

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)

Financial Sanctions

- § 340 As a form of targeted sanctions, financial sanctions aim to reduce the resources (e.g. assets in foreign banks and other economic resources outside the targeted actor's nation) available for particular actors or groups of actors. Thus, they will only affect the resources placed abroad by those individuals, and save the rest of the population from similar exposure. The targeting should thus be fairly precise and humanitarian effects avoided.
- § 341 General issues related to financial sanctions and how they can be handled on the level of the UN Security Council have been discussed in the Interlaken Report, and relevant recommendations are referred to in parentheses (I), below. Controlling financial resources is an important aspect of the international campaign against terrorism. The formation of CTC and the decisions in the Council's resolutions 1373 and 1390 have a particular bearing on these issues. In the European Council's decision of December 27, 2001 (2580/2001) there are regulations affecting European States and States with which they cooperate, which are also helpful in identifying such measures.
- § 342 When focusing on sanctions evasion there are some particular problems in financial sanctions that need to be addressed throughout the sanctions regime. In the following, some issues of concern are addressed and guidelines are suggested, depending on the stage of sanctions implementation.
- § 343 In many states, regulations against money-laundering suggest ways of managing targeted financial sanctions. There are, however, distinct differences. Money-laundering involves unidentified individuals attempting to turn illegally earned assets into "white" resources, which is criminal activity. In targeted sanctions cases, the leaders are often, at least initially, operating legally, and their financial assets cannot simply be defined as illegal. Thus, freezing resources does not necessarily mean confiscating such resources. In cases of terrorist funding, furthermore, money may oftentimes be legal, and the problem is that some of these resources are used for illegal activities (such as terrorism). Either way, some of the methods used to hide transfers may be similar, and thus become the concern of Central

Banks, Financial Authorities and special police forces. The Financial Action Task Force (FATF) set up by G-7 is central in international cooperation. Some coordination also takes place through the Egmont Group.

Typical Problems in Implementing Financial Sanctions

- § 344 Targets evade financial sanctions using various tactics including
- Converting assets to cash and withdrawing it from financial institutions before sanctions are imposed.
 - Converting funds into other forms of fixed or mobile assets including shares, real estate, gems, precious metals, etc.
 - Transferring money to “secure” locations where enforcement of sanctions is unlikely to occur.
 - Transferring funds to non-sanctioned family members (e.g. children, spouses, former spouses).
 - Using emissaries or paid consultants to conduct financial transactions on behalf of the target.
 - Creating front companies, false charities or other institutions to hide assets.
 - Using unofficial financial networks (e.g. hawala, wire transfers, courier services, messengers) rather than official financial institutions.
 - Using funds formally controlled by the State, but in reality controlled by the targeted leader (e.g. Central Bank transactions).
- § 345 Incomplete or inaccurate lists of individuals or entities subject to financial sanctions have created many problems for financial institutions implementing them. Specific concerns include:
- First name/surname is not always clear.
 - First name missing.
 - Date of birth missing.
 - Titles vs. names not always clear.
 - Abbreviations for groups are not clear.
 - If prefixes, middle initials, etc. are part of the name, should implementing groups such as banks search the name with or without these?

- Address information is not clear as to which part of the address contains the city or town of the target.
- Different language versions of some regulations lead to confusion regarding which names might be aliases.
- If a hit in the bank's customer database shows additional first names that are not mentioned in the regulations, question arises regarding validity of hit.

From these considerations, the following recommendations can be made:

Recommendations for Improving Financial Sanctions: The Planning Phase

- § 346 *Pre-assessment and Contingency Planning*
- Identify targets' financial resources, location of resources, agents, associates and financial managers.
 - Identify the methods and the locations used by the target and his or her associates to transfer funds and assets.
 - Include provisions asking States to report on banking and financial activities of the targets for the six months prior to the imposition of sanctions.
 - When pre-assessment or early assessment determines that official banking systems are not used, seek to target the sanctions accordingly so they interfere with the networks actually used by the target.
- § 347 *Distinct and Accurate Definitions*
- Accuracy and clear identification of targets on lists of individuals or entities subject to financial sanctions is vital. The Interlaken Report and the Financial Action Task Force (FATF) have useful definitions for the terms frequently used in targeted sanctions (e.g. assets, firms, etc.).
 - Humanitarian impact assessments are important to determine financial hardships and scope of possible exceptions to the sanctions for humanitarian purposes.
 - Humanitarian exemptions should be included in the resolution to help prevent unintended consequences of sanctions, as well as sanctions evasion and loss of support for the sanctions regime.
 - The scope of permitted humanitarian exemptions should be made clear in the sanctions resolution and should include measures to allow States to provide small exemptions to asset freezes for humanitarian purposes.

§ 348 *Listing*

- Criteria for listing individuals and entities should be worked out in advance and included in the resolution imposing sanctions or determined by the relevant Sanctions Committee in a transparent way.
- Criteria should meet reasonable standards of significance in relation to the objectives of the sanctions regime.

Recommendations for Improving Financial Sanctions: The Operations Phase

§ 349 *Commitment*

- Identify key States, non-state actors, banks, and financial institutions involved in the implementation of financial sanctions and meet with them to discuss their commitment and capacity to counter evasion strategies of the targets.
- Ensure that States collect information from their banks and financial institutions regarding funds frozen under the sanctions and that Member States report this information to the Council.

§ 350 *Complementary Measures*

- Consider coupling a foreign asset freeze with travel bans to disrupt alternative financial operations by the target.

§ 351 *Coordination and Technical Management*

- Coordinate and encourage sharing of information about targets' finances, asset transfers and evasion strategies between the UN, financial institutions, regulators and States.
- Continuously collect information on any attempts that targets have made to move funds and alert appropriate authorities.
- Lists should be transmitted to Member States electronically if possible so that States and their financial institutions can use them more easily.
- Sanctions Committees should adopt the practice of issuing a press release detailing which names have been removed from the list every time a new list is issued.
- All lists on the UN websites should be fully searchable (electronically).
- Compile a list of all assets frozen under the sanctions regime.
- Ask States to provide authority for their agencies to seize assets of individuals/entities violating sanctions to dissuade sanctions evaders from operating in countries due to heightened risk of asset seizure. (I)

Recommendations for Improving Financial Sanctions: The Follow-Up Phase

- § 352 *Technical Assistance*
- Consider requests for technical assistance and ask States with capacity to train and upgrade financial systems for key implementers.
 - Offer training programs for officials in key fields of sanctions implementation.
- § 353 *Flexible and Dynamic Response*
- Invite key implementing institutions (e.g. banks and financial regulators), financial sector associations and States to meet with the Sanctions Committee for briefings on assets seized and patterns of evasion.
 - Include detailed, up-to-date information on the target list and make it available on relevant UN websites and in official publications.
 - Monitor whether targeted actors shift to other forms of financial operations and/or start trading in commodities (e.g. diamonds).
- § 354 *Positive Measures and Communication*
- Explain the purpose of the sanctions to international and local media and emphasize that the measures affect only specific individuals.
 - Be prepared to explain possible effects on the targeted actor's family members.
- § 355 *Delisting*
- Be prepared to remove listed individuals in light of new information concerning their behavior and political affiliations.