

Working Group On Sanctions - Draft Report

14 February 2001

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On 17 April 2000, the Security Council established the "Working Group on General Issues on Sanctions". The Working Group was established by the President of the Council, in Note S/2000/319, and is made up of representatives of the States on the Security Council in 2000 and 2001. This Note explained that it was creating "an informal working group of the Council to develop general recommendations on how to improve the effectiveness of United Nations sanctions", and stated that the Working Group should report its findings by 30 November 2000. This completion date was later postponed to December 2000, and then further postponed indefinitely due to the lack of agreement on a text. The Working Group is chaired by Anwarul Karim Chowdhury of Bangladesh, who has produced various draft reports after consulting the members of the Working Group. This is the latest draft, from 14 February 2001, and it was sent to CASI.

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Chairman's Proposed Outcome *Working Group On Sanctions* 14 February 2001

Cluster I: Sanctions Administration **Sanctions Committees**

Effective administration of UN sanctions requires active and engaged sanctions committees which fulfil their mandates as established in the enacting sanctions resolution. Improvements in the functioning of the sanctions committees need to be encouraged and further developed. In general, sanctions committees should ensure that regular assessments of all aspects and impacts of sanctions are conducted. Equally, the sanctions committees should be concerned with effective implementation and monitoring of sanctions regimes. The working methods of the sanctions committees need to promote transparency, openness and efficiency and should increase interaction between the committees, Member States and other relevant actors. To this end the Working Group recommends that:

- the guidelines of the sanctions committees be harmonized to ensure that common language is used for similar types of sanctions imposed, and amended as necessary to take account of the recommendations contained in this report;
- Access to sanctions committees by States affected directly or indirectly be maximized;
- the sanctions committees also provide opportunities for representatives of relevant international,

- regional and sub-regional organizations, experts and UN agencies to brief them;
- the sanctions committees seek reports, as appropriate, from States, relevant organizations and UN agencies that have information relating to implementation of sanctions and economic and humanitarian impact, including on third States, or that have relevant expertise concerning such implementation, and provide comprehensive reports to the Security Council on respective sanctions regimes, drawing, inter alia, on such reports;
- the sanctions committees make the reports requested by them public unless there are reasons for confidentiality;
- sanctions committees consider majority voting for reaching decisions either of a procedural nature or related to humanitarian exceptions;
- chairs of the sanctions committees ensure that there is systematic coordination among them and meet periodically to exchange views on how to enhance working methods and effectiveness of their committees;
- chairs of sanctions committees undertake visits to the regions concerned;
- chairs of sanctions committees which deal with issues that are similar or connected make every efforts to enhance systematically coordination among their committees and in this context explore the possibilities of periodic joint meetings;
- sanctions committees make their decisions available to all Member States unless they decide that such disclosure do not facilitate sanctions implementation;
- sanctions committees, when mandated by the Council, organize open meetings that allow exchange, inter alia, with other interested Member States on specific issues relevant to sanctions regime;

United Nations Secretariat

The Security Council Subsidiary Organs Branch, which services sanctions committees, is not currently equipped to provide the most effective support to the sanctions committees in their administration of sanctions regimes. There is urgent need for strengthening the Branch, by providing it with adequate manpower, expertise and resources. Expertise already available, within the Secretariat should be pooled and utilized more effectively. To this end, the Working Group recommends that:

- specific expertise within the Branch be developed on different aspects of the design and implementation of sanctions, including on monitoring and enforcement and economic and humanitarian impact of sanctions;
- the Secretariat prepare a database of outside experts who can be called upon to advise sanctions committees on a broad range of technical aspects relating to implementation of sanctions, including finance, customs control, border control, immigration, aviation, illicit trade in arms as well as raw materials and minerals and the economic and humanitarian impact of sanctions,
- the Secretariat prepare references on standardised language for drafting of targeted sanctions resolutions, taking into account the outcomes of the Interlaken and Bonn-Berlin processes;
- the Secretariat, in coordination with the sanctions committees, develop guidelines to assist States in their implementation of targeted financial sanctions;
- the Secretariat prepare factual briefing material for non-permanent members of the Security Council on various sanctions regimes as soon as they take up their responsibilities,
- non-permanent members of the Security Council have access to previous documents of the sanctions committees as soon as they take up their responsibilities;
- the Secretariat establish a website on the various sanctions regimes for use by Council members as well as to provide, as each sanctions committee determines, public access to relevant documentation and information;
- the Secretariat develop, in consultation with the relevant sanctions committees, a standard

- template requesting information on the implementation of UN sanctions by member States for submission to the relevant sanctions committees by all members States;
- the Secretary-General commission an institutional appraisal of the current work structure, management and practices of the Branch, in order to develop recommendations on how to improve its service delivery, focusing on the implementation of the relevant recommendations in this document, in particular in the following areas:
 - administrative and Secretariat support to the sanctions committees, including in the production of sanctions committee reports and assessment reports;
 - development and maintenance of communication channels with the sanctions committees and other parts of the UN system, relevant international, regional and sub-regional organizations, as well as non-governmental organizations and experts with relevant expertise;
 - collation and distribution of information including through development of databases and institutional memory for each sanctions regime;
 - facilitation and coordination of information sharing among UN members States;
 - provision of technical advice to member States in the implementation of sanctions;
 - the Secretary-General ensure, within existing resources, that the Branch has the necessary and predictable resources to fulfil its tasks;

Cooperation with relevant international, regional and sub-regional organizations

The effectiveness of United Nations sanctions could be greatly enhanced by more regular consultation and cooperation between the Secretariat and the Sanctions Committees on the one hand and relevant international, regional and sub-regional organizations on the other. To this end, the Working Group recommends that:

- request be made to relevant international, regional and sub-regional organizations to facilitate the flow of information on implementation of sanctions to the Secretariat and in this context, appoint designated focal points (sanctions liaison officers) for institutionalizing the cooperation with the United Nations;
- reports and other relevant information be transmitted by the Secretariat to these relevant organizations;
- sanctions committees request reports and oral briefings from representatives of relevant organizations with information on implementation of sanctions and their economic and humanitarian impact;

Cluster II: Sanctions Design

Sanctions Resolutions - Imposition, Suspension and Lifting

Sanctions should be established and applied only in accordance with Chapter VII of the UN Charter when the Security Council determines that there is a threat to peace, a breach of peace or act of aggression. Sanctions should be resorted to only with the utmost caution, when other peaceful options provided under the Chapter are inadequate or exhausted. Sanctions regimes, in particular the Security Council resolutions that enact them must be carefully designed clearly establishing the goals and duration, identifying the targets, tailoring the type of sanctions imposed so that they are adequate to the situation, specifying clear criteria that need to be satisfied in order for the sanctions to be suspended or lifted. It is also imperative that sanctions regimes are unambiguous and precise to facilitate effective implementation by States and to maximize the likelihood that the targeted entities comply with the established conditions.--To this end, the Working Group recommends that:

- the scope and terminology of targeted sanctions be precisely and clearly defined in resolutions;
- standard language prepared by the Secretariat drawing on the model language developed in the Interlaken and Bonn/Berlin processes, be utilized in sanctions resolutions where possible and appropriate;
- Consideration be given for providing clearer direction in sanctions resolutions, or in relevant guidelines or other guidance provided by sanctions committees, as to the meaning of terms used in financial sanctions and the implications for their implementation;
- sanctions be imposed for limited periods of time taking all factors into account, and renewed by decisions of the Security Council in light of the non-compliance or failure thereof by the targeted ~~State or entity~~ and the continued relevance and effectiveness and impact of the sanctions regime;
- sanctions resolutions specify clearly what conditions are required to be fulfilled by the targeted entity in order to have the sanctions lifted;
- Security Council consider actions to ease sanctions, short of suspension or lift, in response to partial compliance by targeted entities in order to achieve full compliance;
- sanctions be lifted immediately by the Security Council when conditions for lifting set out in relevant resolutions have been met unless there are other reasons for their continuance, or when the Council determines that the targeted entity has complied with the requirements identified in the relevant resolution or that sanctions are no longer needed;
- in all relevant cases, the Security Council seek pre-assessment reports, from the Secretariat before adopting new sanctions regimes. In case where no pre-assessment report was sought before the adoption of the sanctions regime, the first assessment report should be sought as early as practicable;*

* Chairman's proposed placement

Humanitarian exemptions

Sanctions, in particular economic sanctions, can have serious and negative impacts on the humanitarian situation of people living within a targeted State or in a region controlled by a targeted entity. Sanctions regimes should be therefore designed to minimize the potential for adverse humanitarian impacts and to maximize the ability for humanitarian goods and services to reach civilian populations. To this end, the Working Group recommends that:

- food, medicine and medical supplies be excluded from sanctions regimes;
- basic medical and agricultural equipment, standard educational and other humanitarian items, and travel for religious reasons as well as for the purpose of attending peace talks be excluded from the application of sanctions;
- when appropriate, sanctions committees establish exemption lists that include item-specific, and institution-specific approaches and in this context, undertake consultations with ~~relevant~~ humanitarian organizations, as necessary;
- the sanctions committees define, when appropriate, lists of exempted items, the supply of which would only require notification to the relevant sanctions committee;
- arms embargoes provide for exemptions for supplies of non-lethal military equipment intended solely for humanitarian and protective use and related technical assistance or training to be approved in advance by the relevant sanctions committees, including flak jackets, military helmets, etc., exported to embargoed countries or regions by UN personnel, representatives of the

- media and humanitarian workers for their personal use only;
- any exemption application submitted to the committee be processed expeditiously, including, through possible streaming of such applications by the Secretariat;
- when a UN body or agency intends to take a sanctioned item into the territory controlled by a targeted State or entity, the relevant committee be notified in advance. Any remaining sanctioned items be taken out of the territory when the UN mission ends, or when those are no longer needed.
- the Secretariat prepare standard and simplified applications for humanitarian and other exemptions in order to facilitate the implementation of humanitarian programmes, including by humanitarian agencies and organizations;
- in the event of an emergency humanitarian crisis in a target State or territory controlled by a targeted entity, sanctions committees, when it is within their scope, take measures related to the implementation of the relevant sanctions regime to mitigate the effects of that crisis, and, as deemed appropriate, suggest corrective steps to the Security Council for its consideration;

Targeted Sanctions

Targeted sanctions are a useful tool to focus pressure on target States and entities and minimize unintended impact on civilian populations and non-targeted States and entities. However, targeted sanctions regimes may have some impact on non-target populations, and must be carefully and precisely defined. The Security Council should maintain its flexibility to tailor sanctions to fit the particular circumstances, recognizing that each type of sanction has a different scope, impact and effect. Each type of targeted sanctions can be effective, depending on the circumstances, if implemented and monitored properly. To this end, the Working Group recommends that:

- standardized language be employed in sanctions resolutions and sanctions committee guidelines to ensure and facilitate consistent implementation;
- standardized lists and definitions be used whenever possible;
- States make violations of sanctions by their nationals or other persons operating in their territories or within their jurisdiction punishable by domestic law and/or regulations;
- organizations with particular expertise relevant to the type of sanction imposed (such as ICAO for aviation sanctions) be consulted;

Cluster III: Sanctions implementation Assessment and Evaluation

Once in force, sanctions should be carefully and regularly assessed and evaluated. These assessments, which should be provided for in the relevant sanctions resolution, should take account of the effectiveness of sanctions in achieving the objectives of the Security Council and their unintended impacts on the populations living in the targeted State or in the region controlled by the targeted entity, as well as on other States. To this end, the Working Group recommends that:

- sanctions resolutions provide for periodic assessment reports on the implementation of the sanctions imposed;
- such reports, to be commissioned by the sanctions committees, consider the impact of the imposition of the sanctions in humanitarian, social, economic, political and security terms;
- the reports include recommendations for improving implementation and effectiveness as well as mitigating unintended impacts;
- the reports rely on, among other sources of information, statistical and other data available from the Secretariat and elsewhere;
- sanctions regimes be modified as necessary in response to the conclusions arising from such

reports;

Monitoring and Enforcement

Implementation of sanctions is first and foremost the responsibility of Member States. Nonetheless, the effectiveness of sanctions can be enhanced when they are properly monitored. Effective monitoring can assist States in developing better methods of implementation and provide valuable information for States and the Security Council to investigate and identify to counter efforts to violate sanctions. To this end, the Working Group recommends that:

- Security Council make adequate provision for the investigation and identification of the sources and methods of violations of Council imposed sanctions including, where appropriate, through the appointment of appropriate mechanisms by the Secretary-General upon request of the Security Council;
- the Secretariat facilitate cooperation between these mechanisms, where such cooperation is considered necessary;
- consideration be given to the development by the Security Council of improved monitoring arrangements in order to enhance efficiency and effectiveness and to reduce duplication, if any, in its efforts to investigate and identify the sources and methods of violations of sanctions;
- sanctions committees follow-up on all allegations of violations and where necessary conduct thorough inquiries on alleged violations;
- any findings made by sanctions committees and/or monitoring arrangements be clearly substantiated;
- any information regarding possible violations be immediately conveyed to the relevant States for prompt and thorough investigation and corrective action and States respond promptly to the information provided;
- States alleged to be responsible for violations be given appropriate opportunities to make representations, including through the possibility of making representations before the sanctions committees in response to those allegations;
- the guidelines of sanctions committees be made more explicit on actions to be taken by the committees when violations are identified;
- the Security Council take appropriate action in accordance with the Charter of the United Nations in relation to violations of sanctions;

Assisting Member States to implement sanctions

As member States are ultimately responsible for effectively implementing sanctions, it is imperative that technical, legal and other types of assistance be facilitated to them as far as possible. To this end, the Working Group recommends that:

- the Secretariat facilitate the provision of technical assistance to States upon request;
- relevant international, regional and sub-regional organizations be encouraged to assist States who request assistance in the implementation of sanctions;
- other member States with the relevant expertise offer assistance of technical, legal or other forms to States who request it;

Unintended impact of sanctions on third States

Although unintended impacts of sanctions on third States are often unavoidable, they can be minimized through effective consultation with affected States as provided for in article 50 of the UN Charter as well

as by taking such impacts into account in the pre-assessment, targeting, and ongoing evaluation of sanctions regimes. To this end, the Working Group recommends that:

- both pre-assessment reports and on-going assessment reports include as part of their analysis the likely and actual unintended impact of the sanctions on third States and recommend ways in which negative impacts can be mitigated
- Security Council consider further steps and proposals to improve the effectiveness of the implementation of Article 50 of the UN Charter;
- sanctions committees provide opportunities for third States affected by sanctions to brief them on unintended impacts they are experiencing and assistance needed by them to mitigate negative impacts;
- the Secretariat continue to provide, upon request, advice and information to third States to help them to pursue means to mitigate the unintended impact of sanctions, e.g. on invoking article 50 for consultation with the Security Council;
- where economic sanctions have caused severe effects on third States, the Security Council may request the Secretary-General to consider appointing a special representative or dispatching, as necessary, fact finding missions on the ground to undertake necessary assessments and to identify, as appropriate, possible ways of assistance. In the same context, the Security Council may consider establishing working groups to consider such situations;
- the UN development programme, funds and agencies consider steps, as appropriate, to help enable third States to better cope with social and humanitarian impacts of sanctions.

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