



Consultations on the development of Best Practices Guides for chairpersons and members of sanctions committees

Friday, 16 November 2018, 1.15 pm to 2.45 pm

Permanent Mission of Belgium to the United Nations

Former and current elected members of sanctions committees

Nicolas Fierens Gevaert (Belgium), as chair of the consultations, noted that the purpose of the exercise was to elaborate best practices Guides for chairpersons and experts of sanctions committees. While the Guide for chairpersons was aimed primarily at incoming elected members of the Council, Belgium had also invited the permanent members to join the consultations. The process was launched by Australia, the Netherlands, Sweden, and Belgium, and he was pleased that Poland had agreed to host the next meeting. The current process was a follow-on to the High Level Review of UN Sanctions (HLR) and the Assessment of the HLR, which the reports were published in 2015 and 2017, respectively. Belgium believed that the best practices Guides would strengthen the transparency and effectiveness of sanctions regimes. While the first meeting, hosted by Sweden (on 13 November 2018) had focused on the Permanent Representatives and Deputy Permanent Representatives as the chairs of sanctions committees, this second meeting was more focused on the sanctions experts on the delegations of current, incoming and potential future members of the Council, since Council members had to serve all sanctions committees. The purpose of the briefing paper developed by Compliance and Capacity Skills (CCSI), the organizers of the process, was to start the conversation and elicit inputs from the participants based on their experience.

Participant 1 responding to the first part of the presentation by CCSI (on the election of members and handover, induction and training, penholders, decisions and voting, and

committee documentation), noted that the HLR and Assessment reports, launched in 2015 and 2017, respectively, contained a number of recommendations for improving the policy and practices of the Council's work, that were oriented towards those with a vast knowledge of the issues. He wondered whether the Guide would be merely a simplified version of those reports, or more in line with a "first map through the jungle" for beginner members. In his view, the Guide should focus on the basics, with policy issues forming a second part.

Participant 2 observed that one of the recommendations contained in the Assessment report was to elaborate best practices guides for incoming members without specialized knowledge of sanctions. Speaking on behalf of the co-sponsors, he noted that the purpose was to assist new Council members using a number of sources including the Note by the President of the Council (S/2017/507). The purpose of inviting the participation of permanent members, in addition to current and past non-permanent Council members, was to benefit from their experience. While the purpose was not to delve too deeply into the nitty-gritty, the inclusion of detailed information was necessary for the optimal benefit of both chairs and experts.

Rico Carisch (CCSI) noted that CCSI's role was to facilitate what was necessarily a complex process because of the vast amount of preparatory work that had already been done (in the HLR, Assessment and Note 507 processes). The idea was to hear participants' views on what was relevant to their work and what was no longer relevant, and hopefully, through a democratic process, arrive at a concise, and user-friendly model.

Participant 1 said he would like to see a first, brief chapter containing a sanctions 101, i.e., an overview of the sanctions regimes, the work of the committees, the role of incoming members, and sanctions terminology.

Participant 2 noted that the Guide was not meant to be prescriptive. He agreed with Germany that an overview chapter, giving some sanctions background would be very useful, followed by practical recommendations such as on decision-making processes and daily work. He invited participants to provide suggestions on missing issues as well on issues that need not be elaborated in the Guide.

Participant 3 said that she was not a member of her delegation chairing sanctions committees; rather, she was an expert on three African committees. In her view, elected members built up a lot of expertise on the committees they chaired, and played a minimal role on other committees. She hoped the Guide would not only help elected members with their more complicated role of chairing committees, but would take a broader focus in order to help them to increase their contribution on the other committees.

Rico Carisch (CCSI) responded that he believed that one of the issues that affected how both the chair and committee members could make more of a contribution was the question of consensus decision-making. He suggested that the issue needed more study in terms of how it could be reflected in the Guide.

Participant 3 added that whereas, in her view, committee chairs were more concerned with improving their role and working methods on the Council, what was needed for experts to improve their participation in committees was a better understanding of practical matters such as how to benefit better from the work of expert panels by communicating more strategically with them; as well as how to introduce designation requests. E10 members, she emphasized, needed help in preparing their experts to perform better on committees across the board.

Participant 4 said that on the issue of preparation of experts, she believed it might be helpful to share how a P5 organized itself internally. While Council members might not have a clearly defined doctrine or dedicated sanctions unit or team, her delegation established an expert at the Mission to look into trends from a cross-cutting perspective. The participant prepared an internal guide describing committee practice, including the role of various sanctions actors such as the chair, the secretary, the panel, and the tasks that an expert must undertake before submitting a listing request -- related to the 1267 regime, the Ombudsperson and the Focal Point -- including with Paris, and with other experts on the committee. Each year, a one-month review was undertaken for the purpose of updating the guide and adding policy elements, such as on exemptions. She offered to share elements of the internal guide that were not confidential, at least the headings and system of organization. While no guide could replace practical experience, she believed that sharing it could help to fill some of the gaps described by colleagues. On the possibility of extending the practice of negative consensus to other committees, as contained in the briefing paper, she noted that the practice was confined to the Ombudsperson of the 1267 committee. Committees

made various types of decisions and she believed that extending the practice to all types of decisions throughout all committees would be difficult in practice. The matter could be explored in detail; but she had doubts that it would help the engagement of committee members on certain issues.

Participant 2 said that he wished to stress that the intention of the exercise was not to be prescriptive. He envisaged that the content of the Guide could comprise more technical guidance regarding the work of the various committees; and more policy-oriented proposals that would be assessed on their merit.

Participant 1 noted that elected members, including his delegation, had neither the continuity, historical view, or resources to develop the type of internal guide described by the P5. Elected members could benefit from any such guides that permanent members were willing to share. He believed that everyday practice could form the first part of the Guide, and policy recommendations could be the focus of a second section. As his delegation's sanctions coordinator whose functions included cross-cutting issues, he would try to focus on how to improve the system, including the position of the Ombudsperson. Those would be issues for himself and his superiors, but not for the experts who had enough on their plates.

Participant 5 said she wished to echo views that had already been expressed, particularly that because the participant is only on the Council once every twenty years, it had no institutional memory. During sanctions training in the first year, provided by the Secretariat and Security Council Report, her delegation had been at a loss. This year, her Ambassador was asked to brief in her role as committee chair, and the issues seemed clear and easy. She agreed that it would be valuable for the Guide to include sanctions terms, as mentioned by participant 1, and to include do's and don't's, as mentioned by participant 4. Her aim was not to downplay the importance of the vast amount of work that had already been done, but rather to emphasize that, at least, part of the Guide should be in the mode of a "Guide for Dummies."

Participant 3 said (following the second portion of the presentation, on joint meetings, outreach, and visits to the region) that she was unsure, except for chair's visits, that the recommendations, which seemed quite elaborate, were valid for committees in the African context, where there was scant implementation of sanctions.

Participant 2 responded that for that reason, members may wish to consider increased outreach, or possibly capacity-building as a response to that issue.

Participant 6 said that while low implementation rates might be the case for the African regimes, given the complexity of the 1718 sanctions regime, the outreach activities practiced by both the chair and the expert group through various regional groups, could be held up as an example of good practice.

Participant 2 observed that perhaps more interaction between the EU, which transposed UN resolutions into law, and the various committees, whether through formal or informal contacts, as well as with other regional organizations, could be useful. He was unsure whether there was a formally established mechanism for interaction between committees and the private sector, but he believed that that would be useful as well.

Loraine Rickard-Martin (CCSI) observed that the existence of implementation gaps of varying degrees among the sanctions regimes meant that the Guide was a wish list of sorts. The idea was to make available best practices that hopefully over time would raise awareness among all sanctions actors with resulting improvements in implementation.

Participant 3 responded that there were vast gaps between the complexity of the recommendations concerning, for example, how to enact sanctions-relevant national legislation and regulations for the manufacturing and transportation sectors, and the need to stop the flow of arms into war zones or enact a travel ban in the African regimes. In addition, delegations chairing committees had different administrative capacities. Consequently, the focus might need to be on implementing a small number of context-specific recommendations.

Participant 7 said that he was his delegation's expert on the 1718 Committee. In his experience, some African countries were unable to implement sanctions because of capacity challenges. For example, lacking a budget for the coast guard or maritime police, meant that they could not be expected to carry out those functions. In the context of the 1540 regime, for which he was also his delegation's expert, countries that did not have the capacity or means to have strong border control, were incapable of preventing non-state actors or nuclear weapons from crossing their borders. Committees must take into account that many countries that wished to comply with

sanctions were unable to do so because of capacity constraints. Perhaps some type of fund or assistance should be made available to assist them with implementing sanctions resolutions.

Participant 1, responding to the third section of the presentation (on the private sector, standardizing sanctions terms, sanctions implementation, sanctions and human rights and mediation, due process, expert groups, Ombudsperson/Secretariat, integrating sanctions with other instruments, and capacity enhancement) emphasized the importance of providing standardized terms in an annex to the Guide, given that a term which had one meaning in a resolution might have a different meaning in another. In his view, for experts not working on the counterterrorism regimes, it was enough to flag the issues of due process and the Ombudsperson, on which participant 1 placed great emphasis as a point of policy, but which for now only applied to the 1267 regime. The various audiences for the Guide had different requirements. The 1718 and 1267 regimes were very different from the other country-based regimes. Some audiences needed just the basics and others needed more detailed information that could be included in a further guide.

Participant 2 reiterated that a distinction could be made between the practical operational portion of the Guide, including some legal and historical background, and elaboration of the broader context in another chapter or another guide.

Participant 8 said that it would be important at some point to have a perspective within committees of the challenges faced by states not on the Council in implementing sanctions at the national level. She observed that the Secretariat served an important role for incoming or prospective members of the Council in terms of providing advice and guidance. She wondered whether the state-driven process of drafting committee guidelines was ideal, and whether input should not be sought from the Secretariat as the institutional memory of the committees' work, from its perspective of having an overview of the work of all committees and assisting chairs and members in upholding their commitments.

Rico Carisch noted that the role of the Secretariat was one of the themes of the briefing paper. During the HLR, there was a recognition that the tendency to turn to the Secretariat for every issue overlooked the issue of limited resources and capacity. For that reason, the current exercise was more centered on practical expectations of

member states, bearing in mind the role of the Secretariat as an institutional resource. He added that the Power Point presentation and all available resources on the process would shortly be made accessible on a password-protected website.

Participant 2, summing up the discussion, noted that the primary take-away was that given the current gap in resources, the Guide would be useful for incoming members. A distinction should be made between its technical, operational component, regarding the daily work of the committees, and including legal and historical background, and policy recommendations, which could form a separate chapter. During the next consultations, to be hosted by Poland, consideration could be given to which issues to include in the Guide, and which ones were more appropriate for other process.

Participant 5 noted that the invitation would be sent today for the consultations to take place on 6 December 2018 (concerning sanctions-affected states) to be followed by the briefing paper.

Prepared by CCSI, 24 November 2018