



## **Launch of the Best Practices Guide for Chairs and Members of Sanctions Committees**

**5 February 2019**

**Hosted by the Permanent Mission of Australia to the United Nations in partnership with the Permanent Missions of Belgium, Germany, the Kingdom of the Netherlands, and Sweden**

**H.E. Ms. Tegan Brink**, Deputy Permanent Representative of Australia, noted that Australia viewed the Guide as part of its Security Council legacy from 2013-2014 and the High Level Review of Sanctions, of which it was a co-sponsor. Sanctions as a key part of the UN's peace and security toolbox were only as effective as their weakest link. Gaps in implementation caused them to cease to have their full protective, preventive and coercive effect. It was important that sanctions committees function effectively and that states, regulators, businesses and civil society have the information that they need to comply. Australia's perception was that sanctions committees were functioning better than in the past. One aspect was the approach to thinking about sanctions and their implementation as less punitive and more collaborative, in terms of leading to a better development pathway.

**H.E. Ms. Irina Schoulgin Nyoni**, Deputy Permanent Representative of Sweden, said that her country's two-year tenure on the Security Council had left the impression that sanctions, as the most intrusive instrument available to the Security Council, came with great responsibility. Sweden's experience of chairing two committees (1970 on Libya and 2374 on Mali) had shown that the task required great expertise and understanding of how committees and monitoring experts function. The fact that the Secretariat provided important and significant support and knowledge did not mean that other types of support were not needed. The Guide was complementary to other existing guidelines and guidebooks. As a product of extensive consultations, she hoped that it would be useful for colleagues serving on committees as well as for other external stakeholders.

**H.E. Mrs. Karen Van Vlierberge**, Deputy Permanent Representative of Belgium, observed that it was important for incoming members of the Council to have such a Guide. Since joining the Council a month ago, Belgium had chaired the Somalia committee for the first time. The last time she had worked on the Council was twelve years before. She was therefore unable to compare the current

functioning of committees to the past. However, she had noticed that the committee workload had increased almost exponentially. She greatly appreciated having the Guide for Belgium's experts. Due process in the implementation of sanctions was, for Belgium, not only a question of principle; it was also a question of the effectiveness of sanctions. It was important that every person targeted by sanctions had the right to challenge the sanctions in front of national or regional courts and tribunals. If the decisions on or implementation of the sanctions did not meet due process standards, they would be quashed at the end of the judicial review. The Council had made progress over the past years toward much fairer and clearer procedures. such as the creation of the Ombudsperson for the Al-Qaida and Da'esh regime. However, due process concerns persisted, and legal challenges had been filed in EU and other national jurisdictions around the world. This undermined the effect, efficiency and legitimacy of the UN sanctions system. For this reason, Belgium hoped that the recommendations for fair and effective measures contained in the Guide would be useful in helping the chairs and the experts of the various committees to enhance the application of due process. Belgium was looking forward to continuing the discussion on due process during its two years on the Council and trying to make progress on the issue. She was pleased to announce that Sweden and Belgium would host consultations with the Secretariat on 19 February.

**H.E. Mrs. Lise Gregoire Van Haaren**, Deputy Permanent Representative of the Kingdom of the Netherlands, stated that during the Netherlands' one-year stint on the Council, it had three priorities for conflict prevention: better peace-building, accountability, and rule of law. It also set explicit targets for itself in terms of working methods, effective functioning of the Council, and transparency. The latter was important in order to ensure that the entire membership was on board with sanctions. It was also the reason that the Netherlands had funded the Security Council Affairs Division's new website, so that relevant information could be found. The Netherlands was chair of the DPRK sanctions committee and facilitator of the Iran mechanism. Each committee had its practices and it was important to be prepared. The Secretariat provided essential training for incoming members, but it was also important to be able to manage the politics related to the work of the Council and the committees, including the dynamics with the expert panels, for example. It was important to have an overview in terms of how the work of various committees might be related in order to be aware of the context. The Netherlands believed special attention should be given to gender issues, including the inclusion of gender-based violence in sanctions criteria. There needed to be gender sensitivity, and gender-based training and knowledge, both on expert panels and on the committees.

**Enrico Carisch (CCSI)** said that the goal in developing the Guide was to create a succinct and pragmatic information source for the principle actors and others. The current version was preliminary, but would be useful for intensifying the consultation process. The Guide was divided into four sections: the structure of the sanctions system; committee practices; implementation obligations and compliance needs of member states and the private sector; and committee engagement, i.e., aspirational issues such as human rights. Some of the themes and concerns that came out of the consultations included the role of penholders, the role of due process, and the broader context of human rights. The consultation process would include ten different groups, including monitoring experts and their coordinators, among which there was now a 20-year reservoir of experience to be tapped; Special Representatives and Special Envoys of the Secretary-General, who were important for the work of experts, and from whose collaboration the committees also benefited; and representatives of regional organizations and the humanitarian

community. CCSI was also trying to explore with Germany an outreach effort involving the Human Rights Council in Geneva; and with regional organizations in Brussels and Addis Ababa. It was also critical to have the input of technical organizations in expert group investigations, and the secretaries of sanctions committees who were indispensable in the system, and legal experts. There was an event on gender-related issues planned for the end of February in Nairobi, sponsored by Canada, and with additional funding from the Netherlands. CCSI was collaborating with Ruwanthika Gunaratne, former expert on humanitarian issues on Darfur and Yemen, and a gender expert. In early June, Australia would host a large group of representatives of the private sector, who were the frontline actors of sanctions implementation. The results of the consultations would be integrated into amending the current Guide, and would provide context for the second Guide, for experts and their coordinators. CCSI would try to add a glossary of frequently used sanctions terms that already existed in draft form, and would be opened up on the website so that Members States could log in and provide comments.

**H.E. Mr. Richard Arbeiter**, Deputy Permanent Representative of Canada observed that CCSI had designed the Guide around differentiated approaches depending on the level of knowledge of the end user. That was a practice that should be emulated: understanding what the audience requires and tailoring the product towards multiple audiences on sanctions. The Guide highlighted the needs of the private sector, the expert community and member states seeking ways to better implement and honor their international obligations. Another important aspect of the Guide was its approach of being responsive to those communities and others. Also the disclaimer pointed to the reality that the sanctions issue was not static, and that there was room for continuous improvement and learning, both with the view to increase effectiveness and address some of the gaps that had been noted. Canada was delighted to build on the work of the Netherlands and Sweden and others, particularly around a gendered lens on sanctions issues. The purpose of the workshop in Nairobi was to dive more deeply into the issue, transparently, and with full understanding, and to acknowledge the threshold set by the Security Council for having gender expertise in sanctions committees, but also specifically in the Libya and South Sudan sanctions committees in terms of including sexual violence as a criterion for sanctions. Canada would lean on CCSI's network and expertise for help in thinking through the issue, which would be worthwhile for everyone in the community who is interested in effectiveness and efficiency and making results more achievable.

**H.E. Mr. Juergen Schulz**, Deputy Permanent Representative of Germany, observed that while the later version of the Guide would contain more details, this first draft was an excellent piece of work that was needed by anyone taking over the chair of a sanctions committee. Speaking from a position of a month on the council, he offered preliminary impressions of the work of the sanctions committees. The amount of work should not be underestimated. While there were not many formal meetings, most of the work happens in informal meetings, for which there was a heavy load of communications from the chair to member states, to expert groups, etc. Germany chaired the DPRK and Libya committees, which were quite demanding, and what might seem like technical issues at first sight ended up being highly political. It was important to get to know the players, including relying on the Secretariat's expertise and experience. One must also have a feel for the committee dynamics, and establish contact and get to know the expert panel, which is not based in New York, but spread all over the world and visited New York infrequently.

A participant noted that while the testimony so far was about the usefulness of the Guide to those who had served or were about to serve on the Council, it was probably more useful for those states that had no perspective or had not served in the past and lacked concrete experience of sanctions regimes. Due process was a longstanding priority for his country, which was grateful to have strong advocacy in the Council on the issue. It was an efficacy issue given that states were obliged to implement sanctions, and were also obliged to guarantee due process to their citizens. It sometimes seemed that from inside the Council, the Ombudsperson mechanism was perceived as the end rather than the beginning of the story. He did not understand why a substantive discussion that was needed on how to extend the scope and mandate of the Ombudsperson and how better to support it could not be held. His country also supported mainstreaming certain thematic issues throughout the sanctions regimes, such as sexual and gender-based violence. Very important progress was made with the first listing of individuals accused of the trafficking of persons. He was interested in hearing about prospects to have thematic sanctions regimes on some of the gravest human rights violations, such as cases of slavery. He was also interested to hear views on over-restrictive sanctions implementation (over-compliance) given that the work of humanitarian actors became more difficult if not impossible under some sanctions regimes. This was the case with DPRK, on which the Netherlands had done important work as chair of the committee but it happened in other cases as well. It was important for committees to be vigilant about unintended consequences due to over-compliance.

Another participant observed that as a representative of an African country in the Security Council, he found the discussion of due process very informative. He wondered what the procedures were that needed to be followed, and whether the regional and sub-regional institutions were consulted on the matter. There were many African institutions that had an interest in conflict resolution. He wondered what improvements or progress had been seen in which countries as a result of sanctions being applied and then lifted, or persons delisted. How did sanctions committees balance politics with humanitarian issues, he wondered. There was often a political motive behind sanctions, while failing to look at the humanitarian side, such as sexual exploitation and the abuse of women and children.

A third participant, a current Council member, noted that several delegations were working closely with his, which was coordinating its chairmanship of the Informal Working Group on Security Council Working Methods. Many of the issues raised in today's meeting by the panelists and CCIS were at the core of its ongoing chairmanship and his delegation shared many of the views presented earlier. His delegation recognized the importance of the Ombudsperson, the system of penholdership, and the challenge of enhancing working methods. His delegation stood ready to cooperate with previous and current Council members. Notwithstanding the Secretariat's useful orientation crash course, he wished his delegation had had the Guide before coming on to the Council 14 months before, after not having served for 40 previous years. The actual dynamics and local politics pertaining to each committee could only be learned on the ground. It was important for each Council member to have a sanctions coordinator during its membership of the Council. It was a daunting but useful task, such as when a sanctions coordinator filled in last year for a sanctions committee chair who died unexpectedly.

During responses by the panelists, Ambassador Van Haaren (the Netherlands) said that on the issue of thematic sanctions, particularly on humanitarian issues, the discussion on the DPRK committee had

sometimes become very political on the issue of exemption requests. As chair, her delegation had tried to explain the possibilities of exemptions for humanitarian reasons, and ensure that humanitarian organizations understood the parameters. There were grey areas as to whether, for example, foodstuffs were humanitarian aide, or for reconstruction purposes. Her delegation had taken the initiative to have sanctions applied to human traffickers in Libya, which was possible because it was part of an existing sanctions regime. Given the sensitivities around human rights in the Council, thematic sanctions posed a challenge. There was a human rights-based sanctions regime in place in the EU, related to the Magnitsky Act. While progress had been made there, it would not be the same in the Council given the current dynamics.

Ambassador Schulz (Germany) said that the issue of due process was also very important for his country. Based on the rule of law, and while not being a court hearing in the strict sense, it was fair that persons and entities who no longer warranted being listed, should be taken off the list. Any listed person or entity should have the chance to argue his/its case. There were obvious cases of humanitarian exemptions such as medical operations; but some used exemptions as a pretext to circumvent sanctions. These were delicate grey areas on which the committee had to decide on a case-by-case basis.

Ambassador Van Vlierberge (Belgium) expressed the view that often problems arose with humanitarian actors over exemptions because of information gaps about the meaning of the sanctions provisions, mixed in with political complications. Often experts on the committees did not possess the necessary technical expertise to say, identify dual-use items. The question about whether or not sanctions worked in particular cases was a difficult one to answer without knowing what the situation would have been had no sanctions been deployed. There was an interesting carrot-and-stick discussion such as in Mali, where sanctions were used to trigger the political process, but as soon as the sanctions were in place, then the carrot or stick was gone, and the next incentive would be to get off the sanctions list. Often the Council was good with the stick but not so good with the carrot. There were cases when sanctions did make a difference. It was therefore important to respect the instrument so that it could be used when necessary.

Enrico Carisch (CCSI) observed that due process would become very important as the consultation process moved forward, in that opportunities were being looked at to apply due process not just at the tail end, i.e., with the Ombudsperson, but at the very beginning with decisions by expert panels, such as concerning the minimal requirement to justify opening an investigation, all the way to delisting and conclusion of the process. He hoped that the consultations with the private sector would include practical aspects of over compliance, which occurred when the private sector feared being hit with fines that were imposed not by the UN, but by others. The expert groups could help to avoid damage by managing the process. In terms of whether or not progress occurred after sanctions were applied, it was important not to look at sanctions isolated from the broader policy concept and conflict resolution mechanisms. If there was failure, it was often on the part of the broader policy, not sanctions. We should recall that 15 years ago it was a treacherous endeavor to walk around in the DRC; for 20 years, walking around in Somalia was suicidal if one did it without protection. Today, in these two countries there was a marked difference, which said something about the effectiveness of the overall intervention by the international community. Outreach to the regional organizations in Addis Ababa with the African Union, and in Brussels with the European Union, was planned.

A participant, observing that an “enormous amount of work” had gone into developing the Guide, thanked CCSI for skillfully and accurately including input from Council members. She looked forward to seeing numerous updated versions of the Guide in future. Her delegation, among other former members of the Council, were “envious” of those who were able to benefit from the Guide. Her delegation particularly appreciated the functional approach to sanctions’ multiple goals of constraining or coercing certain behaviors, the focus on transparency, and the effort to produce a glossary of sanctions terms. Harmonization of language was important in arms embargoes as well as in understanding the system of exemptions. It was important that experts and coordinators understand how due process concerns played into appropriately tackling some of the sanctions regimes. She believed it was important in going forward to deepen the knowledge of how sanctions were effectively implemented by the various and diverse state regulatory agencies and the private sector. A dialogue with them was important to understand their needs in implementing sanctions. She pledged her delegation’s support to working on making the next editions of the Guide even more useful.

A participant stated that his delegation was appreciative of CCSI and the partner countries that had brought about the Guide. He was heartened by the idea that it was a working document with room for improvement. His government would like to view the approach of sanctions across the committees as moving from a punitive to a collaborative model, with due process and transparency as key issues. The report of the Informal Working Group on General Issues of Sanctions (S/2006/997) was the cornerstone of guides. One important issue was maintaining commitment and ensuring national coordination, given the ultimate responsibility of Member States under Article 25 of the UN Charter for sanctions implementation. His country had approached the issue from the direction of effective departmental coordination. It was, however, difficult to interact with the expert groups since they were rarely present in New York or in capitals. More effort needed to be put into arranging such meetings. Another important issue pertained to national capacity building, as per section 3 of the handbook. Eight out of 14 countries under sanctions were in sub-Saharan Africa. Implementation needed to be looked at in the context of capacity. He welcomed the intention to consult with regional organization. For the region to be more effective, the Council, the committee, and the groups of experts should support ongoing bilateral and regional efforts.

Another participant noted that his delegation had no experience on the Security Council, but might be a candidate in a few years. Improved due process would lead to a more efficient, effective and better-understood UN sanctions system. The political aspects of humanitarian issues could be reduced if there were constant monitoring of the humanitarian impact of sanctions. The section of the Guide on the issue of human rights and the link to gender was particularly relevant, and would help to explain not only to committee members, but also to the public concerning the usefulness of the tool of sanctions.

A participant noted that the Guide would be particularly helpful for his delegation, which was chairing three sanctions committees. Noting that the elected 10 members currently chaired all the sanctions committees, he was interested in hearing views about the growing support for distributing the chairing of committees among all Council members including the P5. He shared the view that the Council was good at applying sanctions but not as good at lifting them. His delegation was

conducting a benchmarking exercise about ending sanctions regimes. The issue of regular reviews was also an important one for his delegation.

Another participant stated her delegation's appreciation for the Guide as a working document. She observed that transparency was an issue regarding the workings of committees. While many of the issues were technical, there was a lot of hidden politics. Her delegation wondered why committees did not make their decisions public, particularly negative decisions, a practice she viewed as regressive compared to those of the UN, the Council, and other international bodies. Another issue concerned the differences in the functioning and requirements across the various committees, as evidenced by differences in their guidelines. For example, the Ombudsperson served only one committee. Given that Member States were obligated to implement sanctions, there should be more consistency across regimes in order to facilitate implementation. She wondered if the Guide might address in future the inconsistencies in committee practices and guidelines.

A participant noted that her country was a member of the Like-Minded States and was one of the co-sponsors of the High Level Review of UN Sanctions. The Guide was an important development particularly in its focus on the delisting process and on the Ombudsperson mechanism, which her delegation wished to see expanded to other sanctions regimes. She appreciated the Guide, which she found to be user-friendly, practical and handy, and a very important tool for all those on and off the Council, and which warranted study by all Member States.

The representative of a regional organization strongly welcomed the Best Practices Guide and particularly the recommendations concerning due process, specifically not relying only on delisting, but also on the initial listing stage, and calling for designations based on robust evidentiary standards. Another important element in the Guide was where it called for outreach and transparency. Effective implementation by Member States, financial institutions, and international organizations was the litmus test of sanctions, and it could be supported by appropriate outreach. The recent humanitarian guidance provided by the DPRK committee was a very helpful tool. His organization looked forward to continued collaboration on the Guide and to sharing its experience, particularly with regard to due process.

A participant from a mutual fund observed that the risk level was different for various sectors. Corporations had to comply with sanctions, and their shareholders and investors could be strong advocates for sanctions implementation, given that there was a critical amount of risk involved.

Ambassador Van Vlierberge (Belgium), noted that her delegation supported the idea of extending the Ombudsperson mechanism to other sanctions regimes, and considering due process in the listing phase as well. The EU had its own listing standards, which would be hard work to replicate, but it was important to go step by step.

Lorraine Rickard-Martin (CCSI) said that concerning the benchmark exercise for lifting sanctions mentioned by a participant, the Council's language had become clearer about compliance and steps to be taken in order for sanctions to be eased or lifted. The Council was also becoming more responsive to what targets were doing to comply, which was manifested in the way that resolution

provisions changed depending on the situation the ground. There should also be improved and increased sanctions reviews. There needed to be more involvement of expert panels and more of an understanding of the collaborative role they could play in assessing capacity and helping countries respond to the Council's requirements. She appreciated the generosity of the sponsors in sharing their own experience on the Council so as to benefit others who were coming in. The experiences of chairs that had recently served on the Council were what made the Guide practical and practitioner-oriented.

Ambassador Brink noted that the key takeaways for her were that sanctions committees represented a considerable amount of work in a subterranean universe. They were technical and political and the Guide and the kind of exchanges held today were very helpful. Also, there were very challenging issues that needed to be dealt with relating to transparency, due process and balancing sanctions and humanitarian issues. And finally, countries needed support in order to make sanctions implementation effective.

CCSI, 5 March 2019