluded from a process which they are nonetheless bound to implement in accordance with the Charter of the United Nations. A resulting lack of Member State ownership over sanctions has had predictable consequences for effective implementation. While the decision to impose sanctions remains a prerogative of the Security Council, the sense of exclusion experienced by States not members of the Coun-

cil can be reduced by more frequent information briefings and consultations which communicate, *inter alia*: (1) the rationale behind sanctions; (2) what is expected from Member States; (3) the complexity and difficulty of imposing targeted sanctions (including the problematic nature of managing lists, when information supplied by Member States is incomplete); (4) Security Council efforts to reduce untoward humanitarian and economic impacts including those affecting third-parties; and (5) instances of sanctions violations.

- § 24 While briefings to the mass media are a useful way to disseminate this information they cannot substitute for direct interactions with non-Security Council Member States. Innovative lessons on promoting Member State communication and compliance could be drawn from the experience of the Counter-Terrorism Committee (CTC). For example, the CTC practice of conducting web-based consultation and information dissemination may offer an applicable model for use by Sanctions Committees. Ultimately, improved implementation depends upon more sustained engagement with Member States.

#### Lessons of the Counter-Terrorism Committee for Sanctions Implementation

- § 25 Under United Nations Security Council Resolution (UNSCR) 1373 (2001), the mandate of the Counter-Terrorism Committee renders it qualitatively distinct from Sanctions Committees (for more on this, see Part III). Properly speaking, the CTC is not yet charged with the implementation of sanctions, but with measures to identify and eliminate all sources of support for terrorist groups. Unlike the mandates underpinning Sanctions Committees, UNSCR 1373 has relatively straightforward requirements and does not have an end point. Sanctions mandates, on the other hand, have various objectives and varying levels of complexity, depending on the type of sanction involved: travel bans are relatively easier to implement than financial sanctions, while arms embargoes are rarely implemented effectively. Finally, because of the terrorist attack of September 11, 2001, the CTC enjoys an unprecedented level of political support,

support that is no less critical to successful sanctions implementation, but which, for a variety of reasons, is typically lacking.

- § 26 This said, several innovative aspects of the Counter-Terrorism Committee might be relevant to the goal of improved sanctions implementation. First, the high level of Member State reporting on compliance with UNSCR 1373 is a function not only of the compelling circumstances under which it was enacted, but also of innovations in the reporting requirements and formats that the CTC has developed for Member States. Second, the CTC facilitates the provision of technical assistance to Member States whose capacity for counterterrorism is weak. Third, the CTC has successfully established a solid working relationship with other relevant international and national bodies. Finally, the work of the CTC Chairperson has been assisted by the assignment of an expert on technical assistance. Consideration should be given to adapting these innovations to assist Sanctions Committees and Member States to better comply with sanctions resolutions.

#### The Role of the Sanctions Committee Chairperson

- § 27 The effectiveness of the Sanctions Committees in implementing targeted sanctions depends heavily on the initiative and capacity of the SACO Chairperson. Currently, the Chairperson has an open-ended and broad mandate that contributes to a heavy workload. Encompassing both political outreach and technical assistance, the mandate of the Chairperson includes, *inter alia*: raising awareness among Member States of implementation issues; encouraging Member State compliance through the fulfillment of their reporting requirements; assisting in the delivery of Expert Panel reports to the Security Council; and providing information on the purpose and progress of UN sanctions to Member States and the wider public.
- § 28 The personality of the individual Chairperson can have a positive impact on implementation, but his/her role should be seen and understood within the context of the Committee as a whole. The experience of Ambassador Robert Fowler of Canada in the implementation of sanctions against UNITA is frequently cited as an ex-

ample of the role that a pro-active Chairperson can play in the implementation of targeted sanctions. In many cases, however, home governments do not have adequate financial resources to devote to sanctions implementation. To overcome such disparities, and the uneven capacities of different Sanctions Committees, the UN should consider ways to provide supplementary financial support to Sanctions Committees.

- § 29 The initiative and activism of the Chairperson should be encouraged. Ideally, the Chairperson should provide routine liaison with the affiliated Expert Panel and the Sanctions Branch, coordinate the Committee's work with that of other Sanctions Committees, and provide routine briefings with Member States and the media. Yet, in the absence of improved substantive and administrative support, these are enormous burdens for even the most engaged Chairperson and can seriously hamstring effective implementation.
- § 30 To relieve the burden on Chairpersons, various proposals were considered, such as creating the post of a United Nations Security Council (UNSC) mandated Sanctions Coordinator, assigning a technical advisor to each Committee, designating a technical and liaison officer from the Sanctions Branch to assist Sanctions Chairpersons, and upgrading the role of Vice-Chairpersons to take the lead on technical issues, while leaving strategic and political matters to the Chairperson. To relieve the burdens on incoming Chairpersons, consideration should be given to engaging them in Sanctions Committee consultations early on, perhaps by including them in relevant briefings and consultations prior to their formal appointment to a Sanctions Committee.

#### Follow-through on Expert Panel Recommendations

- § 31 Follow-through on the recommendations of the Expert Panel and Monitoring Mechanism reports is the combined responsibility of the Sanctions Committees, the Security Council, and Member States. Most Expert Panels have been extended by Security Council resolutions beyond their original three to six-month terms. Despite this, there has been little by way of concrete follow-through action

– either by the Security Council or Member States – on the accumulated Expert Panel recommendations. The Sierra Leone Panel’s recommendation to impose sanctions on Liberia is a notable, if partial, exception. Lack of follow-through can be attributed to two factors: recommendations that are largely aspirational and not ripe for implementation; and a lack of time and attention by an otherwise over-burdened Security Council. Just as the Expert Panels should be encouraged whenever possible to make practical recommendations, the Security Council should redouble its efforts to ensure that Member States act on them. In the absence of decisive follow-through, both the credibility of the expert investigations and monitoring activities and their capacity to bring Member States into compliance will likely diminish over time.

#### Unintended Consequences

- § 32 As is well known, sanctions can produce unintended humanitarian, social and economic consequences, for the civilian population of the targeted country as well as for affected third parties. Occasionally, these negative effects have created political conditions that have hampered the UN’s ability to ensure effective implementation. Reducing the negative impact of sanctions is the chief reason and objective of the shift from comprehensive to targeted sanctions. Yet, while measures such as arms embargoes, financial sanctions, and travel bans have fewer undue consequences as compared with the comprehensive trade sanctions they were designed to replace, they may still cause unintended harm to individuals, businesses, general populations of civilians, and third States. Unintended negative impacts of targeted sanctions include both the direct and extended social costs of the disruption of trade and commercial activities, increased incentives for criminal evasion, increased civilian dependence on criminal economic activities, and damage to the financial and reputational standing of individuals and entities associated with those who are listed as targets, as well as of those who may be unjustly targeted. The Security Council should continue its efforts to identify and anticipate these impacts, as well as to design more effective measures to minimize them, including improved design and

management of exemption procedures for third parties, whether states, entities, or individuals.

- § 33 To this end, humanitarian agencies and non-governmental organizations (NGOs) have commonly recommended that routine pre-assessments and mid-course assessments be undertaken as an integral part of all sanctions regimes. While desirable from a humanitarian point of view, any requirement for the conduct of impact assessments prior to sanctions imposition (pre-assessments) may pose serious complications for the introduction and further implementation of sanctions by the Security Council. In particular, compulsory pre-assessments risk extending the period between announcement of an intention to impose targeted sanctions and their actual imposition could provide opportunity for targets to develop strategies to evade financial sanctions, arms embargoes and travel bans. While impact assessments can aid improved implementation, there is a risk that pre-assessments could undermine the imposition of sanctions.
- § 34 For this reason, the Stockholm Report does not endorse an absolute requirement for humanitarian and economic pre-assessments when imposing targeted sanctions. However, the Security Council is strongly urged to take into consideration all available analyses of probable impact in order to make informed policy choices and to devise optimal approaches for mitigating any anticipated negative humanitarian and economic consequences, particularly those affecting civilians and third states.
- § 35 In contrast, the routine undertaking of periodic assessments of humanitarian, social, and economic impacts on third parties during the course of sanctions implementation is desirable and often more feasible. Aside from providing an additional way of evaluating the overall impact of sanctions, well-designed on-going assessments would be useful in distinguishing the impact of sanctions from other causes of humanitarian suffering and economic hardship, thereby reducing one of the main sources of opposition to sanctions generally.

- § 36 These assessments could draw upon the methodologies developed by the Inter-Agency Standing Committee (IASC) led by the Office for the Coordination of Humanitarian Affairs (OCHA). They could be conducted either by OCHA or by the Expert Panels and Monitoring Mechanisms, as was done in the case of the report of the Panel of Experts on Liberia submitted pursuant to Resolutions 1343 (2001) and 1408 (2002). In either case, the designation of the agent responsible for undertaking impact assessments should be clearly stated in the mandate of the Security Council. Likewise, the Security Council should ensure that these impact assessments are conducted according to the same rigorous standards as the Expert Panel investigations and are coordinated with these investigations. A similar reporting framework could be adapted for the purpose of evaluating the wider economic impacts of sanctions, both intended and unintended. In all cases, impact assessments should draw upon as many sources of information as possible.
- § 37 Those individuals and entities listed as targets for financial sanctions and travel bans, should be assured by the Security Council of the strictest protection and observance of their due process rights, including equality before the law, the right to be informed of the reasons behind the imposition of sanctions, the right to prepare a defense, the right to be heard, the right to view evidence, and the right to obtain a review. The Security Council should consider establishing clear guidelines for determining which individuals and entities are listed as targets, together with clear standards and procedures for delisting. In order to ensure accountability and transparency, the Security Council may consider the creation of an independent body to monitor the observance of due process rights.

#### Implementation on the Ground

- § 38 It has been frequently observed that the implementation of targeted sanctions encounters the greatest obstacles on the ground, that is, in the states and surrounding regions where actors are being targeted. While periodic Sanction Committee and Expert Panel field visits to the affected areas are useful and should be continued, these



were deemed insufficient to ensure continuous, rigorous, and coordinated sanctions monitoring at the critical local and regional levels. Further consideration should be given to adapting and extending to targeted sanctions regimes the model of the European Union Sanctions Assistance Missions (SAMs) used in the case of Yugoslavia and the proposed regional monitoring network that was proposed, but never implemented, by the (now superceded) sanctions against the territory of Afghanistan formerly controlled by the Taliban.

- § 39 It was also observed that the potential of more systematically drawing on the existing capacities of various UN field missions (political, humanitarian, observer, and peacekeeping) has not been fully explored, even though there appear to be potential synergies. For example, observer and disarmament missions in sanctions-affected areas often have immediate knowledge of arms flows, but this knowledge is not routinely fed into the main sanctions monitoring process. While the Security Council and Secretariat should be encouraged to undertake a systematic assessment of this mechanism for improved implementation on the ground, they should remain cognizant of the potential trade-offs involved. Any measure to give UN field missions a greater role in the provision of information for sanctions-monitoring purposes must also safeguard against the possibility that this role may compromise the integrity, neutrality and efficacy of these missions in fulfilling their primary mandates.

#### RECOMMENDATIONS

- § 40 From this analysis of how the sanctions regimes can be enhanced in the work of the Security Council and its Sanctions Committees, the following concrete recommendations can be suggested.

**Box 1.****Strengthen the Role of the Sanctions Committees****Enhance the Capacity of the Sanctions Committees**§ 41 *For the Security Council*

- Ensure that Sanctions Committees are equipped with clear and complete mandates.
- Consider establishing a standard framework and format to guide all Sanctions Committees, so as to facilitate their work and to ensure consistency and continuity between them.

**Improve Coordination among Sanctions Committees and Other UN Actors**§ 42 *For the Security Council*

- Work to integrate targeted sanctions into a broader diplomatic strategy of conflict prevention and conflict resolution that includes, good offices, mediation, and, where necessary, the threat or use of force, in accordance with Chapter VII of the United Nations Charter.
- Improve regular coordination among the Sanctions Committees, by building a requirement for coordination into sanction-mandating resolutions.
- Assign a coordinating role to an appropriate body or mechanism within the Secretariat, which could establish channels of dialogue and interaction between the Sanctions Committees, the Expert Panels and UN departments and agencies.
- Re-assess the various supporting, advisory, and implementing roles of the UN Secretariat and their relation to Security Council and Sanctions Committee mandates and roles.

**Promote Transparency and Ownership**§ 43 *For Sanctions Committees*

- Provide regular and detailed briefings or reports to Member States on the status of implementation of targeted sanctions, including factual information concerning sanctions violations, obstacles to implementation, efforts to mitigate humanitarian consequences, and to reduce the negative impact on third states.
- Encourage regular input from Member States as to challenges they face in sanctions monitoring and enforcement.
- Provide technical assistance on implementation following clear reporting instructions, consistent with Security Council mandates.
- Strengthen communication and coordination with Member States in

advance of Fifth Committee sessions of the General Assembly, where budgetary issues related to sanctions are being assessed.

- Provide regular briefings to relevant humanitarian and other operational agencies regarding exemptions from sanctions regimes, so that they may adapt their policies and operations accordingly.
- Consider extending the emerging practice by some Sanctions Committee Chairpersons of posting brief summaries of Sanctions Committee informal sessions on their Permanent Mission web pages.
- Arrange for the agendas of all Sanctions Committee meetings to be published in the *UN Journal* to assist Member States as well as the timely publication of the Reports of Statements of Members.

Utilize the Innovative Practices of the Counter-Terrorism Committee

§ 44 *For the Security Council*

- Improve the reporting mechanism by which Member States provide timely and meaningful information to the Sanctions Committees on measures taken in support of sanctions implementation and provide Member States with clear reporting instructions (see Part IV, Box 12).
- Consider adapting the methods of the CTC for facilitating the provision to Member States of needed technical assistance on sanctions implementation.

§ 45 *For Sanctions Committees*

- Develop stronger links with relevant experts and departments of regional organizations, and other international bodies, including Interpol and the Financial Action Task Force (FATF).
- Make full use of the Roster of Experts developed by the Sanctions Branch to assist in the selection of members for Expert Panels, Monitoring Mechanisms and for other technical experts.
- Develop Member State contact points at Permanent Missions to the UN for liaison on all targeted sanctions and make a national contact point registry available to all Member States.
- Consider adapting the methods of the CTC for facilitating the provision to Member States of needed technical assistance on sanctions implementation, including establishing a web-directory of available policy and legal models, training programs and the appointment of an independent technical assistance expert.

Enhance the Support for the Sanctions Committee Chairperson

§ 46 *For the Security Council*

- Consider options for providing expertise and capacity to assist the

Sanctions Committees, including either the creation of the post of Sanctions Coordinator, the assignment of a technical expert along the lines of the CTC, designating a technical and liaison officer from the Sanctions, or the upgrading the role and responsibilities of the Committee Vice-Chairpersons.

- Engage incoming Chairpersons in Sanctions Committee consultations early on, perhaps by including them in relevant briefings and consultations prior to their formal appointment to a Sanctions Committee.
- Mandate Sanctions Committee Chairpersons to hold regular inter-Committee meetings and to develop other measures to coordinate and harmonize their work.
- Revisit the document produced by the Sanctions Committee Chairpersons, known as “The Chairs Report,” to identify proposals that have not been implemented.
- Consider possible ways to provide supplementary financial support to Sanctions Committees.

#### Box 2.

#### Follow Through on Expert Panel and Monitoring Mechanism Reports

##### § 47 *For the Security Council*

- Work to ensure consistent and timely follow-up action on implementing all recommendations of Expert Panel and Monitoring Mechanism Reports, including recalling member-states to their responsibilities under Chapter VIII of the UN Charter to comply with and support UN sanctions.
- Conduct a thorough review of possible follow-on actions recommended by Expert Panels and Monitoring Mechanisms *before* renewing of their extending mandates.
- Give greater consideration to the potential use of secondary sanctions, in instances of verified, chronic violations.
- Consider ways to ensure easing or lifting of sanctions against those targets who have demonstrated compliance.

##### § 48 *For the Sanctions Committee Chairpersons*

- Consult with the independent experts to ensure that their reports include specific, actionable recommendations for Security Council consideration and follow up.
- Chairpersons should be proactive in drawing attention to the find-

ings of Expert Panels and Monitoring Mechanisms and ensuring that their findings and recommendations, including recommendations that lack follow-through, are placed on the Security Council's agenda.

- Chairpersons should ensure that sufficient time is allotted for independent experts to brief the Security Council, and for Council members to review and deliberate the findings of the Expert Panel and Monitoring Mechanism reports.

§ 49 *For Member States*

- Undertake timely and effective direct follow-up action on Expert Panel and Monitoring Mechanism recommendations, where the evidence warrants and where they have the capacity to do so. Notably, Member States should undertake domestic criminal investigations, and where appropriate, legal proceedings when citizens alleged by panel reports to have been active or complicit in the violation of UN sanctions regimes.
- Ensure that verifiable supporting documentation of sanctions violations and national compliance measures are supplied to the appropriate Expert Panel or Monitoring Mechanism, in accordance with Member State's responsibilities for ensuring sanction compliance and enforcement.

**Box 3.**

**Mitigate Unintended Consequences of Targeted Sanctions**

§ 50 *For the Security Council*

- Strengthen measures to use all available sources of information to identify and anticipate unintended negative impacts, as well as to design more effective measures to minimize them, including improved design and management of exemption procedures for third parties, whether states, entities, or individuals.
- Incorporate regular humanitarian, social, and economic impact assessments into sanctions monitoring procedures, following the practices developed by Sanctions Committees in accordance with UNSCR 1343 (2001) and 1408 (2002) and ensure sanctions mandates designate an appropriate agent to undertake them.
- These assessments should proceed under an established methodology, perhaps by adapting and expanding that developed by the OCHA-led Inter-Agency Standing Committee, taking into account the specificities of each sanctions situation.
- Improve mechanisms of communication for (UN Charter) Ar-

ticle 50 cases so that the concerns of third party Member States that might be unduly affected by sanctions, including possible requests for exemptions, may be more effectively addressed.

- Ensure the strictest protection and observance of the due process rights of those listed as targets and consider establishing clear guidelines for determining which individuals and entities are listed as targets, procedures for appeal and, where appropriate, for delisting.
- Consider the creation of an independent body to monitor the observance of due process rights of those designated as sanctions targets.

#### Box 4.

#### Explore Options to Improve Implementation on the Ground

##### § 51 *For the Security Council*

- Strengthen the implementation capacity of regional actors and front-line states to provide continuous local monitoring of sanctions implementation, by considering the adaptation of the Sanctions Assistance Missions (SAMs) employed under the European Union Yugoslav sanctions regime, and the sanctions enforcement support teams as envisioned in UNSCR 1363 (2001), which foresaw the creation of a regionally-based network of national experts, under the authority of the 1267 Sanctions Committee.
- Request the Secretariat to undertake an assessment of the ways to better utilize the current capacities of UN field offices and missions (political, humanitarian, observer, disarmament and peacekeeping) to provide routine sanctions monitoring and reporting as part of their regular functions, taking care not to compromise their primary peacekeeping, diplomatic, or humanitarian missions.
- Consider the possibility of including a requirement to report sanctions violations in the mandates of UN Peacekeeping and Observer Missions.

### 3. Coordination between the UN and Other Relevant Actors

- § 52 Obviously the close cooperation between the UN and other international organizations, whether governmental, non-governmental or private, are important for the implementation of targeted sanctions. In this section, some linkages are identified and illustrated. The topic is also discussed in Part III and Part IV.
- § 53 Whether aimed at reducing the illicit flows of arms, finance, and commodities that sustain armed conflict or at deterring or punishing behavior that threatens international peace and security, targeted sanctions are a highly technical policy instrument. To be implemented effectively, they need the input and support of a wide range of specialized actors and agencies beyond the UN.

#### Relations with International Organizations

- § 54 There have been several efforts by the Security Council, the Sanctions Committees and their affiliated Expert Panels and Monitoring Mechanisms to work more closely with selected specialized international agencies such as Interpol, to better utilize their respective assets and expertise, and coordinate policy initiatives for sanctions implementation (for more on this, see Part III). Understandably, the degree of UN interaction with outside actors in specific instances will vary, depending on, among other factors, the precise nature of the sanctions imposed, that is, whether they include travel bans, financial or arms embargoes, or commodity bans, and on the regions and interests affected. While flexibility is desirable, the *ad hoc* and limited nature of these partnerships reduces the potential to be gained by the UN from more sustained forms of communication and coordination on sanctions implementation as well as sanctions design. Consideration should be given to the creation of some kind of mechanism to ensure routine avenues for improved coordination on sanctions implementation.

### Relations with Regional and Sub-Regional Organizations

- § 55 Likewise, much more work needs to be done in bringing regional and sub-regional organizations into a coordinated effort of sanctions implementation. Too often, these organizations are overlooked or insufficiently marshaled in support of UN targeted sanctions. The European Union (EU) is a partial exception, having developed its own role in the implementation of sanctions, particularly in the areas of international trade and finance, and having had more regular interactions with the Security Council and the Sanctions Committees through Member States, often via the good offices of a EU Member State holding the Presidency of the Union and through regular briefings in New York and Brussels on EU perspectives on sanctions.
- § 56 Most other regional and sub-regional organizations, however, are not fully incorporated into the sanctions process. For example, despite recommendations by the Liberia Expert Panel to strengthen the ECOWAS moratorium, there has been little substantive engagement between the Security Council and ECOWAS. While many such regional actors and initiatives may require assistance in developing a full complement of technical expertise on arms embargoes, financial sanctions, commodity and aviation bans, they already possess strong regional knowledge of sanctions related behavior. Ways should be explored to ensure that the Sanctions Committees and the Sanctions Branch of the Secretariat more routinely utilize this knowledge.

### Relations with Non-Governmental Organizations

- § 57 In recent years, the Security Council and the Sanctions Committees have taken great strides in bringing the perspectives and know-how of a range of NGO actors into the design and implementation of targeted sanctions. Under the Arria formula,\* NGOs frequently give country and issue briefings to the Security Council. NGOs have also been the driving force in establishing the now widely accepted idea that the UN has a responsibility to prevent or reduce the human-

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\* The Arria formula is an informal arrangement that allows the Council greater flexibility to be briefed about international peace and security issues. It was first implemented in 1993 by Amb. Diego Arria of Venezuela.



itarian consequences of UN sanctions, and have lent their expertise to the design of impact assessment methods. A number of NGO practitioners have also served on Expert Panels. Most recently, NGOs have collaborated with UN Member States and the private sector in the Kimberley Process on the certification of rough diamonds, an initiative that flowed, in part, from the work of the Expert Panels in Angola and Sierra Leone in monitoring sanctions violations.

- § 58 These interactions with NGOs should be continued and strengthened, especially on issues where NGOs enjoy a comparative functional advantage or regional presence. In particular, the Security Council should improve ways to ensure that sanctions policy take into account the views of indigenous civil society actors. The contribution of local NGOs in targeted countries should be treated with great sensitivity and verified given the possible failure safety nets from the parties affected, and the natural bias of NGOs (as with government officials). The Security Council should also consider exploring ways to bring in the expertise of human rights NGOs to bear upon the problem of ensuring that the procedures for identifying and managing sanctions targets are transparent and in conformity with international human rights norms and the rights of due process.

#### Relations with the Private Sector

- § 59 Private sector actors have become increasingly important to international peace and security, a fact which has been acknowledged by the creation of the UN Global Compact, an initiative of the Secretary-General to promote greater private sector commitment to conflict prevention and sustainable development. With the partial exception of the Kimberley Process for the certification of rough diamonds, there has been no concerted effort to engage the private sector in sanctions policy. Yet, many private sector actors, including financial institutions, insurance companies, and transportation companies, have both a capacity and expertise to bear on sanctions implementation. Ways should be explored, to increase opportunities for consultation with key representative bodies of private sec-

tor actors on sanctions related issues, as well as to develop strategies and inducements for improved industry standards in ways that can be leveraged to complement the objectives of targeted sanctions and contribute to their implementation.

#### Relations with Media

- § 60 As both a source of information that may provide useful investigative leads and as a conduit for promoting well-informed public awareness of the course of UN sanctions efforts, the media are an indispensable partner for improved sanctions implementation. Given the wide room that exists for public misperception to undermine UN sanctions efforts, as well as the remedial potential of greater transparency, improved relations with the international media should be a priority area. Particular areas of priority include: improving the UN's capacity to communicate with accredited UN correspondents, promoting transparency in the application of targeted sanctions; conveying a better understanding to a broader public regarding the scope and purpose of particular targeted sanctions regimes, particularly in sanctions-affected countries (see Part IV); improved public dissemination of the reports of Expert Panels and Monitoring Mechanisms, including efforts to prevent unauthorized leaks that undermine their credibility, and more skillful and systematized utilization of open information sources in on-going efforts to monitor and enforce targeted sanctions.
- § 61 One way of accomplishing these objectives would be to improve the quality and profile of briefings on the work of Sanctions Committees and Expert Panels. The Secretary General's spokesperson regularly informs the media of decisions made by the Security Council but is not expected to promote the implementation of sanctions. The designation of a Security Council spokesperson may be desirable in this regard. Currently, the Chairs of the Sanctions Committees act as spokespersons for the Committee, but their effectiveness could be enhanced if they were provided with adequate professional support or if the function of spokesperson were assigned to another specially designated individual.

## RECOMMENDATIONS

- § 62 From this analysis of how the sanctions regimes can be enhanced with regard to coordination and transparency between the UN and other actors, the following concrete recommendations can be suggested.

**Box 5.****Improve Coordination between the UN and Other Relevant Actors**

- § 63 *For the Security Council*
- Consideration should be given to the creation of a mechanism to ensure routine avenues for improved coordination and information sharing on sanctions implementation with relevant external agencies, such as Interpol, the Financial Action Task Force, and the World Customs Organization (WCO).
  - Improve methods for routine engagement of regional and sub-regional organizations in support of sanctions implementation, both by inviting their regular input and by assisting them to build the technical capacity for coordinated sanctions monitoring and enforcement.
  - Encourage greater interaction between relevant NGOs and the SACOs through more frequent NGO briefings on sanctions-related issues, perhaps through the use of the Arria formula of informal meetings between the SC members and key experts and actors. To make this an effective mechanism, schedules of relevant Security Council and SACO meetings should be provided to NGOs well in advance to allow them the needed preparation time.
  - Ensure that a representative array of voices from civil society/NGOs are taken into account and included, where appropriate, in UN-led humanitarian evaluations of the impact of targeted sanctions regimes, including prior impact assessments and periodic follow up of actual sanctions impact on civilians. Establish a dual track interaction with large international NGOs that deal with international policy issues and NGOs in the field.
  - Explore ways to bring the expertise of the Office of the High Commissioner for Human Rights (OHCHR) and human rights NGOs to bear on the problem of ensuring that procedures for compiling lists of sanctions targets are transparent and in conformity with international human rights norms and due process.
  - Explore options to increase opportunities for consultation with key private sector actors on sanctions-related issues.

**Box 6.****Develop a Media Strategy**

- § 64 *For the Security Council and Sanctions Committees*
- Establish a system of routine press briefings on the work of the Sanctions Committees to inform media, particularly in countries or regions where targeted sanctions are being applied, regarding the objectives, progress and challenges of sanctions implementation.
  - Augment the liaison role of the Office of the Spokesman of the Secretary-General between the media, the UNSC Presidency, and the Sanctions Committees.
  - Arrange for routine background press briefings by UN Expert Panels, timed to coincide with the formal release of Expert Panel reports.
  - Ensure a coordinated and timely media message and reduce pre-emptive leaking of Expert Panel reports by introducing system of formal press embargoes and/or by establishing clear guidelines for all Sanctions Committees and Expert Panel members regarding disciplined procedures for public release of Expert Panel reports.
- § 65 *For the Secretariat*
- Develop strategies to assist the Security Council in providing better public information to Member States and the general public and to convey the message that targeted sanctions are a potentially valuable and useful instrument of deterrence and prevention.

#### 4. The Role of the Expert Panels and Monitoring Mechanisms

##### 4 a. Establishing Expert Panels and Monitoring Mechanisms

- § 66 It is widely agreed that the creation of the independent Panels of Experts and Monitoring Mechanisms has been a signal innovation in the application of UN sanctions. Over the last few years, such expert groups have made a major contribution to improved understanding of the nature and scope of sanctions violations and of obstacles to more systematic compliance, thereby enhancing the UN's

overall capacity to refine and tighten targeted sanctions. Their status as independent bodies has allowed them to undertake the “naming and shaming” of sanctions violators. Though at times controversial, this practice has led to improvement in Member State awareness of the importance of improved compliance with targeted sanctions.

- § 67 As with any innovation, the work of the Expert Panels and Monitoring Mechanisms has proceeded with some measure of trial and error. Their experience provides several lessons on ways to improve their working methods, enhance their capacities, and maximize their contribution to the goal of implementation. Consultations with members of the Panels and Monitoring Mechanisms, with Sanctions Committee Chairpersons, and with officers of the Sanctions Branch, revealed a number of areas in need of further improvement.

*The Selection of Independent Experts*

- § 68 In the past, the procedure for the selection of independent experts for the panels and monitoring mechanisms was for the Secretariat to propose candidates for Security Council approval, based on suggestions provided by Member States and, sometimes, other experts in a particular field of specialization relevant to the mandated tasks of the particular sanctions regime. Following UN-wide practice, experts were selected according to criteria of both functional and regional expertise. While this process worked sufficiently well in identifying appropriate candidates, it has proven very time-consuming.
- § 69 Objections were raised that the established method and criteria for selecting experts were insufficiently standardized and transparent. In response, the Sanctions Branch recently has established an open and standing Roster of Experts from which future members of Expert Panels and Monitoring Mechanisms should be drawn. Both the roster and the criteria for expert selection will require further development, particularly in establishing transparent and uniform criteria of selection.

*Systematic Orientation of Experts*

- § 70 As panel members are drawn from a pool of experts from a variety

of specialized professions, with varying levels of knowledge of the inner workings of the UN and of UN sanctions policy, they would benefit from a more systematic process of orientation, including familiarization with the work and best practices of other Expert Panels and Monitoring Mechanisms. Many experts, however, have begun their work equipped with only the relevant Security Council resolutions and rudimentary instructions from their Sanctions Committee. While these instructions prescribe the mandate and basic parameters of the investigations, they do not always offer guidance as to how they might best proceed. Very often, experts have been left to “make it up as we went along,” only to discover later that they had inadvertently and needlessly duplicated the work of other panels and monitoring mechanisms.

#### *Information Management*

- § 71 Improvement is also needed in the area of information management. Currently, there is no centralized, retrievable database for the documents and information accumulated by the individual Expert Panels. Indeed, for lack of a home, this material largely remains in the custody of individual experts, thereby remaining inaccessible to both the Sanctions Branch and the other Expert Panels and Monitoring Mechanisms, whose work could benefit from it. There is an urgent necessity to establish a system within the Secretariat where the accumulated materials on sanctions monitoring and sanctions violations can be consolidated and made available to investigators, monitors, and UN policymakers.

#### *Common Guidelines*

- § 72 Likewise, Expert investigations have been hampered by a lack of procedural guidelines that could assist them in the design of working methods, investigative procedures, standards of evidence, and reporting formats. Of particular concern was the need for a clear and transparent set of principles to assure that investigations and reports meet the highest evidentiary standards. While all Expert Panels endeavor to be rigorous, in some cases, their reports have been found wanting, either because some allegations were based on

confidential sources or because sources of evidence were not included in the final reports.

- § 73 At times, a lack of verifiable sources on particular instances of alleged sanctions busting can prejudice the reception of the entirety of their findings. Indeed, some media representatives have noted that the standards of evidence and verification employed to substantiate allegations of sanctions busting may be less rigorous than those of professional journalism. In countries with stringent libel laws, media outlets can be held to account for disseminating unsubstantiated allegations, even where these are made by third parties. For these reasons, some outlets have demurred from reporting on Expert Panel findings altogether. The promotion of wider media coverage of UN sanctions efforts, therefore, will require a concerted effort to improve the quality of Expert Panel investigations and to ensure high standards of evidence and appropriate explanations of panel findings.
- § 74 The Expert Panels and Monitoring Mechanisms should be provided with standardized reference guidelines to consult as they set about their work. In order to safeguard the independence and integrity of the Expert Panels, these guidelines should address procedural and methodological issues. They should not be used to dictate the content or scope of Expert Panel investigations or findings. These guidelines should draw on the best practices and lessons learned from the accumulated experience of existing Expert Panels and Monitoring Mechanisms, and should cover, *inter alia*: interpreting UNSC mandates; procedures for liaising with SACOs, the Secretariat, the media, and other UN agencies; viable work-plans and field visit guidelines, investigative methodologies, reporting formats and citation requirements, common and rigorous standards of evidence for identifying and verifying sanctions violations, for evaluating reliability of sources, and for managing lists; and procedures for public release of Expert Panel reports. The Guidelines should allow some room for tailoring to the specific mandates of different panels.

## RECOMMENDATIONS

- § 75 From this analysis on how the sanctions regimes can be enhanced in the work of the Expert Panels and Monitoring Mechanisms, the following concrete recommendations can be suggested.

**Box 7.****Improve the Capacity of Expert Panels and Monitoring Mechanisms****Strengthen Logistical, Administrative and Budgetary Support**§ 76 *For the Security Council*

- Ensure that sanctions resolutions that mandate the creation of an Expert Panel need to take full account of logistical and budgetary support that the panel will require to fulfill these mandates, including the provision of an adequate time period for investigation and reporting.
- Continue to study the proposal submitted by Member States to establish a unified independent expert mechanism.

§ 77 *For the Sanctions Branch*

- As a matter of priority, establish a system within the Secretariat where the accumulated materials on sanctions monitoring and sanctions violations can be consolidated and made available to investigators, monitors, and UN policymakers.
- Ensure that the Expert Panels receive a thorough orientation on the background to their mandate, the work of previous panels, the parameters of their work, and the expectations placed on them. Orientation should also include clarification of how the Sanctions Committees and the Secretariat function.

**Establish a Common Process for Selection of Independent Experts**§ 78 *For the Security Council and Sanctions Committees*

- Make use of the standing Roster of Experts recently established by the Sanctions Branch, to facilitate more rapid selection of experts. Avoid re-appointing the same experts to new panels, as institutional habituation may undermine their independent perspective.
- Supplement the recently established Roster of Experts by developing rigorous and transparent criteria and procedures for the selection of panel and monitoring mechanism experts, so as to ensure that each



Expert Panel has the appropriate mix of regional and functional expertise and that the selection process remains transparent and objective.

- Supplement Expert Panel and Monitoring Mechanism investigations with legal expertise to ensure their findings meet solid evidentiary standards. The UN Office of Legal Affairs might be enlisted to assist identifying relevant legal experts.

#### Establish Common Guidelines for Expert Panels and Monitoring Mechanisms

##### § 79 *For the Security Council and Sanctions Committees*

- Provide the Expert Panels and Monitoring Mechanisms with standardized reference guidelines to consult as they set about their work. These guidelines should be suggestive rather than mandatory, in keeping with the principle of independence of the expert investigations.
- Develop guidelines drawing on the best practices and lessons learned from the accumulated experience of existing Expert Panels and Monitoring Mechanisms, as well as relevant recommendations of the General Working Group on Sanctions, and allow flexibility for tailoring to the specific mandates of different panels.

#### 4 b. Lessons from Expert Panels

- § 80 In an effort to assist the Security Council in this area, this report provides a set of model guidelines for Expert Panel and Monitoring Mechanism investigations (See Box 8 below). These guidelines are the product of several consultations with past and present Expert Panel and Monitoring Mechanism members, officers of the Sanctions Branch and Sanctions Committee Chairpersons. Taking account of the need to preserve the independent status of the Panels and Monitoring Mechanisms, they are meant to be illustrative rather than prescriptive. Also, in deference to the varying mandates and functions of the different Expert Panels and Monitoring Mechanisms, these guidelines should be tailored to the specific needs and purposes of each sanctions regime. They build on some lessons that have been learned and are summarized in the following paragraphs.

*Mandate*

- § 81 Expert Panels and Sanctions Monitoring Mechanisms (Panels/Mechanisms) are independent bodies established by the Security Council for a limited time in order to discharge their respective mandates. While their work is to be conducted with broad independence, they are intended to support the monitoring role of the Sanctions Committees by providing specialized expertise and information regarding compliance and non-compliance with sanctions regimes. Experts, nominated by the Security-General in their personal capacity, should endeavor to understand the scope and purpose of their role and responsibility within their respective mandate. Of particular importance is the need for each Panel/Mechanism to clearly understand the Sanctions Committees and UN Security Council objectives: particularly, whether the Panel/Mechanism mandate is to identify and investigate violations generally, monitor member-state compliance, or both.

*Consultations*

- a) With Sanctions Committees and Their Chairs
- § 82 Throughout the term of their mandate, Expert Panels and Monitoring Mechanisms should conduct on-going consultation with the relevant Sanctions Committees and their Chairpersons. Consultations with Sanctions Committees and their chairs will be particularly useful in clarifying the terms of reference at the outset and as a source of substantive political and strategic advice to the experts when formulating the public presentation of their findings. The Committee Chairpersons can provide considerable guidance for the Panels/Mechanisms, especially on procedural concerns, however, in substantive matters, the Committee's consensus is necessary. Bilateral contacts between the Committee Chairpersons chairs and the other members could, therefore, facilitate consultation with Panels/Mechanisms. Also, the Sanctions Branch should organize a full orientation and briefing with all relevant UN departments at the outset of their work. It is recommended that the Panel/Mechanism arrange for meetings with other international organization and agencies on their own initiative.

## b) With Other Expert Panels

- § 83 Newly established Expert Panels and Monitoring Mechanisms should avail themselves of the accumulated experience and knowledge of other prior and on-going panels. For this purpose, disbanded panels should ensure that the documentation they collect is delivered to the Sanctions Branch of the Secretariat. In order to facilitate the dissemination of information, the Secretariat should upgrade its capacities to provide institutional memory and manage the relevant documentation. Regular exchange of work-plans between Panels/Mechanisms can enhance their work in particular areas and can greatly assist them in avoiding duplication. The convening of periodic retreats by the Secretariat of the members of Expert Panels and Monitoring Mechanisms to permit an informal exchange of experience could prove useful.

*Coordination of Work Plans*

- § 84 Expert Panels and Monitoring Mechanisms may choose to work together out of a centralized office or to pursue their investigations from various locations, subject to the Security Council's decision. Particularly in the latter case, it is incumbent upon the Chairperson of the Expert Panel or Monitoring Mechanism, or the members, where a Chairperson is not designated, to regularly reconvene the group in order to coordinate work and collectively assess their progress. The Sanctions Branch of the Secretariat can offer administrative and logistical support to this end, as resources allow. It is necessary, therefore, to determine the financial needs and resources available early in the process. A harmonized working method and division of labor between the panels and Committees regarding investigative functions should be agreed upon early in the process. Likewise, follow-up activities must also be coordinated between the groups and their respective Committees to ensure that the two bodies do not work at cross-purposes. The Secretariat should continue to make administrative improvements to such ends by tracking correspondence dispatched by panels.

*Ensure Solid Evidentiary Reporting Standards*

- § 85 While the reports of the Expert Panels and Monitoring Mechanisms are available for public consumption, their primary purpose is to provide sanctions-related information to the Sanctions Committees and the Security Council, and should be written with this purpose in mind.
- § 86 As the credibility of the process depends upon the veracity of investigative findings, reports should be drafted according to the highest possible evidentiary standards. At a minimum, particular findings should be corroborated by two independent, verifiable sources. Investigators should endeavor to ensure that every assertion is corroborated by solid evidence.
- § 87 In the absence of subpoena powers, experts will rely on two sorts of information: confidential information supplied by cooperating states and/or international officials, journalists, and private individuals; and information in the public domain. Investigators should take particular care in weighing the reliability of confidential information, keeping in mind the identity and role of the source supplying it.
- § 88 When the reliability cannot be fully established, experts should evaluate the degree of reliability according to standard criteria (see Table 1). While a decision to report on allegations lacking full, transparent validation is at the discretion of the panel or monitoring team, such allegations should normally be avoided.

**Table 1.**  
**Criteria for Coding Reliability of Sources and Validity of Information**

§ 89 Source Reliability “Source Codes”		§ 90 Validity of Information “Information Codes”	
A	When there is <b>no doubt</b> of the authenticity, trustworthiness and competence of the source; or if the information is supplied by an individual who, in the past, has proved to be <b>reliable in all instances</b> .	1	When the information is known to be <b>true without any reservations</b> .
B	When a source from whom information in the past has, <b>in the majority of instances, proved to be reliable</b> .	2	When the information is <b>known personally</b> to the source, but is not known personally to the reporting officer.
C	When sources from whom information in the past has, <b>in the majority of instances, proved to be unreliable</b> .	3	When the information is <b>not known personally to the source</b> but is corroborated by information already recorded.
X	In the case of previously untried sources, when there is doubt about the authenticity, trustworthiness or competency of the source.	4	When the information is <b>not known personally to the source</b> and cannot be corroborated in any other way (at this time).

The table presents 16 different degrees for determining the reliability of sources and validity of information with A1 being the highest and X4 the lowest.

*Drafting Final Report and Recommendations*

- § 91 While the format of particular reports is left to the discretion of each Expert Panel and Monitoring Mechanism, it should seek to conform as closely as possible to the relevant UN Security Council mandate. Reports of other panels may offer useful models. Overall, reports should be as action-oriented as possible.

- § 92 When drafting their reports, it is incumbent upon the Expert Panels and Monitoring Mechanisms consider the desired impact of their findings. Accurate phrasing of allegations regarding non-compliance or outright violations of sanctions is as vital to the report as reliable evidence; a poorly worded or vague formulation can undermine the credibility of the entire report. Particular care should be taken in identifying names; reports should ensure that individuals are only identified in conjunction with specific activities and should avoid linking individuals to broader violations in the absence of traceable trails of evidence. Standards of evidence should be stated at the outset of the report and carefully adhered to. Wherever possible, reported allegations should be supported by explicit identification of sources.
- § 93 Special care should be paid to formulating recommendations for Security Council consideration, as this is typically the most scrutinized section of the report. Where possible, recommendations should prescribe specific and practical actions that flow from critical findings. Although Panels/Mechanisms can introduce some factual amendments to their reports after submission, it is important to avoid any substantive change.

#### *Field Visits*

- a) Planning
- § 94 To facilitate field visits, the Expert Panels and Monitoring Mechanisms should endeavor to undertake prior consultations with the relevant local and regional UN offices and governmental representations, as these consultations may be a useful source of logistical and informational support for their work. Visits to the field have proved a useful way for Sanctions Committee Chairpersons to gain a first hand understanding of the sanctions regimes they are charged with overseeing. Should a Committee Chairperson plan a visit around the same time as an expert group, coordination will be needed to define roles and avoid duplication.
- b) Relations with Local Authorities
- § 95 Members of Expert Panels and Monitoring Mechanisms need to

remain cognizant of the limitations of their investigative authority, specifically their lack of subpoena power. Achieving the objectives of collecting information and monitoring national compliance with UN sanctions depends upon the extent to which investigators solicit the good offices and cooperation of national authorities, as well as regional governmental organizations (AU, EU, OAS, etc.). A strong element of diplomacy and tact is essential, especially where evidence may implicate state officials in non-compliance or outright violations of UN sanctions. To facilitate good relations and to promote national compliance, relevant state authorities should be given the opportunity to view and act on panel findings in confidence.

c) Personal Security

- § 96 Given the nature of the behavior being investigated, it may not always be possible to confront those found to be complicit in sanctions-busting activities, as doing so may jeopardize the personal safety of members of the Expert Panels and Monitoring Mechanisms. In judging which course of action to pursue, panel members must carefully weigh the potential security risks against the desired positive outcome.

d) Confidentiality of Sources

- § 97 Upholding the confidentiality of sources of information regarding sanctions busting or non-compliance may be necessary to ensure the personal safety and standing of individual sources. While such confidential information may be useful in identifying investigative leads, it should not be the sole basis of public assertions of alleged violations. The credibility of findings and the integrity of the process require that evidence be as transparent and verifiable as possible. In all cases, the efforts should be made to ensure the veracity of information gained in confidence against independent and verifiable sources.

*Media Relations*

- § 98 Under the guidance of the relevant SACO Chair, Panel/Mechanism members should develop an effective media strategy. As both a source of information that may provide useful investigative leads and as a conduit for promoting public awareness of the course of UN sanc-

tions efforts, the media is an indispensable partner. During the course of investigations and field visits, however, experts should exercise prudence in dealing with the media, as premature leakage of expert findings may obstruct investigations, risk exposing confidential sources, and otherwise complicate the progress of sanctions compliance. In dealing with the media, the Panel/Mechanism may elect to adopt some of the standard practices used for the release of other prominent UN reports, including press conferences, in coordination with the Office of the UN Spokesman, preferably with the Committee's approval. Reports should be made available to the media only after they have been delivered to the Security Council for review. In all public statements, it is desirable that expert panel and monitoring mechanism spokespersons reiterate to the public the purpose and scope of the UN mandate under which these investigations proceed.

#### RECOMMENDATIONS

- § 99 From this analysis of how the work of the Expert Panels and Monitoring Mechanisms can be enhanced, the following model guidelines can be suggested.

#### Box 8.

#### Model Guidelines for Expert Panels and Monitoring Mechanisms

- § 100 *Mandate by the Security Council*  
*Expert Panels and Sanctions Monitoring Mechanisms shall*
- Define their activities according to the mandate given by the UNSC, and consult with the relevant Sanctions Committee, through the Chair, possible ambiguities or queries regarding said mandate.
  - Identify violations to the sanctions regime, monitor member-state compliance, and produce specific recommendations for action, unless instructed otherwise.
- § 101 *Consultations*  
*Expert Panels and Sanctions Monitoring Mechanisms shall*
- Maintain on-going consultations with the relevant Sanctions Com-



mittee Chair from the outset and until findings are made available to the public.

- Avail themselves of the accumulated experience and knowledge of other prior and on-going Expert Panels and Sanctions Monitoring Mechanisms and ensure that all documentation collected in the course of their investigations is delivered to the Secretariat.
- Maintain their independence while their investigations are being conducted.
- Give the opportunity to relevant state authorities to view and act on their findings in confidence, and make available, whenever appropriate, any evidence of wrongdoing to the relevant governments for their review and comment.

§ 102 *Coordination of Work Plans*

*Expert Panels and Sanctions Monitoring Mechanisms shall*

- Define a clear division of labor among the Chairperson and group members, and clarify their respective functional roles in the investigation.
- Undertake prior consultations with the relevant local and regional UN offices in support for their work.
- Solicit the good offices and cooperation of national authorities in New York and/or in capitals.
- Consider a careful balance between the potential security risks derived from the investigative activities and the need to produce a positive outcome.

§ 103 *Evidentiary Standards and Sources of Information*

*Expert Panels and Sanctions Monitoring Mechanisms shall*

- Draft reports according to the highest possible evidentiary standards, including corroboration of particular findings by independent, credible sources.
- Consider carefully the reliability of confidential information supplied by cooperating state and international officials, journalists, and private individuals taking into consideration the identity and role of the supplying source.
- Avoid using confidentially or anonymously supplied information as the basis for allegations or as the sole basis of any assertions of wrongdoing.
- Ensure that evidence be as transparent and verifiable as possible to protect the credibility of findings and the integrity of the process.
- Identify sources of information whenever appropriate.

§ 104 *Final Report**Expert Panels and Sanctions Monitoring Mechanisms shall*

- Ensure that the report complies with the requirements of the UNSC mandate under which the investigation is authorized.
- Consider that the primary purpose of the report is to provide information and recommendations to the Security Council, and consequently, use a format that may contribute effectively to the purposes defined by the Security Council.
- Pre-assess the impact of the report in consultation with the Sanctions Committee, in particular when dealing with specific names of individuals, organizations, or states.
- If figures are mentioned, for example, those measuring the value or volume of shipments in sanctioned commodities, a footnote indicating the source should be included.
- While information concerning background and context may be appropriate, seek to produce a report that is factual and include sources whenever possible.

§ 105 *Relations with the Media**Expert Panels and Sanctions Monitoring Mechanisms shall*

- Establish clear criteria, in close cooperation with the relevant SACO Chair, to communicate with the media.
- Exercise prudence in dealing with the media during the course of investigations and field visits.
- Make reports available to the media only after they have been delivered to the Security Council for review.

## 5. The Capacity of the UN Secretariat

### The Role of the Sanctions Branch

- § 106 The work of the Sanctions Branch (Security Council Subsidiary Organs Branch) was assessed in reference to its primary functions in providing substantive, technical, and administrative support to the Sanctions Committees and their affiliated Expert Panels and Monitoring Mechanisms. An abiding concern was to determine whether

the Sanctions Branch possesses adequate human, administrative, analytical and informational, and budgetary capacity to provide assistance to the Sanctions Committees and their affiliated Expert Panels and Monitoring Mechanisms in a timely and effective manner.

#### Human Capacity

- § 107 While the staff size of the Sanctions Branch has not been a hindrance to the effective discharge of its responsibilities in the past, the long term trend of increasing use of UN sanctions and the creation of Expert Panels and Monitoring Mechanisms has created new challenges which has led to a proliferation of tasks for the Branch.
- § 108 Should this trend continue, the capacity of the Branch needs to be re-evaluated in light of its expanded duties vis-à-vis the proliferation of expert groups, particularly if the relevant bodies decide to assign a formal sanctions coordinating role to the Secretariat. While improved capacity is needed, such efforts should proceed in an incremental and minimalist fashion.

#### Analytic and Information Capacity

- § 109 The Sanctions Branch does not have the capacity to fulfill its mandated task of compiling and producing analytical information related to the work of the Sanctions Committees. Although the unit does not act as an investigative branch, it does make use of a wide range of sources including reports from other UN departments, non-governmental organizations, and the media. This information is then passed to the Expert Panels, whose task it is to undertake independent monitoring and investigation of sanctions compliance.
- § 110 Within existing resources, the Branch continues to develop database systems for tracking the more traditional activities of the Sanctions Committees. However, the Sanctions Branch has insufficient capacity to systematically archive and evaluate the information collected by the expert groups, or to store this information in a retrievable database. This is a condition that seriously impairs the ability of the Sanctions Branch to provide institutional memory to the Sanctions Committees, vis-à-vis the Expert Groups. Indeed, as it currently

stands, the lack of a central information depository means that the accumulated information and evidence of the Expert Panels and Monitoring Mechanism investigators largely remains in their personal custody. Priority should be given to establishing an in-house database for all sanctions-related documentation and information.

- § 111 In the future, in consultation with the Sanctions Committees, the Sanctions Branch could make this data available to the Sanctions Committees, members of Expert Panels and Monitoring Mechanisms and other authorized individuals through a security-protected Internet Web Portal. A centralized Internet web portal, whether housed at the UN or at a participating academic center, would enhance the interchange of ideas and information regarding sanctions implementation, while also adding to the transparency of UN sanctions issues. The system could be designed to serve both the wider interested community of scholars, advocacy groups, and think tanks, as well as the internal informational needs of key UN actors, with some information made publicly available (thus aiding transparency) while other information remains password protected, accessible to key UN officials only.

#### Institutional Support for the Expert Panels and Monitoring Mechanisms

- § 112 While the *ad hoc* character of the Expert Panels has helped ensure their flexibility and independent authority, the proliferation of panels has strained the ability of the Sanctions Branch to provide needed substantive administrative, logistical, and analytical support. Such support is even more essential to those Expert Panels that are not based at UN Headquarters in New York. According to those members of the Expert Panels who participated in the Stockholm Process, chronic shortcomings include: logistical and budgetary delays, which sometimes affected the timing of field investigations, lack of a centralized archive or database on the information collected by previous or parallel panels, and lack of coordination and information exchange among Panels who are engaged in parallel investigations, sometimes covering the same ground. A common refrain was

the need for enhanced logistical, administrative, substantive, and budgetary support.

- § 113 The Security Council should provide the Expert Panels and Monitoring Mechanisms with supplementary institutional support, while ensuring the independence of the panels, which is the *sine qua non* of their credibility. The Security Council should remain seized of the various options now being proposed by Member States to enhance routine institutional support for the Panels of Experts. Such a facility would help to avoid costly and wasteful duplication of work, provide a modicum of institutional memory and information pooling between different panels that is currently and woefully lacking, and reduce the administrative and logistical burdens of the panel members. Overall, a dedicated facility would enhance the effectiveness and deterrent capacity of the Expert Panels and thereby strengthen UN sanctions implementation.
- § 114 Whether this institutional support takes the form of an expanded Sanctions Branch a dedicated Expert Panel Support Office, or an Expert Mechanism, enhanced institutional support for the Expert Panels and Monitoring Mechanisms should be designed to provide core administrative and analytical support to the panels. This support may include the creation of a secure, up-to-date database of accumulated information available to all Expert Panels; strengthening the recently established standing Roster of Experts; and liaison among the Expert Panels and between them and other UN agencies and departments.
- § 115 As the Security Council considers various options to address this issue, it may wish to take the following observations into consideration:
1. First, the provision of substantive, logistical and administrative support to Expert Panels need not entail the creation of a new and cumbersome layer of UN bureaucracy or the replacement of the *ad hoc* Expert Panels and Monitoring Mechanism with a permanent monitoring mechanism. Instead, this goal could be accomplished by retaining the Expert Panels and Monitoring Mechanisms, as currently structured, but supplementing their work through the creation of a

small, dedicated Expert Panel support facility within the UN Secretariat.

2. Second, whatever form it may take, the envisioned support facility should have built-in safeguards to assure that its functions do not compromise the independence of the *ad hoc* Expert Panels and Monitoring Mechanisms.
3. Third, to meet immediate needs, the development of the recently established standing Roster of Experts, as well as the elaboration of transparent methods for their selection, and steps to centralize and store accumulated documents and information of past and current Expert Panels and Monitoring Mechanisms should proceed in the interim. These capacities can be built into the Sanctions Branch as currently structured and need not await a decision by the Security Council of the final form of the proposed support facility.

#### Budgetary Resources

- § 116 That adequate budgetary support is critical to the effective implementation, monitoring and enforcement of targeted sanctions is self-evident. Thus far, however, the Sanctions Branch and Sanctions Committees have had to scramble to secure financing of the Expert Panels and Monitoring Mechanisms. Ideally, this financial support should be anticipated, budgeted, and supplied from the outset of the creation of an Expert Panel or Monitoring Mechanism, as failure to do so can lead to unnecessary and costly delays in their field investigations, incomplete investigations, and the late remuneration of experts.
- § 117 To date, however, it has proven difficult to ascertain the realistic budgetary needs of the Expert Panels or of UN sanctions implementation more broadly. In particular, there has been no systematic assessment of the budgetary requirements of the Expert Panels and Monitoring Mechanisms, a problem exacerbated by frequent recourse to Trust Funds. It was also noted that those Sanctions Committees chaired by representatives of well-endowed states have had additional, extra-budgetary resources to draw upon. While this has improved the monitoring capacity of select sanctions regimes, it has also created a discrepancy in capacity and performance among sanctions regimes.

## RECOMMENDATIONS

- § 118 From this analysis of how to enhance the capacity of the UN Secretariat, the following concrete recommendations can be suggested.

**Box 9.****Enhance the Capacity of the UN Secretariat**

- § 119 *Upgrade Human Capacity of the Sanctions Branch*
- Ensure that the Sanctions Branch is adequately staffed to fulfill effectively its mandated tasks of providing administrative, logistical, and analytical support to the Sanctions Committees, Expert Panels, and Monitoring Mechanisms.
- § 120 *Improve Analytical and Information Capacity*
- Establish a centralized and accessible database of all sanctions-related information collected from Expert Panel and Monitoring Mechanism investigations as well as from other sources and provide a full-time information specialist to manage the database.
  - Further systematize and consolidate the newly implemented Roster of Experts of those nominated by member states and others, based on best practices, according to clear criteria, and that includes relevant types of expertise: country experts, sanctions experts, law enforcement professionals, specialists on international transport, small arms smuggling, financial flows, etc.
  - Consider establishing an Internet Web Portal on UN sanctions implementation Committees as a data-retrievable repository of sanctions-relevant research and reports that would be accessible to authorized users.
- § 121 *Ensure Adequate Budgetary Support for Sanctions Implementation*
- Confirm the UN regular budget as the main funding source for sanctions implementation.
  - Develop an assessment mechanism and general guidelines to determine the budgetary support that is required for each Expert Panel and Monitoring Mechanism to facilitate the cost estimates elaborated between the Secretariat and the panels.
  - Ensure an adequate budgetary allocation that Chairs of the Sanctions Committees may use for activities relevant to implementation, including travel to the region.





## Part III: Supporting Member State Capacity to Implement Targeted Sanctions

### 6. Introduction

- § 122 IT IS THE Member States of the United Nations that are responsible for the implementation of Security Council decisions. Their willingness and capacity to implement sanctions will thus determine whether sanctions will succeed or fail. Obviously, capacity to implement targeted sanctions is critical, but political will is paramount. Political will at all levels, beginning with the members of the Security Council, is essential to the effective implementation of targeted sanctions.
- § 123 Furthermore, effective implementation requires an ongoing dialogue between the Security Council, the Secretariat and Member States regarding implementation, helping Member States to accomplish the stated objectives, not just declaring what states must do. This dialogue can be promoted in various ways, including through reports on implementation, concrete measures to help Member States and technical assistance. The experiences from the UN Counter-Terrorism Committee (CTC) give some insights on how reporting and assistance can be improved.
- § 124 Due to their technical complexity, targeted sanctions are more difficult for most Member States to implement than comprehensive sanctions. A national legal and administrative framework is neces-

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Part III is the result of Working Group 2 in the Stockholm Process. Chair for this group: Ambassador Curtis Ward, Counter-Terrorism Committee, United Nations, New York. Rapporteur: Professor Thomas Biersteker, Watson Institute for International Studies, Brown University.

sary to give effect to Security Council resolutions in Member States' domestic law. To assist Member States, a Consolidated Model Law has been developed and is presented in Box 11.

- § 125 As Member States have the ultimate responsibility to implement targeted sanctions effectively, they must therefore have the capacity to do so. There is significant variation in the capacity of states to implement targeted sanctions. Where lack of capacity exists in states in which the major onus is placed to implement sanctions (e.g. neighboring and other most affected states), the result is a credibility gap between the adoption and implementation of Security Council sanctions resolutions. Thus, it is important to consider forms of technical assistance, either extended through international organizations or directly between Member States. Such capacity building has important implications for longer-term development.
- § 126 Given these considerations, and the other points enunciated above, it is imperative that a platform be established for the effective implementation of targeted sanctions, consisting of both general principles (see Box 10, *Principles for Effective Implementation of Targeted Sanctions*) and specific guidelines for particular types of sanctions (see Section 8, Practical Guidelines for Effective Implementation by States).

## 7. Concrete Measures by the Member States, Supported by the UN and International Organizations

### 7 a. UN–Member State Interaction

#### *Lessons from Security Council Resolutions 1373 and 1377*

- § 127 Targeted sanctions regimes can draw on the momentum and lessons of UN Security Council Resolutions 1373 and 1377 for the drafting and implementation of sanctions resolutions. The two resolutions are illustrations of strong political will, and while it is too soon

to tell about the effectiveness of all aspects of the Counter-Terrorism Committee process, some important precedents have been established that could be drawn upon in future UN Security Council resolutions targeting sanctions. The following paragraphs spell out some of these.

- § 128 With regard to *reporting requirements*, Paragraph 6 of Resolution 1373 specifies that States should report on what actions they have taken or plan to take to implement the resolution. The monitoring process established by the CTC also suggests that there should be greater consistency in, and transparency of, reporting on implementation, based on specific questions posed, and guidelines established, by the committee. Sanctions Committees in the future could learn from the enhanced transparency in the work of the CTC. See recommendations for reporting in Part IV, Box 12.
- § 129 Paragraph 13 of Resolution 1377 recognizes that many states may require *assistance* in implementing the requirements of the resolution and invites them to seek assistance with implementation, if they need it. The resolution calls on Member States to assist each other to implement the resolution fully, while Paragraph 14 invites the Counter-Terrorism Committee to explore ways states can be assisted by international, regional and sub-regional organizations. In the context of sanctions committees, it might also be useful to conduct an assessment of the capacity of the most affected States, to identify what specific types of assistance they might require to enhance their capacity to implement the sanctions effectively.
- § 130 With regard to the provision of *financial support* to assist the implementation by states lacking administrative capacity and the means to provide it, there is a potential menu of choices available ranging from the issuance of a directory of sources of support, to the offer of bilateral assistance from those members willing to provide it, the provision of multilateral donor community support, or the establishment of a trust fund or other internal funding instrument within the Secretariat, including budgetary allocation within the resolution itself.

- § 131 The strengthening of the capacity of the Secretariat and the provision for independent expertise should be considered priorities. The Secretariat could also act as a repository to provide an *online database* for the provision of information about the implementation of targeted sanctions along the lines of the process established by UN Security Council resolution 1373.

*Reporting and Communication*

- § 132 It is important to maintain effective communication on targeted sanctions implementation between the UN and Member States, between UN Missions and capitals, and within the capitals (among those responsible for implementation, i.e. ministries of foreign affairs and other agencies).
- § 133 Member States are encouraged to identify *central contact points* to disseminate information on targeted sanctions implementation in their capitals. A relevant sanctions committee could publish a directory of contact points, update it at regular intervals, and encourage all states to make use of the directory for contacts on matters covered by targeted sanctions resolutions, recognizing that cost or personnel requirements could be an inhibiting factor for some states.
- § 134 It is especially important to ensure that there is an adequate flow of information between missions in New York and those responsible for the dissemination of information at the national level. The national authorities responsible for implementation must receive the information in a timely manner, and Member States should identify the most appropriate channel for communications. In some instances, increasing the capacity of UN missions to process and transmit information to capitals might be necessary.
- § 135 Member States could also consider utilizing central contact points for enhancing internal coordination, not only disseminating information on targeted sanctions, but also coordinating implementation at the national level.

*Periodic Reviews*

- § 136 To be able to support Member States the Security Council should conduct periodic reviews of the effectiveness of specific Council resolutions. Such reviews could take place with the assistance of outside experts and/or specialized international organizations to assess ways to increase the effectiveness on the target and evaluate the unintended effects of the targeted sanctions, including humanitarian impacts.
- § 137 Expert Panels can be an instrument of transparency that enables the investigation of violations of targeted sanctions (and monitor their implementation). The information provided will also be of use to the Member States themselves, to improve on their implementation measures.
- § 138 To encourage more effective implementation of targeted sanctions by Member States, a Council presidency might choose to adopt a theme of encouraging effective implementation of sanctions, with the goal of producing an output document, including general principles and/or guidelines for the implementation of sanctions (see Box 10) and a listing of resources available to Member States and other entities.

## 7 b. Member State Implementation

- § 139 The implementation of sanctions by Member States is assumed to be automatic, following a decision by the Security Council. However, it might be important for the President of the Security Council and/or the Chair of the relevant Sanctions Committee to *communicate directly to leaders* in the targeted and most affected countries on the significance of the actions taken by the Council. The Council could also consider arranging regional meetings with leaders of key countries during Security Council missions where the goals and means of the sanctions are discussed fully and seriously. The Security Council should also make use of meetings in New York with leaders of key countries to address the issue of sanctions implementation.

§ 140 The implementation of sanctions can be part of a Member State's efforts to improve *integrity* in government operations. Implementation means that customs and excise will have to function effectively. This may also result in increased effectiveness in the State administration, improved transparency and more rational uses of State revenue.

The effective implementation of sanctions at the national level requires the following key measures:

- § 141 First, the adoption of a legal framework – a *model law* or its functional equivalent – giving legal effect under domestic law to resolutions passed by the UN Security Council would serve as the basis for national level implementation of targeted sanctions. (See the discussion of model law legislation in Section 9.) While there may be alternative ways to give Security Council resolutions effect in domestic law (primary legislation referring to Security Council resolutions, sector-specific primary legislation, general purpose secondary legislation in trade and finance, and generic constitutional authority), the adoption of a model law expedites implementation, achieves uniformity of interpretation across different national legal jurisdictions, and enables States to implement all types of sanctions imposed by the Security Council. It also obviates the need for States to pass special enabling legislation each time the Security Council passes a resolution. While a version of the model law described in Section 9 need not be adopted by every State, its functional capabilities should serve as the benchmark for alternative means to provide domestic legal standing to Security Council resolutions. The adoption of a model law should be a priority for Member States, and the Security Council should formally endorse this idea.
- § 142 Second, measures should be introduced into domestic legislation making States responsible for the *criminal prosecution of violations* of UN Security Council resolutions by persons and entities falling within their jurisdictions. Not only should they prosecute violations of targeted sanctions, but they should also protect private sector institutions under their jurisdiction from liability for claims arising

from their compliance with sanctions resolutions. This point is elaborated in the Interlaken Process report.

- § 143 Third, public information and *dissemination of information* about the sanction should be provided to relevant actors, using electronic as well as written notification.
- § 144 Fourth, *sectorally-specific guidelines* and administrative practices should be identified. Once again, the *Practical Guidelines for Effective Implementation by States* included in Section 8 spells out best practices and relevant measures with respect to different types of targeted sanctions. Among the measures that should be considered are compliance and enforcement measures, exemptions and exceptions, and in the case of targeted financial sanctions, the administration of seized or frozen assets.
- § 145 Implementation of targeted sanctions requires considerable skills and administrative capacities of the Member States. Part of this is to disseminate information expeditiously to the public and private entities concerned. Even in small countries this can be rather demanding tasks. In Example 1 a Swedish example is given from the implementation of targeted financial sanctions. The financial sanctions are handled by the Swedish Financial Supervisory Authority (Finansinspektionen, FI). It has the appropriate legal authority, but also requires considerable administrative capacity to be an effective instrument. This aspect is further elaborated in Section 7 c, below.

#### Example 1.

#### The Swedish Financial Supervisory Authority

This governmental agency (Finansinspektionen) is supervising companies in the insurance, credit and securities market – all in all 2,500 companies and insurance brokers. As of April 2002 this meant:

- 108 banks and other credit institutions
- 125 securities companies
- 70 fund management companies
- 1 stock exchange
- 2 authorized market places
- 1 clearing house
- 430 insurance companies
- 108 friendly societies
- 1,170 insurance brokers

### 7 c. Measures to Strengthen Member State Capacity

- § 146 Lack of implementation of a targeted sanctions resolution by a Member State may be caused by administrative incapacity. This may lead to a need for external support, including financial assistance. Obviously, lack of such support cannot constitute an excuse for non-compliance.
- § 147 *Technical assistance* can be provided in the form of training, seminars, and operational assistance from the UN, regional organizations, and other international institutions, including, but not limited to, WCO, ICAO, Interpol, IBRD, IMF, and the Financial Action Task Force (FATF) on money laundering.
- § 148 *Sanctions assistance missions* and/or offices in target or neighboring States can be created such as was done in the case of Yugoslavia. This typically entails coordination from an office in New York, with the deployment of individual monitors in the field, to assist Member States in their monitoring of borders. This concept can be enlarged to cover also other types of activities, when needed.
- § 149 The *private sector* is central to the implementation of targeted sanctions and should play an important role in making targeted sanctions more effective. Thus, it is important to encourage private sector initiatives to develop recommendations for “best practices” in different sectors. Private sector organizations should be mobilized to ensure that their members are fully aware of the targeted sanctions regime.
- § 150 *Expert cooperation*, with periodic meetings among national regulatory authorities, along the lines of the coordination that has taken place historically among regulatory institutions responsible for financial sanctions, should be encouraged.
- § 151 *Peer evaluations* of enforcement of targeted sanctions by Member States of each other, along the lines of the process created by the FATF in the area of money laundering should also be considered.



§ 152 Should periodic reviews reveal intentional non-compliance, as determined by the UN Security Council, possible actions include: vigorous diplomacy, diplomatic and economic disincentives, and the imposition of secondary sanctions.

§ 153 Member States should develop and make available training programs for the implementation of targeted sanctions. Access to such training programs could be provided through bilateral relationships, within regional frameworks or multilateral institu-

tions. Some sectors of public administration could particularly benefit from these programs, notably customs officials, airport staff, border guards, and financial authorities. These programs will also enhance government capacity at large, and thus benefit the Member State over the longer term. Example 2 suggests examples of what Member States can offer in terms of training, using some Swedish experiences.

#### Example 2.

##### Training Programs for Member States

Based on the Swedish experience, there are certain key authorities for the implementation of targeted sanctions, such as Customs, Police, Border Guards, Coast Guards, Airport, Railroad, Seaport, Road transportation authorities, Financial regulators and others.

Typical programs include *Management Seminars* for leaders of key authorities, preferably in a regional setting and thus contributing to establishing regional networks.

Then it is important also to conduct *National Programs for Middle and Lower Level Staff* in the same authorities. To facilitate this and have a resource for future training, it is important also to include *Training of the Trainers*, for instance at international institutions.

Topics to be covered in such training programs include:

- The Scope of Sanctions (UN goals, targeted actors, measures of success)
- The role and impact of the authority (how it is affected, its resources, benefits of international cooperation and division of labor, possibilities of technical assistance)
- Technical advances in the areas of specialization (electronic techniques, other techniques of use, practical experiences, etc.)
- The issue of integrity (motivation of staff, salary structures, integrity of the organization, handling of illegitimate pressure, etc.)

#### 7 d. Improving Consultations with International and Regional Organizations

- § 154 In the design of targeted sanctions resolutions, the Security Council should *draw on the expertise of relevant, specialized international organizations* (such as WCO, ICAO, and IMO etc.) to assess how effectively the resolutions can be implemented. In doing so, the Security Council should remain mindful of the balance between quick and decisive action by the international community and taking the time to consult with expert agencies about the feasibility of implementation of specific measures (see also Parts II and IV).
- § 155 The UN Security Council should seek the cooperation of relevant regional and international organizations and encourage them, within their competence and mandate, to *assist Member States* fulfill their obligations under the Charter.
- § 156 It is important to *improve the communications links* between the UN and specialized international organizations, drawing their attention to problems within their competence identified in monitoring and investigative reports.
- § 157 The UN Secretariat could also improve consultation with relevant technical organizations (such as ICAO, WCO), and should be encouraged to facilitate the transmission of information to member states requesting technical assistance (for more on this issue, see Part II).

- § 158 Relevant international organizations could be called upon to coordinate or *conduct training programs* for Member States requesting assistance. For example, organizations such as the WCO assist their Member States in achieving efficiency through technical assistance programs, see Example 3 which could also be extended to programs for compliance with targeted sanctions.

## Example 3.

## The World Customs Organization

The World Customs Organization, WCO, has 11 regional offices that monitor trends in smuggling.

Its customs enforcement network looks into different types of concealment.

It administers bilateral agreements and multilateral conventions for the exchange of information.

There are no restrictions on access to this exchange of information, if it is about general trends, latest concealment methods, or types of frauds. There are provisions restricting the use of some types of information, however. It depends on the level of confidentiality. This information could be shared with Sanctions Committees, following an application from a Member State.

While the WCO currently has no specific programs for assisting members with compliance with UN resolutions, it could develop relevant programs and use its existing network for dissemination of sanctions related information.

It has a global database. Member States could *utilize the database available* from the WCO for sanctions implementation. There could be a page for UN sanctions. The tools are available. If there is information that is relevant to Member States, they can access it.

The WCO has three *websites*: a public website; a members' website; and an enforcement website. Most developed countries are making full use of the information available. The countries with fewer capabilities, utilize the network less. However, the general expansion of the Internet is facilitating important change.

## RECOMMENDATIONS

- § 159 The Security Council should encourage more effective implementation of targeted sanctions. In preparing the stage for effective implementation, the Security Council is encouraged to establish a set of principles (see Box 10), that may be incorporated in a resolution, Presidential Statement, or Note by the President. Subsequent Security Council resolutions imposing targeted sanctions could recall this document and include its contents by reference.

**Box 10.****Principles for Effective Implementation of Targeted Sanctions**

- § 160 In preparing the stage for effective implementation of targeted sanctions, the Security Council may consider establishing the following set of principles, incorporated in a resolution, Presidential Statement, or Note by the President as they might decide.
- Recalling that under Article 25 of the UN Charter, mandatory resolutions of the Security Council are binding on all Member States, and must be given full effect in their laws and administration;
  - Taking into consideration, in determining whether to impose sanctions, the appropriateness of specific targeted sanctions and an evaluation as to the likelihood of the effectiveness of the measures being contemplated;
  - Acknowledging the need for periodic reassessment of the measures, including their unintended effects on civilian populations, respecting international humanitarian law [and human rights];
  - Expressing a willingness to assist States to carry out their responsibilities to implement sanctions measures;
  - Expressing its willingness to consider the impact of targeted sanctions on non-targeted States, including the provision of practical ways to assist them;
  - Calling upon the Bretton Woods institutions and United Nations agencies, funds and programs to assess the impact of sanctions on non-targeted States and, in appropriate circumstances, to identify practical ways to assist them; and
  - Recalling that the Security Council has used secondary sanctions as an enforcement tool.
- § 161 To encourage effective implementation of targeted sanctions in accordance with these principles, the Security Council should adopt a platform for effective implementation and
- Call upon states to adopt a model law to give effect to Security Council resolutions in domestic law.
  - Make it clear that lack of capacity to implement sanctions effectively must be specifically addressed by States lacking such capacity in their reports to sanctions committees.
  - Invite States to seek technical assistance if they lack the capacity to implement sanctions effectively.
  - Encourage States with the capacity to do so to offer appropriate technical and financial assistance to States needing it.

- Encourage States to establish an interdepartmental committee that brings together relevant agencies to implement targeted sanctions and to identify central contact points in their capital for the transmission of information about the implementation of targeted sanctions.
- Encourage States to cooperate through regional organizations to which they belong to identify best practices, cooperate with expert panels and sanctions committees, and to ensure reporting of violations.
- Mandate the Sanctions Committees, in cooperation with the Secretariat, to monitor compliance by States and to establish detailed reporting requirements for them.
- Encourage the transparency of Sanctions Committees to facilitate implementation.
- Create a database, in cooperation with the Secretariat, of available technical assistance for capacity building.

## 8. Practical Guidelines for Effective Implementation by States\*

- § 162 Pursuant to Article 25 of the Charter of the United Nations, Member States are obliged to give effect to decisions of the Security Council. Where the Council decides to impose targeted sanctions in carrying out its responsibility for the maintenance of international peace and security, the success of these measures depends upon effective implementation at the national level.
- § 163 This section provides practical guidance to States in establishing and improving their legal and administrative capacity to implement UN targeted sanctions. It is aimed primarily at national officials responsible for implementing targeted sanctions. However, policy

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\* The analysis and recommendations in Section 8 is largely drawn from the ongoing research project at the Watson Institute for International Studies at Brown University that hereby is gratefully acknowledged.

makers in UN fora may find this section useful as an indication of what is required of national-level implementation if sanctions are to be effective in achieving Security Council objectives.

- § 164 Building on the Interlaken and Bonn-Berlin processes, this section summarizes “best practices” for the implementation of the range of targeted sanctions imposed by the Security Council. Sanctions may be “targeted” in two senses. First, sanctions may be targeted upon persons. Targeted financial sanctions and travel bans are “targeted” in this sense. Second, sanctions may target specific sectors of economic activities or commodities. Aviation bans, arms embargoes and controls imposed on the trade in rough diamonds and timber are “targeted” in this regard.
- § 165 This section assesses both types of targeted sanctions on five different dimensions of implementation.
- § 166 First, states and their regulatory authorities must have the domestic legal authority to implement targeted sanctions. While there are different approaches to providing a legal basis for the implementation of targeted sanctions at the national level, the adoption of a legal framework – a model law or its functional equivalent – giving legal effect under domestic law to resolutions passed by the UN Security Council would serve as a straightforward and efficient way to achieve this objective. However, primary legislation is in itself insufficient to implement Security Council decisions; States must take the necessary steps to promulgate regulatory or administrative measures for effective implementation at the national level.
- § 167 Second, states must designate an administrative agency or agencies (central contact points) to be responsible for the various tasks required in implementing targeted sanctions at the national level. The effective performance of these tasks relies upon information received from the UN and from missions to the UN. In designating administering agencies, states should ensure as a matter of priority that communication at all levels – between the UN and Member States, between UN missions and capitals, and within the capitals (among those responsible for implementation) is effective.

- § 168 Third, domestic administrative agencies must disseminate information about the sanctions to domestic actors. This will most likely consist of general public information as well as information specifically targeted to key actors within domestic society that are called upon to implement sanctions (such as banks, airlines, importers, etc.).
- § 169 Fourth, a program for monitoring the implementation of sanctions is required to ensure compliance and the effectiveness of the sanctions.
- § 170 Finally, the enforcement of sanctions requires that breaches be pursued, with penalties sufficient to deter circumvention.
- § 171 Beyond these five elements, this section identifies “sector-specific” measures for best practice national-level implementation. Given that the guidance offered here is in the form of a checklist of critical elements in implementation, sources of further information are identified. These include references to relevant regional and international agreements, relevant intergovernmental and nongovernmental organizations, and relevant web sites to provide context and expertise useful for the more effective implementation of UN targeted sanctions.

## RECOMMENDED NATIONAL MEASURES

**Arms Embargoes**

- § 172 *Legal Framework*
- Ensure existing legislation is adequate to implement the full range of measures (e.g. export, follow-up export, re-export, licensing and transit restrictions) that may be imposed by a Security Council resolution: give effect to resolutions through regulatory or administrative action.
  - Develop administrative measures for the registration, licensing and monitoring of arms brokers (for example, by maintaining national lists of brokers convicted of offenses related to arms embargoes); the establishment of a list of controlled goods prohibited by the embargo; the establishment of catch-all clauses for goods not covered by national lists of controlled goods; the seizure prohibited goods and the funds used or intended for use in illegal arms transactions; the criminal prosecution of those who breach an arms embargo and; the authentication and reconciliation of end-use certificates.
- § 173 *Administering Agency*
- Consider how best to employ existing expertise and dedicate resources to the development and maintenance of knowledge on targeted sanctions.
  - Designate an official body or bodies to administer sanctions, such as import and export administration agencies or Customs; ensure cooperation between these agencies by designating a lead department and facilitate intra-governmental coordination.
  - Ensure effective communication at all levels – between the UN and Member States, between UN missions and capitals, and within the capitals (among those responsible for implementation).
- § 174 *Information Dissemination*
- Inform the public through notices in official journals and through the use of media and information technology.
  - Inform key actors, such as arms producers, distributors and brokers.
  - Share information (including records of arms production and surpluses) and intelligence among government departments and between governments to identify suspect shipments, destinations, transit routes and brokers.
- § 175 *Monitoring Compliance*
- Establish procedures for licensing and certification of end-users, including delivery verification.



- Promote the adoption of codes of conduct for arms suppliers, such as those set out by regional and sub-regional organizations.
  - Maintain a “black list” of groups and individuals engaged in the illegal manufacture, trade, stockpiling, transfer, possession, transportation, insurance and financing for acquisition, of illicit weapons, and ensure that those convicted of offenses cannot operate.
  - Utilize ports of entry (land, sea and air) as opportunities to monitor transfers.
- § 176 *Enforcement*
- Specify in legislation that breach of an embargo may result in criminal prosecution.
  - Impose penalties, including criminal penalties, appropriate to deter violations.
- § 177 *Sector-Specific Measures*
- Trace and verify arms shipments that are at possible risk of being diverted.
- § 178 *Relevant Regional and International Agreements*
- Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, July 2001 (A/CONF. 192/15).
  - Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community (SADC) Region, 14 Aug. 2001.
  - Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Material, 14 Nov. 1997.
  - European Union Code of Conduct for Arms Exports, 8 June 1998.
  - OSCE Document on Small Arms and Light Weapons, 24 Nov. 2000.
- § 179 *Relevant IGOs and NGOs*
- WCO ([www.wcoomd.org](http://www.wcoomd.org))
  - The Wassenaar Arrangement ([www.wassenaar.org](http://www.wassenaar.org))
- § 180 *Other Relevant Websites*
- Bonn International Center for Conversion ([www.smartsanctions.de](http://www.smartsanctions.de))
  - Small Arms Survey ([www.smallarmssurvey.org](http://www.smallarmssurvey.org))
  - British American Security Information Council ([www.basicint.org](http://www.basicint.org))
  - Stockholm International Peace Research Institute ([www.sipri.se](http://www.sipri.se))
  - The Fund for Peace ([www.fundforpeace.org](http://www.fundforpeace.org))
  - International Action Network on Small Arms ([www.iansa.org](http://www.iansa.org))

## Financial Sanctions

- § 181 *Legal Framework*
- Ensure that adequate legal authority to implement sanctions at the national level exists without needing to engage the legislative process for each Security Council resolution (e.g. by enacting enabling legislation such as the Interlaken Model Law).
  - Give effect to resolutions through regulatory or administrative actions.
- § 182 *Administering Agency*
- Consider how best to employ existing expertise and dedicate resources to the development and maintenance of knowledge on targeted sanctions.
  - Designate an official body or bodies to administer sanctions – including the consideration and determination of requests for exceptions and exemptions, where permitted – such as the MFA or the financial supervisory agency.
  - Ensure effective communication at all levels – between the UN and Member States, between UN missions and capitals, and within the capitals (among those responsible for implementation).
- § 183 *Information Dissemination*
- Inform the public through notices in official journals and through the use of media and information technology.
  - Communicate with banks and financial institutions; notify them directly, including through outreach activities, and provide specific and timely guidance for the implementation of sanctions.
  - Notification should include a statement of the legal basis for sanctions; the precise time period within which transactions should be examined; definition of targets; detailed guidelines about what is prohibited; information on exemptions; and information concerning to whom reports should be sent, and applications for exemptions or exceptions and questions regarding sanctions should be addressed.
- § 184 *Monitoring Compliance*
- States should monitor the activities of banks and financial institutions to encourage compliance with financial sanctions, including capacity building, reporting and external auditing requirements.
  - Financial institutions should employ methods to recognize and stop transactions, and be encouraged to raise their internal supervisory standards to conform to multilateral initiatives, including through the use of technology.

- § 185 *Enforcement*
- Clearly define acts constituting a breach of sanctions, the nature of such violations (civil or criminal), and specific penalties (prison sentences and/or fines) appropriate to deter violations.
  - Encourage compliance and foster cooperative relations with financial institutions through a system of warnings and civil penalties.
- § 186 *Sector-Specific Measures*
- Specify the criteria and process for considering and giving effect to decisions regarding exemptions and exceptions.
  - Determine procedures for the administration of assets.
- § 187 *Relevant Regional and International Agreements*
- Convention for the Suppression of the Financing of Terrorism (A/RES/54/109), 9 Dec. 1999.
  - Convention against Transnational Organized Crime (A/RES/55/25), 15 Nov. 2000.
  - FATF 40 recommendations and 8 special anti-terrorist measures.
- § 188 *Relevant IGOs and NGOs*
- UN Office on Drugs and Crime ([www.unodc.org](http://www.unodc.org))
  - The World Bank Group ([www.worldbank.org](http://www.worldbank.org))
  - Basel Committee on Banking Supervision ([www.bis.org/bcbs/](http://www.bis.org/bcbs/))
  - Financial Stability Forum ([www.fsforum.org](http://www.fsforum.org))
  - FATF ([www.oecd.org/fatf](http://www.oecd.org/fatf))
  - The Egmont Group ([www1.oecd.org/fatf/Ctry-orgpages/org-egmont\\_en.htm](http://www1.oecd.org/fatf/Ctry-orgpages/org-egmont_en.htm))
  - Wolfsberg AML Principles ([www.wolfsberg-principles.com](http://www.wolfsberg-principles.com))
  - IMF ([www.imf.org/](http://www.imf.org/))
- § 189 *Other Relevant Websites*
- Interlaken Process ([www.smartsanctions.ch](http://www.smartsanctions.ch))
  - The Targeted Financial Sanctions Project at the Watson Institute ([www.watsoninstitute.org/tfs](http://www.watsoninstitute.org/tfs))

### Travel Bans (including visa bans)

- § 190 *Legal Framework*
- Ensure that adequate legal authority exists to implement sanctions at the national level without needing to engage the legislative process for each Security Council resolution (e.g. by enacting enabling legislation such as the Interlaken Model Law).
  - Give effect to resolutions through regulatory or administrative actions.
- § 191 *Administering Agency*
- Consider how best to employ existing expertise and dedicate resources to the development and maintenance of knowledge on targeted sanctions.
  - Designate an official body or bodies to administer sanctions – including the consideration and determination of requests for exceptions and exemptions, where permitted – such as the MFA, immigration and border control agencies.
  - Ensure effective communication at all levels – between the UN and Member States, between UN missions and capitals, and within the capitals (among those responsible for implementation).
- § 192 *Information Dissemination*
- Inform the public through notices in official journals and through the use of media and information technology, including aeronautical means of communication.
  - Inform key actors, such as airline, transportation and insurance companies and consular offices where visas are issued.
- § 193 *Monitoring Compliance*
- Provide guidelines to key actors regarding the application and scope of sanctions, including details of what to do in case of violations and required reporting.
- § 194 *Enforcement*
- National measures should ensure that contravention or evasion shall be made a criminal offence with effective, dissuasive and proportionate penalties.
- § 195 *Sector-Specific Measures*
- Establish a central database to maintain a list of individuals to be denied permission to enter.
  - Specify the criteria and process for considering and giving effect to decisions regarding exemptions and exceptions.

- |       |                                                                                                                                                                                                                                                                                                     |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| § 196 | <i>Relevant Regional and International Agreements</i> <ul style="list-style-type: none"><li>◦ Convention on International Civil Aviation, 7 Dec. 1944.</li><li>◦ International Air Services Transit Agreement, 7 Dec. 1944.</li><li>◦ International Air Transport Agreement, 7 Dec. 1944.</li></ul> |
| § 197 | <i>Relevant IGOs and NGOs</i> <ul style="list-style-type: none"><li>◦ ICAO (<a href="http://www.icao.org">www.icao.org</a>)</li><li>◦ IATA (<a href="http://www.iata.org">www.iata.org</a>)</li><li>◦ Interpol (<a href="http://www.interpol.int">www.interpol.int</a>)</li></ul>                   |
| § 198 | <i>Other Relevant Websites</i> <ul style="list-style-type: none"><li>◦ Bonn International Center for Conversion (<a href="http://www.smartsanctions.de">www.smartsanctions.de</a>)</li></ul>                                                                                                        |

## Aviation Bans

- § 199 *Legal Framework*
- Ensure that adequate legal authority exists to implement sanctions at the national level.
  - Amend existing measures, or take regulatory or administrative action to deny targets permission to take off from, land in and fly over national territories.
- § 200 *Administering Agency*
- Consider how best to employ existing expertise and dedicate resources to the development and maintenance of knowledge on targeted sanctions.
  - Designate an official body or bodies to administer sanctions, such as the MFA, the Transportation Ministry, the aviation or air traffic control agency; ensure cooperation between these agencies.
  - Ensure effective communication at all levels – between the UN and Member States, between UN missions and capitals, and within the capitals (among those responsible for implementation).
- § 201 *Information Dissemination*
- Inform the public through notices in official journals and through the use of media and information technology, including aeronautical means of communication.
  - Inform key actors, such as the Civil Aviation Authority, Customs and Excise, airport authorities, air traffic control authorities and registered companies.
- § 202 *Monitoring Compliance*
- Provide guidelines to key actors regarding the application and scope of sanctions, including details of what to do in case of violations and information about required reporting.
- § 203 *Enforcement*
- National measures should ensure that contravention or evasion should be made a criminal offence with effective, dissuasive and proportionate penalties.
- § 204 *Sector-Specific Measures*
- Establish a central database, such as the ICAO register of aircraft, to maintain a list of prohibited aircraft.
  - Specify the criteria and process for considering and giving effect to decisions regarding exemptions and exceptions.
  - Point about seizure of aircraft, barring aircraft from take off and landing.

- § 205 *Relevant Regional and International Agreements*
  - Convention on International Civil Aviation, 7 Dec. 1944.
  - International Air Services Transit Agreement, 7 Dec. 1944.
  - International Air Transport Agreement, 7 Dec. 1944.
- § 206 *Relevant IGOs and NGOs*
  - ICAO ([www.icao.org](http://www.icao.org))
  - IATA ([www.iata.org](http://www.iata.org))
  - Interpol ([www.interpol.int](http://www.interpol.int))
- § 207 *Other Relevant Websites*
  - Bonn International Center for Conversion ([www.smartsanctions.de](http://www.smartsanctions.de))

## Targeted Trade Sanctions: 1. The Example of Rough Diamonds Controls

- § 208 *Legal Framework*
- Adopt legal and administrative provisions as appropriate to implement the certification scheme developed through the Kimberley Process.\*
  - Amend or enact appropriate legal and administrative provisions, or use the Interlaken Model Law, to establish authority to implement Security Council resolutions on trading in rough diamonds with states targeted by sanctions.
- § 209 *Administering Agency*
- Designate importing and exporting authorities; appoint an official coordinator to deal with the implementation of the certification scheme, who could serve as a point of contact if sanctions are imposed.
  - Collect and maintain official production, import and export data.
  - Ensure effective communication at all levels – between the UN and Member States, between UN missions and capitals, and within the capitals (among those responsible for implementation).
- § 210 *Information Dissemination*
- Share statistical data with other countries as appropriate.
  - Communicate with parties involved in the diamond industry; notify them directly, including through outreach activities, and provide specific and timely guidance for the implementation of sanctions.
- § 211 *Monitoring Compliance*
- Establish a system of domestic controls for the production and trade of rough diamonds and which allows for effective international monitoring.
  - Cooperate to ensure the effectiveness of the certification scheme towards the implementation of sanctions.
  - Ensure that all cash purchases of rough diamonds are routed through official banking channels, supported by verifiable documen-

\* The Kimberley Process proposes a certification scheme for rough diamonds aimed in part at facilitating the control of trade in rough diamonds. The current agreement is to be found at <<http://www.kimberleyprocess.com>>. While the aim of the Kimberley Process is primarily conflict prevention rather than conflict resolution, the certification scheme may facilitate more effective sanctions, should the Security Council act to target the trade in rough diamonds.



tation such as that developed as part of the Kimberley Process Certification Scheme.

§ 212 *Enforcement*

- Maintain dissuasive and proportional penalties for transgressions.
- Inform others of the names of individuals or companies convicted of activities relevant to the certification scheme or the effectiveness of sanctions.

§ 213 *Relevant Regional and International Agreements*

- Kimberley Process Certification Scheme, November 2002 ([www.kimberleyprocess.com](http://www.kimberleyprocess.com))

§ 214 *Relevant IGOs and NGOs*

- Partnership Africa Canada ([partnershipafricacanada.org](http://partnershipafricacanada.org))
- Global Witness ([www.globalwitness.org](http://www.globalwitness.org))
- Diamond High Council ([www.diamonds.be](http://www.diamonds.be))
- Amnesty International ([web.amnesty.org/diamonds/index.html](http://web.amnesty.org/diamonds/index.html))

### Targeted Trade Sanctions: 2. The Example of Timber\*

- § 215 *Legal Framework*
- Amend or enact appropriate legal and administrative provisions, or use the Interlaken Model Law, to establish authority to implement Security Council embargoes on trading in conflict timber with states targeted by sanctions.
- § 216 *Administering Agency*
- Identify and empower an administering agency, such as the MFA, Customs or Agriculture Ministry, to detect timber imports from illegal sources and seize prohibited goods.
  - Ensure effective communication at all levels – between the UN and Member States, between UN missions and capitals, and within the capitals (among those responsible for implementation).
- § 217 *Information Dissemination*
- Increase public awareness of forest crimes and opportunities to purchase forest products from legal sources.
  - Educate judicial and law enforcement officials about forest law enforcement.
  - Develop protocols for sharing import/export data.
- § 218 *Monitoring Compliance*
- Cooperate towards universal standards for monitoring and reporting on forest crimes, such as through the registration of origin and destination by timber producers.
- § 219 *Enforcement*
- Strengthen penalties and sanctions against illegal activities.
- § 220 *Sector-Specific Measures*
- Support existing multilateral efforts aimed at suppressing illegal logging through: labeling and certification of timber products; timber tracking through chain of custody audit and negotiation systems and; monitoring and verification of imports.
- § 221 *Relevant Regional and International Agreements*
- Ministerial Declaration of the Forest Law Enforcement and Governance East Asia Ministerial Conference, September 2001 (available at: [www.foejapan.org/en/news/minist\\_decl.html](http://www.foejapan.org/en/news/minist_decl.html)).

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\* This table represents a first attempt to consolidate information relevant to the implementation of sanctions targeted on timber.

- § 222 *Relevant IGOs and NGOs*
- United Nations Forum on Forests ([www.un.org/esa/sustdev/forests.htm](http://www.un.org/esa/sustdev/forests.htm))
  - G8 Action Program on Forests ([www.g8.gc.ca/docs/forestfinal-e.asp](http://www.g8.gc.ca/docs/forestfinal-e.asp))
  - Global Witness ([www.globalwitness.org](http://www.globalwitness.org))

## 9. Implementation at the National Level: Towards a Comprehensive Model Law\*

### Introduction

- § 223 Article 25 of the United Nations Charter obliges Member States of the UN to implement decisions taken by the Security Council. Fundamental to the implementation of targeted sanctions is Member States' ability to give effect to Security Council Resolutions in domestic law. The national legal framework therefore is crucial to the establishment of the administrative practices to implement UN sanctions. In many states, however, specific legislative action is required to translate Security Council decisions into national law. The essential question is: Does the State have the authority necessary to implement targeted sanctions?
- § 224 States respond to this question in various ways.\*\* Amongst these, the "Model Law approach" has been endorsed by sanctions experts as the most straightforward and uncontroversial means whereby a state can implement targeted sanctions efficiently at the national level.

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\* The analysis and recommendations in Section 9 has benefited strongly from the ongoing research project at the Watson Institute for International Studies at Brown University which hereby is gratefully acknowledged.

\*\* See the Interlaken Report.

- § 225 The idea of a Model Law – national enabling legislation to provide the government of the relevant Member State with the appropriate powers to adopt secondary legislation to give effect to decisions of the Security Council taken under Article 41 of the UN Charter – was initially proposed as part of the Interlaken Process on targeted financial sanctions. Subsequently, the Bonn-Berlin Process on the implementation of arms embargoes, aviation and travel bans endorsed the Model Law approach and suggested refinements to the Interlaken Model Law.
- § 226 The advantages of the Model Law approach for sanctions implementation include
- a) More expeditious and efficient implementation of sanctions, as it obviates the need to pass legislation for each sanctions regime.
  - b) Greater uniformity of implementation across Member States, thereby contributing to sanctions’ effectiveness and minimizing opportunities for sanctions evasion.
  - c) The ability to implement all types of sanctions, and indeed, *all* Security Council decisions under Article 41.
- § 227 Member States’ legal frameworks vary according to national legal and administrative traditions and the Model Law is not necessarily a “one size fits all” approach. However, in addition to the endorsements from the Interlaken and Bonn-Berlin processes, the importance of domestic legislation to implement targeted sanctions has also been noted in the context of the work of the Counter-Terrorism Committee.

#### Differences between Model Law Drafts

- § 228 The table in Appendix 1 reproduces the texts of the Model Laws developed as part of the Interlaken and Bonn-Berlin processes. The purpose of both versions is to serve as primary legislation, thereby enabling national authorities to utilize legal and administrative instruments, as appropriate, to implement Security Council resolutions. The Bonn-Berlin Report (pp. 97–98) endorsed the Interlaken Model Law approach, but recommended a few amendments, and

noted that in the case of the European Union, a common position has been defined.

§ 229 The differences (which are underscored in the table) may be summarized as

- Including states and authorities that are not Member States of the UN (e.g. non-Member States that voluntarily implement resolutions, regional bodies such as the European Union and UN governing administrations such as those then in place in Kosovo and East Timor).
- Clarifying that states are not obliged to implement non-mandatory resolutions.
- Substituting the Interlaken phrase “national measures” with “legal and administrative provisions” and “any implementing law.”
- Altering Article 2 language to include all actions entered into prior to the imposition of sanctions (“rights and obligations conferred or imposed...” as opposed to “transactions entered into...”).
- Extending the scope of the Model Law to include vessels and aircraft under a state’s jurisdiction (Article 3).

#### The Consolidated Model Law

§ 230 In the work of the Stockholm Process there was also a review of the Model Law proposals for adequacy and comprehensiveness, given the different types of targeted sanctions and identified the strengths of the Interlaken proposal.

#### *The Inclusion of Bodies That Are Not Member States*

§ 231 Under Article 41 of the Charter, Security Council decisions are only binding upon Member States. Simplicity and consistency throughout the Model Law (for example, in the civil law preamble and in article 1) commends that it refer only to Members States. Of course, this does not preclude non-Member States from implementing resolutions, but rather reflects the fact that only Member States have undertaken to give effect to decisions under Article 25 of the Charter. Further, the Interlaken Model Law was drafted for adoption at the national level and regional bodies are likely to develop their own

procedures for implementing Security Council resolutions, where they have the constitutional authority to do so (such as through the adoption of a regulation by the European Commission). Finally, as noted by the Bonn-Berlin Expert Working Group, the question of what legal provisions might be appropriate for UN governing administrations (such as in Kosovo and East Timor) requires further consideration; as such, this matter may be best resolved outside of the Model Law discussion.

*The Use of Discretionary Language in Article 1 of the Model Law*

- § 232 It is appropriate to use non-discretionary language in Article 1 of the Model Law, which refers to “decisions” under Article 41 of the Charter. Such decisions bind Member States, by virtue of Article 25 of the Charter. There is no risk of a Member State being bound by resolutions that do not refer to “decisions” of the Council. Such exhortatory resolutions of the Security Council do not bind Member States, but rather give Member States a choice about whether to take action to implement. Here, the Model Law should be seen to be as “enabling” as possible, such that exhortatory resolutions can be implemented under the Model Law where there is the political decision to do so.

*Reference to “Legal and Administrative Provisions” over “National Measures”*

- § 233 Although the terminology used to capture the full range of legal and administrative instruments may vary according to national traditions, the phrase “national measures” is intended to be understood broadly and so may be seen to include “legal and administrative provisions.”

*Reference to “Rights and Obligations” over “Transactions” in Article 2 of the Model Law*

- § 234 At issue here is which of these phrases is to be considered broader and therefore covering the range of cases. If “transactions” is considered as limited to contractual rights and duties, then the alternative phrasing may be preferable. However, in some jurisdictions, “transac-

tions” may be subject to a broader interpretation. Generally, “rights and obligations” appears to broaden the language in a useful way.

*Extending the Scope of Article 3 of the Model Law  
to Include Vessels and Aircraft under a State’s Jurisdiction*

§ 235 Clarifying the scope of the Model Law in this way is a useful addition.

RECOMMENDATIONS

§ 236 Based on these conclusions, therefore, the following text represents a consolidated Model Law that Working Group 2 endorses as the most straightforward and efficient means for Member States to give effect to Security Council resolutions under Article 41 of the Charter.

**Box 11.**

**Conclusions on the Consolidated Model Law**

Preamble

§ 237 *For Civil Law Countries:*

- Whereas the United Nations Security Council may decide, in accordance with Article 41 of the Charter of the United Nations, on measures not involving the use of armed force to be deployed to give effect to its decisions, and may call upon the members of the United Nations to apply such measures.
- Whereas such measures 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.
- Whereas the Members of the United Nations have agreed to accept and carry out the decisions of the Security Council in accordance with the Charter of the United Nations.
- Whereas [the Member State] is a member of the United Nations.

§ 238 *For Common Law Countries*

- An Act to enable effect to be given to decisions under Article 41 of the Charter of the United Nations.

Article 1.

§ 239 If, under Article 41 of the Charter of the United Nations, the Security Council of the United Nations calls upon [*the Member State*] to apply

measures to give effect to a decision taken under that Article, then in accordance with [*the Member State*]'s obligations under Article 25 of the Charter the [*relevant authority*] shall forthwith adopt such [*national measures*] as appears necessary or expedient to implement such measures effectively.

Article 2.

- § 240 The [*national measures*] shall apply notwithstanding rights and obligations conferred or imposed prior to, as well as after, the [*national measures*] coming into force, unless expressly stated otherwise; and compliance with the [*national measures*] (or with the legislation of another State adopted pursuant to the same resolution of the Security Council) shall be a complete defense against any claim based on the above mentioned rights and obligations.

Article 3.

- § 241 The [*national measures*] made under paragraph 1 shall apply within the territory of [*the Member State*] and to all nationals of and entities incorporated in or organized in accordance with the laws of [*the Member State*], wherever located or operating, and on board of vessels or aircraft under [*the State's*] jurisdiction.

Article 4.

- § 242 Contravention or evasion of the [*national measures*] shall be an offence, subject to the penalties specified in the [*national measures*]. Such penalties shall be effective, dissuasive and proportionate, and may include the forfeiture of any property, documents or funds deriving from, used or dealt with in connection with the contravention or evasion.

Article 5.

- § 243 [*National measures*] made in accordance with this law shall have effect notwithstanding the provisions of any other law.



## Appendix 1: Comparison of Model Law Proposals\*

The Interlaken Report For Civil Law Countries	The Bonn-Berlin Report For Civil Law Countries
<i>Preamble</i>	
<p>§ 244 Whereas the United Nations Security Council may decide, in accordance with Article 41 of the Charter of the United Nations, on measures not involving the use of armed force to be deployed to give effect to its decisions, and may call upon the members of the United Nations to apply such measures.</p>	<p>§ 245 Whereas the United Nations Security Council may decide, in accordance with Article 41 of the Charter of the United Nations, on measures not involving the use of armed force to be deployed to give effect to its decisions, and may call upon the members of the United Nations <u>(and other States, regional legislative bodies or an international entity temporarily charged with the administration of a territory)</u> to apply such measures.</p>
<p>§ 246 Whereas such measures 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.</p>	<p>§ 247 Whereas such measures 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.</p>
<p>§ 248 Whereas the Members of the United Nations have agreed to accept and carry out the decisions of the Security Council in accordance with the Charter of the United Nations; and</p> <p><b>Whereas [<i>the Member State</i>] is a member of the United Nations.</b></p>	<p>§ 249 Whereas the Members of the United Nations have agreed to accept and carry out the decisions of the Security Council in accordance with the Charter of the United Nations; and</p> <p><b>Whereas [<i>the Member State</i>] is a member of the United Nations.</b></p>
<p>§ 250 An Act to enable effect to be given to decisions under Article 41 of the Charter of the United Nations.</p>	<p>§ 251 An Act to enable effect to be given to decisions under Article 41 of the Charter of the United Nations.</p>

\* Cf. notes to the columns at § 262 and § 263.

The Interlaken Report	The Bonn-Berlin Report
<i>Article 1</i>	
<p>§ 252 If, under Article 41 of the Charter of the United Nations, the Security Council of the United Nations calls upon [<i>the Member State</i>] to apply measures to give effect to a decision taken under that Article, then in accordance with [the Member State]’s obligations under Article 25 of the Charter the [<i>relevant authority</i>] shall forthwith adopt such [<i>national measures</i>] as appears necessary or expedient to implement such measures effectively.</p>	<p>§ 253 If, under Article 41 of the Charter of the United Nations, the Security Council of the United Nations calls upon (<u>the enacting state</u>) (<u>and other regional bodies or international administrations with legislative and executive authority</u>) to apply measures to give effect to a decision taken under that Article, then in accordance with [the Member State]’s obligations under Article 25 of the Charter the [relevant authority] shall (<u>may</u>) forthwith adopt such (<u>legal and administrative provisions</u>) as appear necessary or expedient to implement such measures effectively.</p>
<i>Article 2</i>	
<p>§ 254 The [<i>national measures</i>] shall apply to transactions entered into prior to, as well as after, the [<i>national measures</i>] coming into force, unless expressly stated otherwise; and compliance with the [<i>national measures</i>] (or with the legislation of another State adopted pursuant to the same resolution of the Security Council) shall be a complete defense to any claim for non-performance of any such transaction.</p>	<p>§ 255 The (<u>legal and administrative provisions</u>) shall apply notwithstanding rights and obligations conferred or imposed prior to, as well as after, the <u>provisions</u> coming into force, unless expressly stated otherwise; and compliance with the <u>provisions</u> (or with the legislation of another State adopted pursuant to the same resolution of the Security Council) shall be a complete defense <u>against any claim based on the above mentioned rights and obligations</u>.</p>
<i>Article 3</i>	
<p>§ 256 The [<i>national measures</i>] made under paragraph 1 shall apply within the territory of [<i>the Member State</i>] and to all nationals of and entities incorporated in or organized in accordance with the laws of [<i>the Member State</i>], wherever located or operating.</p>	<p>§ 257 The (<u>legal and administrative provisions</u>) made under paragraph 1 shall apply within the territories of (<u>the State/international administration</u>) and to all nationals of and entities incorporated in or organized in accordance with the laws of (<u>the State</u>), wherever located or operating, <u>and on board of vessels or aircraft under (the State’s) jurisdiction</u>.</p>

The Interlaken Report	The Bonn-Berlin Report
<i>Article 4</i>	
<p>§ 258 Contravention or evasion of the [<i>national measures</i>] shall be an offence, subject to the penalties specified in the [<i>national measures</i>]. Such penalties shall be effective, dissuasive and proportionate, and may include the forfeiture of any property, documents or funds deriving from, used or dealt with in connection with the contravention or evasion.</p>	<p>§ 259 Contravention or evasion of the (<u>legal and administrative provisions</u>) shall be an offence, subject to the penalties specified in the <u>provisions</u>. Such penalties shall be effective, dissuasive and proportionate, and may include the forfeiture of any property, documents or funds deriving from, used or dealt with in connection with the contravention or evasion.</p>
<i>Article 5</i>	
<p>§ 260 [<i>National measures</i>] made in accordance with this law shall have effect notwithstanding the provisions of any other law.</p>	<p>§ 261 <u>Any implementing law</u> made in accordance with this law shall have effect notwithstanding the provisions of any other law.</p>
<i>Notes</i>	
<p>§ 262 The phrase “national measures” was preferred over the phrase “secondary legislation” which was thought to be “too limiting and potentially misleading as many states would implement sanctions through executive decision or administrative directive (e.g. of the Central Bank).” “National measures” was considered to be a more comprehensive phrase.</p>	<p>§ 263 Amendments to the Interlaken text are underlined.</p>



## Part IV: Targeting the Target: Measures to Improve Accuracy and Manage Sanctions Evasion

### 10. Introduction

- § 264 THE PURPOSE OF targeted sanctions is to modify the behavior of specific actors whose actions have been determined by the Security Council to threaten international peace and security. The key features of targeted sanctions are their focus on: a) specific actors in a target regime, including governments, other ruling elites, non-state actors, entities and individuals, and b) the specific resources used by these actors to advance their policies.
- § 265 Targeted sanctions include restrictions on the delivery of arms, financial assets, travel, flight connections, particular goods and services (notably certain natural resources and processed commodities, such as diamonds, oil, timber, arms, spare parts for particular products) and on international representation. Targeted sanctions require careful attention to monitoring to determine whether or not they are modifying the behavior of targets. The effective use of targeted sanctions requires a proactive approach by the United Nations to planning, implementation and monitoring, as well as greater attention to sanctions evasion. Part IV of the Stockholm Report is devoted to refining the accuracy and efficacy of targeted sanctions.
- § 266 Part IV is divided into three distinct sections. First, there is a need to identify the problems in targeting sanctions accurately and develop general remedies (Section 11). Second, the problems and so-

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Part IV is the result of Working Group 3 in the Stockholm Process. Chair: Professor Kevin Clements, International Alert, London. Rapporteur: Dr. Erica Cosgrove, Princeton University.

lutions vary for different types of targeted sanctions, which require specific analysis (Section 12). Third, Member States and the UN need to be as fully informed about these problems as possible, requiring a reporting procedure (Section 13).

## 11. Issues of Concern and General Recommendations

- § 267 Key problems in targeting the targeted actor are the identification of the actor, determining which resources should be subject to sanctions, the counter-reactions of the targeted actor, and the ability and willingness of third states to make the sanctions effective. The strength of the entire chain of implementation measures depends on the accuracy of targeting, and ultimately this determines whether or not the UN Security Council achieves its goals. Furthermore, if the targeted sanctions do not succeed, demands for broader and more coercive sanctions are likely to arise.
- § 268 There are a variety of *actors that are normally targeted in sanctions regimes* include a variety of legal entities. They can be individuals (such as government officials or other key decision makers), as well as family members of such individuals), political organizations (parties, branches etc.), military organizations (guerrillas as well as conventional armed forces), corporate entities (public as well as private firms) and other non-state actors. Furthermore, targeted actors may also be those individuals and organizations that support the primary targeted actors. The targeted actors and their role in the sanctions strategy must be made clear to implementing authorities from the outset.
- § 269 Targeting is the first element in the chain of implementation. The following problems are generic to this type of sanction:
- Too narrow or inaccurate targeting, in design of the sanction measures.

- Poor implementation by Member States, particularly key states, actors and entities.
- Targeted actors are likely to utilize a range of strategies before and after sanctions are implemented including:
  1. Use of intermediaries, front companies and organizations to evade sanctions;
  2. Making representations to third countries seeking assistance with sanctions evasion;
  3. Justifying their evasion of sanctions on human rights grounds, which may or may not be substantiated;
  4. Using propaganda and/or media campaigns to make arguments justifying their evasion of sanctions and objections to sanctions.
- Member States may be reluctant to implement mandated sanctions if they are seen to be overly broad, or to conflict with country-specific legal rights of their citizens/residents, such as free speech (affects bans on representation), right to asylum (affects bans on residence), or economic and social rights (affects financial sanctions).
- The value of inducements and positive measures is overlooked as means of promoting compliance in the target country and cooperation from third states.

§ 270 The issue of targeting is a matter that affects the sanctions regime throughout the entire operation. There are distinct stages or phases, however, and in the following these are used to organize the recommendations. Sanctions move from an initial phase of preparations, sometimes including feasibility studies or other preparatory work: the Planning Phase. The Member States then take on the responsi-

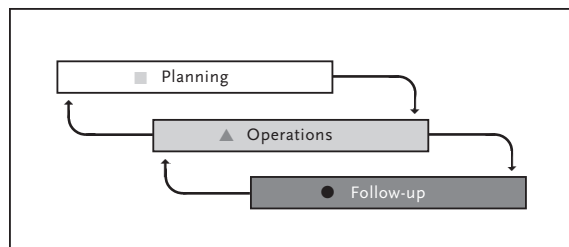


Figure 1.  
Phases in Targeting

bility of implementing the sanctions, carry out their own national planning and turn the sanctions into manifest reality: the Operations phase of sanctions. There is a Follow-up and monitoring phase that involves continuous re-evaluation of implementation and adjustment to unexpected consequences or changes to ineffective measures: the follow-up phase. The evaluation of the sanctions regimes, its goal achievement, possible strengthening, suspension or termination remains with the Security Council. All of these phases are important for improving sanctions targeting. As can be seen from Figure 1, the phases do not constitute entirely separate periods of actions. There are connections, overlaps and transition periods. These phases are helpful for organizing the analysis of the problems and finding remedies. This is done in general terms in the remainder of Section 11, and the specifics of particular types of sanctions are discussed in Section 12.

### The Planning Phase of Targeted Sanctions

#### *Pre-assessment and Contingency Planning*

§ 271 A reasonable pre-assessment of the feasibility of targeted sanctions and their likely implications is critical for the implementation of sanctions which are to follow. Undoubtedly there are time constraints on planning and it is difficult to have contingencies for all possible events. Pre-assessments may also serve as early warnings for potential targeted actors. Therefore, early assessment (before or shortly after a Security Council resolution) is most realistic. The assessment should be clear regarding what behavior the UN is seeking to change, who the responsible actors/entities are, the means that are available to the target to take evasive actions, and a baseline report on the target's pre-sanctions status. Pre-assessment or early assessment reports can provide valuable analysis regarding the likely humanitarian impact of sanctions on the target, as well as political and economic impacts.

§ 272 Questions to consider in this phase include:

- What behavior is the Security Council seeking to change?



- What means are at the disposal of the target actor to carry out its objectionable policies?
- In which ways is the target likely to try to evade the sanctions?
- Is the target likely to take retaliatory measures against those implementing the sanctions, and what might these be?
- What resources are available to the Security Council to assist in determining what types of targeted sanctions will be most effective?
- What resources are available to the Security Council, the Secretariat, and Member States for implementing targeted sanctions?

— GENERAL RECOMMENDATIONS

- § 273 Time may not permit detailed pre-assessments in all cases, but every effort should be made to “front-load” the assessment and planning process. This allows for full consideration of the likely impact of sanctions on the target and on other actors. In most cases of targeted sanctions considerable time has passed before particular sanctions have been agreed and decided on. It should be kept in mind, however, that pre-assessments that are made public might provide an early warning to prospective targeted actors. Still, such analysis should be encouraged in the Secretariat as well as in the Member States themselves, and made available to Member States. When time constraints do not permit, an assessment early in the sanction regime is still necessary.
- § 274 Such analysis should also aim to identify ways the target is likely to evade sanctions and preclude them to the extent possible. It is crucial to consider the capacity of targeted states to counter sanctions, for instance, by increasing indigenous production of sanctioned goods or services (e.g. small arms, light weapons, ammunition, equipment for internal repression).
- § 275 It is equally important to identify “Achilles heels” by developing a detailed profile of the target in order to ensure that targeted sanctions imposed by the Security Council are those with the greatest possibility of speedily achieving the objectives of the Council.

- § 276 This pre-assessment of targeted sanctions should also try to anticipate potential country-specific legal issues that Member States may encounter in implementing sanctions and clarify to the greatest extent possible the specific measures that Member States are obliged to take in order to implement UN sanctions and to fully comply with the resolution.

*Distinct and Accurate Definitions*

- § 277 Unclear demands make it difficult for Member States and relevant non-state actors to comply, create confusion for Member States regarding the purpose of the sanctions, and can lead to different positions by Members as to when sanctions are to be ended. “Constructive ambiguity” can result in difficulties with implementation. Evaluations of specific sanctions regimes often follow only after a period of time. Recently, the Security Council has taken a more proactive approach by appointing Expert Panels and Monitoring Mechanisms. This is important in strengthening the sanctions regimes. In Part II, Section 4, proposals are suggested in this regard. Here the following can be added:

— GENERAL RECOMMENDATIONS

- § 278 Maximize clarity with respect to the demands made of the targeted actors as to the objectives of the sanctions, the behavior that must change, and (when relevant) deadlines of compliance. This will make it more difficult for the targeted actor to distort the meaning of the sanctions.
- § 279 Include definitions of targeted sanctions from the Interlaken and Bonn-Berlin Reports and related publications that have credible and unambiguous definitions for the types of sanctions under consideration.
- § 280 In cases where the Security Council does not include definitions in the text of the resolution, Sanctions Committees should be encouraged to direct Member States that raise questions about definitions to widely agreed sources for clarification, such as those contained in the manuals on sanctions produced by the previous processes.

- § 281 Include a standing monitoring capacity and feedback mechanisms in the early resolutions, so as to keep the Security Council informed about sanctions implementation and to allow it to respond in a dynamic and flexible way to new developments.

*Targeted Sanctions and the Listing of Individuals and Entities*

- § 282 Targeted sanctions may focus on individuals, groups, organizations, and commercial entities and may relate to their property, freedom of movement and ability to access or sell particular goods and services. The issues of listing and delisting are crucial for the accuracy and effectiveness of these measures. It is important that listed individuals are correctly identified, are actually responsible for the policies, and remain so throughout the listing period. Many problems have arisen from the listing procedures. Recently some have been addressed with respect to certain sanction regimes.\* There is a need for a general approach.

— GENERAL RECOMMENDATIONS

- § 283 Clear justification, transparency and speed regarding selection of individuals, groups and entities for listing that reflect principles of due diligence.
- § 284 Introduce the possibility of administrative or judicial processes (e.g. regular reviews of names on the lists) that fulfill ordinary expectations of due process to address mistakes that may occur in listing and to take into account compliance or changed behavior by listed individuals and entities.
- § 285 Delisting procedures should be made explicit by the relevant Sanctions Committee in a timely way following the imposition of targeted sanctions and the publication of lists.
- § 286 Maximum specificity in identifying individuals and entities to be targeted (e.g. accuracy of names, translations of names, addresses

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\* See Iain Cameron, *Report to the Swedish Foreign Office on Legal Safeguards and Targeted Sanctions* (Uppsala: Uppsala University, Faculty of Law, 2002), <<http://www.jur.uu.se/sii/index.html>>.

and affiliations of targets, passport numbers, and potentially: photos, short descriptions of activities/affiliations making the individual/entity eligible for inclusion on the list).

- § 287 Disseminate up-to-date lists as widely as possible via the Internet on the websites of the Sanctions Committees as well as through other public outlets, and traditional media channels such as radio and television, and through the efforts of Member States. When distributed via the Internet and on UN websites, the lists should be downloadable by users and fully searchable for all terms of identification.

### The Operations Phase of Sanctions

#### *Member States Are Responsible for Implementing Sanctions*

- § 288 UN Member States are likely to encounter many problems in implementation. Some of these will relate to their capacity to actually undertake the measures, others may have to do with the fact that sanctions affect regional, rather than state-specific, networks of interaction and integration. Typical issues of concern are the following:
- § 289 Lack of capacity to implement sanctions has been a significant problem in past and ongoing sanctions regimes. Some types of sanctions require very speedy implementation by Member States to avoid evasion (e.g. moving bank assets in financial sanctions).
- § 290 When it is apparent that key implementing states lack the ability to implement sanctions, relevant capacity-building assistance has not been made available to improve the situation.
- § 291 Reports from Member States on implementation of targeted sanctions have not until recently been fully used as tools for ongoing monitoring and assessment of sanctions regimes.

#### — GENERAL RECOMMENDATIONS

- § 292 Build on information and understandings resulting from CTC reporting process and use it as guidance for improving capacities of Member States to implement targeted sanctions (for more on this, see Part III).
- § 293 Develop detailed reporting provisions to be used to the extent pos-

sible in all sanctions cases to give the Security Council full information on the capacities of states to implement the required measures. A proposal building on CTC reporting provisions and recent innovations in sanctions practice is given in Section 13 below.

- § 294 Capitalize on regional organizations, meetings or processes to enhance both implementation capacity and awareness of targeted sanctions in Member States.

*The Importance of Maintaining the Commitment of Member States*

- § 295 It is in the interests of Member States to comply with requirements that they implement sanctions measures, and their domestic implementation plans and level of commitment should reflect this. If states fail to implement sanctions, then the Security Council should establish a body to monitor non-compliance and recommend ways to increase compliance and commitment to the sanctions regime.
- § 296 Constant feedback to the Security Council through reports to the Security Council, briefings, monitoring bodies, regional meetings or field visits is needed to ensure that Member States are committed to supporting the sanctions regime and that the Council is aware of Member States that may require additional assistance or guidance with respect to implementation.

— GENERAL RECOMMENDATIONS

- § 297 Throughout the sanctions regime it is important to remind Member States of the purpose of the sanctions, of their duties under the UN Charter and of the fact that the success of the UN will benefit all Member States.
- § 298 Sanctions should also to be adjusted or enhanced by *complementary measures* or by adding new targets as experience with a particular sanctions regime progresses.

*Coordination among Affected Sectors, Member States and Organizations*

- § 299 States will implement sanctions in different ways, depending on their economic and political structure, the extent to which differ-

ent sectors are affected and the international support they can receive. Corruption (lack of integrity) in administrative services in some states can also impede the implementation.

— GENERAL RECOMMENDATIONS

- § 300 Member States need to coordinate local officials in different agencies on integrity support measures and to overcome corruption related to sanctions implementation.
- § 301 Efforts to discourage corruption are needed in regions and Member States where targeted sanctions are being applied. The Security Council and Member States should consult with experts on corruption, such as Transparency International, Eurocustoms and the World Customs Organization, to determine areas where corruption may impede implementation of sanctions. Regional anti-corruption initiatives should accompany the application of targeted sanctions wherever possible.

The Follow-Up Phase of Sanctions Implementation

*Review, Monitoring and Assessment of the Accuracy in Targeting*

- § 302 The experience of targeted sanctions to date has included the following problems in reporting and monitoring of sanctions:
- § 303 Some Member States have lacked capacity to carry out the targeted sanctions as decided by the Security Council. Sanctions Committees have not been able to conduct frequent, regular, thorough and professional reviews of the implementation of targeted sanctions. Credible reports of sanctions evasion have often not resulted in a proactive response by the Security Council. The reviews of sanctions to date have often not included information on the willingness of the target to comply.

— GENERAL RECOMMENDATIONS

- § 304 Member States with the capacity should be willing to extend *technical assistance* to other Member States as needs emerge when reviewing the implementation of sanctions. Sanctions resolutions should include regular reviews of the implementation of sanctions, as well

as evasion that has occurred and the willingness of the target to comply with the demands of the Security Council.

- § 305 In all sanctions cases, it is important to include a reporting requirement to the implementing national and international institutions providing relevant information concerning the period *just prior* to the imposition of sanctions (i.e. retrospective reporting). This can help the Council, Secretariat and Member States track evading tactics that the target may have taken in anticipation of sanctions.
- § 306 The reporting by Member States should be as specific as possible, which can be encouraged by having the Sanctions Committee pose specific questions to all Member States about implementation. This should be done through a questionnaire or guidelines for Member States to use in preparing their reports. Follow-up reports should be requested on a recurring basis. A proposal is presented in Section 13.
- § 307 The Security Council should conduct frequent, regular, thorough and professional reviews of the implementation of targeted sanctions.
- § 308 When monitoring of sanctions implementation reveals significant failures to implement and intentional non-compliance, the Security Council and Member States should remind states and the target of their duty to comply with UNSC demands. The Council should consider, in a *flexible and dynamic* way, actions to address the new situation, in particular by reviewing and strengthening the measures imposed. This might also include the option of so-called secondary sanctions on states or other entities.
- § 309 Sanctions Committee Members should be encouraged to demonstrate their willingness to review concerns about inaccurate or problematic targeting (e.g. through public briefings or by holding open meetings of the Sanctions Committees).

*Positive Measures and Inducements*

- § 310 Targeted sanctions must be clearly described and understood as measures to maintain international peace and security, not as ways of punishing an entire nation or the region of which a state is an in-

tegral part. The targeting of particular individuals should communicate this, but it might also be important to extend and even expand assistance to other communities in the region and in the targeted country. This can be done within the confines of international development assistance (rather than through the Security Council).

— GENERAL RECOMMENDATIONS

- § 311 Consider a “package approach” including assistance to Member States to help them implement targeted sanctions that includes financial and technical assistance for implementation, particularly for third states that are key implementers of sanctions.
- § 312 Public recognition should be extended by the Security Council to Member States that complete their reporting and implementation measures quickly and fully.
- § 313 Include exhortative language in the resolution urging donors to maintain high levels of aid and assistance, or increase aid and assistance, to populations in targeted states. This will help mitigate problems that have arisen, such as in the case of Liberia, where the targeted regime used the sanctions as an excuse to cease cooperation with other UN agencies, and some donor groups halted their programs in Liberia.
- § 314 The Council should consider ways to communicate directly with the targeted actor or actors to clarify demands and encourage compliance.

*The Need for a Sanctions Communication Policy*

- § 315 The general public in the countries of the targeted actors often does not receive accurate information about why sanctions are in place. The willingness of Member States to implement may depend on public awareness of the objectives and content of the sanctions. Thus, questions of media relations are important for all sanctions. These issues have also been discussed in Parts II and III.

— GENERAL RECOMMENDATIONS

- § 316 Encourage the use of public information efforts explaining the ratio-



nale of sanctions (e.g. to end a conflict and save lives) to encourage compliance.

- § 317 Maintain continuous public information efforts particularly oriented towards civilian populations in the target state as well as in third states on the rationale of sanctions (e.g. to end a conflict and save lives).

*Delisting Procedures in Case of Compliance*

- § 318 There are reported cases of individuals being listed who in fact have changed their allegiance or abandoned their support of the target. As this is partly the aim of sanctions, such reactions should be encouraged. Removing deserving individuals from the lists contributes to furthering the aims of the targeted sanctions regime. Thus, they demand a swift response by the Sanctions Committees.

— GENERAL RECOMMENDATIONS

- § 319 Sanctions Committees that use lists to identify targeted actors should be encouraged to adopt delisting procedures based on principles of due diligence early in a sanctions regime.
- § 320 Sanctions Committees should consider possible mechanisms or procedures to allow individuals listed as targets to submit information directly to the Chair of the Sanctions Committee in cases where the targeted individual is unable to petition his or her government of residence and/or citizenship.
- § 321 When information is received claiming that a listed individual has changed his or her behavior, a response is required. Such claims should be considered in accordance with the requirements of due diligence.

## 12. Recommendations to Counter Sanctions Evasion – by Type of Targeted Sanctions

- § 322 The following concrete recommendations are suggested for enhancing the ability to target sanctions accurately and effectively. It also includes the capacity to adjust the sanctions strategy to the counter-reactions of targeted actors. This is done for different types of sanctions, related to the three phases of sanctions implementation, and to the different issues of concern indicated in Section 11.
- § 323 The Guidelines and Recommendations that follow are addressed to the UN Security Council, which is ultimately responsible for the sanctions regimes, as well as to the Sanctions Committees, Member States and International Organizations bound by the decisions according to the UN Charter and to relevant non-governmental organizations that can be of assistance. They are organized to address particular problems relating to different phases in the sanctions regime.

### Arms Embargoes

- § 324 Arms embargoes aim to deny particular actors access to lethal weapons. Such weapons are often crucial resources for sustaining a group's or individual's ability to continue threatening international peace and security. In situations where such actors hold state power, arms embargoes have to be imposed on entire states. This gives arms embargoes some of the classic problems of comprehensive sanctions. In designing such sanctions, there is a need to consider the consequences of imposing asymmetric measures: the actors that already possess weaponry are likely to maintain that advantage vis-à-vis other actors in a society.
- § 325 General issues arising in arms embargoes and how they can be handled on the level of the UN Security Council have been discussed in the Bonn-Berlin Report, and are referred to here in parentheses (B).

§ 326 There are some particular problems of sanctions evasion in arms embargoes that need to be addressed throughout the sanctions regime. In the following, some issues of concern are addressed and guidelines are suggested for addressing them depending on the stage of sanctions implementation. Most states have arms export controls, which in principle means that a government structure is available for controlling the flow of arms or related military resources.

*Typical Problems in Arms Embargo Implementation*

§ 327 Recent experiences of the implementation of arms sanctions have illustrated a host of different problems that have to be addressed, to make such sanctions effective measures:

- Targeted actors may not only be states but also non-state actors such as rebel groups or terrorist networks. This creates challenges for identifying who is to be targeted to interfere with arms flows to the target most efficiently.
- Targeted actors frequently evade arms sanctions by turning to criminal networks or enlisting the services of organized or transnational criminal groups.
- While evaders and those who facilitate evasion may be known to many Member States and other officials, there is no established practice for compiling lists of these individuals and taking follow-up action against them.
- Substantial illicit trafficking of arms may occur prior to the imposition of sanctions, making it more difficult to disrupt established clandestine trade flows.
- In recent arms embargoes, trafficking of weapons by air transport has been extremely difficult to identify and disrupt.
- Targets may use “unconventional” arms which are below military standards, dual-use items and recycled weapons.
- Documents may cite neighboring countries as the final destination of a particular arms purchase.
- Arms embargoes may be applied in conflicts where a UN or regional peacekeeping mission may also be present. When sanctions are poorly enforced, the continued flow of weapons to the region creates ad-

ditional challenges for the peacekeeping mission and to international peace and security.

- Targeted actors often argue that arms sanctions should be lifted or suspended in order to support their right of self-defense.

Taking such problems into consideration the following recommendations have been identified with respect to different phases of sanctions implementation.

#### Recommendations for Improving Arms Embargoes: The Planning Phase

- § 328 *Pre-assessment and Contingency Planning*
- Consider the history of arms flows to the region to identify target's weapons sources, purchasing patterns, transfer networks, intermediaries, etc.
  - Consider the entire arms trading network in the region and whether previous reports of other Working Groups, panels or monitoring bodies contain useful information on activities of these networks and sanctions evasion strategies.
  - Identify states whose cooperation in implementing the arms embargo is most crucial for implementation and consider whether to place monitors in key countries.
- § 329 *Distinct and Accurate Definitions of Measures*
- Identify dual-use technologies and sub-military standard equipment available to targets and include them among sanctioned goods.
  - Identify weapons already available to the target, as well as target's indigenous production capacity. Consider including sanctions on imports of key components of weapons that might be produced by the target, including spare parts.
  - Identify porousness of borders and effectiveness of customs controls, surveillance and interception capabilities.
  - Ensure that targeted measures succeed in interfering with the activities as they relate to the target.
  - Identify individuals and/or entities responsible for engaging in weapons trade on behalf of the target actors and begin a list of possible additional targets to be included in sanctions measures.

### Recommendations for Improving Arms Embargoes: The Operations Phase

- § 330 *Responsibility*
- Identify sources of specific capacity-building measures and activities for key implementing Member States, international and regional organizations and encourage States to provide and accept such assistance to facilitate implementation and to stop sanctions evasion (e.g. provide assistance to ECOWAS to implement its regional moratorium on the import of small arms and light weapons).
- § 331 *Commitment*
- Identify key States, regional networks, individuals and entities and urge them to commit to swift and effective implementation. Prohibit, expose and penalize the activities of the organized or criminal transnational networks involved in trading arms with the target.
  - Ensure that the reporting requirements contained in sanctions resolutions are used to give the Security Council full information on the capacities and commitment of states to implement the required measures.
  - Ensure a quick flow of information to the Security Council from monitoring bodies that assess sanctions implementation.
- § 332 *Complementary Measures*
- Consider the most effective mix of targeted sanctions needed to change the target's behavior, such as coupling arms embargoes with other targeted sanctions. This could be financial sanctions combined with travel bans, as violations are reported, or if arms embargoes alone are not effective in changing the target's behavior.
  - Include complementary measures to interfere with financing, transport, control and exploitation of natural resources as they relate to arms embargoes.
  - Determine best practices or ways to use lists of known evaders or facilitators for the target and disseminate them to the Member States with requests for further investigation and follow-up action.
  - Work with ICAO to determine appropriate penalties for violations of arms embargoes by aircraft, such as through the falsification of export documents and falsification of flight plans.
  - Support initiatives for standardization of end-use certificates for arms transfers.
  - Reinforce and urge Member States to support Security Council efforts to introduce marking of light weapons and tagging of chemical precursors for weapons production.

- § 333 *Coordination*
- Coordinate relevant Sanctions Committees, regional organizations and Member States to ensure that arms embargoes and complementary measures are fully implemented.
  - Key officials in Member States – (e.g. police, customs officials) in the target’s region – must meet to coordinate their efforts in sanctions implementation.
  - Optimize the sharing of information, including sensitive information, among Sanctions Committees, Member States, regional and international organizations.
- § 334 *Technical Management*
- Designate appropriate technical experts to the relevant Sanctions Committee(s) to assist in coordinating the implementation of arms embargoes across the UN system. Consider ways to coordinate and provide support for air traffic surveillance and interdiction of aircraft suspected of sanctions-busting in zones of conflict, possibly through regional organizations. (B)
  - Ask Member States to revoke the registration of aircraft and licenses of pilots responsible for violating UN arms embargoes. (B)
  - If UN or regional peacekeepers are present in a region where arms sanctions are imposed, the Security Council should mandate or request the peacekeeping operation to report to the UN on enforcement of the sanctions or to monitor or enforce the sanctions.

### Recommendations for Improving Arms Embargoes: The Follow-Up Phase

- § 335 *Technical Assistance*
- Offer training programs for officials in key fields of sanctions implementation.
  - Assess whether the technical assistance provided has been sufficient, how it has contributed to implementation, and how it can be improved.
- § 336 *Flexible and Dynamic Response*
- Ensure that reports on implementation submitted by Member States are discussed and that the findings contained in them are used in determining further action once sanctions are implemented.

- Require reporting from Member States to highlight possible evasion and follow up with States to ask what measures they are taking in response to allegations of violations.
- Urge Member States to publicize names and information on those individuals, groups and entities who are failing to comply with sanctions.
- Sanctions Committee Chairs should issue Press Releases to publicize which Member States have submitted reports on implementation and note which have not.
- Use the benchmarks and best practices with respect to implementation to measure and possibly alter the response.

§ 337 *Positive Measures*

- Assist key countries in implementation.
- Design listing and delisting procedures so as to keep pressure on targets while ensuring that “normal” relations can be maintained with others.
- Consider increased assistance in fields of education, humanitarian support, etc. to reinforce the message that the entire nation is not being targeted.

§ 338 *Communication*

- Seize every opportunity to publicly explain why and how arms embargoes are being used against particular actors, and how those actors threaten international peace and security in order to counter the target’s anti-sanctions propaganda.
- Consider new ways of reaching the media in the target’s home country with the same message.

§ 339 *Delisting*

- In cases of sanctions on particular non-state actors, individuals or companies, Member States should be encouraged to carefully scrutinize and regularly review any lists of known evaders or facilitators for the target for possible mistakes in listing, and to respond swiftly and judiciously for requests for removal.

### Financial Sanctions

- § 340 As a form of targeted sanctions, financial sanctions aim to reduce the resources (e.g. assets in foreign banks and other economic resources outside the targeted actor's nation) available for particular actors or groups of actors. Thus, they will only affect the resources placed abroad by those individuals, and save the rest of the population from similar exposure. The targeting should thus be fairly precise and humanitarian effects avoided.
- § 341 General issues related to financial sanctions and how they can be handled on the level of the UN Security Council have been discussed in the Interlaken Report, and relevant recommendations are referred to in parentheses (I), below. Controlling financial resources is an important aspect of the international campaign against terrorism. The formation of CTC and the decisions in the Council's resolutions 1373 and 1390 have a particular bearing on these issues. In the European Council's decision of December 27, 2001 (2580/2001) there are regulations affecting European States and States with which they cooperate, which are also helpful in identifying such measures.
- § 342 When focusing on sanctions evasion there are some particular problems in financial sanctions that need to be addressed throughout the sanctions regime. In the following, some issues of concern are addressed and guidelines are suggested, depending on the stage of sanctions implementation.
- § 343 In many states, regulations against money-laundering suggest ways of managing targeted financial sanctions. There are, however, distinct differences. Money-laundering involves unidentified individuals attempting to turn illegally earned assets into "white" resources, which is criminal activity. In targeted sanctions cases, the leaders are often, at least initially, operating legally, and their financial assets cannot simply be defined as illegal. Thus, freezing resources does not necessarily mean confiscating such resources. In cases of terrorist funding, furthermore, money may oftentimes be legal, and the problem is that some of these resources are used for illegal activities (such as terrorism). Either way, some of the methods used to hide transfers may be similar, and thus become the concern of Central



Banks, Financial Authorities and special police forces. The Financial Action Task Force (FATF) set up by G-7 is central in international cooperation. Some coordination also takes place through the Egmont Group.

*Typical Problems in Implementing Financial Sanctions*

- § 344 Targets evade financial sanctions using various tactics including
- Converting assets to cash and withdrawing it from financial institutions before sanctions are imposed.
  - Converting funds into other forms of fixed or mobile assets including shares, real estate, gems, precious metals, etc.
  - Transferring money to “secure” locations where enforcement of sanctions is unlikely to occur.
  - Transferring funds to non-sanctioned family members (e.g. children, spouses, former spouses).
  - Using emissaries or paid consultants to conduct financial transactions on behalf of the target.
  - Creating front companies, false charities or other institutions to hide assets.
  - Using unofficial financial networks (e.g. hawala, wire transfers, courier services, messengers) rather than official financial institutions.
  - Using funds formally controlled by the State, but in reality controlled by the targeted leader (e.g. Central Bank transactions).
- § 345 Incomplete or inaccurate lists of individuals or entities subject to financial sanctions have created many problems for financial institutions implementing them. Specific concerns include:
- First name/surname is not always clear.
  - First name missing.
  - Date of birth missing.
  - Titles vs. names not always clear.
  - Abbreviations for groups are not clear.
  - If prefixes, middle initials, etc. are part of the name, should implementing groups such as banks search the name with or without these?

- Address information is not clear as to which part of the address contains the city or town of the target.
- Different language versions of some regulations lead to confusion regarding which names might be aliases.
- If a hit in the bank's customer database shows additional first names that are not mentioned in the regulations, question arises regarding validity of hit.

From these considerations, the following recommendations can be made:

#### Recommendations for Improving Financial Sanctions: The Planning Phase

- § 346 *Pre-assessment and Contingency Planning*
- Identify targets' financial resources, location of resources, agents, associates and financial managers.
  - Identify the methods and the locations used by the target and his or her associates to transfer funds and assets.
  - Include provisions asking States to report on banking and financial activities of the targets for the six months prior to the imposition of sanctions.
  - When pre-assessment or early assessment determines that official banking systems are not used, seek to target the sanctions accordingly so they interfere with the networks actually used by the target.
- § 347 *Distinct and Accurate Definitions*
- Accuracy and clear identification of targets on lists of individuals or entities subject to financial sanctions is vital. The Interlaken Report and the Financial Action Task Force (FATF) have useful definitions for the terms frequently used in targeted sanctions (e.g. assets, firms, etc.).
  - Humanitarian impact assessments are important to determine financial hardships and scope of possible exceptions to the sanctions for humanitarian purposes.
  - Humanitarian exemptions should be included in the resolution to help prevent unintended consequences of sanctions, as well as sanctions evasion and loss of support for the sanctions regime.
  - The scope of permitted humanitarian exemptions should be made clear in the sanctions resolution and should include measures to allow States to provide small exemptions to asset freezes for humanitarian purposes.

§ 348 *Listing*

- Criteria for listing individuals and entities should be worked out in advance and included in the resolution imposing sanctions or determined by the relevant Sanctions Committee in a transparent way.
- Criteria should meet reasonable standards of significance in relation to the objectives of the sanctions regime.

### Recommendations for Improving Financial Sanctions: The Operations Phase

§ 349 *Commitment*

- Identify key States, non-state actors, banks, and financial institutions involved in the implementation of financial sanctions and meet with them to discuss their commitment and capacity to counter evasion strategies of the targets.
- Ensure that States collect information from their banks and financial institutions regarding funds frozen under the sanctions and that Member States report this information to the Council.

§ 350 *Complementary Measures*

- Consider coupling a foreign asset freeze with travel bans to disrupt alternative financial operations by the target.

§ 351 *Coordination and Technical Management*

- Coordinate and encourage sharing of information about targets' finances, asset transfers and evasion strategies between the UN, financial institutions, regulators and States.
- Continuously collect information on any attempts that targets have made to move funds and alert appropriate authorities.
- Lists should be transmitted to Member States electronically if possible so that States and their financial institutions can use them more easily.
- Sanctions Committees should adopt the practice of issuing a press release detailing which names have been removed from the list every time a new list is issued.
- All lists on the UN websites should be fully searchable (electronically).
- Compile a list of all assets frozen under the sanctions regime.
- Ask States to provide authority for their agencies to seize assets of individuals/entities violating sanctions to dissuade sanctions evaders from operating in countries due to heightened risk of asset seizure. (I)

### Recommendations for Improving Financial Sanctions: The Follow-Up Phase

- § 352 *Technical Assistance*
- Consider requests for technical assistance and ask States with capacity to train and upgrade financial systems for key implementers.
  - Offer training programs for officials in key fields of sanctions implementation.
- § 353 *Flexible and Dynamic Response*
- Invite key implementing institutions (e.g. banks and financial regulators), financial sector associations and States to meet with the Sanctions Committee for briefings on assets seized and patterns of evasion.
  - Include detailed, up-to-date information on the target list and make it available on relevant UN websites and in official publications.
  - Monitor whether targeted actors shift to other forms of financial operations and/or start trading in commodities (e.g. diamonds).
- § 354 *Positive Measures and Communication*
- Explain the purpose of the sanctions to international and local media and emphasize that the measures affect only specific individuals.
  - Be prepared to explain possible effects on the targeted actor's family members.
- § 355 *Delisting*
- Be prepared to remove listed individuals in light of new information concerning their behavior and political affiliations.

#### Travel Bans

- § 356 Travel bans aim at reducing the easy access to international contacts for particular actors. For many actors, international legitimacy is gained through making visits abroad or receiving visitors. International travel is also necessary for financial dealings in which such actors may be involved. By identifying these actors and preventing them from paying visits to other countries, the international pressure is made obvious to the targeted actors. Travel sanctions actually work as bans on the ability to enter a particular country (i.e. visa

bans) or as general bans on certain individuals that prevent them from transiting or entering any country. At the same time, other individuals remain free to travel, thus making clear that the sanctions concern only specific inhabitants of a particular country.

§ 357 General issues related to travel bans and how they can be handled on the level of the UN Security Council have been discussed in the Bonn-Berlin Report, and are thus referred to in parenthesis (B).

§ 358 When discussing sanctions evasion there are particular problems for travel bans that needs to be addressed throughout the sanctions regime. In the following, some issues of concern are addressed and guidelines are suggested for their handling, depending on the stage of sanctions implementation. Many of the implementation measures are dealt with by specific governmental authorities, such as passport officials, border guards, immigration officers and corresponding agencies.

*Typical Problems in Travel Ban Implementation*

§ 359 Sanctions on individual travel is a novel measure as a separate instrument for the international community. The experiences since the end of the Cold War suggest some typical problems:

- Lack of clear procedures and legal requirements for Member States who find targeted actors attempting to enter their territories or present in their territories.
- Difficulty in clearly identifying individuals subject to travel bans due to the legitimate holding of multiple nationalities or multiple passports.
- Difficulty in correctly identifying the targeted individuals, especially due to intentional deception on the part of targeted actors.
- Ease of evasion due to ability to obtain fraudulent passports, the use of false names, etc.
- Difficulty in ensuring that targeted leaders do not violate travel bans for unauthorized purposes.
- Failure of neighboring States and others to enforce travel bans at the points of entry into their countries.

- Failure of airlines to cooperate with Member States in checking whether passengers are on travel ban lists.
- Failure in electronic dissemination of travel ban lists to reach all relevant States or officials within States due to limitations of state capacity.

With these considerations in mind, the following recommendations can be made:

#### Recommendations for Improving Travel Bans: The Planning Phase

- § 360 *Pre-assessment and Contingency Planning*
- Collect information on the travel habits and needs of the targeted actors, so as to be able to predict likely challenges in implementation.
  - Discuss with IATA the possibility of including provisions in the sanctions prohibiting transportation service providers (e.g. air carriers, shipping companies, etc.) from transporting individuals who are on the travel ban list.
- § 361 *Distinct and Accurate Definitions*
- Information identifying all individuals subject to travel bans should be as complete as possible and should be completed early in the planning phase. Include specific definitions about what is meant by categories of people who might be subject to travel bans, such as senior government officials, Cabinet members, etc.
  - To distinguish targets from non-targets it is necessary to collect and disseminate as much information as possible about the targeted individuals, including passport details, place and date of birth, multiple nationalities, alternative spellings of names, aliases or *noms de guerre*, titles (e.g. military rank), known addresses of residence, photographs, finger prints, etc. (B).
- § 362 *Listing*
- The criteria for listing individuals and entities should be worked out in advance and meet reasonable standards of significance in relation to the goals of the sanctions regime.

**Recommendations for Improving Travel Bans:  
The Operations Phase**§ 363 *Commitment*

- Identify key States and regions in implementation of the travel ban, such as neighboring countries, and meet with their leaders separately to discuss their commitment and capacity.
- Encourage Member States to impose penalties on their airlines through the enactment of appropriate domestic legislation for failing to cooperate with measures to implement the travel ban.

§ 364 *Complementary Measures*

- Consider adding individuals to the travel ban if they are reported to travel on behalf of targeted actors.
- Consider coupling travel bans with other targeted sanctions (e.g. financial assets) when individuals are found to deliberately violate sanctions.

§ 365 *Coordination and Technical Management*

- Continuously collect information on any attempts that targets have made to travel and alert appropriate authorities.
- Member States must ensure that such information is promptly transmitted to relevant authorities (diplomatic postings, officials at points of entry, airline carriers, etc.). Transmission of the information should occur through electronic and non-electronic means.
- States must make information about targeted actors available at points of entry in the clearest possible manner, for example, by means of posters. (B)

### Recommendations for Improving Travel Bans: The Follow-Up Phase

- § 366 *Technical Assistance*
- The Security Council should meet with the World Customs Organization, IATA, and immigration officials to encourage them to provide technical assistance to key implementing States for monitoring travel bans.
  - Offer training programs for officials in key fields of sanctions implementation.
- § 367 *Flexible and Dynamic Response*
- Develop means of rapid inquiry when questions arise regarding the identities of individuals and entities on the list and be prepared to instantly update lists accordingly.
  - Consider field visits and bilateral meetings by Security Council members with key states to ensure full implementation.
  - Include detailed and frequently updated information identifying the targets on the list on the relevant UN websites and in official publications. (B)
  - Monitor whether targeted actors shift to other forms of transportation.
- § 368 *Positive Measures, Communication*
- Inform the media internationally and locally of the purpose and scope of the sanctions, emphasizing that it affects only specific individuals.
- § 369 *Delisting*
- For credible sanctions it is necessary to have a high degree of preparedness to remove listed individuals from travel ban lists in light of new information on their behavior and political affiliations.



### Aviation Sanctions

- § 370 Aviation sanctions (as a form of transportation sanctions) often aim to reduce the easy access to international contacts for particular actors, or groups of actors. International legitimacy may be gained through making or receiving visits. International travel is also necessary for financial dealings in which targeted actors may be engaged. By identifying typical travel routes and blocking such routes, international pressure is made obvious to the actors. Aviation sanctions may also take the form of grounding specific airlines or freezing aeronautical finance resources. In cases where all transportation from a particular country is blocked as a result of sanctions, the effects are likely to be similar to those resulting from the imposition of sanctions on the nation as a whole. Targeted states may close their air space in retaliation for the imposition of sanctions. A number of other travelers will be affected, and such effects must be assessed in terms of their economic and humanitarian impact.
- § 371 General issues related to aviation sanctions and how they can be handled on the level of the UN Security Council have been discussed in the Bonn-Berlin Report, and are referred to below in parentheses (B).

When focusing on sanctions evasion there are some particular problems in aviation sanctions that need to be addressed throughout the sanctions regime. In the following, some issues of concern are addressed and guidelines are suggested for their handling, depending on the stage of sanctions implementation. The national authorities who are most important to implementation of aviation sanctions are those that regulate access to air space and airport operators. International cooperation focuses on the International Civil Aviation Organisation (ICAO) and regional cooperative arrangements.

#### *Typical Problems in Implementing Aviation Sanctions*

- § 372 The recent uses of aviation sanctions have illustrated some pertinent problems:

- Lack of communication and coordination between Security Council and International Civil Aviation Organization (ICAO) on aviation ban enforcement.
- Lack of technical capacity in many States to identify overflights of their territories and other violations of aviation sanctions.
- Targeted actors are able to re-register their planes under different names, file false flight plans, make false declarations, and make use of flags of convenience in order to evade identification and sanctions.
- If aviation sanctions are imposed and are effective, targets will likely divert their activities from aviation to rail, land and maritime transportation.
- Targeted aviation sanctions may result in target closing its airspace, which leads to additional costs for non-target airlines due to longer flying times, additional fuel needs, and the reduction of the amount of cargo that can be carried.

With these considerations in mind, the following recommendations are suggested:

#### Recommendations for Improving Aviation Sanctions: The Planning Phase

- § 373 *Pre-assessment and Contingency Planning*
- Identify the most accurate target for the ban, such as national air carriers or carriers with significant state ownership or management that might be appropriate targets for aviation bans.
  - Make an assessment of transport patterns used by the target.
  - Include measures in the sanctions resolution to prohibit the most likely evasion tactics used by the target. Include prohibition on any activity that is intended to circumvent the sanctions measures.
  - When aviation sanctions are considered, meet with ICAO and IATA to discuss ways of countering evasion. Discuss possibility of including penalties in the sanctions resolution on pilots who deviate or divert from their flight plans without good reason (e.g. engine failures, grave illness, weather or other emergency).
- § 374 *Distinct and Accurate Definitions*
- Find ways of dealing with subsidiaries of the main aviation compa-

nies or groups selected for sanctions, as well as national aircraft and private aircraft.

- Humanitarian pre-assessment or early assessment reports are important to determine impact of aviation ban on humanitarian flights, or general humanitarian requirements or particular medical needs in the target state, including medical evacuations.
- Humanitarian exemptions in the resolution must be very clear and should include provisions for emergencies, humanitarian need, and religious obligations.

§ 375 *Listing*

- Determine whether such sanctions concern all flights, or only flights by particular air carriers.
- If specific aircraft are listed, the registration numbers should be verified with ICAO. The organization's assistance should be sought to help disseminate lists of targets to its members.

### Recommendations for Improving Aviation Sanctions: The Operations Phase

§ 376 *Commitment*

- Identify need in key implementing States for support and assistance for air traffic control and interdiction in target areas.

§ 377 *Complementary Measures*

- Consider coupling aviation sanctions with arms embargoes, if it is shown that air transport is used for arms deliveries and there is a need to impose arms embargoes.
- Consider coupling aviation sanctions with bans on spare parts for aircraft, the closing of airports, and the closing of airline offices.

§ 378 *Coordination and Technical Management*

- Seek involvement of ICAO in disseminating information to its members about aviation sanctions, soliciting their feedback and following up on implementation.
- Require Member States to distribute or broadcast "Notice to Airmen" (NOTAM) alerting all pilots if airspace is closed due to sanctions.
- Continuously collect information on any attempts that targets have made to evade aviation sanctions and alert appropriate authorities in Member States and in international and regional organizations.

### Recommendations for Improving Aviation Sanctions: The Follow-Up Phase

- § 379 *Technical Assistance*
- Ask States to contribute mobile radar systems, global positioning satellites, or funding for such systems, to assist with monitoring of air traffic.
  - Ask States or international organizations to develop special training programs for airport and customs officials to increase awareness and ability to implement aviation sanctions.
- § 380 *Flexible and Dynamic Response*
- Consider revoking the registration of aircraft used to violate sanctions.
  - Consider revoking the licenses of pilots found to be violating sanctions.
  - Monitor whether targeted actors shift to other forms of transportation and consider appropriate counter-measures.
- § 381 *Positive Measures*
- Consider assistance to neighboring countries that may face increased land or maritime transportation flows as a result of aviation sanctions.
  - Develop alternative routes for non-targeted actors in the targeted country.
  - Implement contingency plan when airspace is closed, by creating a notice center.
- § 382 *Communication*
- Explain the purpose of the sanctions to international and local media and emphasize that the measures affect only specific individuals.
  - Prepare a strategy to explain possible negative effects on normal travel and trade.
- § 383 *Delisting*
- Be prepared to remove listed individuals in light of new information concerning their behavior and political affiliations.

### Targeted Trade Sanctions

- § 384 Specific trade sanctions aim at reducing revenues and at controlling flows of strategic commodities going to particular actors. These import or export bans most often concern exports of particular commodities. The export of such goods from particular countries is to be reduced, generally through import bans by recipient countries, although in other cases, states may be banned from exporting strategic items to targets. The sanctions history include cases of bans on exports of tobacco, rough diamonds, etc. from particular countries. Recently, timber exports have been discussed. There are also cases of restrictions on oil deliveries or spare parts to particular countries. Targeted trade sanctions may affect the exports or imports from or to an entire country with respect to the specified commodity, but not its general trading. They should avoid some of the classic problems of comprehensive sanctions, as they are not intended to harm the entire economy. However, some economic sectors in a country may be adversely affected, and thus, sanctions may also have negative effects for individuals other than those who are the ultimate target of the sanctions regime.
- § 385 Targeted trade sanctions have not been studied in depth. One exception is the field of rough diamond exports from particular countries, where some experience has been gained. The so-called Kimberley Process may eventually address some of these problems.
- § 386 When focusing on sanctions evasion there are particular problems in targeted trade sanctions that need to be addressed throughout the sanctions regime. In the following, some issues of concern are discussed and guidelines are suggested for addressing them, for each phase of sanctions implementation.
- § 387 Customs services are central in implementation and they may benefit from international cooperation, as indicated in Part III. Lessons can be drawn from the efforts to combat drug trade and trafficking. The World Customs Organization and Eurocustoms should be consulted when targeted trade sanctions are used for lessons from past experience.

*Typical Problems in Implementing Targeted Trade Sanctions*

§ 388 The use of targeted trade sanctions as a separate measure is novel. Recent experiences have highlighted generic issues that require careful consideration:

- Goods that are subject to targeted trade sanctions such as oil, diamonds or timber are frequently difficult or impossible to distinguish from similar goods that are not subject to such sanctions.
- The control of these commodities can be evaded by mixing banned goods with those that are allowed to be freely traded.
- Certification systems for targeted goods are not internationally standardized or may not be used in practice (e.g. end-use certificates for arms purchases or rough diamonds). The use of false documents creates opportunities for sanctions evasion.
- Commodities, such as oil, that might be included in targeted sanctions regimes generate their own problems. Oil companies and governments may not monitor fuel stocks and movements in areas adjacent to conflict zones.
- Targeted actors may shift from trading in one sanctioned commodity to other non-sanctioned resources (e.g. from rough to polished diamonds, from diamonds to timber).
- Targeted actors subject to import bans will frequently stockpile the goods in question prior to implementation of sanctions.
- Targeted trade sanctions may produce unintended consequences, such as black markets and expanded opportunities for corruption. The beneficiaries of black markets and corruption may be the target itself.

With these and similar considerations in mind, the following recommendations can be made for the effective implementation of targeted trade sanctions:

### Recommendations for Improving Targeted Trade Sanctions: The Planning Phase

- § 389 *Pre-assessment and Contingency Planning*
- Identify the goods and services that are available to the target regime and that support its ability to engage in the behavior that concerns the Security Council.
- § 390 *Distinct and Accurate Definition of Measures*
- Consider whether to include services such as maritime registry, engineering, and others that facilitate evasion of the targeted trade sanctions.
  - Consider the technical means that are available to identify national sources of goods and commodities in target states, potential allies and trade partners that might help it evade sanctions.
  - Identify states, non-state actors and their networks that are controlling the production, trading and financing of the specific goods or services being considered for targeted sanctions.
  - Identify who the most important trading partners of the targets are and assess their willingness and capacity to implement suggested sanctions.
  - Conduct an early humanitarian assessment of the impact of targeted trade measures on target economy and on (potentially affected) non-target economic sectors or key states.
  - Compile record of normal trade patterns, including volumes of trade, with respect to the goods and services for the target. Try to obtain information from Member States regarding possible stockpiling by the target, as well as increases in production and sales in advance of an export ban.
- § 391 *Listing*
- Although the sanctions are focused on all trade involving specific goods and services, listing may be considered if some traders, producers, financiers or others known to be involved in previous sanctions violations can be identified.

### Recommendations for Improving Targeted Trade Sanctions: The Operations Phase

- § 392 *Commitment*
- Identify States, regional networks, individuals and entities whose cooperation in implementation is vital and urge them to commit to swift and effective implementation.
  - Identify key trading partners of the target regime to determine how States or organizations might direct capacity building assistance to improve implementation.
- § 393 *Complementary Measures*
- Consider using travel bans against those responsible for violating sanctions or who facilitate illicit trade in banned goods or services to reinforce targeted trade sanctions.
  - Consider targeted aviation sanctions to prevent smuggling.
  - Strengthen efforts to introduce a standardized and credible system or certificates of origin for particular commodities (e.g. for rough diamonds as discussed in the Kimberley Process).
- § 394 *Coordination and Technical Management*
- Engage relevant industry leaders and private sector associations in the sanctions regime and encourage them to share information with UN.
  - Arrange special meetings with major trading partners of the target to explain the sanctions and to identify needs in their implementation.
  - Consider new mechanisms or targeted sanctions to respond to evasion strategies and changes in trade and financial flows after implementation.
  - If UN or regional peacekeepers are present in a region where targeted trade sanctions are imposed, and they have information on sanctions evasion, they should be instructed to report this to the UN system.
  - If UN or regional peacekeepers are present in the region, consider attaching Sanctions Monitors to the peace operation.
  - Work with the World Customs Organization (WCO) and international law enforcement groups to determine appropriate, internationally uniform penalties for violations of targeted trade sanctions.



### Recommendations for Improving Targeted Trade Sanctions: The Follow-Up Phase

- § 395 *Technical Assistance*
- Consider designating appropriate technical experts to the relevant Sanctions Committee(s) to assist in coordinating the implementation of the sanctions across the UN system.
  - Offer training programs for officials in key fields of sanctions implementation.
- § 396 *Flexible and Dynamic Response*
- Monitor trade patterns with respect to targeted goods, particularly in the target region, with the intent of strengthening sanctions if necessary.
  - Monitor trade flows for indications of evasion through mixing of sanctioned and non-sanctioned goods.
  - Monitor changes in trade financing that may indicate evasion of the targeted sanctions.
  - Monitor whether targeted actor shifts to other economic activities and consider whether additional measures to respond to such shifts are necessary.
- § 397 *Positive Measures*
- Assist key countries with implementation measures.
  - Evaluate possible humanitarian impact in the affected sector and consider ways to provide additional humanitarian assistance.
  - Consider increased assistance in fields of education, health, etc. to demonstrate that sanctions and their effects are only intended to impact the target, not the general population.
- § 398 *Communication*
- Proactively engage in public diplomacy to encourage implementation and enforcement of sanctions.
  - Anticipate and counteract target's propaganda campaigns against sanctions by holding press conferences, issuing press releases and making other public statements as appropriate.
  - Engage relevant industry leaders and private sector associations in targeted sanctions and encourage them to share information with UN.
- § 399 *Delisting*
- In cases of sanctions on particular non-state actors, individuals or companies, Member States should be encouraged to carefully scrutinize and regularly review any lists of known evaders or facilitators for the target for possible mistakes in listing, and to respond swiftly and judiciously to requests for removal.

### Sanctions on International Representation

- § 400 The idea behind targeted sanctions that focus on restricting international representation (often described as “diplomatic sanctions”) is to reduce the easy access to international contacts for particular actors. International legitimacy may be gained by having representation abroad (for instance, political party offices, official representatives, etc.). Such representation may also be necessary for carrying out the target’s own financial dealings. By identifying, restricting or ending key forms of foreign representation, international pressure affects the targeted actors specifically. At the same time, other individuals are free to be represented in their own right, so that the sanctions apply only to specific inhabitants of a particular country.
- § 401 General issues related to sanctions on representation have not been part of the previous sanctions processes and this type of actions requires further discussion and research than can be pursued at this time. Some experience has been gained from the sanctions on Angola, e.g. the closure of UNITA offices, UNSCR 1127 (1997). There are many issues in designing such sanctions, for instance, whether they should only concern non-official representation (such as political parties and their international representation) or official missions (embassies, particular diplomats, or international recognition). Obviously, reduction or ending of official diplomatic representation in other countries is likely to result in retaliatory measures by the targeted regime, thus reducing overall international contacts, which in turn may affect people other than the intended target.
- § 402 As these issues have barely been fully considered, the Stockholm Report does not include specific recommendation on such measures. It is sufficient to mention the possibilities and to state that the format for implementation suggested in Part IV would also be applicable to sanctions on international representation.

### 13. Guidelines to Assist States in Preparing Reports on Sanctions Implementation

#### Background

- § 403 From the discussions in the Stockholm Process it emerges that sanctions build on the experience and momentum of the innovative reporting requirements contained in Security Council Resolution 1373 and those used by other Sanctions Committees to contribute to the effective implementation of targeted sanctions.
- § 404 Thus, the document *Guidelines to Assist States in Preparing Reports on Sanctions Implementation* has been developed. Its purpose is to encourage States to take a proactive approach in implementing targeted sanctions. It is hoped that the guidelines can help prevent failures by Member States to report fully, accurately and quickly in response to resolutions that require such reporting.
- § 405 These guidelines could be distributed to Member States following the adoption of Security Council resolutions imposing targeted sanctions. This information is particularly important for those Member States who are in the frontlines of implementation of targeted sanctions.
- § 406 The blanks below relate to the sanction-initiating resolution and relevant subsections thereof and will, of course, vary for each case.
- § 407 The submitted reports will be circulated to the members of the Sanctions Committee and the members of the Monitoring Group (Mechanism, etc.). They will also be made publicly available unless a State specifically requests that the report or the information contained therein be kept confidential.
- § 408 With this background, the questions in Box 12 are suggested to be addressed to the Member States.

## Box 12.

## Draft Form for Reporting on Implementation

*Introduction*

- § 409 Resolution \_\_\_\_, adopted under Chapter VII of the United Nations Charter, requests (or requires) all States to report to the Committee on the mandatory measures contained therein. It is the responsibility of all States to implement and enforce those measures. The Sanctions Committee created by Security Council resolution \_\_\_\_ is mandated to monitor the implementation of these measures.
- § 410 The Committee stands ready to advise States, if requested, on all issues related to the implementation of resolution \_\_\_\_.  
The Sanctions Committee would appreciate your assistance and expects to learn from your experience to improve the implementation of targeted sanctions.

*Reporting on Implementation*

- § 411 In compiling their reports, States should aim to provide clear and substantive information. In addition, the Committee would appreciate if reports were as factual and complete as possible. In particular, States should provide information on the following:

*All Targeted Sanctions*

- § 412 What ministry or agency in your State is responsible for the implementation of these targeted sanctions (list specific sanctions measures contained in Security Council resolution)? How do we contact them? Please provide phone, fax, address and email information.
- § 413 What legislative and/or administrative measures, if any, have the authorities in your State taken to implement the targeted sanctions required by the Security Council in resolution \_\_\_\_?
- § 414 What penalties apply in your State for violations of the measures contained in paragraphs \_\_\_\_ of resolution \_\_\_\_ (list specific measures contained in the resolution)?
- § 415 Please send the Committee a copy of the most recent relevant legislation or administrative measures pertaining to the implementation of these measures.
- § 416 If any such legislation or administrative measures have recently been proposed or are being contemplated, please provide further details about them.

*Arms Sanctions*

- § 417 What measures has your State taken to stop deliveries of arms, weapons and related materiel of all types, assistance or training related to military activities from earlier sales to or arrangements with the individuals, groups and entities that are covered by the measures contained in resolution \_\_\_\_?
- § 418 What measures have been implemented to stop supplies of restricted materiel on flag vessels?
- § 419 What measures have been taken to stop deliveries from free trade zones?
- § 420 What measures have been taken to stop transfers of restricted goods via your territory?
- § 421 With respect to the direct or indirect supply, sale or transfer of arms and related materiel, what kind of goods list is your country using to identify prohibited items? Is this list compatible with internationally agreed lists?
- § 422 Are exports of these goods normally licensed by your State? If so, who is the licensing authority?
- § 423 How often have licenses for exports of these goods or services been issued?

*Financial Sanctions*

- § 424 What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.
- § 425 Have you informed banks and other financial institutions operating in your State of their obligations regarding the freezing of funds and other financial assets, as contained in resolution \_\_\_\_?
- § 426 If your authorities have identified and frozen funds and other financial assets or economic resources of the individuals, groups, undertakings and entities referred to in the list adopted by the Sanctions Committee, please indicate relevant information such as types of assets frozen, account numbers (where possible) and monetary value of frozen assets.
- § 427 How, specifically, do procedures for the issuance of identity papers and travel documents support the travel ban on certain individuals contained in resolution \_\_\_\_ and in the list of such individuals adopted by the Sanctions Committee?

*Travel Bans*

- § 428 Has your State notified your national immigration and customs services of the need to implement the measures contained in resolution \_\_\_\_?
- § 429 What measures has your State taken to prevent the entry into or the transit through your territories of the individuals referred to in the list mentioned in paragraph \_\_\_\_ of resolution \_\_\_\_?
- § 430 How, specifically, do procedures for the issuance of identity papers and travel documents support the travel ban on certain individuals contained in resolution \_\_\_\_ and in the list of such individuals adopted by the Sanctions Committee?

*Aviation Sanctions*

- § 431 Does your State have the ability to monitor overflights and landings of civil aviation?
- § 432 Does your State have the ability to intercept aircraft in cases where you find violations?

*Targeted Trade Sanctions*

- § 433 What measures has your State taken to prevent the supply, sale or transfer to \_\_\_\_ of the goods and services listed in paragraphs \_\_\_\_ of resolution \_\_\_\_?

*Additional Measures*

- § 434 Would your State be willing or able to provide assistance to other States to help them implement the measures contained in resolution \_\_\_\_?
- § 435 What financial and human resources has your State allocated to the implementation of these sanctions?
- § 436 Are you or other officials in your State aware of instances of sanctions evasion? If so, please describe in as much detail as possible.
- § 437 Would there be any technical or legal restrictions to your cooperating with United Nations monitoring or investigative bodies with respect to these sanctions?
- § 438 The Sanctions Committee would in addition welcome the submission of any other information concerning investigations or enforcement actions related to your efforts to enforce and strengthen the measures imposed under domestic laws or regulations to prevent and punish violations of the measures contained in resolution \_\_\_\_.
- § 439 Please include any other relevant information in your reports. You may also include general observations, concerns or requests for assistance related to the implementation of the measures contained in resolution \_\_\_\_.
- § 440 The Sanctions Committee appreciates your most valuable response within \_\_\_\_ days.

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