

HLR

High Level Review of
United Nations Sanctions



Working Group 3



UN Sanctions: Humanitarian Aspects and Emerging Challenges

Chairperson's Report
19 January 2015

Table of contents	Page
Introduction	3
High Level Review	3
Terms of Reference	3
Working methods	4
Primary findings	4
Topic 1: Humanitarian aspects of UN sanctions	
A. Assessing sanctions impact	5
B. Over-compliance	6
Exemptions for humanitarian actors	7
Recommendations	8
C. Humanitarian exemptions - general	8
Recommendations	9
Topic 2: Enhancing collaboration and information-sharing among sanctions monitoring and humanitarian and human rights actors	
Enhancing awareness	9
Recommendations	11
Topic 3: Enhancing coordination and information-sharing among UN Sanctions Committees and regional organizations	
A. Coordination and information-sharing	11
Recommendations	12
B. Listing and delisting	12
Recommendations	14
C. Mediation	15
Recommendations	16
Topic 4: Emerging sanctions issues	
Overview	16
Recommendations	17
A. Women and children	17
Recommendations	18
B. Natural resources	18
Recommendations	19
C. Use of the internet and digital technology	20
Recommendations	21

Introduction

High Level Review

1. The High Level Review of UN sanctions is an initiative, sponsored by Australia, Germany, Greece, Finland and Sweden, and organized by the Watson Institute for International Studies and Compliance and Capacity Skills International, LLC, to enhance the effectiveness of United Nations sanctions to better address threats to international peace and security, through improved integration with internal and external institutions and related legal instruments.
2. The review was conducted from May to October 2014 by three working groups, examining, respectively, UN integration and coordination; the relationship between UN sanctions and external institutions and instruments; and the humanitarian aspects of sanctions and emerging challenges.
3. Working Group 3 held meetings in New York on 16 June and on 17 September 2014. The final meeting was held in Athens from 13-14 October 2014 and was co-chaired by the Chairperson of Working Group 3, Ms. Maria Telalian, Head, Legal Department, Ministry of Foreign Affairs of Greece; and Ms. Ina Lepel, Deputy Director General for Global Issues, Humanitarian Aid, Counterterrorism and Civil Crisis Prevention, Federal Foreign Office, Germany.

Working Group 3 - terms of reference

4. Working Group 3 focused on identifying opportunities to optimize UN sanctions as an effective tool in response to serious and systematic violations of human rights (HR) and international humanitarian law (IHL); addressing humanitarian aspects of sanctions; improving coordination with regional implementation mechanisms to enhance UN sanctions implementation; and exploring new applications to address current and evolving threats to international peace and security.
5. Specifically, the Working Group explored the following topics:
 - The humanitarian aspects of UN sanctions;
 - Enhancing collaboration and information-sharing among sanctions monitoring and humanitarian and human rights actors;
 - Improving implementation of UN sanctions by enhancing coordination and information-sharing between UN Sanctions Committees and regional organizations;
 - Current and emerging sanctions issues

Working methods

6. Working Group 3 consulted with a broad range of actors including members of the Security Council; the UN Secretariat and UN agencies; other Member States; UN Panels of Experts; the 1267/1989 Ombudsperson; regional organizations; and civil society, and solicited written contributions on the Working Group web page, in order to assess current sanctions practices and to develop practical, policy-oriented options to enhance sanctions implementation.
7. Working Group 3 meetings strove to be inclusive and collaborative, including practitioners with extensive field experience in the implementation of UN sanctions and humanitarian mandates, and former and current members of Expert Groups. Participants' practical experience dealing with challenges that may complicate the collaboration between sanctions and humanitarian and human rights actors proved valuable in providing fresh insights that challenged conventional thinking on relevant issues.
8. Summaries of the meetings of the Working Group are posted on the working group website, http://www.hlr-unsanctions.org/wg_three/dialogue. These consultations, meetings, and deliberations resulted in the findings and recommendations contained in this report.
9. In preparing the report, the Chairperson elaborated findings and advanced options based on deliberations over the entire Working Group 3 process, considered the range of views, formulated practical reconciliations, and noted under the relevant section of the report, the issues on which consensus was not reached. The recommendations in the boxes do not, therefore, necessarily reflect consensus positions among all participants of Working Group 3. The aim of this approach is to present a broad range of ideas rather than the lowest common denominator.
10. Among the findings of the Working Group was that UN sanctions regimes must be consistent with and respect the Charter and customary international law including IHL and IHRL where applicable. The Working Group's objective in discussing this issue was to examine the question of how best to improve the implementation of UN sanctions.

Primary findings

11. The primary findings of the Working Group are as follows:
 - Sanctions are most effective as part of a comprehensive strategy by the international community to prevent conflict or restore peace, that must be consistent with UN values and principles. UN resolutions underscore that sanctions and respect for human rights are complementary and mutually reinforcing.
 - The evolution from comprehensive to targeted UN sanctions has largely addressed concerns regarding the humanitarian aspects of sanctions.

However, the Security Council should consider conducting more assessments of sanctions impact, developing standing humanitarian exemptions across all relevant sanctions regimes, and minimizing over-compliance, including by increasing the use of defined terms and guidelines for sanctions implementation.

- Implementation of UN sanctions can be enhanced by initiating regional capacity building efforts and enhancing information-sharing, including by establishing regional liaison officers.
- Efforts must be continued to enhance the fairness and transparency of sanctions procedures to address human rights and due process issues so as to ensure the effectiveness and viability of sanctions regimes.
- The Security Council should consider expanding sanctions designation criteria to better address existing and emerging threats, including specific human rights violations not explicitly covered under existing regimes.

Topic 1: Humanitarian aspects of UN sanctions

A. Assessing Sanctions Impact

12. In the early 1990s, Security Council sanctions were the subject of controversy regarding the humanitarian impact of the comprehensive sanctions, in particular, those placed on Iraq. The Council itself has consistently advocated limiting the unintended humanitarian impact of sanctions, first in the form of a 1995 non-paper by the five permanent members.¹

13. The evolution from comprehensive to targeted sanctions was a gradual process that began in the early 1990s with progressive refinements resulting from the Interlaken, Bonn-Berlin, and Stockholm Processes, and has largely addressed many concerns about the direct humanitarian effects of sanctions on populations.

14. Over time, the Office of the Coordinator for Humanitarian Affairs (OCHA), sometimes in conjunction with other UN departments, was tasked to conduct assessments and pre-assessments. There was also a steady movement toward standardizing individual humanitarian exemptions, i.e. exemptions designed to allow listed individuals to receive assistance on a case by case basis in response to specific humanitarian needs, led by the 1267 Committee, which was gradually generalized across other Sanctions Committees. All Security Council sanctions since Haiti (1994) have been targeted, constituting some type of combination of an arms embargo, travel and aviation bans, asset freeze, and commodity ban.

15. Few assessments have been done of the humanitarian aspects of targeted sanctions, and these measures are generally assumed to have little direct humanitarian impact. Whereas most asset freezes have limited humanitarian impact

¹ S/1995/300, April 1995.

on the individuals designated, experience has shown that more extensive financial sanctions such as those imposed on Libya in 2011, and some commodity sanctions, can have effects beyond their original intent.

16. In addition, the Working Group heard that there is a perception amongst humanitarian actors that some financial sanctions have had an impact in some contexts on the ability of humanitarian actors to deliver assistance according to the principles defining humanitarian work. In this regard, the 2006 Informal Working Group on General Issues of Sanctions (S/2006/997, paragraph II.B.(v)) recommended that the Security Council ‘Encourage donors to bear in mind that any downward adjustment in the level of aid and assistance to populations in targeted States, particularly in cases where certain economic sectors (such as timber and diamonds) are targeted, could affect how the population in the targeted State perceives the aim of sanctions.’

17. Participants noted that attention to the humanitarian impact of sanctions should be a practical question of effectiveness, credibility, or sustainability, as well as their consistency with the objectives and purposes of the Charter in accordance with Article 24 thereof. Pre-assessments and assessments of the effects of UN sanctions on the general population (a number of which have been commissioned by the Security Council) can help to ensure that sanctions have the desired political outcomes without unduly affecting ordinary people’s lives.

18. Bearing in mind that sanctions regimes have three distinct phases: planning or design, implementation, and follow-up, a periodic, mandatory, standardized, evidence-based approach to assessing the humanitarian, social and economic impacts of targeted sanctions at each stage should be adopted, including but not limited to consultations with humanitarian agencies and organizations.²

B. Over-compliance

19. The extent of the impact of UN sanctions, when combined with the broader financial sanctions imposed autonomously by States or regional groups, is insufficiently understood in the field. Owing to fear of being found in violation of both UN and autonomous sanctions, some UN humanitarian actors have reported over-compliance by some donors, and, as a result the unnecessary withholding of aid.

20. Financial institutions and other actors reportedly act with caution in areas subject to both UN and autonomous sanctions. Some banks have curtailed services or cut off credit card or debit card transactions in countries subject to UN financial sanctions. It is not, however, clear whether these actions represent a response to the UN sanctions, the autonomous sanctions, or broader compliance obligations placed on financial institutions under due diligence frameworks.

² The 2004 Interagency Standing Committee Handbook on conducting humanitarian assessments, titled *Sanctions Assessment Handbook: Assessing the Humanitarian Implications of Sanctions*, United Nations, 2004) warns against attributing to sanctions impacts that have other causes. Without reliable standardized methodology, “there has been a great deal of confusion about the humanitarian impact of sanctions.”

Exemptions for Humanitarian Actors

21. There is a general lack of understanding among humanitarian actors in the field regarding what actions they can and cannot take vis-a-vis sanctioned individuals, entities and states. As a result, UN humanitarian workers may have inadvertently violated UN sanctions provisions in some cases and have over-complied in others, thereby unnecessarily impeding much needed humanitarian care as a result.

22. UN sanctions are implemented by States in the context of broad due diligence requirements set by the Financial Action Task Force's 40 recommendations. These due diligence requirements stem from a range of counter-terrorism and anti-money laundering obligations taken up by Member States under international instruments such as the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the 1999 International Convention for the Suppression of the Financing of Terrorism, the 2000 Convention against Transnational Organized Crime and the 2003 United Nations Convention against Corruption. This overarching compliance framework is said to create difficulties for humanitarian actors both in respect of their ability to deliver aid in a timely manner and strictly according to independent needs assessments, their perceived neutrality, and in their efforts to obtain the necessary funds to carry out their activities.

23. Humanitarian actors have called for the generalization of standard exemptions for all operations necessary for the impartial and neutral delivery of humanitarian assistance, based on the model of the humanitarian exemption in the Somalia sanctions regime. This would be a first step towards facilitating their work in conflict areas where sanctions are part of the conflict resolution approach. This would also be recognition of the need to strike a right balance between the legitimate objective of limiting the risk of aid diversion, and the imperative of safeguarding the ability of humanitarian actors to respond in a principled manner to humanitarian crises. Such steps would need to be followed by the introduction of similar exemptions in autonomous sanctions regimes, and clear implementation procedures at the national level.

24. Humanitarian actors should in parallel continue improving their own measures to prevent the diversion of aid. As impartial and neutral actors, humanitarian organizations have a responsibility to ensure that humanitarian aid goes exclusively to those who need it, without any consideration other than their needs.

Recommendations

In situations for which the Security Council is contemplating the imposition of financial sanctions, the Security Council should conduct an assessment of on-the-ground capacity to implement and the nature of the targets, bearing in mind that in some cases the Security Council may wish to act quickly to impose time-sensitive measures such as an asset freeze. Such assessments should be evidence-based and include an examination of any humanitarian and socio-economic effects of sanctions in consultation with humanitarian agencies and organizations.

The Security Council should consider adopting explicit standing exemptions for humanitarian actors across all relevant sanctions regimes on the model of the humanitarian exemption in the Somalia sanctions regime.

When the Security Council imposes targeted financial sanctions, it should include humanitarian impact assessment and reporting in the mandates of UN Expert Groups, as appropriate.

In situations in which the Security Council has applied financial sanctions, the Chair of the relevant Sanctions Committee should conduct regular visits to regions under sanctions to discuss implementation, including potential humanitarian impacts of sanctions.

In order to address over-compliance, the Security Council and Sanctions Committees should increase the use of defined terms and guidelines for the implementation of sanctions.

The Security Council and Sanctions Committees should increase awareness of the potential effects of national implementation of financial sanctions on the ability of humanitarian actors to conduct timely and principled action.

C. Humanitarian exemptions - general

25. UN sanctions, comprehensive or targeted, have always included exemptions for humanitarian purposes, with increased standardization and more consistent application taking place over time. In the case of travel bans, exemptions are provided for medical or religious reasons; to participate in a peace process; and for judicial processes. Such exemptions are provided for ordinary or extraordinary expenses, in the case of an asset freeze.

26. Individual exemption procedures include approval by a Sanctions Committee on a case by case basis, or by notification to the Sanctions Committee, with approval assumed in the absence of a negative decision within a specified time period.

27. Notwithstanding the long history of humanitarian exemptions, serious doubt is regularly voiced about the extent to which individuals and entities subject to sanctions are aware of the availability of exemptions and the procedures for obtaining them. Simplified procedures for individuals or other actors with standing

to directly request exemptions are lacking, and in most cases only governments can request exemptions.

Recommendations

The Security Council should conduct a review of all humanitarian exemptions with respect to their adequacy, dissemination of information, and implementation.

Sanctions Committees should strengthen procedures to ensure that designated individuals or entities are informed of their eligibility for exemptions to the sanctions measures and of their right to petition for de-listing.

As already required under relevant Security Council resolutions, Sanctions Committees should include, on the main page of their websites, a simple explanation of available exemptions in clear and precise language, based on resolutions and Committee guidelines. They should also ensure the inclusion of this information in any notices provided at the time of listing.

The Security Council should consider adopting explicit standing humanitarian exemptions across all relevant sanctions regimes on the model of the humanitarian exemption in the Somalia sanctions regime.

The Security Council should empower the De-Listing Focal Point to receive and transmit humanitarian exemption requests for all sanctions regimes, except the Al-Qaida regime, for which the Ombudsperson should be assigned responsibility.

Member States should inform INTERPOL when an individual is granted an exemption to the travel ban.

Topic 2: Enhancing collaboration and information-sharing among sanctions monitoring and humanitarian and human rights actors

Enhancing awareness

28. Ultimately, the mandates of sanctions monitoring, humanitarian and human rights actors aim at enhancing peace and justice notwithstanding differing immediate objectives. Most sanctions monitoring actors interact regularly with human rights actors and humanitarian actors. Violations of international human rights and humanitarian law (IHL and IHRL) increasingly constitute grounds for designation under targeted travel or financial sanctions. The growing relationship between sanctions and humanitarian and human rights actors, highlights the importance of mutual respect for their respective mandates as well as the need for appropriate mechanisms for the exchange of information among them.

29. A lack of understanding of the objectives of sanctions, and of the principles under which humanitarian actors operate, can impede cooperation among sanctions monitoring and humanitarian actors. The potential consequences for humanitarian

actors in terms of access and protection can be extremely serious, if they are perceived as being anything but neutral and impartial. The overriding concern of humanitarian actors is therefore to avoid any blurring of the lines between sanctions actors and humanitarian actors.

30. Sanctions actors are often not on the ground to collect time-sensitive information, and are often limited in their geographic reach. Other actors can help Expert Groups understand local sensitivities, facilitate confidential meetings, and provide source-protection referral pathways.

31. Concerns remain regarding ownership, protection and use of information, in particular that which involves the identity of witnesses, victims, and interviewees as well as the need to ensure their protection throughout the process of investigating and reporting on potential designees. But such exchange of information has been crucial in bringing the names of alleged perpetrators of IHL and IHRL violations to the Security Council for the various Sanctions Committees' consideration as well as through the respective thematic SRSG (Special Representative of the Secretary-General) mandates. In the case of humanitarian actors, the concerns about safeguarding their neutrality and impartiality make any sharing of information with sanctions actors a highly sensitive issue.

32. Misunderstandings and confusion also arise regarding sanctions from various sources, and insufficient knowledge of Expert Groups' mandates, such as the modalities of their work, and their status within the UN system. Enhanced awareness and information can break down barriers, build trust among different actors, and promote greater information sharing and collaboration.

33. From the perspective of some human rights actors, inadequate collaboration with sanctions actors has resulted from the sanctions actors' lack of expertise, including sensitivity to victims and knowledge of the language; cultural sensitivities such as male experts dealing with female victims; repetitive interviews of minors; the conduct of collective rather than individual interviews; high turnover of Panel members; and generally weak methodology.

34. Variations in methodological standards among actors, duplication of data, insufficient understanding about how information will be used by Expert Groups, and fears regarding victim protection are barriers to greater cooperation between sanctions monitors and human rights actors. The fact that Expert Group reports eventually become public documents sometimes creates difficulties for panels with humanitarian and human rights actors and other interlocutors concerned about the confidentiality of information.

Recommendations

Sanctions Committees should sensitize members of Expert Groups on the role of human rights and humanitarian actors.

The Secretariat should sensitize human rights and humanitarian leadership and actors in the field regarding the role of sanctions, especially in addressing misconceptions regarding the objectives and purposes of sanctions.

Human rights actors and humanitarian organizations and Expert Groups, should enhance the dialogue among themselves on an informal and confidential basis.

Topic 3: Enhancing coordination and information sharing among UN Sanctions Committees and regional organizations

A. Coordination and information sharing

35. A multiplicity of sanctions regimes from various sources (including regional and national) can be confusing to some actors, as well as to the targets and the private sector, sometimes leading to over-compliance and complications for implementation. Public education and guidance are therefore necessary on the particulars of UN sanctions measures.

36. It is important from the outset to distinguish between (i) UN-imposed sanctions; (ii) regional and national measures to implement UN sanctions; and (iii) autonomous sanctions imposed by Member States or regional organizations. The Working Group dealt only with the first two categories.

37. To enhance the effectiveness of UN sanctions at the national and regional level, it is necessary throughout the life of a sanctions regime; to communicate to the affected actors in the region the reasons, objectives and the nature of the measures of the sanctions regime. Cooperation among Member States, relevant regional organizations and the Security Council's sanctions actors is important for ensuring effective implementation of sanctions.

38. There is a need to ensure the exchange of information to improve implementation of UN sanctions at the regional and national level. Cooperation between the UN and regional organizations is hindered by the lack of parallel internal structures.

39. A lack of awareness and the absence of a structured relationship between UN Expert Groups and regional and sub-regional organizations can result in a lack of political will and the absence of regional and national implementation measures to implement UN sanctions.

40. The Chair wishes to note that the representative of the Russian Federation maintained the position that unilateral sanctions adopted outside the scope of the UN Security Council are illegal and detrimental.

Recommendations

Chairs of Sanctions Committees in the same geographical regions (West Africa, Horn of Africa) should organize more frequent joint meetings especially in the regions concerned to promote understanding of similar issues and challenges.

Sanctions Committees should foster cooperation and exchange of information with regional organizations and establish best practices in implementing UN sanctions, including by establishing regional liaison officers.

The Security Council and Sanctions Committees should conduct public education campaigns and publish guidance on the nature of UN sanctions, their purpose, objectives, and the roles of various actors.

The Sanctions Committees and Secretariat should organize specific meetings with regional groups on challenges to sanctions implementation and possible assistance.

The Security Council and Sanctions Committees should enhance the implementation of UN sanctions by regional organizations and Member States by facilitating regional and national capacity building efforts.

The Sanctions Committees should strengthen implementation of Security Council resolutions taking into account all available information including technical assessment reports by regional organizations and mechanisms.

The Security Council should request regional organizations to establish a regular practice of sharing their reports with the UN on the economic, humanitarian and political effects of UN sanctions.

B. Listing and delisting

41. The General Assembly has called on the Security Council to ensure fair and clear procedures related to sanctions. In 2006, the Secretary-General issued a non-paper on the minimum standards required to ensure that the listing procedures are fair and transparent, including the right to be informed; the right to be heard; the right to be assisted or represented by counsel; and the right to an independent review mechanism and effective remedy.³

42. Further, international human rights instruments provide, and relevant authorities support, that the imposition of measures which directly affect the rights of individuals, including by the Security Council, must be accompanied by a fair process which provides for an effective remedy. The transparency and fair process improvements surrounding the use of targeted sanctions by the Security Council,

³ The minimum standards mentioned by the UN Secretary General in his 2006 Non-Paper have been examined by the European Court of Human Rights of the Council of Europe in the case of Nada (judgement 2012) and in Al-Dulimi and Montana Management Inc. (2013), which is currently referred to the Grand Chamber of the European Court of Human Rights.

including the establishment of the Office of the Ombudsperson for the Al-Qaida Sanctions regime, seek to ensure compliance with international law in this regard.

43. Legal challenges in the court system of the European Union and the Council of Europe as well as within national courts have served as a catalyst for further improvements in the Security Council's listing and delisting procedures, such as the establishment of a Focal Point for Delisting and the Office of the Ombudsperson. These improvements are strongly welcomed and provide for greater transparency and more independent review procedures at the UN level.

44. The sufficiency of the measures adopted, in particular in terms of the requirement to provide an effective remedy, remains an open issue with differing jurisprudence and views. Because of its advanced stage, the litigation within the European Union was a central focus in the discussions of the Working Group. Specifically, the European Court of Justice has held that only judicial review of the lawfulness of national and regional measures implementing UN sanctions will suffice and it has adopted a specific definition as to what constitutes an effective remedy when legal challenges are made by the relevant persons. While for the European Court of Justice the question is ultimately whether a listed person has access to an "effective judicial protection", the Working Group discussed how best to enhance the independence and effectiveness of the process by which listing is reviewed.

45. As a result, within the European Union it appears clear that judicial review is the only form of effective remedy which cannot be replaced by mechanisms like the Focal Point or even the Ombudsperson, though the European Court of Justice made no mention of the Ombudsperson mechanism in its analysis of the issue. Whether this interpretation will be adopted or applied more generally is unknown. However, regardless of its reach, this jurisprudence should not prevent continued efforts to ensure the fairness and transparency of sanctions procedures and to address human rights and due process issues at the UN level, particularly given Security Council efforts to ensure that its actions are in accordance with IHL, IHRL and refugee law, as stated in its resolutions.⁴

46. The improved approach is required on both national/regional and UN levels. The European Union is acutely aware of this and action is ongoing to improve the European institutions' ability to defend challenges to Security Council listings.

⁴ These improved procedures are pertinent for additional reasons. Firstly, they may reduce the number of challenges before national and regional courts. This effect has been seen in litigation before the European Court of Justice. Secondly, when such challenges are made, information from the administrative procedure at the international level can feed into the judicial process, including through the provision of additional information concerning the relevant listing. At the same time the litigation within the European Union highlights that there is need for further improvements to address the specific issue of national and regional courts challenging national implementation of Security Council decisions, and in particular an approach through which more transparency on the information/evidence forming the basis for individual listings could be provided in procedures relating to such legal challenges.

47. Meanwhile, there are steps the Council itself can take to improve the quality of information underpinning its listing decisions. Regular reviews of listings are important, both in the context of fair process, but also to ensure listing information is up to date. All sanctions regimes should be accompanied by a requirement for a specific periodic review, at reasonable intervals, which will consider the question whether the listing remains appropriate and whether new information exists to support the listing. While the time period for the review can vary from regime to regime, it should be a defined period in each instance.

48. Sanctions regimes should be more transparent in relation to the decision-making process, in addition to the initiative which is already underway with regard to the production of Narrative Summaries of reasons for listing for all individuals and entities listed under targeted sanctions regimes.

49. There is a need for additional measures to improve investigative results, overall methodologies and evidentiary standards to be put at the disposal of Sanctions Committees and monitoring mechanisms. However, it is necessary to note that some of the main problems resulted from designations by states.

50. The Chair wishes to note that at the Athens meeting, the representative of the Russian Federation spoke critically about the current working practices of the Ombudsperson and expressed strong reservations about extending the Ombudsperson's mandate to the listing criteria and to other UN sanctions regimes. He also stated that he generally disassociated himself from most of the Working Group's recommendations. Another State representative voiced disagreement with the inclusion in the recommendations of the Athens meeting of reference to the report of the Like-Minded States.

Recommendations

The Security Council should continue to improve the criteria for sufficiency and transparency of information/evidence which is the basis for individual listings.

The Security Council should include in all sanctions regimes a requirement for a specific periodic review, at reasonable intervals, to consider the question of whether listings remain appropriate and to ensure the information regarding the listing remains up to date.

The Security Council should consider extending the institution of the Ombudsperson beyond the Al-Qaida regime to the other sanctions regimes.

As in the Al-Qaida Sanctions regime (paragraph 58 of resolution 2161 (2014)) the Security Council should empower and encourage Committees to provide reasons for decisions taken with regard to listing, delisting, and granting or denying humanitarian exemptions to relevant Member States, national and regional courts and bodies, for the purpose of enhancing coordination between the UN, Member

States, and regional organizations.

The Security Council should consider favorably the proposals submitted to the Security Council by Switzerland and the Like-Minded States in April 2014 on 'Improving fair and clear procedures for a more effective UN sanctions system.'

C. **Mediation**

51. To conduct effective mediation, the United Nations Guidance for Effective Mediation (A/66/811) stresses that a UN mediator must, inter alia, be impartial and maintain the consent of the parties. The mediation should also be inclusive, as inclusive processes are more likely to identify and address the root causes of conflict, and can reduce the likelihood of excluded actors undermining the process.

52. When mediation is conducted in parallel with Security Council sanctions, the primary goal of UN engagement may need to be clarified. Moreover, the imposition of sanctions may affect the manner in which some conflict parties may be included in a mediation process. The space for mediators to carry out peace-making work needs to be preserved if it is to have a chance of success, and this means they must retain the ability to communicate with any party or actor necessary to address the conflict – which may include individuals or parties under sanctions. At the same time, mediation processes need to be carried out with full respect for relevant legal limitations, including targeted Security Council sanctions where these are in effect.

53. The goal of sanctions (among others) to change the behavior of a listed individual or entity is fully consistent with the goals of mediation. To enhance the likelihood that both will be effective, mediators need to be clear about the role and purposes of sanctions to be able in turn to explain to targeted individuals and entities the conditions under which delisting, easing, or lifting of sanctions may occur. Mediation efforts may be negatively impacted when delisting is linked with a party's cooperation and yet de-listing does not materialize following such cooperation, or when the delisting period is protracted. Exemptions to allow listed individuals to take part in mediated dialogue processes, particularly when participants are required to travel internationally, are helpful.

54. The group affiliation of parties to a conflict is sometimes very fluid, particularly when armed actors control large parts of territory. Cases where parties may be listed for individual targeted sanctions and may also be part of a group engaged in finding a political solution requires greater flexibility that takes into account the particulars of mediation.

Recommendations

The UN leadership, SRSGs and other UN and non-UN mediators should improve coordination and information-sharing among themselves on the role and multiple goals of sanctions, including the benefits of sanctions used as an incentive or disincentive in negotiations.

The Security Council should ensure that provisions for exemptions from the measures, to allow listed individuals to take part in mediated dialogue processes, are included in every sanctions regime.

Topic 4: Current and emerging sanctions issues

Overview

55. The Working Group considered situations that may not yet have been brought to the attention of the Security Council but in which UN sanctions might usefully play a role; or where a situation may already be subject to sanctions but where more attention needs to be paid to designating those responsible. Circumstances include a greater focus on natural resources and the environment; stemming corruption and organized crime; the use of digital technologies and the Internet for propagating hate speech and supporting terrorism (through ordering or planning attacks; bomb-building, raising funds, recruiting mercenaries); the role of mid-level commanders in facilitating human rights violations; sexual violence; other forms of gender-based crimes and targeted attacks against women; the use of children in conflict; failure to comply with the responsibility to protect; the phenomenon of foreign fighters; cyber-security; wildlife trafficking; and the increasing collaboration between terrorist and other organized criminal elements. Consideration should be given to applying sanctions tools more broadly to tackle these types of current and emerging challenges.⁵

56. There is a need to expand access to and the exchange of information, tools and databases to investigate illicit financial flows and funding streams of conflict. Linkages between the sources of financing (for example, various criminal activities such as trafficking in arms, human beings, and natural resources) and use of the Internet to violate UN sanctions should be addressed.

⁵ The Security Council declared that Ebola was a threat to international peace and security (resolution 2177 (2014)) in which case obstruction of medical and humanitarian aid could be subject to sanctions. In PRST/2014/23 (19 November 2014) the Security Council “[expressed] its determination to consider listing pursuant to resolution 2161 (2014) individuals, groups, undertakings and entities associated with Al-Qaida who are financing, arming, planning, or recruiting for them, or otherwise supporting their acts or activities, including through information and communications technologies, such as the internet, social media, or any other means.”

Recommendations

The Security Council should expand the sanctions designation criteria where appropriate to better address existing and emerging threats in relation to the situation targeted by the sanctions regime in question, for example, to include specific human rights violations not explicitly covered under the existing regime. In general, the Security Council should use existing sanctions regimes more effectively to enforce thematic priorities, including those related to the Children and Armed Conflict and Women, Peace and Security agendas.

The Security Council could consider adopting thematic sanctions regimes (e.g. piracy) in addition to country-specific sanctions in order to address global threats, such as incitement to genocide, sexual violence in conflict, human trafficking, gross violations of women's human rights.

The Secretariat and the Security Council should work with international and regional organizations, including INTERPOL, to expand information exchange and use of existing tools and databases to explore linkages between sources of financing (for example various criminal activities such as trafficking in arms, human beings, and natural resources) and use of the Internet to violate UN sanctions.

The General Assembly should be requested to make additional resources available to meet the requisite technical, language, and substantive skills needed to strengthen the Secretariat's capacity to assist the sanctions bodies and Expert Groups.

A. Women and children

57. In recognition of the plight of women and girls as the overwhelming majority of the victims of rape or other forms of sexual violence, and whose roles in the community often exposes them to heightened risks, the Security Council focuses significant attention on the theme of "women, peace and security". It holds an annual open debate on this theme, and a second annual open debate on the specific issue of gender-based and sexual violence in conflict. In 2013, the Council referenced the women, peace and security agenda in thematic resolutions on small arms (S/RES/2117), counter-terrorism (S/RES/2129) and peacekeeping (S/RES/2086). It has specifically included gender-based and sexual violence as designation criteria on over half of its targeted sanctions regimes, and has included a "women, peace and security" mandate in 11 peacekeeping and special political missions. The issue is further supported by an effective NGO Working Group, which circulates "Monthly Action Points" to all Council members in a bid to influence Council decision making.

58. The UN Special Representative for Children and Armed Conflict and UNICEF work together with other partners as part of the monitoring and reporting mechanism (MRM) on six grave violations against children in conflict situations including the recruitment and use of children as combatants, and in support

functions that place them in grave danger. Parties to conflict who commit such violations against children are named in the annexes of the Annual Report of the Secretary-General on children and armed conflict.

59. However, as with so many dimensions of the responses to threats to international peace and security, these strong normative actions are impeded by inconsistent and less than effective implementation. The protection of women and children needs to be improved through enhanced coordination with all assistance providers in conflict regions and backed up with a credible threat of sanctions for those who impede these protection mandates.

Recommendations

The Security Council should establish a coordination mechanism between the thematic SRSGs and the women and child protection advisers within peacekeeping operations and special political missions to enhance the sharing of information between relevant actors on parties to armed conflict that are credibly suspected of committing or being responsible for acts of rape or other forms of sexual violence, and the recruitment and use of children in conflict.

The Security Council should continue to include the protection of women and girls, particularly against acts of rape or other forms of sexual violence, in SRSG mandates in conflict regions. The Secretariat should in turn improve coordination of UN-system wide efforts for their protection; conduct more sensitization and training; introduce a more results-based approach, and more frequent and accurate reporting, and sensitization regarding the protection of sources and victims.

The Secretariat and peace-keeping missions should sensitize and train personnel and peacekeepers in UN gender standards, test such personnel in the field and ensure that violations are reported.

Consistent with the three principal pillars of the UN Women, Peace and Security agenda established through Security Council resolution 1325 (2000) (prevention, protection and participation), and with General Assembly resolution 65/69, and its subsequent versions (women, disarmament, non-proliferation and arms control) more emphasis should be placed on efforts to increase the participation of women in decision-making processes for preventing and combatting conflict.

B. Natural resources

60. UN sanctions in the form of bans on the international trade of certain natural resources are not new. In 1966, an embargo against the exportation and importation of raw materials from and to Southern Rhodesia was the first sanctions regime involving natural resources. Beginning in the early 1990s up to the late 2000s, UN oil sanctions were imposed on Angola and Sierra Leone, timber sanctions on Cambodia and Liberia, and a charcoal ban on Somalia. The Kimberley Process arose in part from the Council's attempts to stop the trade of conflict diamonds from

African war zones. In connection with the sanctions on the Democratic Republic of Congo, due diligence obligations were imposed for all actors involved in the trade of certain minerals originating from the Eastern Congo. In 2014, the Council adopted additional measures against individuals and entities illegally supporting armed groups through the illicit trade of wildlife and wildlife products in the Central African Republic.

61. Applying sanctions to trade in natural resources requires great care to avoid unintended consequences. With some exceptions, the targets for such sanctions are primarily non-state actors and armed opposition groups. Because the natural resources trade can serve as the main source of revenue for the affected countries, there is an obvious possibility that legitimate trade could also be affected. Similarly, the non-state actors who seek to use natural resource revenues to fund conflict usually rely on artisanal communities and regional economic structures, often through coercion, to access and sell the resources. There is therefore a risk that sanctions targeting the sector could “double victimize” these communities. Sanctions regimes targeting the exploitation of natural resources should be made adaptable and flexible.

62. On the other hand, the trend of evolving sophistication of sanctions strategies in the illicit trade in natural resources and wildlife has shown the potential to catalyze reform and improve responsible business practices of all stakeholders involved in affected countries and regions. Properly applied sanctions may therefore strengthen the national economic position of the country in question, by ensuring its natural resources are preserved for the development of the national economy, and not used as a source of conflict and instability. By requiring strengthened governance arrangements for natural resources, the sanctions can also prevent natural resources becoming themselves a source of conflict.

Recommendations

The Security Council should make better use of existing mechanisms (e.g. listing criteria, due diligence guidelines and Panel of Expert reporting) to address linkages between natural resource management, private sector actors, financing of targeted entities, and armed conflict.

The Security Council should adopt a carefully monitored due-diligence based approach that rewards legal trade while members of illegal armed groups or organized crime organizations are blocked from benefiting from this trade.

The Security Council should consider the impact of sanctions on legitimate livelihoods when adopting due diligence measures.

The Security Council and Sanctions Committees should develop specific capacity assistance focused on compliance with natural resources sanctions.

Member States should use the provisions of the convention on transnational organized crime (TOC) while engaging with the Security Council to take further action

C. Use of the Internet and digital technology

63. The main challenge in this area is to address the imperative of preventing the use of the Internet and information and communication technology for propaganda, the circulation of hate speech; and the recruitment and financing of violent extremism while balancing the right to privacy and freedom of expression. Because most countries have Internet providers and users, this issue requires better coordination and cooperation, including requesting private companies to block websites used to circulate terrorist-related propaganda.

64. Cybercrime, because it is mostly transnational, makes law enforcement and investigative work difficult. The lack of legislative harmonization can be a hurdle. Given that terrorist use of the Internet defies national borders, it is particularly appropriate to offer a coordinated international response to combat this threat.⁶ Enhancing investigative capacities and strengthening international cooperation will facilitate the determination of which countries and/or individuals are responsible for cybercrimes, therefore making the imposition of UN sanctions possible.⁷

⁶ This was the aim of the legal framework passed within the Council of Europe in 2001 through the Convention on Cybercrime which could play a key role in addressing these emerging threats but it has yet to be accepted universally.

⁷ Notwithstanding obstacles related to freedom of speech, the convention on pornography (Optional Protocol on the Rights of the Child on the sale of children, child prostitution and child pornography) the 2005 *Council of Europe Convention on the Prevention of Terrorism* which set up preventive criminal offences (including those perpetrated through the Internet) such as public provocation to commit a terrorist offence, recruitment and training for terrorism and related domestic legislation criminalizing such activity, facilitated the blocking of websites.

Recommendations

Member States should address transnational threats and new technologies, including the use of the Internet for illicit activities, within existing frameworks, including under Security Council resolutions 2161 and 2178. Engage other stakeholders including Internet users and the IT industry to address such threats in the implementation of sanctions.

The Security Council should enhance investigative capacities and strengthen international cooperation to facilitate the determination of which countries and/or individuals or entities are responsible for cybercrimes, thereby making the imposition of UN sanctions possible.

The Security Council should encourage adoption of relevant national legislation criminalizing the use of the Internet for terrorist purposes (as is the case for child pornography) and encourage international cooperation between Member States as well as with intergovernmental organizations in this regard.

The Security Council should expand and extend to other sanctions regimes the provision in the Al-Qaida and Taliban sanctions that those who provide financial services for Internet hosting and service providers for the purposes of promoting terrorism or other norm-breaking activities are in violation of the asset freeze.

The Security Council should ensure the provision of additional resources to meet the technical and substantive skills needed to strengthen the Secretariat's capacity to assist the sanctions bodies including the Panels of Experts, and for the Panels themselves to have the requisite resources and technical expertise to carry out the increasing demands of their mandates.