



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

Tuesday, 13 November 2018, 10.00 to 11.30 am

Permanent Mission of Sweden to the United Nations

UN, Conference Room 12

Consultation with Permanent Representatives

H.E. Mr. Carl Skau (Sweden) suggested that the Power Point presentation by CCSI be circulated to the participants. He noted that the purpose of the presentation was to trigger discussion and that the purpose of the current consultations was to receive input on their experience from participants who have been working on sanctions, and on gaps in the understanding of those now entering the Council. In his view, the three main themes were i) sanctions committee structure; ii) outreach; iii) the various sanctions tools.

Participant 1 noted that participants included past, current, incoming and aspiring members of the Council and that an exchange of information, knowledge and understanding among elected members was crucial and should be ongoing. He believed that the relationship and exchange of information between chairs and penholders, and between different sanctions committees was important, as was promoting greater awareness and understanding of sanctions in order to support better implementation. Communication in terms of clearly explaining the reasons behind sanctions was key for increasing the legitimacy and acceptance of this important tool. He wondered whether the unintended humanitarian consequences, including on sections of society, such as women and girls, were being sufficiently prevented. He believed that there was a particular role and contribution by elected members in their bringing of a fresh perspective to the issue.

Participant 2 observed that the background briefing may on first sight appear to be theoretical, but it contained the major themes. In her view, limitations on the role of the chair necessitated creative approaches. For example, she had found that informal informals, particularly with countries affected by sanctions, helped to create a useful dialogue. Notwithstanding the role of regional and sub-regional organizations, countries that were neighbors of affected states had an important role in sanctions implementation. Discussions with experts concerning the consequences of financial sanctions were also useful. She believed that committee guidelines, which differed from one committee to another, needed to be reviewed and updated on a continuing basis in order to reflect changes in the sanctions measures, and new criteria for designations, which should be clearly stated. In addition, changes were needed in the structure of the chair/penholder relationship. While currently, interactions between the chair and penholder were usually initiated by the chair, penholders should also be obliged to initiate discussions with chairs.

Participant 3, noting his support for the exercise, asked whether the permanent members of the Council had been invited to the consultations. He believed that one of the primary discussions in the Guide should concern why only elected members were chairs of subsidiary bodies. Elected members tended to fully understand the parameters of their role as committee chair only toward the end of their two-year tenure, whereas the permanent members would bring continuity to the role. The fact that the practice that elected members chaired the subsidiary bodies did not mean that change was not needed. In his view, achieving a better balance in this regard would increase the legitimacy of the Security Council overall. In addition, the recommendations in the Guide should include that committee chairs be co-penholders if not penholders, for the sake of coherence on the issues and for legitimacy of the process. The distinction between a chair and a penholder was an artificial one. A chair's knowledge of the situation on the ground would be useful input to the drafting of related resolutions. He believed that the issue of the sheer volume of committee documents that were circulated for each committee was a practical issue that needed to be conveyed to elected members so that they were aware of the workload of various committees.

Ambassador Skau agreed that the permanent members would be invited for future discussions. Participant 3's point about a better balance in chairing committees was well taken. Were elected members to share the chairing of committees with the permanent members, thus handing off some of their power in that regard, elected members would need to ensure that they have a larger role as penholders.

Participant 4 commended the current exercise and noted that chairing of the 1718 committee had been a formative experience for his country. There were several complicated resolutions in quick succession in a sanctions regime which appeared to be the tightest ever. As chair, his delegation had organized many outreach briefings with regional groups and groups of member states. He agreed with Ireland about the importance of collaboration among the elected 10, including in helping to reach other constituencies in the General Assembly. He fully shared the view of the importance of outreach to the private sector, which played a key role in sanctions implementation, particularly for complex regimes. For particularly complicated sanctions regimes such as 1718, standardization of sanctions terms was key in order to make information understandable for those who had to implement sanctions. Because of the need for coherence between the sanctions committee and the political situation, he shared the view of Poland and Germany about the need for close synergy between the penholder and the chair of the sanctions committee. He believed that his delegation had done a good job passing on its experience to the Netherlands in terms of elements needed to prepare for the job. Sharing a split term had facilitated that process, but this was also possible between all outgoing and incoming Council members.

Participant 5 said that he was impressed with the scope of issues contained in the briefing paper. He believed that the relationship between the panel of experts and the committee chair merited additional attention. Committee chairs, particularly for the first year, and because the allocation of committees is a subjective process, may be at a disadvantage compared to the panel of experts because they did not have the same knowledge of the country affected by the sanctions regime. The difficulty experienced by the chair in evaluating the panel's methodology and content of its report could hinder the effectiveness of the committee's work. It was possible for chairs to establish a good relationship with the panel, but still the chair has little leverage because much of the work done by experts was hidden. What was seen was the end result without knowing how that result was obtained. Consequently, the interaction between the chair and the panel was crucial, and particularly because the process of appointing panels was non-transparent and not based on merit. The briefing note, and the Guide, could make a stronger case for more fairness and transparency in selecting experts. As noted by participant 3, the permanent members have an invisible hand in the form of their nations who are usually among the panel's experts. It was one of the fundamental issues concerning how to make the committees efficient and effective, and how to hold experts accountable for their work which they currently were not.

Participant 1 noted that although she believed herself, as a committee chair to be knowledgeable about the country, there were limitations on the extent to which she could use that experience. One option was to establish good contacts with the panel of experts and to use one's experience to provide guidance of sorts. However, because some colleagues were not experts on the country concerned, that could be a frustrating experience.

Participant 6 said that he supported the objectives of the Guide, and particularly on the issues raised by Ukraine, as chair of the Informal Working Group on Documentation and Other Procedural Questions, his delegation recognized that there was resistance to making practical change. His delegation, headed by an Ambassador with extensive United Nations experience, had fought very hard to take small steps, including in implementation of the Note by the President of the Security Council, S/2017/507, which his delegation very much supported. Kuwait had prepared a non paper in which it outlined priority areas, including the chair/penholder relationship, extension of the ombudsperson system to all sanctions committees, and extending the chairing of committees to the permanent five members. Kuwait currently shared penholdership of the Syrian humanitarian file with a Council member with whom it collaborated closely, which was testimony to the fact that countries not necessarily from the same region or sharing the same culture, could work well together and even pass resolutions. There were many areas in which the E10 could develop partnerships among themselves, without the support of the P5. Kuwait had very big boots to fill after Japan as former chair of the IWG. His delegation intended to work closely with the incoming E10, including on the IWG, to make further progress on the recommendations in its non paper.

Ambassador Skau noted that in some ways, Note 507 and the IWG were doing work parallel to the initiative on the Guide. There was no intention on the part of Sweden as a sponsor of the Guide to overlap with those processes. What was lacking in Note 507 was creative and boldness in implementation.

Participant 7 observed that a Guide was an important tool for incoming members to hit the ground running. Indonesia's approach to sanctions had three pillars: i) the tool should be used as a last resort; ii) sanctions should be well targeted; and iii) reviewed periodically. These were very political aspects that should not detract from the technicalities of the issue. He believed the roles of committee chair and penholder were

difficult to separate. He agreed with Germany that there was a direct link between the sanctions committee and penholdership and noted that the latter was more appealing to Indonesia's domestic audience. The current exercise should emphasize not only obligations, but also incentives such as how to promote cooperation with international corporations, which could be a carrot for countries in implementing sanctions. All Council members and chairs should stress that effective sanctions implementation not only contributed to global peace and security, but could directly benefit the affected country itself in terms of international cooperation for strengthening its national capacity to implement sanctions. On the other hand, the issue of expanding dual use items, in creating an additional implementation burden for countries, could cause countries to distance themselves from sanctions implementation. There should be a balance in emphasizing obligations and incentives.

Participant 8 agreed with other speakers that there should be a strong relationship between the chair and the penholder. However, she said, such a relationship did not always benefit the neutrality of the chair. Penholders tended to have a more restrictive interpretation of the resolution. The Secretariat had a wealth of experience on various sanctions committees and was an excellent source of guidance including on legal issues. There were responsibilities of chairs not reflected in the committee guidelines, such as upholding the independence of expert groups, that should be emphasized. Transparency was another such issue, of which outreach meetings were the formal version, mandated by the resolution. It was also important to reach out to the private sector, NGOs and other member states, which was also not reflected in the guidelines but was crucial for transparency and for an understanding of correct implementation of the resolutions. On the issue of negative consensus, mentioned in the briefing paper, it might work for the Al Qaeda/Daesh committee but could be counterproductive in other committees, where for example, a committee member could propose an exemption for somebody who was clearly still violating sanctions, and 15 members would need to overrule the proposal.

Participant 2 said that her delegation was pleased to be a co-sponsor of the exercise as targeted sanctions were important to the Security Council in exercising its responsibility. Belgium had made written comments so she intended to touch briefly on more strategic points. Her delegation supported a fair distribution of the chairmanship of sanctions committees. There was an upcoming expert-level meeting on the Guide at her Mission on Friday (16 November) to which the permanent members were invited to discuss the briefing paper. Her delegation was interested in improving the outreach of sanctions

committees, not only to regional organizations, such as the European Union, but also to neighbouring countries and the private sector. Her delegation was also interested in adjusting the criteria for listing and – Belgium having been instrumental in creating the Ombudsperson mechanism—in extending its functions to other sanctions committees. She had noted the views of the colleague from the Netherlands on the issue of negative consensus and believed that an exchange on the topic at the expert level would be useful.

Participant 9 said her delegation viewed its participation in the current exercise as an extension of an ongoing conversation with the High Level Review of UN Sanctions (HLR) and the Compendium and that her delegation had been working on a number of fronts to address the issues. Canada supported the idea of expanding the role of the Ombudsperson to other sanctions committees. She agreed with Ukraine on the need for more transparency in the appointment of members of panels of experts. Behind the scenes machinations by the permanent members that had resulted in a gap of a year and a half in replacing the Ombudsperson had impacted the functionality of the office, and also impacted the selection of experts overall. On outreach, in her previous role on domestic sanctions, there was a lot of criticism from banks in Canada regarding a lack of transparency and the resulting difficulty in implementing the various UN sanctions that were in place. Canada was working hard domestically to increase awareness of sanctions. Its experience, with a very sophisticated banking sector, pointed to the fact that implementation was a very difficult achievement for many countries. The issue of capacity-building, contained in the briefing paper, was one that should be looked into more closely as well.

Participant 10 said that her delegation wished to raise as food for thought for E10 states as they assumed the chairmanship of committees, the issue of the annual reports of committees which note the number of entities and individuals that were listed as a result of committee decisions. However, the reports did not include the listing requests that were denied. This lack of transparency in committee guidelines was archaic. This was the case for the guidelines for the Al Qaeda sanctions committee and she believed that it was standard for other committee guidelines. Her delegation was unaware of any other multilateral organization in which decisions were made without informing member states. The state that made the request was informed but the wider membership was not. In some cases, the denial of requests was based on considerations that were not technical. Her delegation had inquired about the legal basis for consensus decision-making, which acted as a veto in sanctions committees, and mostly come from the permanent

members. There were positives and negatives concerning the issue, and this was an important point to keep in mind.

Ambassador Skau said that his delegation had been very active on the High Level Review before being elected to the Council and had had consultations with New Zealand as former chair of the ISIL-Da'esh committee. His delegation believed that the practice of consensus decision-making was making the work of committees inefficient. But from Sweden's own experience on various committees, consensus decision-making was a veto for the elected members as well. Sweden had blocked listings requests, for example, where there were problems with the narrative, or in cases of guilt by association where the individual was unable to challenge a decision by having recourse to an ombudsperson. Sweden, and others, was also blocking several new guidelines that called for the chair to have absolute consensus before taking action, for instance, in calling for an outreach meeting. His delegation agreed that there were pros and cons to the issue of consensus decision-making.

Participant 11 said that the learning curve for a committee chair could be long and difficult and that the briefing paper provided a roadmap and shortcuts for the process. For his delegation, the issues of transparency for sanctions committees, due process, and extension of the role of the ombudsperson, needed to be further developed by the Council in order to guarantee legitimacy. On the penholder issue, he believed a committee chair and members could provide useful information to be reflected in the drafting of resolutions. His delegation fully supported the idea of having the sanctions chair as a penholder or co-penholder for related resolutions, and agreed with Germany that this would increase the legitimacy and effectiveness of sanctions. His delegation very much supported an enhanced role and joint action by elected members. However, Peru, having played the role, knew that the learning curve for penholders could also be harsh. Perhaps there could be a Guide for penholders since it could be a useful role for elected members to play. After all, besides the veto, the main advantage for the permanent members was their experience and institutional memory in drafting resolutions.

Hilding Lundqvist (Sweden) noted that incoming members may not be appointed to chair the committee(s) of their choice. He echoed the Netherlands in noting that there was a delicate balance involved in the role of the chair in terms of being perceived as a neutral or impartial player, which is not necessarily the case with the penholder or permanent member who may have strong vested interests in the particular countries

affected by sanctions. There were reasons why it would not probably be a good idea for the chair and penholder to be the same on a sanctions regime.

Rico Carisch (CCSI) noted that drafting of the Guide for chairpersons and elected members was beginning and that its content very much depended on input to the 25 issues included in the briefing paper. The more specific the input, the better the quality of the Guide would be. In drafting the briefing paper, it became clear how quickly the sanctions system moved on some specific issues. During the consultations on the High Level Review, outreach and transparency were by far the most important topics, and they comprised about a third of the 150 recommendations in the Compendium. Now the interest was in issues that had not existed a few years ago, such as the relationship between the chair and penholder, and redistribution of the chairmanship among all 15 members. The draft would benefit from specific recommendations which could be conveyed in writing to Sweden.

Ambassador Skau, responding to a comment that the Guide could expand on the penholder issues, as suggested by Peru, noted that the current time frame might not allow for such an expansion, and in any case, some of the more political and strategic issues could be dealt with in an introduction or foreword. The intention of the current Guide was to provide practical guidance for the day-to-day work of chairing a committee. At the same time, there were points in today's rich discussion that should be captured, without losing focus on providing practical guidance.