



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

Thursday, 6 December 2018, 1.15 pm to 2.45 pm
Permanent Mission of Poland to the United Nations

Consultation with Delegations of States affected by UN sanctions

Ambassador Wronecka (Poland) noted that from her observations as Chair of the Sudan, South Sudan and Iraq sanctions committees, the work of committees involved challenges related to both substance and procedures. As Chair, she made a point of establishing positive contacts with all committee members, and also with countries under sanctions, to emphasize the positive aspects of sanctions in terms of improving standards rather than as punishment. She admired the efforts of the sponsors and CCSI as organizers toward the ambitious project of producing a Guide before the end of the year. She was pleased that this third consultation in the process provided an opportunity for participation by countries from regions that had not yet done so.

Rico Carisch (CCSI) observed that the input of sanctions affected states was vital to the development of the Best Practices Guides since they, more than most, should feel that they have benefited from UN sanctions. Rather than a detailed presentation of the issues as had been done at previous consultations, he suggested that it might be more beneficial to foster a free-flowing discussion of the most relevant issues. He wished to note that despite the considerable effort of the permanent mission of Poland to invite at least three dozen states, not only those targeted by sanctions, but also those affected owing to geographic or economic proximity, those categories of states were not strongly represented around the table. He observed that their absence, and their silence

on a written questionnaire that had been circulated to them, might be their strongest statement on the topic. He suggested also that a second meeting with this particular group of states could be scheduled for late January or early February 2019, to give current participants a chance to reach out to those delegations concerning how they could be more productively engaged, given that a Best Practices Guide without their input would not be desirable.

Presenting a summary of the briefing paper, he noted that it contained eight or nine issues that were particularly relevant to this group of states. Fourteen or fifteen other issues had been included, with a view to providing delegations with more detailed information on the workings of sanctions committees. Guide 2 (for monitoring groups and their coordinators) was envisaged to consist of sections that would discuss the key roles and functions of the primary sanctions actors; the standing practices of committees; sanctions measures currently in effect; and more aspirational themes with which sanctions committees were increasingly confronted, such as the relationship between sanctions and human rights, and sanctions and mediation. CCSI was also developing an annex of frequently used sanctions terms.

He presented the first topic contained in the questionnaire for discussion, from the perspective of sanctions-affected states: How could the sanctions system be made more effective, clear and transparent? He expressed the view that this question could be discussed in the context of outreach and capacity-building assistance, and other specific actions by panels of experts and coordinators that could assist states' sanctions implementation efforts.

He noted that consultations for the High Level Review and the Assessment had been centered around some of these issues, and hoped that during this round, the discussion could go beyond what seemed to be the stock answer that the Secretariat should do more, which was clearly not very practical. The current consultations sought to elaborate more practical and realistic ways to carry out improvements where opportunities may exist.

Concerning the question of how the process of listing, delisting and exemptions could be improved while protecting due process rights, he noted that while the Like-Minded States had led on the topic, perhaps there were additional insights to be offered. On the question of how to enhance sanctions implementation, there was the question of what improvements could be made beyond Implementation Assistance Notices and improved communication with the sanctions committees. Finally, he

added, input was welcome on the topic of how UN sanctions could better support protection of the human rights of the general population, as well as women, girls and children.

Ambassador Wronecka expressed the view that one of the ways that the UN sanctions system could be made more effective and transparent was by improving communication. While there was an overall impression of the technical nature of sanctions, which could be addressed by familiarizing oneself with relevant documentation, she believed the human dimension was overlooked. Because sanctions affected countries tended to view sanctions as punishment, she believed an important role of the Chair was to sit with them to explain aspects of sanctions that would allow them to pass through the experience positively. Responding to requests, for example, to update the guidelines, was a normal exchange of information that enhanced transparency and perhaps provided incentives for improved sanctions implementation.

Participant 1 observed that Member States had different capacities to implement sanctions. Member States' obligations in this regard often did not take into account new developments on the Security Council's sanctions resolutions. As an example, sanctions on North Korea had evolved two or three times in the past two years making it difficult for some countries to implement. Because of language issues, which were not often taken into account, It took two weeks for his Mission to transfer a communication from the sanctions committee to capital. Because of this time lapse, there was one case where it was particularly difficult to respond to an allegation of non-compliance with a particular sanctions regime. There were also often complex issues related to transposing UN sanction into the legal system of the particular state. Because many countries did not have the ability to implement UN sanctions in a short period of time, he added, it was important to take into account the variations in state capacity when applying sanctions.

Participant 2 shared that his delegation was in the process of completing the questionnaire and that he wished to apologise for the delay. His delegation had a very pragmatic approach to sanctions, beginning with the view that sanctions should not be viewed as either punishment or a criminal proceeding, but rather as a tool for changing behavior or preventing certain behaviors from occurring. His government's regulatory agencies received requests from courts that were not familiar with sanctions law, to provide information on the freezing of assets including bank accounts. He noted that

regional organizations such as the European Union, which had competence in many areas of sanctions implementation, could provide assistance to states' regulatory agencies and the private sector as the primary implementers of sanctions, on matters such as assets freezes, travels bans and on import and export restrictions.

Participant 3 noted that his Government had sent letters to sanctions committees requesting clarification on some sanctions terms (such as the meaning of 'liquidation' or limiting the number of bank accounts), but had not receive responses. He suggested that Security Council members could provide more assistance on the issue. In his view, a glossary of sanctions terms, as mentioned in the briefing paper, would be useful for inclusion in the Guide. He understood that the 15 members of the Committee had to arrive at consensus on interpretation of sanctions provisions, which was the reason that guidance was often not forthcoming. Consequently, in practice, it was often difficult for states to face challenges of implementation on the ground. Perhaps the committees could institute a practice of meeting with concerned states to arrive at a common understanding of the language of Council resolutions.

Participant 4 as one of the sponsors, noted that its support for the Guide project emanated from its experience as a member of the Security Council. It was important in the longer term to bring in the perspective of not only targeted, but also affected states. While he agreed that a glossary of sanctions terms would be helpful, in the participant's experience with chairing committees, some resolutions were much more fleshed out than others; but most resolutions consist of a basic assets freeze and travel ban. Tricky implementation questions that required interpretation often arose, such as the meaning or limits of an assets freeze; and the use of exemptions. He observed that as a reflection of the political situation in committees, such questions could sometimes take months to reach agreement in the committee. Sometimes states had to rely on the judgment of their national agencies. A fleshed out glossary of sanctions terms was desirable, as in the case of the EU, with the hope that any interpretation did not counter the original intention of the resolution. As mentioned by Poland, the topic of incentives for targeted states was important. An area where chairs could engender more discussion was on the topic of criteria for delisting and when a target had met the threshold.

Ambassador Wronecka said that Chairs could propose to hold discussions on designation requirements, such as introducing new criteria for designations, including

with regard to sexual violence, and how the police could play a more positive role on the ground regarding security and criminality.

Rico Carisch (CCSI) noted that the glossary was an interesting challenge including the selection of terms. He perceived it as a work in progress requiring input from states. One option could be to offer two or three definitions that had been applied by various sanctions committees.

On the question of enhancing implementation, **Ambassador Wronecka** said that she had observed that expert panels could play a positive role, particularly through the establishment of regular dialogue with the Chair. Chairs could further work constructively with expert panels, including comparing notes on their experience on the ground, to enhance efficiency in the sanctions system while respecting the independence of the groups. Positive engagement could ensure that the efforts of committees and expert groups were in the same direction.

Rico Carisch (CCSI) noted that, with support from Canada, there were plans to hold consultations in February or March in Africa, on the topic of sanctions and gender. The effort would bring together subject matter experts and field experience, on the issues of gender violence, violence against children in conflict, from multiple conflict regions, including where there were no UN sanctions, that would hopefully provide a fresh take on the issues. Discussions would include the question of how the principal sanctions actors could increase their gender competence. Drawing from his own experience as a former expert group coordinator, discussions on gender could be hampered by bias, including a tendency for males to do the talking for a community, and it was important for guidance to be offered on the topic, particularly to incoming experts, on how to reach out to the female population. Discussions could also include the possible unintended gender consequences of sanctions, such as the effect of an assets freeze on women in a family, clan or community. He believed it was a body of issues that needed to be explored in detail and the Canadian effort would allow an opportunity for them to be addressed.

Participant 1 observed that the appointment of expert group members, while giving priority to technical expertise, should perhaps be done with more care in terms of factors such as nationality, or political affiliation, which could impact on their work. Human interaction was an important factor in the relationship between states and expert

groups. Expert group methodology was another factor, meaning the effective and consistent application of guiding principles for their work. Transparency on expert panel methodology would assist states in responding to expert panel requests for information and/or allegations; and in making complaints about how panels conducted their work, while being aware of the political parameters of committee work.

Rico Carisch (CCSI) expressed the view that in his experience the best training for expert groups was exposure to a well-informed and skeptical committee that asked probing questions, particularly on the group's methodology. The coordinator's first role at the beginning of each mandate was to set aside time to fully discuss methodology. There were vast differences in how individual expert groups operated. Some groups had very good practices while others seemed to take an individualistic approach that did not foster consensus. Only the committee could effectively remedy such situations, which was a reason to quickly develop a Best Practices Guide for chairs and members of sanctions committees.

Loraine Rickard-Martin (CCSI) said that priority should be given to impressing on expert panels the importance of establish cooperative relationships with states under sanctions. The sanctions system over 20 to 25 years had moved from an approach of minimal interaction with affected states, toward more collaboration, cooperation and transparency. Expert groups should be encouraged to work together with affected states to determine the obstacles to implementation, and where gaps in understanding existed in terms of actions they needed to take to comply and fulfill the obligations of sanction. Awareness-raising of the importance of interaction, collaboration and mutual understanding needed to be done on a constant basis given the turnover in expert groups, committees and the Council.

Rico Carisch (CCSI) observed that one of the outcomes of the Assessment of the High Level Review that was conducted in 2016, was the question of whether or not due process should be integrated throughout the entire sanctions implementation chain. This should begin with the decision of experts whether or not to pursue an issue related to individuals, companies or entities based on preliminary, credible evidence. Every subsequent step up to the delisting decision should include a consideration on the part of the experts and the committee whether additional due process procedures should be applied to those subject to sanctions, while stressing the preventive and coercive role of sanctions.

Ambassador Wronecka, as Chair of the Iraq sanctions committee, noted that listing activity entailed the cooperation of the national government and therefore information-sharing between the committee and the delegation to facilitate communication with the capital was important.

Participant 3 noted that because communication between committees and state capitals on listing and delisting activities was routed through the UN Mission, the process was sometimes delayed. He wondered whether there was the possibility of directly communicating such decisions. Another participant cited time zone differences as further contributing to such delays.

Amassador Wronecka noted in this regard that whereas committee decisions should in theory be immediately available on the committee's web page, it was no guarantee that the person involved would be immediately informed.

Rico Carisch (CCSI) stated that he wished to share some surprising insights from a recent two-day sanctions implementation training that he had presented in Africa on DPRK sanctions, which was intended primarily for government officials but was attended mostly by compliance officers of local banks. The participants had no knowledge about communication channels for designations and delisting regarding UN sanctions. However, their central banks circulated a black list with a variety of names, of which some might be related to UN actions. On further checking, it appeared that not all the information was updated or accurate in terms of UN designations. Flawed communications between committees and capitals was even worse between national authorities and banks. He believed that a practical issue that could perhaps be included in a Best Practices Guide was a model of an ideal national implementation scenario that could include training, tutorials and webinars in which committee chairs and members could participate.

Participant 2 noted that litigation in certain courts regarding due process rights was being translated into compensation measures for certain companies and even individuals. He suggested that while courts varied in their legal culture and tradition, some court decisions might have lessons for improvements in the sanctions system.

Rico Carisch (CCSI) observed that sanctions had a natural versatility that lent itself to constant experimentation and that this natural tension had to be managed by the chair and committee. He agreed that the role of national courts had become quite important in sanctions. He cited a case from about a year ago, of a ruling of the Singapore High Court, which he described as refreshing, that stated that targeted sanctions on a DPRK entity was based on layers of circumstantial evidence. At the same time, he added, there had to be recognition of the political nature of sanctions and the important role of the tool.

Participant 4 said that in his delegation's experience, the interpretation of exemptions, for example, was quite arbitrary, depending on the particular sanctions committee. Some committee chairs were less proactive, and depended on the members to come up with an interpretation of a particular exemption. An active chair would put forward his or her interpretation and elicit responses. In a third scenario, the Secretariat, which currently had an entity working on cross-cutting issues, drawing on its experience of similar exemption requests and other sanctions regimes, came up with a response. In his view, the arbitrary nature of responding to requests for clarification, plus political sensitivities, meant that affected and targeted states might receive a response on one issue and not on another.

Participant 1 suggested that in general more outreach, in a variety of different formats, was desirable. Currently, there was some written explanation of some sanctions processes. States affected by sanctions could be provided an opportunity to interact with committee members, even as observers during meetings, to witness the dynamics first-hand. More technical workshops on particular sanctions regimes for a specific targeted group of Member States for training their experts would also be useful. Information gleaned could be useful for transposing sanctions into national legal systems. The Secretariat recently responded positively to a request for more information about sanctions committees; but more comprehensive information for a wider audience was necessary.

Loraine Rickard-Martin (CCSI) suggested that expert groups should be more oriented toward helping to guide states about how to implement sanctions. One impediment could be the longstanding view that only the Council and the committees ha the right to definitively interpret sanctions provisions, hence the reason that Implementation Assistance Notices were subject to committee consensus. Still, while it

was accepted that the interpretation prerogative belonged to the Council and committees, the Secretariat has a practice of providing guidance to states who requested it, and expert panels should transform their relationship to states that are affected by sanctions and to states in general, in providing practical implementation guidance as needed.

Rico Carisch (CCSI) noted that the sponsors strongly supported the relationship between sanctions and human rights and the exploration of what aspects of sanctions practice should be further enhanced. It was also one of the most discussed topics during consultations on the High Level Review and the Assessment. The important distinction was made by a sponsor that the human rights focus should not only be on women, girls and children, but on the population as a whole. Recalling that the issue was a perennial one for expert group members, with or without a human rights specialization, he noted that it was increasingly promoted in the methodology of expert groups. For it to become practice rather than theory, however, expert groups would need to demonstrate that they had actually developed specific working principles as part of their methodology, including the language skills and cultural sensitivities necessary to be able to speak to all groups in conflict-affected societies.

Noting that the cultural background of expert group members were factors that needed to be considered, **Ambassador Wronecka** observed that human rights issues were an inevitable part of the focus of sanctions committees because of sexual abuse and other violations. It was an ethical imperative to deal with these issues, including the rights of children in conflict.
