

Part III: Supporting Member State Capacity to Implement Targeted Sanctions

6. Introduction

- § 122 IT IS THE Member States of the United Nations that are responsible for the implementation of Security Council decisions. Their willingness and capacity to implement sanctions will thus determine whether sanctions will succeed or fail. Obviously, capacity to implement targeted sanctions is critical, but political will is paramount. Political will at all levels, beginning with the members of the Security Council, is essential to the effective implementation of targeted sanctions.
- § 123 Furthermore, effective implementation requires an ongoing dialogue between the Security Council, the Secretariat and Member States regarding implementation, helping Member States to accomplish the stated objectives, not just declaring what states must do. This dialogue can be promoted in various ways, including through reports on implementation, concrete measures to help Member States and technical assistance. The experiences from the UN Counter-Terrorism Committee (CTC) give some insights on how reporting and assistance can be improved.
- § 124 Due to their technical complexity, targeted sanctions are more difficult for most Member States to implement than comprehensive sanctions. A national legal and administrative framework is neces-

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sary to give effect to Security Council resolutions in Member States' domestic law. To assist Member States, a Consolidated Model Law has been developed and is presented in Box 11.

- § 125 As Member States have the ultimate responsibility to implement targeted sanctions effectively, they must therefore have the capacity to do so. There is significant variation in the capacity of states to implement targeted sanctions. Where lack of capacity exists in states in which the major onus is placed to implement sanctions (e.g. neighboring and other most affected states), the result is a credibility gap between the adoption and implementation of Security Council sanctions resolutions. Thus, it is important to consider forms of technical assistance, either extended through international organizations or directly between Member States. Such capacity building has important implications for longer-term development.
- § 126 Given these considerations, and the other points enunciated above, it is imperative that a platform be established for the effective implementation of targeted sanctions, consisting of both general principles (see Box 10, *Principles for Effective Implementation of Targeted Sanctions*) and specific guidelines for particular types of sanctions (see Section 8, Practical Guidelines for Effective Implementation by States).

7. Concrete Measures by the Member States, Supported by the UN and International Organizations

7 a. UN–Member State Interaction

Lessons from Security Council Resolutions 1373 and 1377

- § 127 Targeted sanctions regimes can draw on the momentum and lessons of UN Security Council Resolutions 1373 and 1377 for the drafting and implementation of sanctions resolutions. The two resolutions are illustrations of strong political will, and while it is too soon

to tell about the effectiveness of all aspects of the Counter-Terrorism Committee process, some important precedents have been established that could be drawn upon in future UN Security Council resolutions targeting sanctions. The following paragraphs spell out some of these.

- § 128 With regard to *reporting requirements*, Paragraph 6 of Resolution 1373 specifies that States should report on what actions they have taken or plan to take to implement the resolution. The monitoring process established by the CTC also suggests that there should be greater consistency in, and transparency of, reporting on implementation, based on specific questions posed, and guidelines established, by the committee. Sanctions Committees in the future could learn from the enhanced transparency in the work of the CTC. See recommendations for reporting in Part IV, Box 12.
- § 129 Paragraph 13 of Resolution 1377 recognizes that many states may require *assistance* in implementing the requirements of the resolution and invites them to seek assistance with implementation, if they need it. The resolution calls on Member States to assist each other to implement the resolution fully, while Paragraph 14 invites the Counter-Terrorism Committee to explore ways states can be assisted by international, regional and sub-regional organizations. In the context of sanctions committees, it might also be useful to conduct an assessment of the capacity of the most affected States, to identify what specific types of assistance they might require to enhance their capacity to implement the sanctions effectively.
- § 130 With regard to the provision of *financial support* to assist the implementation by states lacking administrative capacity and the means to provide it, there is a potential menu of choices available ranging from the issuance of a directory of sources of support, to the offer of bilateral assistance from those members willing to provide it, the provision of multilateral donor community support, or the establishment of a trust fund or other internal funding instrument within the Secretariat, including budgetary allocation within the resolution itself.

§ 131 The strengthening of the capacity of the Secretariat and the provision for independent expertise should be considered priorities. The Secretariat could also act as a repository to provide an *online database* for the provision of information about the implementation of targeted sanctions along the lines of the process established by UN Security Council resolution 1373.

Reporting and Communication

§ 132 It is important to maintain effective communication on targeted sanctions implementation between the UN and Member States, between UN Missions and capitals, and within the capitals (among those responsible for implementation, i.e. ministries of foreign affairs and other agencies).

§ 133 Member States are encouraged to identify *central contact points* to disseminate information on targeted sanctions implementation in their capitals. A relevant sanctions committee could publish a directory of contact points, update it at regular intervals, and encourage all states to make use of the directory for contacts on matters covered by targeted sanctions resolutions, recognizing that cost or personnel requirements could be an inhibiting factor for some states.

§ 134 It is especially important to ensure that there is an adequate flow of information between missions in New York and those responsible for the dissemination of information at the national level. The national authorities responsible for implementation must receive the information in a timely manner, and Member States should identify the most appropriate channel for communications. In some instances, increasing the capacity of UN missions to process and transmit information to capitals might be necessary.

§ 135 Member States could also consider utilizing central contact points for enhancing internal coordination, not only disseminating information on targeted sanctions, but also coordinating implementation at the national level.

Periodic Reviews

- § 136 To be able to support Member States the Security Council should conduct periodic reviews of the effectiveness of specific Council resolutions. Such reviews could take place with the assistance of outside experts and/or specialized international organizations to assess ways to increase the effectiveness on the target and evaluate the unintended effects of the targeted sanctions, including humanitarian impacts.
- § 137 Expert Panels can be an instrument of transparency that enables the investigation of violations of targeted sanctions (and monitor their implementation). The information provided will also be of use to the Member States themselves, to improve on their implementation measures.
- § 138 To encourage more effective implementation of targeted sanctions by Member States, a Council presidency might choose to adopt a theme of encouraging effective implementation of sanctions, with the goal of producing an output document, including general principles and/or guidelines for the implementation of sanctions (see Box 10) and a listing of resources available to Member States and other entities.

7 b. Member State Implementation

- § 139 The implementation of sanctions by Member States is assumed to be automatic, following a decision by the Security Council. However, it might be important for the President of the Security Council and/or the Chair of the relevant Sanctions Committee to *communicate directly to leaders* in the targeted and most affected countries on the significance of the actions taken by the Council. The Council could also consider arranging regional meetings with leaders of key countries during Security Council missions where the goals and means of the sanctions are discussed fully and seriously. The Security Council should also make use of meetings in New York with leaders of key countries to address the issue of sanctions implementation.

§ 140 The implementation of sanctions can be part of a Member State's efforts to improve *integrity* in government operations. Implementation means that customs and excise will have to function effectively. This may also result in increased effectiveness in the State administration, improved transparency and more rational uses of State revenue.

The effective implementation of sanctions at the national level requires the following key measures:

- § 141 First, the adoption of a legal framework – a *model law* or its functional equivalent – giving legal effect under domestic law to resolutions passed by the UN Security Council would serve as the basis for national level implementation of targeted sanctions. (See the discussion of model law legislation in Section 9.) While there may be alternative ways to give Security Council resolutions effect in domestic law (primary legislation referring to Security Council resolutions, sector-specific primary legislation, general purpose secondary legislation in trade and finance, and generic constitutional authority), the adoption of a model law expedites implementation, achieves uniformity of interpretation across different national legal jurisdictions, and enables States to implement all types of sanctions imposed by the Security Council. It also obviates the need for States to pass special enabling legislation each time the Security Council passes a resolution. While a version of the model law described in Section 9 need not be adopted by every State, its functional capabilities should serve as the benchmark for alternative means to provide domestic legal standing to Security Council resolutions. The adoption of a model law should be a priority for Member States, and the Security Council should formally endorse this idea.
- § 142 Second, measures should be introduced into domestic legislation making States responsible for the *criminal prosecution of violations* of UN Security Council resolutions by persons and entities falling within their jurisdictions. Not only should they prosecute violations of targeted sanctions, but they should also protect private sector institutions under their jurisdiction from liability for claims arising

from their compliance with sanctions resolutions. This point is elaborated in the Interlaken Process report.

- § 143 Third, public information and *dissemination of information* about the sanction should be provided to relevant actors, using electronic as well as written notification.
- § 144 Fourth, *sectorally-specific guidelines* and administrative practices should be identified. Once again, the *Practical Guidelines for Effective Implementation by States* included in Section 8 spells out best practices and relevant measures with respect to different types of targeted sanctions. Among the measures that should be considered are compliance and enforcement measures, exemptions and exceptions, and in the case of targeted financial sanctions, the administration of seized or frozen assets.
- § 145 Implementation of targeted sanctions requires considerable skills and administrative capacities of the Member States. Part of this is to disseminate information expeditiously to the public and private entities concerned. Even in small countries this can be rather demanding tasks. In Example 1 a Swedish example is given from the implementation of targeted financial sanctions. The financial sanctions are handled by the Swedish Financial Supervisory Authority (Finansinspektionen, FI). It has the appropriate legal authority, but also requires considerable administrative capacity to be an effective instrument. This aspect is further elaborated in Section 7 c, below.

Example 1.

The Swedish Financial Supervisory Authority

This governmental agency (Finansinspektionen) is supervising companies in the insurance, credit and securities market – all in all 2,500 companies and insurance brokers. As of April 2002 this meant:

- 108 banks and other credit institutions
- 125 securities companies
- 70 fund management companies
- 1 stock exchange
- 2 authorized market places
- 1 clearing house
- 430 insurance companies
- 108 friendly societies
- 1,170 insurance brokers

7 c. Measures to Strengthen Member State Capacity

- § 146 Lack of implementation of a targeted sanctions resolution by a Member State may be caused by administrative incapacity. This may lead to a need for external support, including financial assistance. Obviously, lack of such support cannot constitute an excuse for non-compliance.
- § 147 *Technical assistance* can be provided in the form of training, seminars, and operational assistance from the UN, regional organizations, and other international institutions, including, but not limited to, WCO, ICAO, Interpol, IBRD, IMF, and the Financial Action Task Force (FATF) on money laundering.
- § 148 *Sanctions assistance missions* and/or offices in target or neighboring States can be created such as was done in the case of Yugoslavia. This typically entails coordination from an office in New York, with the deployment of individual monitors in the field, to assist Member States in their monitoring of borders. This concept can be enlarged to cover also other types of activities, when needed.
- § 149 The *private sector* is central to the implementation of targeted sanctions and should play an important role in making targeted sanctions more effective. Thus, it is important to encourage private sector initiatives to develop recommendations for “best practices” in different sectors. Private sector organizations should be mobilized to ensure that their members are fully aware of the targeted sanctions regime.
- § 150 *Expert cooperation*, with periodic meetings among national regulatory authorities, along the lines of the coordination that has taken place historically among regulatory institutions responsible for financial sanctions, should be encouraged.
- § 151 *Peer evaluations* of enforcement of targeted sanctions by Member States of each other, along the lines of the process created by the FATF in the area of money laundering should also be considered.

§ 152 Should periodic reviews reveal intentional non-compliance, as determined by the UN Security Council, possible actions include: vigorous diplomacy, diplomatic and economic disincentives, and the imposition of secondary sanctions.

§ 153 Member States should develop and make available training programs for the implementation of targeted sanctions. Access to such training programs could be provided through bilateral relationships, within regional frameworks or multilateral institu-

tions. Some sectors of public administration could particularly benefit from these programs, notably customs officials, airport staff, border guards, and financial authorities. These programs will also enhance government capacity at large, and thus benefit the Member State over the longer term. Example 2 suggests examples of what Member States can offer in terms of training, using some Swedish experiences.

Example 2.

Training Programs for Member States

Based on the Swedish experience, there are certain key authorities for the implementation of targeted sanctions, such as Customs, Police, Border Guards, Coast Guards, Airport, Railroad, Seaport, Road transportation authorities, Financial regulators and others.

Typical programs include *Management Seminars* for leaders of key authorities, preferably in a regional setting and thus contributing to establishing regional networks.

Then it is important also to conduct *National Programs for Middle and Lower Level Staff* in the same authorities. To facilitate this and have a resource for future training, it is important also to include *Training of the Trainers*, for instance at international institutions.

Topics to be covered in such training programs include:

- The Scope of Sanctions (UN goals, targeted actors, measures of success)
- The role and impact of the authority (how it is affected, its resources, benefits of international cooperation and division of labor, possibilities of technical assistance)
- Technical advances in the areas of specialization (electronic techniques, other techniques of use, practical experiences, etc.)
- The issue of integrity (motivation of staff, salary structures, integrity of the organization, handling of illegitimate pressure, etc.)

7 d. Improving Consultations with International and Regional Organizations

- § 154 In the design of targeted sanctions resolutions, the Security Council should *draw on the expertise of relevant, specialized international organizations* (such as WCO, ICAO, and IMO etc.) to assess how effectively the resolutions can be implemented. In doing so, the Security Council should remain mindful of the balance between quick and decisive action by the international community and taking the time to consult with expert agencies about the feasibility of implementation of specific measures (see also Parts II and IV).
- § 155 The UN Security Council should seek the cooperation of relevant regional and international organizations and encourage them, within their competence and mandate, to *assist Member States* fulfill their obligations under the Charter.
- § 156 It is important to *improve the communications links* between the UN and specialized international organizations, drawing their attention to problems within their competence identified in monitoring and investigative reports.
- § 157 The UN Secretariat could also improve consultation with relevant technical organizations (such as ICAO, WCO), and should be encouraged to facilitate the transmission of information to member states requesting technical assistance (for more on this issue, see Part II).

§ 158 Relevant international organizations could be called upon to coordinate or *conduct training programs* for Member States requesting assistance. For example, organizations such as the WCO assist their Member States in achieving efficiency through technical assistance programs, see Example 3 which could also be extended to programs for compliance with targeted sanctions.

Example 3.

The World Customs Organization

The World Customs Organization, WCO, has 11 regional offices that monitor trends in smuggling.

Its customs enforcement network looks into different types of concealment.

It administers bilateral agreements and multilateral conventions for the exchange of information.

There are no restrictions on access to this exchange of information, if it is about general trends, latest concealment methods, or types of frauds. There are provisions restricting the use of some types of information, however. It depends on the level of confidentiality. This information could be shared with Sanctions Committees, following an application from a Member State.

While the WCO currently has no specific programs for assisting members with compliance with UN resolutions, it could develop relevant programs and use its existing network for dissemination of sanctions related information.

It has a global database. Member States could *utilize the database available* from the WCO for sanctions implementation. There could be a page for UN sanctions. The tools are available. If there is information that is relevant to Member States, they can access it.

The WCO has three *websites*: a public website; a members' website; and an enforcement website. Most developed countries are making full use of the information available. The countries with fewer capabilities, utilize the network less. However, the general expansion of the Internet is facilitating important change.

RECOMMENDATIONS

§ 159 The Security Council should encourage more effective implementation of targeted sanctions. In preparing the stage for effective implementation, the Security Council is encouraged to establish a set of principles (see Box 10), that may be incorporated in a resolution, Presidential Statement, or Note by the President. Subsequent Security Council resolutions imposing targeted sanctions could recall this document and include its contents by reference.

Box 10.**Principles for Effective Implementation of Targeted Sanctions**

- § 160 In preparing the stage for effective implementation of targeted sanctions, the Security Council may consider establishing the following set of principles, incorporated in a resolution, Presidential Statement, or Note by the President as they might decide.
- Recalling that under Article 25 of the UN Charter, mandatory resolutions of the Security Council are binding on all Member States, and must be given full effect in their laws and administration;
 - Taking into consideration, in determining whether to impose sanctions, the appropriateness of specific targeted sanctions and an evaluation as to the likelihood of the effectiveness of the measures being contemplated;
 - Acknowledging the need for periodic reassessment of the measures, including their unintended effects on civilian populations, respecting international humanitarian law [and human rights];
 - Expressing a willingness to assist States to carry out their responsibilities to implement sanctions measures;
 - Expressing its willingness to consider the impact of targeted sanctions on non-targeted States, including the provision of practical ways to assist them;
 - Calling upon the Bretton Woods institutions and United Nations agencies, funds and programs to assess the impact of sanctions on non-targeted States and, in appropriate circumstances, to identify practical ways to assist them; and
 - Recalling that the Security Council has used secondary sanctions as an enforcement tool.
- § 161 To encourage effective implementation of targeted sanctions in accordance with these principles, the Security Council should adopt a platform for effective implementation and
- Call upon states to adopt a model law to give effect to Security Council resolutions in domestic law.
 - Make it clear that lack of capacity to implement sanctions effectively must be specifically addressed by States lacking such capacity in their reports to sanctions committees.
 - Invite States to seek technical assistance if they lack the capacity to implement sanctions effectively.
 - Encourage States with the capacity to do so to offer appropriate technical and financial assistance to States needing it.

- Encourage States to establish an interdepartmental committee that brings together relevant agencies to implement targeted sanctions and to identify central contact points in their capital for the transmission of information about the implementation of targeted sanctions.
- Encourage States to cooperate through regional organizations to which they belong to identify best practices, cooperate with expert panels and sanctions committees, and to ensure reporting of violations.
- Mandate the Sanctions Committees, in cooperation with the Secretariat, to monitor compliance by States and to establish detailed reporting requirements for them.
- Encourage the transparency of Sanctions Committees to facilitate implementation.
- Create a database, in cooperation with the Secretariat, of available technical assistance for capacity building.

8. Practical Guidelines for Effective Implementation by States*

- § 162 Pursuant to Article 25 of the Charter of the United Nations, Member States are obliged to give effect to decisions of the Security Council. Where the Council decides to impose targeted sanctions in carrying out its responsibility for the maintenance of international peace and security, the success of these measures depends upon effective implementation at the national level.
- § 163 This section provides practical guidance to States in establishing and improving their legal and administrative capacity to implement UN targeted sanctions. It is aimed primarily at national officials responsible for implementing targeted sanctions. However, policy

* The analysis and recommendations in Section 8 is largely drawn from the ongoing research project at the Watson Institute for International Studies at Brown University that hereby is gratefully acknowledged.

makers in UN fora may find this section useful as an indication of what is required of national-level implementation if sanctions are to be effective in achieving Security Council objectives.

- § 164 Building on the Interlaken and Bonn-Berlin processes, this section summarizes “best practices” for the implementation of the range of targeted sanctions imposed by the Security Council. Sanctions may be “targeted” in two senses. First, sanctions may be targeted upon persons. Targeted financial sanctions and travel bans are “targeted” in this sense. Second, sanctions may target specific sectors of economic activities or commodities. Aviation bans, arms embargoes and controls imposed on the trade in rough diamonds and timber are “targeted” in this regard.
- § 165 This section assesses both types of targeted sanctions on five different dimensions of implementation.
- § 166 First, states and their regulatory authorities must have the domestic legal authority to implement targeted sanctions. While there are different approaches to providing a legal basis for the implementation of targeted sanctions at the national level, the adoption of a legal framework – a model law or its functional equivalent – giving legal effect under domestic law to resolutions passed by the UN Security Council would serve as a straightforward and efficient way to achieve this objective. However, primary legislation is in itself insufficient to implement Security Council decisions; States must take the necessary steps to promulgate regulatory or administrative measures for effective implementation at the national level.
- § 167 Second, states must designate an administrative agency or agencies (central contact points) to be responsible for the various tasks required in implementing targeted sanctions at the national level. The effective performance of these tasks relies upon information received from the UN and from missions to the UN. In designating administering agencies, states should ensure as a matter of priority that communication at all levels – between the UN and Member States, between UN missions and capitals, and within the capitals (among those responsible for implementation) is effective.

- § 168 Third, domestic administrative agencies must disseminate information about the sanctions to domestic actors. This will most likely consist of general public information as well as information specifically targeted to key actors within domestic society that are called upon to implement sanctions (such as banks, airlines, importers, etc.).
- § 169 Fourth, a program for monitoring the implementation of sanctions is required to ensure compliance and the effectiveness of the sanctions.
- § 170 Finally, the enforcement of sanctions requires that breaches be pursued, with penalties sufficient to deter circumvention.
- § 171 Beyond these five elements, this section identifies “sector-specific” measures for best practice national-level implementation. Given that the guidance offered here is in the form of a checklist of critical elements in implementation, sources of further information are identified. These include references to relevant regional and international agreements, relevant intergovernmental and nongovernmental organizations, and relevant web sites to provide context and expertise useful for the more effective implementation of UN targeted sanctions.

RECOMMENDED NATIONAL MEASURES

Arms Embargoes

- § 172 *Legal Framework*
- Ensure existing legislation is adequate to implement the full range of measures (e.g. export, follow-up export, re-export, licensing and transit restrictions) that may be imposed by a Security Council resolution: give effect to resolutions through regulatory or administrative action.
 - Develop administrative measures for the registration, licensing and monitoring of arms brokers (for example, by maintaining national lists of brokers convicted of offenses related to arms embargoes); the establishment of a list of controlled goods prohibited by the embargo; the establishment of catch-all clauses for goods not covered by national lists of controlled goods; the seizure prohibited goods and the funds used or intended for use in illegal arms transactions; the criminal prosecution of those who breach an arms embargo and; the authentication and reconciliation of end-use certificates.
- § 173 *Administering Agency*
- Consider how best to employ existing expertise and dedicate resources to the development and maintenance of knowledge on targeted sanctions.
 - Designate an official body or bodies to administer sanctions, such as import and export administration agencies or Customs; ensure cooperation between these agencies by designating a lead department and facilitate intra-governmental coordination.
 - Ensure effective communication at all levels – between the UN and Member States, between UN missions and capitals, and within the capitals (among those responsible for implementation).
- § 174 *Information Dissemination*
- Inform the public through notices in official journals and through the use of media and information technology.
 - Inform key actors, such as arms producers, distributors and brokers.
 - Share information (including records of arms production and surpluses) and intelligence among government departments and between governments to identify suspect shipments, destinations, transit routes and brokers.
- § 175 *Monitoring Compliance*
- Establish procedures for licensing and certification of end-users, including delivery verification.

- Promote the adoption of codes of conduct for arms suppliers, such as those set out by regional and sub-regional organizations.
 - Maintain a “black list” of groups and individuals engaged in the illegal manufacture, trade, stockpiling, transfer, possession, transportation, insurance and financing for acquisition, of illicit weapons, and ensure that those convicted of offenses cannot operate.
 - Utilize ports of entry (land, sea and air) as opportunities to monitor transfers.
- § 176 *Enforcement*
- Specify in legislation that breach of an embargo may result in criminal prosecution.
 - Impose penalties, including criminal penalties, appropriate to deter violations.
- § 177 *Sector-Specific Measures*
- Trace and verify arms shipments that are at possible risk of being diverted.
- § 178 *Relevant Regional and International Agreements*
- Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, July 2001 (A/CONF. 192/15).
 - Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community (SADC) Region, 14 Aug. 2001.
 - Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Material, 14 Nov. 1997.
 - European Union Code of Conduct for Arms Exports, 8 June 1998.
 - OSCE Document on Small Arms and Light Weapons, 24 Nov. 2000.
- § 179 *Relevant IGOs and NGOs*
- WCO (www.wcoomd.org)
 - The Wassenaar Arrangement (www.wassenaar.org)
- § 180 *Other Relevant Websites*
- Bonn International Center for Conversion (www.smartsanctions.de)
 - Small Arms Survey (www.smallarmssurvey.org)
 - British American Security Information Council (www.basicint.org)
 - Stockholm International Peace Research Institute (www.sipri.se)
 - The Fund for Peace (www.fundforpeace.org)
 - International Action Network on Small Arms (www.iansa.org)

Financial Sanctions

- § 181 *Legal Framework*
- Ensure that adequate legal authority to implement sanctions at the national level exists without needing to engage the legislative process for each Security Council resolution (e.g. by enacting enabling legislation such as the Interlaken Model Law).
 - Give effect to resolutions through regulatory or administrative actions.
- § 182 *Administering Agency*
- Consider how best to employ existing expertise and dedicate resources to the development and maintenance of knowledge on targeted sanctions.
 - Designate an official body or bodies to administer sanctions – including the consideration and determination of requests for exceptions and exemptions, where permitted – such as the MFA or the financial supervisory agency.
 - Ensure effective communication at all levels – between the UN and Member States, between UN missions and capitals, and within the capitals (among those responsible for implementation).
- § 183 *Information Dissemination*
- Inform the public through notices in official journals and through the use of media and information technology.
 - Communicate with banks and financial institutions; notify them directly, including through outreach activities, and provide specific and timely guidance for the implementation of sanctions.
 - Notification should include a statement of the legal basis for sanctions; the precise time period within which transactions should be examined; definition of targets; detailed guidelines about what is prohibited; information on exemptions; and information concerning to whom reports should be sent, and applications for exemptions or exceptions and questions regarding sanctions should be addressed.
- § 184 *Monitoring Compliance*
- States should monitor the activities of banks and financial institutions to encourage compliance with financial sanctions, including capacity building, reporting and external auditing requirements.
 - Financial institutions should employ methods to recognize and stop transactions, and be encouraged to raise their internal supervisory standards to conform to multilateral initiatives, including through the use of technology.

- § 185 *Enforcement*
- Clearly define acts constituting a breach of sanctions, the nature of such violations (civil or criminal), and specific penalties (prison sentences and/or fines) appropriate to deter violations.
 - Encourage compliance and foster cooperative relations with financial institutions through a system of warnings and civil penalties.
- § 186 *Sector-Specific Measures*
- Specify the criteria and process for considering and giving effect to decisions regarding exemptions and exceptions.
 - Determine procedures for the administration of assets.
- § 187 *Relevant Regional and International Agreements*
- Convention for the Suppression of the Financing of Terrorism (A/RES/54/109), 9 Dec. 1999.
 - Convention against Transnational Organized Crime (A/RES/55/25), 15 Nov. 2000.
 - FATF 40 recommendations and 8 special anti-terrorist measures.
- § 188 *Relevant IGOs and NGOs*
- UN Office on Drugs and Crime (www.unodc.org)
 - The World Bank Group (www.worldbank.org)
 - Basel Committee on Banking Supervision (www.bis.org/bcbs/)
 - Financial Stability Forum (www.fsforum.org)
 - FATF (www.oecd.org/fatf)
 - The Egmont Group (www1.oecd.org/fatf/Ctry-orgpages/org-egmont_en.htm)
 - Wolfsberg AML Principles (www.wolfsberg-principles.com)
 - IMF (www.imf.org/)
- § 189 *Other Relevant Websites*
- Interlaken Process (www.smartsanctions.ch)
 - The Targeted Financial Sanctions Project at the Watson Institute (www.watsoninstitute.org/tfs)

Travel Bans (including visa bans)

- § 190 *Legal Framework*
- Ensure that adequate legal authority exists to implement sanctions at the national level without needing to engage the legislative process for each Security Council resolution (e.g. by enacting enabling legislation such as the Interlaken Model Law).
 - Give effect to resolutions through regulatory or administrative actions.
- § 191 *Administering Agency*
- Consider how best to employ existing expertise and dedicate resources to the development and maintenance of knowledge on targeted sanctions.
 - Designate an official body or bodies to administer sanctions – including the consideration and determination of requests for exceptions and exemptions, where permitted – such as the MFA, immigration and border control agencies.
 - Ensure effective communication at all levels – between the UN and Member States, between UN missions and capitals, and within the capitals (among those responsible for implementation).
- § 192 *Information Dissemination*
- Inform the public through notices in official journals and through the use of media and information technology, including aeronautical means of communication.
 - Inform key actors, such as airline, transportation and insurance companies and consular offices where visas are issued.
- § 193 *Monitoring Compliance*
- Provide guidelines to key actors regarding the application and scope of sanctions, including details of what to do in case of violations and required reporting.
- § 194 *Enforcement*
- National measures should ensure that contravention or evasion shall be made a criminal offence with effective, dissuasive and proportionate penalties.
- § 195 *Sector-Specific Measures*
- Establish a central database to maintain a list of individuals to be denied permission to enter.
 - Specify the criteria and process for considering and giving effect to decisions regarding exemptions and exceptions.

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| § 196 | <i>Relevant Regional and International Agreements</i> <ul style="list-style-type: none">◦ Convention on International Civil Aviation, 7 Dec. 1944.◦ International Air Services Transit Agreement, 7 Dec. 1944.◦ International Air Transport Agreement, 7 Dec. 1944. |
| § 197 | <i>Relevant IGOs and NGOs</i> <ul style="list-style-type: none">◦ ICAO (www.icao.org)◦ IATA (www.iata.org)◦ Interpol (www.interpol.int) |
| § 198 | <i>Other Relevant Websites</i> <ul style="list-style-type: none">◦ Bonn International Center for Conversion (www.smartsanctions.de) |

Aviation Bans

- § 199 *Legal Framework*
- Ensure that adequate legal authority exists to implement sanctions at the national level.
 - Amend existing measures, or take regulatory or administrative action to deny targets permission to take off from, land in and fly over national territories.
- § 200 *Administering Agency*
- Consider how best to employ existing expertise and dedicate resources to the development and maintenance of knowledge on targeted sanctions.
 - Designate an official body or bodies to administer sanctions, such as the MFA, the Transportation Ministry, the aviation or air traffic control agency; ensure cooperation between these agencies.
 - Ensure effective communication at all levels – between the UN and Member States, between UN missions and capitals, and within the capitals (among those responsible for implementation).
- § 201 *Information Dissemination*
- Inform the public through notices in official journals and through the use of media and information technology, including aeronautical means of communication.
 - Inform key actors, such as the Civil Aviation Authority, Customs and Excise, airport authorities, air traffic control authorities and registered companies.
- § 202 *Monitoring Compliance*
- Provide guidelines to key actors regarding the application and scope of sanctions, including details of what to do in case of violations and information about required reporting.
- § 203 *Enforcement*
- National measures should ensure that contravention or evasion should be made a criminal offence with effective, dissuasive and proportionate penalties.
- § 204 *Sector-Specific Measures*
- Establish a central database, such as the ICAO register of aircraft, to maintain a list of prohibited aircraft.
 - Specify the criteria and process for considering and giving effect to decisions regarding exemptions and exceptions.
 - Point about seizure of aircraft, barring aircraft from take off and landing.

- § 205 *Relevant Regional and International Agreements*
 - Convention on International Civil Aviation, 7 Dec. 1944.
 - International Air Services Transit Agreement, 7 Dec. 1944.
 - International Air Transport Agreement, 7 Dec. 1944.
- § 206 *Relevant IGOs and NGOs*
 - ICAO (www.icao.org)
 - IATA (www.iata.org)
 - Interpol (www.interpol.int)
- § 207 *Other Relevant Websites*
 - Bonn International Center for Conversion (www.smartsanctions.de)

Targeted Trade Sanctions: 1. The Example of Rough Diamonds Controls

- § 208 *Legal Framework*
- Adopt legal and administrative provisions as appropriate to implement the certification scheme developed through the Kimberley Process.*
 - Amend or enact appropriate legal and administrative provisions, or use the Interlaken Model Law, to establish authority to implement Security Council resolutions on trading in rough diamonds with states targeted by sanctions.
- § 209 *Administering Agency*
- Designate importing and exporting authorities; appoint an official coordinator to deal with the implementation of the certification scheme, who could serve as a point of contact if sanctions are imposed.
 - Collect and maintain official production, import and export data.
 - Ensure effective communication at all levels – between the UN and Member States, between UN missions and capitals, and within the capitals (among those responsible for implementation).
- § 210 *Information Dissemination*
- Share statistical data with other countries as appropriate.
 - Communicate with parties involved in the diamond industry; notify them directly, including through outreach activities, and provide specific and timely guidance for the implementation of sanctions.
- § 211 *Monitoring Compliance*
- Establish a system of domestic controls for the production and trade of rough diamonds and which allows for effective international monitoring.
 - Cooperate to ensure the effectiveness of the certification scheme towards the implementation of sanctions.
 - Ensure that all cash purchases of rough diamonds are routed through official banking channels, supported by verifiable documen-

* The Kimberley Process proposes a certification scheme for rough diamonds aimed in part at facilitating the control of trade in rough diamonds. The current agreement is to be found at <<http://www.kimberleyprocess.com>>. While the aim of the Kimberley Process is primarily conflict prevention rather than conflict resolution, the certification scheme may facilitate more effective sanctions, should the Security Council act to target the trade in rough diamonds.

tation such as that developed as part of the Kimberley Process Certification Scheme.

§ 212 *Enforcement*

- Maintain dissuasive and proportional penalties for transgressions.
- Inform others of the names of individuals or companies convicted of activities relevant to the certification scheme or the effectiveness of sanctions.

§ 213 *Relevant Regional and International Agreements*

- Kimberley Process Certification Scheme, November 2002 (www.kimberleyprocess.com)

§ 214 *Relevant IGOs and NGOs*

- Partnership Africa Canada (partnershipafricacanada.org)
- Global Witness (www.globalwitness.org)
- Diamond High Council (www.diamonds.be)
- Amnesty International (web.amnesty.org/diamonds/index.html)

Targeted Trade Sanctions: 2. The Example of Timber*

- § 215 *Legal Framework*
- Amend or enact appropriate legal and administrative provisions, or use the Interlaken Model Law, to establish authority to implement Security Council embargoes on trading in conflict timber with states targeted by sanctions.
- § 216 *Administering Agency*
- Identify and empower an administering agency, such as the MFA, Customs or Agriculture Ministry, to detect timber imports from illegal sources and seize prohibited goods.
 - Ensure effective communication at all levels – between the UN and Member States, between UN missions and capitals, and within the capitals (among those responsible for implementation).
- § 217 *Information Dissemination*
- Increase public awareness of forest crimes and opportunities to purchase forest products from legal sources.
 - Educate judicial and law enforcement officials about forest law enforcement.
 - Develop protocols for sharing import/export data.
- § 218 *Monitoring Compliance*
- Cooperate towards universal standards for monitoring and reporting on forest crimes, such as through the registration of origin and destination by timber producers.
- § 219 *Enforcement*
- Strengthen penalties and sanctions against illegal activities.
- § 220 *Sector-Specific Measures*
- Support existing multilateral efforts aimed at suppressing illegal logging through: labeling and certification of timber products; timber tracking through chain of custody audit and negotiation systems and; monitoring and verification of imports.
- § 221 *Relevant Regional and International Agreements*
- Ministerial Declaration of the Forest Law Enforcement and Governance East Asia Ministerial Conference, September 2001 (available at: www.foejapan.org/en/news/minist_decl.html).

* This table represents a first attempt to consolidate information relevant to the implementation of sanctions targeted on timber.

- § 222 *Relevant IGOs and NGOs*
- United Nations Forum on Forests (www.un.org/esa/sustdev/forests.htm)
 - G8 Action Program on Forests (www.g8.gc.ca/docs/forestfinal-e.asp)
 - Global Witness (www.globalwitness.org)

9. Implementation at the National Level: Towards a Comprehensive Model Law*

Introduction

- § 223 Article 25 of the United Nations Charter obliges Member States of the UN to implement decisions taken by the Security Council. Fundamental to the implementation of targeted sanctions is Member States' ability to give effect to Security Council Resolutions in domestic law. The national legal framework therefore is crucial to the establishment of the administrative practices to implement UN sanctions. In many states, however, specific legislative action is required to translate Security Council decisions into national law. The essential question is: Does the State have the authority necessary to implement targeted sanctions?
- § 224 States respond to this question in various ways.** Amongst these, the "Model Law approach" has been endorsed by sanctions experts as the most straightforward and uncontroversial means whereby a state can implement targeted sanctions efficiently at the national level.

* The analysis and recommendations in Section 9 has benefited strongly from the ongoing research project at the Watson Institute for International Studies at Brown University which hereby is gratefully acknowledged.

** See the Interlaken Report.

- § 225 The idea of a Model Law – national enabling legislation to provide the government of the relevant Member State with the appropriate powers to adopt secondary legislation to give effect to decisions of the Security Council taken under Article 41 of the UN Charter – was initially proposed as part of the Interlaken Process on targeted financial sanctions. Subsequently, the Bonn-Berlin Process on the implementation of arms embargoes, aviation and travel bans endorsed the Model Law approach and suggested refinements to the Interlaken Model Law.
- § 226 The advantages of the Model Law approach for sanctions implementation include
- a) More expeditious and efficient implementation of sanctions, as it obviates the need to pass legislation for each sanctions regime.
 - b) Greater uniformity of implementation across Member States, thereby contributing to sanctions’ effectiveness and minimizing opportunities for sanctions evasion.
 - c) The ability to implement all types of sanctions, and indeed, *all* Security Council decisions under Article 41.
- § 227 Member States’ legal frameworks vary according to national legal and administrative traditions and the Model Law is not necessarily a “one size fits all” approach. However, in addition to the endorsements from the Interlaken and Bonn-Berlin processes, the importance of domestic legislation to implement targeted sanctions has also been noted in the context of the work of the Counter-Terrorism Committee.

Differences between Model Law Drafts

- § 228 The table in Appendix 1 reproduces the texts of the Model Laws developed as part of the Interlaken and Bonn-Berlin processes. The purpose of both versions is to serve as primary legislation, thereby enabling national authorities to utilize legal and administrative instruments, as appropriate, to implement Security Council resolutions. The Bonn-Berlin Report (pp. 97–98) endorsed the Interlaken Model Law approach, but recommended a few amendments, and

noted that in the case of the European Union, a common position has been defined.

§ 229 The differences (which are underscored in the table) may be summarized as

- Including states and authorities that are not Member States of the UN (e.g. non-Member States that voluntarily implement resolutions, regional bodies such as the European Union and UN governing administrations such as those then in place in Kosovo and East Timor).
- Clarifying that states are not obliged to implement non-mandatory resolutions.
- Substituting the Interlaken phrase “national measures” with “legal and administrative provisions” and “any implementing law.”
- Altering Article 2 language to include all actions entered into prior to the imposition of sanctions (“rights and obligations conferred or imposed...” as opposed to “transactions entered into...”).
- Extending the scope of the Model Law to include vessels and aircraft under a state’s jurisdiction (Article 3).

The Consolidated Model Law

§ 230 In the work of the Stockholm Process there was also a review of the Model Law proposals for adequacy and comprehensiveness, given the different types of targeted sanctions and identified the strengths of the Interlaken proposal.

The Inclusion of Bodies That Are Not Member States

§ 231 Under Article 41 of the Charter, Security Council decisions are only binding upon Member States. Simplicity and consistency throughout the Model Law (for example, in the civil law preamble and in article 1) commends that it refer only to Members States. Of course, this does not preclude non-Member States from implementing resolutions, but rather reflects the fact that only Member States have undertaken to give effect to decisions under Article 25 of the Charter. Further, the Interlaken Model Law was drafted for adoption at the national level and regional bodies are likely to develop their own

procedures for implementing Security Council resolutions, where they have the constitutional authority to do so (such as through the adoption of a regulation by the European Commission). Finally, as noted by the Bonn-Berlin Expert Working Group, the question of what legal provisions might be appropriate for UN governing administrations (such as in Kosovo and East Timor) requires further consideration; as such, this matter may be best resolved outside of the Model Law discussion.

The Use of Discretionary Language in Article 1 of the Model Law

- § 232 It is appropriate to use non-discretionary language in Article 1 of the Model Law, which refers to “decisions” under Article 41 of the Charter. Such decisions bind Member States, by virtue of Article 25 of the Charter. There is no risk of a Member State being bound by resolutions that do not refer to “decisions” of the Council. Such exhortatory resolutions of the Security Council do not bind Member States, but rather give Member States a choice about whether to take action to implement. Here, the Model Law should be seen to be as “enabling” as possible, such that exhortatory resolutions can be implemented under the Model Law where there is the political decision to do so.

Reference to “Legal and Administrative Provisions” over “National Measures”

- § 233 Although the terminology used to capture the full range of legal and administrative instruments may vary according to national traditions, the phrase “national measures” is intended to be understood broadly and so may be seen to include “legal and administrative provisions.”

Reference to “Rights and Obligations” over “Transactions” in Article 2 of the Model Law

- § 234 At issue here is which of these phrases is to be considered broader and therefore covering the range of cases. If “transactions” is considered as limited to contractual rights and duties, then the alternative phrasing may be preferable. However, in some jurisdictions, “transac-

tions” may be subject to a broader interpretation. Generally, “rights and obligations” appears to broaden the language in a useful way.

*Extending the Scope of Article 3 of the Model Law
to Include Vessels and Aircraft under a State’s Jurisdiction*

§ 235 Clarifying the scope of the Model Law in this way is a useful addition.

RECOMMENDATIONS

§ 236 Based on these conclusions, therefore, the following text represents a consolidated Model Law that Working Group 2 endorses as the most straightforward and efficient means for Member States to give effect to Security Council resolutions under Article 41 of the Charter.

Box 11.

Conclusions on the Consolidated Model Law

Preamble

§ 237 *For Civil Law Countries:*

- Whereas the United Nations Security Council may decide, in accordance with Article 41 of the Charter of the United Nations, on measures not involving the use of armed force to be deployed to give effect to its decisions, and may call upon the members of the United Nations to apply such measures.
- Whereas such measures may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.
- Whereas the Members of the United Nations have agreed to accept and carry out the decisions of the Security Council in accordance with the Charter of the United Nations.
- Whereas [the Member State] is a member of the United Nations.

§ 238 *For Common Law Countries*

- An Act to enable effect to be given to decisions under Article 41 of the Charter of the United Nations.

Article 1.

§ 239 If, under Article 41 of the Charter of the United Nations, the Security Council of the United Nations calls upon [*the Member State*] to apply

measures to give effect to a decision taken under that Article, then in accordance with [*the Member State*]'s obligations under Article 25 of the Charter the [*relevant authority*] shall forthwith adopt such [*national measures*] as appears necessary or expedient to implement such measures effectively.

Article 2.

- § 240 The [*national measures*] shall apply notwithstanding rights and obligations conferred or imposed prior to, as well as after, the [*national measures*] coming into force, unless expressly stated otherwise; and compliance with the [*national measures*] (or with the legislation of another State adopted pursuant to the same resolution of the Security Council) shall be a complete defense against any claim based on the above mentioned rights and obligations.

Article 3.

- § 241 The [*national measures*] made under paragraph 1 shall apply within the territory of [*the Member State*] and to all nationals of and entities incorporated in or organized in accordance with the laws of [*the Member State*], wherever located or operating, and on board of vessels or aircraft under [*the State's*] jurisdiction.

Article 4.

- § 242 Contravention or evasion of the [*national measures*] shall be an offence, subject to the penalties specified in the [*national measures*]. Such penalties shall be effective, dissuasive and proportionate, and may include the forfeiture of any property, documents or funds deriving from, used or dealt with in connection with the contravention or evasion.

Article 5.

- § 243 [*National measures*] made in accordance with this law shall have effect notwithstanding the provisions of any other law.

Appendix 1: Comparison of Model Law Proposals*

The Interlaken Report For Civil Law Countries	The Bonn-Berlin Report For Civil Law Countries
<i>Preamble</i>	
<p>§ 244 Whereas the United Nations Security Council may decide, in accordance with Article 41 of the Charter of the United Nations, on measures not involving the use of armed force to be deployed to give effect to its decisions, and may call upon the members of the United Nations to apply such measures.</p>	<p>§ 245 Whereas the United Nations Security Council may decide, in accordance with Article 41 of the Charter of the United Nations, on measures not involving the use of armed force to be deployed to give effect to its decisions, and may call upon the members of the United Nations <u>(and other States, regional legislative bodies or an international entity temporarily charged with the administration of a territory)</u> to apply such measures.</p>
<p>§ 246 Whereas such measures may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.</p>	<p>§ 247 Whereas such measures may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.</p>
<p>§ 248 Whereas the Members of the United Nations have agreed to accept and carry out the decisions of the Security Council in accordance with the Charter of the United Nations; and</p> <p>Whereas [the Member State] is a member of the United Nations.</p>	<p>§ 249 Whereas the Members of the United Nations have agreed to accept and carry out the decisions of the Security Council in accordance with the Charter of the United Nations; and</p> <p>Whereas [the Member State] is a member of the United Nations.</p>
<p>§ 250 An Act to enable effect to be given to decisions under Article 41 of the Charter of the United Nations.</p>	<p>§ 251 An Act to enable effect to be given to decisions under Article 41 of the Charter of the United Nations.</p>

* Cf. notes to the columns at § 262 and § 263.

The Interlaken Report	The Bonn-Berlin Report
<i>Article 1</i>	
<p>§ 252 If, under Article 41 of the Charter of the United Nations, the Security Council of the United Nations calls upon [<i>the Member State</i>] to apply measures to give effect to a decision taken under that Article, then in accordance with [the Member State]’s obligations under Article 25 of the Charter the [<i>relevant authority</i>] shall forthwith adopt such [<i>national measures</i>] as appears necessary or expedient to implement such measures effectively.</p>	<p>§ 253 If, under Article 41 of the Charter of the United Nations, the Security Council of the United Nations calls upon (<u>the enacting state</u>) (<u>and other regional bodies or international administrations with legislative and executive authority</u>) to apply measures to give effect to a decision taken under that Article, then in accordance with [the Member State]’s obligations under Article 25 of the Charter the [relevant authority] shall (<u>may</u>) forthwith adopt such (<u>legal and administrative provisions</u>) as appear necessary or expedient to implement such measures effectively.</p>
<i>Article 2</i>	
<p>§ 254 The [<i>national measures</i>] shall apply to transactions entered into prior to, as well as after, the [<i>national measures</i>] coming into force, unless expressly stated otherwise; and compliance with the [<i>national measures</i>] (or with the legislation of another State adopted pursuant to the same resolution of the Security Council) shall be a complete defense to any claim for non-performance of any such transaction.</p>	<p>§ 255 The (<u>legal and administrative provisions</u>) shall apply notwithstanding rights and obligations conferred or imposed prior to, as well as after, the <u>provisions</u> coming into force, unless expressly stated otherwise; and compliance with the <u>provisions</u> (or with the legislation of another State adopted pursuant to the same resolution of the Security Council) shall be a complete defense <u>against any claim based on the above mentioned rights and obligations</u>.</p>
<i>Article 3</i>	
<p>§ 256 The [<i>national measures</i>] made under paragraph 1 shall apply within the territory of [<i>the Member State</i>] and to all nationals of and entities incorporated in or organized in accordance with the laws of [<i>the Member State</i>], wherever located or operating.</p>	<p>§ 257 The (<u>legal and administrative provisions</u>) made under paragraph 1 shall apply within the territories of (<u>the State/international administration</u>) and to all nationals of and entities incorporated in or organized in accordance with the laws of (<u>the State</u>), wherever located or operating, <u>and on board of vessels or aircraft under (the State’s) jurisdiction</u>.</p>

The Interlaken Report	The Bonn-Berlin Report
<i>Article 4</i>	
<p>§ 258 Contravention or evasion of the [<i>national measures</i>] shall be an offence, subject to the penalties specified in the [<i>national measures</i>]. Such penalties shall be effective, dissuasive and proportionate, and may include the forfeiture of any property, documents or funds deriving from, used or dealt with in connection with the contravention or evasion.</p>	<p>§ 259 Contravention or evasion of the (<u>legal and administrative provisions</u>) shall be an offence, subject to the penalties specified in the <u>provisions</u>. Such penalties shall be effective, dissuasive and proportionate, and may include the forfeiture of any property, documents or funds deriving from, used or dealt with in connection with the contravention or evasion.</p>
<i>Article 5</i>	
<p>§ 260 [<i>National measures</i>] made in accordance with this law shall have effect notwithstanding the provisions of any other law.</p>	<p>§ 261 <u>Any implementing law</u> made in accordance with this law shall have effect notwithstanding the provisions of any other law.</p>
<i>Notes</i>	
<p>§ 262 The phrase “national measures” was preferred over the phrase “secondary legislation” which was thought to be “too limiting and potentially misleading as many states would implement sanctions through executive decision or administrative directive (e.g. of the Central Bank).” “National measures” was considered to be a more comprehensive phrase.</p>	<p>§ 263 Amendments to the Interlaken text are underlined.</p>