

# Targeted Financial Sanctions

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A Manual for Design  
and Implementation

Contributions from the  
Interlaken Process



**The Swiss Confederation**  
in cooperation with the  
**United Nations Secretariat**  
and the



**Watson Institute for International Studies**  
**Brown University**

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*“Because economic sanctions have proved to be such a blunt and even counter-productive instrument, a number of governments, and numerous civil society organizations and think tanks around the world, have explored ways to make them smarter by better targeting them. Switzerland has led an effort to design instruments of targeted financial sanctions, including drafting model national legislation required to implement them...These efforts are now sufficiently well advanced to merit serious consideration by Member States. I invite the Security Council, in particular, to bear them in mind when designing and applying sanctions regimes.”*

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Kofi Annan  
Secretary-General of the United Nations  
*We the Peoples: The Role of the  
United Nations in the 21st Century*  
A/54/2000, paras. 232-33.  
March 2000



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# PREFACE

The past decade has witnessed a surge in United Nations imposed sanctions regimes. Sanctions have become an important tool in the hands of the international community to promote international peace and security. Not all sanctions regimes, however, have been successful in inducing the targeted leaderships to return to policies respectful of international norms. Furthermore, some sanctions have been criticized as causing excessive suffering to civilian populations or inflicting economic damage on third states, typically neighbors of the target state.

To address such concerns, the concept of “targeted sanctions” has been developed. These sanctions are designed to focus on groups of persons responsible for the breaches of the peace or the threats to international peace and security, while ideally leaving other parts of the population and international trade relations unaffected. Such sanctions can target financial assets as well as the freedom of movement of the targeted persons through travel and aviation sanctions.

Switzerland, in line with its humanitarian tradition and its belief in free trade, has taken up these ideas. In cooperation with the UN Secretariat, Switzerland has organized international expert meetings in Interlaken and New York, and initiated what has come to be known as the “Interlaken Process” on targeted financial sanctions.

The manual before us is the next step in this process. The document condenses the insights of the Interlaken and New York meetings into a ready-to-use manual which should make it easier to draft and implement targeted financial sanctions. It contains two parts, one on model language for UN sanctions resolutions and another on model legislation for effective sanctions implementation at the national level. Targeted sanctions call for markedly higher administrative standards than traditional sanctions. Special

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attention is therefore given to areas like reporting, information sharing and monitoring to enhance sanctions effectiveness.

In the aftermath of the recent shocking terrorist attacks, measures to track and block funds financing terrorism have gained renewed attention. Against this background, the work done in Interlaken Process and this manual have gained even further relevance.

I sincerely hope that this practical guide will prove useful to those responsible for drafting and implementing sanctions and that it will contribute to the development of incisive, yet selective sanctions regimes.

A handwritten signature in black ink, appearing to read 'Deiss', with a stylized flourish at the end.

Joseph Deiss  
*Minister of Foreign Affairs*  
*Switzerland*





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# INTRODUCTION

In recent years, the concept and strategy of targeted sanctions imposed by the United Nations Security Council under Chapter VII of the Charter of the United Nations, have been receiving increased attention. Practitioners and analysts generally agree that better targeting of such measures on the individuals responsible for the policies condemned by the international community, and the elites who benefit from and support them, would increase the effectiveness of sanctions, while minimizing the negative impact on the civilian population. The considerable interest in the development of targeted sanctions regimes has focused primarily on financial sanctions, travel and aviation bans, and embargoes on specific commodities such as arms or diamonds.

Targeted financial sanctions entail the use of financial instruments and institutions to apply coercive pressure on transgressing parties—government officials, elites who support them, or members of non-governmental entities—in an effort to change or restrict their behavior. Sanctions are targeted in the sense that they apply only to a subset of the population—usually the leadership, responsible elites, or operationally responsible individuals; they are financial in that they involve the use of financial instruments, such as asset freezes, blocking of financial transactions, or financial services; and they are sanctions in that they are coercive measures applied to effect change or constrain action.

Targeted financial sanctions are not a ‘cure-all’ solution; they cannot achieve the desired political goals in isolation, and are likely to be most effective when considered as part of a broader, coordinated political and diplomatic strategy. At present, experience in developing and implementing targeted financial sanctions is limited. While some comprehensive sanctions regimes have included financial elements, and other sanctions efforts have attempted to focus on specific subsets of the population, there are few instances of financial sanctions against a list of targeted individuals. The range of sanctions against UNITA

and the Taliban, first introduced in 1998 and 1999 respectively, are the only examples currently in force. However, targeted financial sanctions represent a potential refinement of the sanctions tool that could be used in conjunction with other coercive efforts, such as travel bans, to minimize the unintended effects of comprehensive sanctions and achieve greater effectiveness.

### *The Interlaken Process*

The first comprehensive attempt to examine the feasibility of targeted financial sanctions, initiated by the Swiss Government in 1998, has come to be known as the “Interlaken Process.”<sup>1</sup> Responding to a call from the Secretary-General of the United Nations Kofi Annan to make sanctions more effective, the Swiss Government brought together representatives from national governments, central bank authorities, the United Nations Secretariat, various international organizations, the private banking sector, and academia to examine the instrument of targeted financial sanctions.

The first meeting (Interlaken I) focused on the specific technical requirements of financial sanctions and identified a number of preconditions necessary for targeted sanctions to be effective: clear identification of the target, ability to identify and control financial flows, and strengthening of the UN sanctions instrument.

The second Interlaken seminar (Interlaken II), attended by more than seventy participants from twenty-two States on all continents, further developed recommendations on the technical aspects of targeting, but also addressed issues arising from differences in implementation of financial sanctions among States. One Working Group at Interlaken II developed standardized texts or building blocks of language for future UN Security Council resolutions, including prohibitions and exemptions. Such language was utilized for the first time by the European Union as part of its implementation of sanctions against the Federal Republic of Yugoslavia over the issue of Kosovo, and was drawn upon by the Afghanistan Sanctions Committee.<sup>2</sup> Standardized language and definitions in Security Council resolutions could contribute to enhanced effectiveness of financial sanctions, through harmonized implementation across national

borders. In addition, since States operate with different legal systems, thereby creating difficulties in implementing Security Council resolutions in a consistent manner, the seminar examined the basic elements necessary for a legal framework to implement financial sanctions at the national level. Another Interlaken Working Group developed a draft Model Law that States could adopt to enable them to implement fully and consistently targeted financial sanctions imposed by the Security Council.

Beyond building blocks for Security Council resolutions and the Model Law, Interlaken II also addressed the need for the United Nations to develop greater capabilities for administering and monitoring financial sanctions, including the provision of guidance and technical assistance to help States implement sanctions on a consistent basis.

Overall, the Interlaken seminars concluded that targeted financial sanctions are technically feasible, but that additional concrete measures on national and international levels, as well as within the UN Secretariat, are necessary for the instrument to be developed more fully and made effective.

### *Beyond Interlaken—Practical results for the UN and national governments*

While significant progress has been made over the past several years on the design of targeted financial sanctions, there is also a clear recognition of the amount of detailed work that still needs to be accomplished at the level of implementation to create an effective regime.

In order to develop further measures and bring a practical conclusion to the substantive work already accomplished on targeted financial sanctions through the Interlaken Process, the Swiss Government asked the Thomas J. Watson Jr. Institute for International Studies at Brown University<sup>3</sup> to undertake research to develop two specific products related to the results of the Interlaken Process: a manual for drafting Security Council resolutions imposing targeted financial sanctions, and a guide for States in establishing the legal and administrative machinery and procedures to implement targeted financial sanctions at the national level.

To review the draft documents prepared by the Watson Institute Targeted Financial Sanctions Project, a Workshop was convened on 23 July 2001 in New York. Hosted by the Permanent Observer Mission of Switzerland to the United Nations, in cooperation with the United Nations Secretariat, the Workshop included representatives of more than thirty permanent missions to the United Nations, as well as national officials and sanctions experts from around the world. Comments and feedback from the session have been incorporated into these final texts. Overall, participants concluded that sanctions remain a critical tool for the Security Council, and expressed a clear interest in refining the instrument through the use of targeted financial sanctions.

### *Use of this manual*

There are two primary audiences for the documents contained in this manual: 1) officials in the Missions to the United Nations and the UN Secretariat who will be called upon to draft future Security Council resolutions imposing targeted financial sanctions, and 2) officials of national governments responsible for implementing the sanctions after the Security Council has acted.

Part 1 of this manual—*Designing United Nations Security Council Resolutions on Targeted Financial Sanctions*—is intended as a guide for those who draft future Security Council resolutions. It draws heavily upon the work of Interlaken II’s Working Group 3, and owes a significant textual and intellectual debt to the Working Group’s building blocks of text for Security Council resolutions imposing targeted financial sanctions. According to the final report from the seminar, “[t]he overall objective of the Working Group was to contribute to the improved effectiveness of financial sanctions by providing standard language elements and definitions which would serve as building blocks for future UN resolutions adopted under Article 41 of the Charter, and enhance unambiguous interpretation and uniform implementation by all States of those resolutions.”<sup>4</sup>

Elements of the Interlaken II language have been utilized in various forms since 1999. Practitioners’ recommendations, however, continued to call for the development of specific language modules for Security Council resolutions that could be adapted quickly to unique circumstances. Part 1 also draws

heavily upon two other sources: resolutions passed by the Security Council and regulations issued by European Council (EC) that relate to targeted financial sanctions. EC regulations are useful in that they serve as the domestic legislation for many European States, and have offered new alternative ways to design a targeted sanctions regime. Annex D to Part 1 contains the internet links to all Security Council resolutions and EC regulations cited in this document.

Part 2 of the manual—*Implementing Targeted Financial Sanctions at the National Level*—focuses on the legal and administrative requirements for the effective implementation of targeted financial sanctions at the national level. These elements include: a legal framework, designation of an administering agency, development and dissemination of information, compliance initiatives, exemptions and exceptions, administration of assets, and enforcement efforts. The document is intended to provide practical guidance for States in establishing these measures to implement sanctions effectively. It is based in large part on the research derived from a questionnaire and discussions with States regarding their implementation of previous multilateral financial sanctions. From this information on individual countries' practices, the recommendations for "best practices" were developed.

We are grateful to the Swiss Government for their ongoing leadership on this issue, including their funding of this project, to the Secretary-General for the support received from the UN Secretariat, and to the international team of experts who generously gave their time and expertise. It is our hope that these documents will assist the United Nations community and States in more effectively designing and implementing targeted financial sanctions.

*Watson Institute Project on  
Targeted Financial Sanctions  
Brown University  
October, 2001*

### Endnotes

<sup>1</sup> The papers presented at Interlaken I and Interlaken II are available on-line at <<http://www.smartsanctions.ch>>. All references in this document to Interlaken II are to the published version of the report.

<sup>2</sup> See SC/6844, 13 April 2000, referring to a *Note Verbale* issued by the Committee established pursuant to resolution 1267. In addition to providing a definition of the ‘funds and other financial resources’ to be frozen by States, the Committee issued an initial list of targets in the *Note*.

<sup>3</sup> See <<http://www.WatsonInstitute.org/tfs>> for a summary of previous research and publications of the Targeted Financial Sanctions Project at the Watson Institute.

<sup>4</sup> Published report of Interlaken II, p. 79.

# PART 1

## DESIGNING UNITED NATIONS SECURITY COUNCIL RESOLUTIONS ON TARGETED FINANCIAL SANCTIONS

This document is not a model resolution. Rather, it provides options in the form of a menu of different language modules of text to include in future resolutions, from which policymakers can choose. Depending on the political goals of the Security Council in imposing financial sanctions, the targets, scope, duration, and administrative structure of the sanctions can be tailored to fit the circumstances of each case by deleting or modifying individual elements of the draft text as appropriate.

To provide a context for evaluating the suggested text, an explanation of its purpose within the sanctions resolution accompanies each language module of draft text. Where applicable, a brief discussion of the advantages and disadvantages of different options and a summary of how similar text has been used in past resolutions are also included. Paragraph numbering within the language modules is consistent with section numbering within this document. It is included for ease of reference only and future drafters would need to tailor the numbering to the specific resolution.

Annex A contains a complete mock resolution utilizing the language modules given throughout. Annex B summarizes the

definitions of specific terms used in Security Council resolutions that impose targeted financial sanctions as developed at Interlaken II, as well as provides a discussion of how they have been modified when used in EC regulations. Annex C summarizes the list of specific exemptions to targeted financial sanctions, also developed at Interlaken II. Annex D provides internet links to the Security Council resolutions and European Council regulations referred to in this document, and other relevant websites.

### **Components of UN Security Council resolutions imposing targeted financial sanctions**

Preamble

1. Objectives of Sanctions
2. Prohibitions
3. Exemptions and Exceptions
4. International Organizations
5. Sanctions Committee
6. Petition for Removal from List of Targets
7. Reporting
8. Monitoring
9. Appeals to States
10. Nonliability for Compliance with Sanctions
11. Sunset Clause



## Preamble

All Security Council resolutions begin with a preamble. The preamble usually consists of several paragraphs and establishes the context for issuing the resolution. It will include any or all of the following elements:

- A short description of the situation to which the Security Council is responding;
- The nature of the Council's reaction;
- Recognition of either ongoing or concluded efforts at resolution of the conflict and affirmation of relevant international norms or agreements;
- Mention of any previous resolutions by relevant regional or international bodies on the issue; and
- Previous actions of the Security Council and Secretary-General, especially regarding monitoring activities.

Paragraphs in the preamble normally begin with such phrases as:

*The Security Council...*

*Commending*

*[Gravely] Concerned*

*Considering*

*[Deeply] Deploring*

*Determining*

*Emphasizing*

*Having heard/received*

*Notes [with concern]*

*Noting [in particular]*

*Reaffirming*

*Recalling*

*Recognizing*

*Stressing*

*Strongly condemning*

*Strongly supporting*

*Taking note*

*Welcoming*

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The preamble generally concludes with a reference to the source of the Security Council's authority under the Charter of the United Nations, using the following phrases:

*“Determining that ... [the situation] ... constitutes a threat to international peace and security,”* and

*“Acting under Chapter VII of the Charter of the United Nations,”*

These phrases or similar formulations may appear later in the resolution if it has multiple parts<sup>1</sup> and draws authority from more than one chapter of the Charter.

## 1. Objectives of Sanctions

It is essential that Council members agree on the goals of the sanctions at the outset. While the relevant paragraphs in the preamble will answer the question of “why” the Security Council is imposing sanctions—usually through a statement concerning the objectionable behavior—section 1 should articulate exactly “what” it is that the Council hopes to achieve through the imposition of sanctions. A clear articulation of the objectives will also assist decisionmakers in determining “how” these measures are to be implemented. The objectives represent criteria that the Council expects the target to fulfill. These paragraphs typically begin with the word “*Demands* [...]” and serve as the criteria against which actions by the target are measured for decisions concerning the lifting or easing the sanctions (see section 11—Sunset Clause).

Therefore, well defined goals articulated at the outset help to minimize conflicts within the Sanctions Committees and Security Council by establishing clear criteria for determining how the measures are to be imposed, their duration, and their effectiveness.

### 2. Prohibitions

Paragraphs that are not preambulatory are either mandatory or exhortative. The distinction between mandatory and exhortative lies in the obligatory or voluntary nature underlying the provisions contained therein, and is signaled by the words that open the paragraph. For example, “calls upon” or “urges” are exhortative, while words such as “decides” or “requests” are mandatory and indicate that the provisions or requests contained in that paragraph are binding upon Member States under Chapter VII of the Charter of the United Nations. In stating the details of the sanctions—targets, scope, duration, exceptions, and other necessary elements—both mandatory and exhortative paragraphs are used.

The prohibitions contained in this section of the resolution constitute the core elements of the sanctions and answer four critical questions:

1. *Whom are the measures to be imposed against?*
2. *Who will implement the measures?*
3. *When and for how long are the measures to be effective?*
4. *What are the components of the financial sanction?*

Specific issues within each of these broad questions are discussed below.

#### 2.1 *Whom are the measures to be imposed against?*

Targeting is critical to the effectiveness of financial sanctions. Without a precise definition of categories of targets, and/or a specific list of targets, States cannot implement targeted sanctions. Further, failure to maintain an accurate and up-to-date list of targets undermines the effectiveness of targeted sanctions altogether.

Throughout this document, the phrases “targeting” and “targeted sanctions” are generally understood to mean measures imposed against identified persons (natural or legal). In some cases the term “targeted sanctions” may be used in a broader sense, such that it includes a ban on selected activities or the means by which

targets maintain their objectionable behavior.<sup>2</sup> Where the term “targeted sanctions” is to be understood in this broader sense, the resolution text should be revised accordingly.

To answer the question “who is to be targeted?” the draft text in Option 1 provides a range of persons that may be subject to targeted financial sanctions. The word “persons” should be understood broadly to mean *all* natural and legal persons. The phrase “legal persons” covers all government entities (e.g. ministries, departments, local authorities), state-owned or operated entities (e.g. postal authorities), and all other private and public sector organizations. Targets are most often defined through general categories of such persons. These categories may be narrow or broad, according to need, and in consideration of whether the list is “closed” or “open” (see below). The draft text below provides the option of defining categories of legal persons with greater specificity in an annex to the resolution. Although past experience should not be considered limiting, categories given in resolutions to date have been based on membership in a government or political faction (such as the Taliban or UNITA), control of entities critical to the operations of such factions or membership in the family of an individual in one of the aforementioned groups.<sup>3</sup> Given the ease of transferring assets to family members, prohibitions against them are an important consideration.

While categories of targets are spelled out in the resolution, it is rare for the resolution itself to name actual targeted persons.<sup>4</sup> The draft text below acknowledges that decisions concerning specific targets are more likely to be delegated to the Sanctions Committee, which will be tasked with developing a list of persons, against whom the targeted measures are to be implemented.

Once developed, it is important that the target list be kept up-to-date because of the ease with which targets can shift functions to other persons or entities, transfer assets and create front entities to evade sanctions. Options are provided in the draft text for closed or open lists. A closed list provides the Sanctions Committee with the authority to designate the list of targets, limiting the ability of many States to act beyond the designated list.<sup>5</sup> An open list also gives primary responsibility to the Committee for developing and

maintaining the list, but empowers States to act before the issuance of the Committee's list (but within the categories of targets established by the resolution) or go beyond it, when States suspect that targeted assets are within their jurisdiction. This approach might be especially useful where the Committee is unable to reach a quick consensus on the identity of all targets (here, the names of targeted persons on which consensus can be achieved might be included in an annex to the resolution). To be effective, the use of lists requires some degree of coordination to facilitate information-sharing and consistent implementation across States.<sup>6</sup> For this reason, the option of delegating the task of targeting exclusively to States without any involvement on the part of the Committee<sup>7</sup> is not optimal, and therefore is not included.

Regardless of how the list is developed and maintained, specific and reliable information on targeted persons is required to implement effective targeted financial sanctions. For example, identifying information on targeted individuals should be as complete as possible, including full names, aliases, passport numbers, date and place of birth, and any known addresses. For corporate entities, identifying information should include alternative names (especially where entities use different names and/or multiple languages), business addresses, and where possible, the date and place of incorporation and any registration numbers.

### 2.2 *Who will implement the measures?*

To be effective, targeted financial sanctions must be implemented by *all States*, regardless of UN membership or the degree of involvement in the global financial market. The ease of transferring financial assets means that resolutions that fall short of this standard weaken the effectiveness of sanctions by allowing circumvention. For this reason, throughout the draft, the clear formulation "*All States shall...*" is preferred to alternatives that have been used in past resolutions.<sup>8</sup>

In addition to requiring all States to implement sanctions, resolutions should also specify that the measures are intended to bind all persons under the jurisdiction of States. The draft text below requires that *all States* require *all their nationals and any*

*other person within their territories* to implement the measures imposed by the resolution. This phrase covers any dependent territories of States, which may be of particular relevance in the context of financial sanctions given the importance of offshore financial centers.

### 2.3 *When and for how long are the measures to be effective?*

In the past, UN targeted financial sanctions have come into force either on a date specified in the resolution (generally two weeks or one month following the passage of the resolution) or after a specified period (e.g. one month following the passage of the resolution). Often the delay is designed to provide the target an opportunity to cease the objectionable behavior, thereby avoiding the imposition of sanctions.<sup>9</sup>

While the delay between passage and implementation may in theory influence the behavior of targeted persons, it also provides the opportunity for targets to take measures to circumvent sanctions. Previous sanctions episodes with such delays have resulted in significant sums of money being withdrawn prior to the effective date, thereby enhancing the ability of the targets to evade sanctions.<sup>10</sup> Therefore, sanctions should be implemented without a grace period at the UN level and with urgency at the national level.

One means of addressing this problem is by tracing the movement of financial assets retroactively by requiring States to report on the presence or movement of funds and other financial resources for some period prior to the actual imposition of sanctions. Draft text for such a measure follows at the end of this section and may be useful in conjunction with either option provided below. Retroactive reporting can generate valuable information concerning the whereabouts of financial assets, which could be of assistance to the Council in determining additional enforcement measures. Also, as a practical matter, the implementation of sanctions by States maybe contingent upon the development of a list of targets (unless the list is open, as discussed above), with the effect that national action can be delayed even further. For these reasons, measures to trace assets retroactively should be

considered as a strategy to help bridge the gap between the entry into force and the domestic implementation of targeted financial sanctions.

The question of when sanctions are to cease is addressed in the discussion of section 1 (Objectives of Sanctions) and in section 11 (Sunset Clause).

### 2.4 *What are the components of the financial sanction?*

Targeted financial sanctions prohibit the use of existing and future funds and other financial resources by targeted persons. To implement these prohibitions, resolutions should require that the funds and other financial resources owned or controlled, directly or indirectly, presently and in the future, by targeted persons be frozen, and that “no funds and other financial resources [...] shall be made available” to targeted persons. Therefore, existing funds as well as future movements of funds and other financial resources are captured by the prohibitions.

To operationalize these prohibitions, Working Group 3 at Interlaken II developed standard definitions of key phrases. These definitions are provided in Annex B, as well as modifications of definitions as used in EC regulations, plus commentary. The Interlaken Working Group took the position that definitions should not be included in the resolution, preferring that the results of their work be understood as the basis upon which the Council has acted. However, if consensus on definitions can be achieved in the Council, definitions should be included in future resolutions. The inclusion of definitions gives a clear statement of the Council’s intention and may be required to promote more consistent implementation at the national level. Definitions may be included in an annex to the resolution, an approach that is reflected in the mock resolution (Annex A). European Council regulations that impose targeted financial sanctions have contained definitions in the operative paragraphs.

Also, the Interlaken Working Group included a ban on providing financial services to targeted persons. There is no clear consensus as to whether a separate paragraph is required to implement such



a ban, considered by some experts to be covered by freezing funds and other financial resources (note the comment in Annex B). Because of the ambiguity concerning this question, a specific reference to a ban on financial services is in the draft text below with a separate paragraph,

Lastly, it should be noted what is *not* included in the prohibitions discussed in this document. For example, if it is the drafters' intention to ban *all forms of investment* involving targeted persons, a specific reference may be required, as some forms of investment could be made through forms of payment not covered by the prohibitions of the resolution (e.g. payments in goods). Also, as noted previously (see para. 2.1), this document does not cover *activities* (as opposed to merely the funds and other financial resources) related to the maintenance of the target's objectionable behavior.<sup>11</sup> Prohibitions of this scope may have the effect of broadening the understanding of targeted sanctions as discussed above and is likely to be politically difficult for this reason.

### 2.5 *Options for prohibitions*

Below are two alternative options to impose targeted financial sanctions. The first option broadly reflects past experience; the second—the “freeze and release” approach—is an alternative that was discussed in detail at the 23 July Workshop and is offered to indicate a new approach to imposing prohibitions that may be considered by the Council, if circumstances dictate.

#### *Option 1:*

**The Security Council imposes a targeted financial sanction on a category or categories of persons.** Subparagraphs (a) through (d) provide categories of targets which can be tailored to specific circumstances.

#### **OPTION 1 BASIC DRAFT TEXT:**

*Decides that all States shall ensure that all funds and other financial resources owned or controlled, directly or indirectly, by:*

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- (a) *officials of the [government], [name of political faction, parastatal organization, or military junta] in [target state];*
- (b) *the immediate families of any of the above;*
- (c) *legal persons owned or controlled by (a) or (b), [or as defined in Annex [xx]];*
- (d) *[insert reference to target list according to Option 1A or 1B, below];*

*are frozen and that no funds and other financial resources, including funds derived from property, shall be made available, by their nationals or by any persons within their territory, directly or indirectly, to or for the benefit of the persons, natural or legal, referred to in this paragraph;*

AS USED IN MODIFIED FORM IN:

- (i) S/RES/1173 (1998) on UNITA, para. 11.
- (ii) S/RES/1267 (1999) on the Taliban, para. 4(b).
- (iii) S/RES/1333 (2000) on the Taliban, para. 8(c).

### **DRAFT TEXT (FINANCIAL SERVICES BAN):**

*Decides that all States shall prohibit the provision of financial services by their nationals or by any person within their territory, in relation to any assets owned or controlled, directly or indirectly, by any person referred to in paragraph 2 above;*

Note: Option 1 is *incomplete* without the inclusion of the text from either Option 1A or 1B. Further options for open or closed lists are also given.

#### *Option 1A:*

**The Security Council delegates the designation of actual targets to the Sanctions Committee** in addition to its other duties. Doing so accords considerable decisionmaking authority to this subsidiary organ of the Council and the Committee should be done as quickly as possible because States cannot implement sanctions against natural persons without a specific list of targets.

**Advantages:** The Sanctions Committee—as a body more focused on the specific issues related to sanctions—has a greater ability to administer sanctions, including managing the myriad processes of implementing sanctions such as maintaining the list, mandatory reporting, monitoring, and handling requests for exceptions. The Security Council, as the principal political decisionmaking organ of the United Nations, cannot be expected to deal well with the specific details of each individual sanctions program.

**Disadvantages:** As seen below, this approach has been used in the past, and the Sanctions Committees involved have not always acquitted themselves well.<sup>12</sup> There is also a lack of uniformity among Sanctions Committees in how they fulfill the duties the Council gives to them. In addition, under the existing rules of procedure, a Sanctions Committee can reach decisions only by consensus, thereby permitting any one country to block progress. Experience also has shown that some requests for rulings of the Sanctions Committee require technical knowledge of the subject matter well beyond what might be expected of the Committee members. Although this is not a case specifically against this option, it does argue for reforming the Sanctions Committees' working methods. The Security Council's Working Group on General Issues on Sanctions (established in April 2000 pursuant to a Note by the President of the Security Council, S/2000/319) is addressing these matters.

### **OPTION 1A DRAFT TEXT:**

[closed list] *“(d) persons, natural or legal, as designated by the Committee established by paragraph 5 below;”*

[open list] *“(d) persons, natural or legal, including as designated by the Committee established by paragraph 5 below;”*

AS USED IN MODIFIED FORM FOR A CLOSED LIST IN: S/RES/1267 (1999) on the Taliban, para. 4(b) (which refers to the Committee established in para. 6).

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If using an open list, the following text may be used to empower States to act beyond the list and establish the necessary procedures:

*Decides that in cases where States acquire or possess well-founded information that a person is subject to the prohibitions in paragraph 2, they shall apply the prohibitions to this person, and decides that in such cases States shall notify the Sanctions Committee of their actions and forward any relevant information to the Committee, and further decides that the Sanctions Committee established by paragraph 5 below may decide that [prohibitions in paragraph 2] shall no longer apply to said person, or shall add said person to the list of targets;*

### *Option 1B:*

**The Security Council issues an Annex to the resolution, containing the names of persons subject to the prohibitions.<sup>13</sup>**

Advantages: Including this information in the resolution is likely to facilitate timely implementation, as the Annex provides a degree of certainty for which most States would normally have to rely on the Sanctions Committee. Furthermore, the real “critical period” of sanctions implementation is the time from when the target suspects that funds will be frozen (and begins to conceal assets) to the time that institutions actually freeze the targeted funds. This approach reduces this period of delay.

Disadvantages: Because the Council lacks the time and expertise required to produce a sufficiently descriptive list of targets, this approach might result in a delay and lack of detail, particularly with regard to identifying information. Under this option there is also a possible lack of flexibility, unless the Security Council also passes on responsibility for providing the necessary details, as well as list maintenance, to the Sanctions Committee.

### OPTION 1B DRAFT TEXT:

To designate persons in the Annex of a resolution, the following phrase should be included in the basic text given above:

[closed list] “(d) persons, natural or legal, as designated in Annex [xx] of this resolution;”

[open list] “(d) persons, natural or legal, including as designated in Annex [xx] of this resolution;”

AS USED IN MODIFIED FORM FOR AN OPEN LIST IN: EC Reg. 1294/1999 over the matter of Kosovo, Art. 2.

If using an open list, the additional language in 1A to specifically empower States to act beyond the list may be considered for inclusion here. Also, a reference to this paragraph must be made in the relevant paragraph which enumerates the powers of the Sanctions Committee, and ought to include provision for reporting on State action regarding targeting beyond those already designated by the Committee (see sections 5 on Sanctions Committee and 7 on Reporting).

### *Option 2:*

In response to an emergency and recognizing the need for a quick and effective response, **the Security Council decides upon a “freeze-and-release” approach, imposing financial sanctions on all persons, natural or legal, of the target state, with the stipulation that general sanctions must become targeted within a set period of time, leaving the determination of targets to the Sanctions Committee.**

The discussion of this option at the 23 July Workshop reflected that there is likely to be much resistance to imposing a comprehensive sanction of this nature, even if only for a brief period. Further, skepticism exists about the ability of the Committee to reach consensus on a list of targeted persons within a short time. Yet some participants suggested there may be circumstances in the future where it may be useful for the Council to consider

such an option. The draft text below requires that the sanctions be scaled back as soon as the Committee designates targeted persons, or by a specific time, as a way of addressing these concerns.

**Advantages:** If the functional purpose of sanctions is to deny targets access to their funds through preventing the flight of assets, this option could result in a marked increase in effectiveness. As the determination of targeting would be made after imposing the financial sanction, the risk of forewarning to potential targets would be reduced. The principal advantage of this option is the speed of action in that, given the will of the Security Council to act, the resolution could be passed with a minimum of discussion and time. The wording need not be complex, which would again help to reduce discussion time and clarify meaning, especially if based on the language provided below. The speed of action would reduce the possibility of forewarning potential targets and thus evasion of the sanctions.

**Disadvantages:** As noted above, much opposition exists to sanctions on the broader population, which this option entails at the outset. There are several requirements that must be met for the subsequent targeting (freeze-and-release) aspect of the sanctions to function properly: the Sanctions Committee (or whichever body will be responsible for determining eventual targets) must be convened rapidly; there must be significant cooperation between States and the Committee during the brief period of the general financial sanctions to enable the development of an accurate and comprehensive list of targets and; the narrowed list must also be produced within a short timeframe. While these constraints in utilizing the freeze-and-release approach also pertain to Option 1, in this case there is the risk that prolonged comprehensive sanctions will have negative humanitarian consequences.

**OPTION 2 DRAFT TEXT:**

*Decides that all States shall ensure that all funds and other financial resources owned or controlled, directly or indirectly, by any person, natural or legal, who is a national of, or residing in or operating in [target state], are frozen and that no funds and other financial resources, including funds derived from property, shall be made available, nor financial services provided, directly or indirectly, to or for the benefit of the persons referred to in this paragraph;*

AS USED IN MODIFIED FORM IN:

- (i) S/RES/757 (1992) on the FRY (S&M), para. 5.
- (ii) S/RES/820 (1993) on FRY (S&M), para. 21.

*Decides that the comprehensive freeze on funds and other financial resources, and ban on financial services, as imposed in the paragraph above shall enter into force immediately and shall be limited by [deadline] [or upon the specification of targeted persons or categories of persons by the Sanctions Committee/Security Council] [or whichever of these occurs first] to a freeze on the funds and other financial resources of any persons or categories of persons as to be designated by the [Sanctions Committee/Security Council], and confirms that all funds and other financial resources of all other persons shall be released and financial services may be provided to them at this time;*

## 2.6 *Tracing funds retroactively*

As previously discussed in section 2.3, it may be advantageous in some instances for the Security Council to include a clause enabling targeted funds and other financial resources to be traced retroactively. This is accomplished by requiring States to report on the presence or movement of targeted assets within their jurisdiction. This information could improve the capacity of sanctions monitors to assess the effectiveness of the measures imposed and address the “implementation gap” between the resolution coming into force and adoption of measures at the

national level. The text below refers to section 7 (Reporting) to require that information gathered through asset tracing is reported.

**DRAFT TEXT:**

*Requests that all States trace the funds and other financial resources of targeted persons which were withdrawn from or transferred out of their jurisdiction during [xx] months preceding the entry into force of this resolution and report to [...] in accordance with paragraph 7;*



### **3. Exemptions and Exceptions**

The purpose of the exemptions and exceptions section is to allow the Security Council or Sanctions Committee to identify general areas or specific cases to which the prohibitions shall not apply. They include exemptions and exceptions for humanitarian purposes, or to ensure that the sanctions do not overly disrupt sender, neighboring or target economies, and attempt to ensure that the sanctions are indeed targeted in their effect. While a financial sanction that is truly targeted should require fewer such provisions (as it affects only the targeted individuals and not the population at large), it is both customary and practical to include such measures in resolutions—if for no other reason than to create a process to deal with unforeseen situations that require a relaxation of the prohibitions.

The exemptions and exceptions section of the resolution addresses two issues: the types of transactions permitted and whether the Sanctions Committee or States are responsible for administering the exemptions or exceptions process.

Before addressing these issues, note that this document defines exemptions and exceptions consistent with the Bonn-Berlin Expert Working Group on Travel and Aviation related Sanctions: “[e]xceptions are cases that require prior approval by the Sanctions Committee; exemptions are stated as such in the resolution and do not require Sanctions Committee approval.”<sup>14</sup> Whereas this distinction has not been maintained systematically in past resolutions, it is used here to contribute towards common usage.

#### *3.1 Permitted transactions*

Permitted transactions may be stated in the resolution *generally* or *specifically*, but are usually stated in general terms.

General exemptions or exceptions will most likely refer to medical or humanitarian grounds for allowing targets to use frozen funds. Other grounds for general exemptions or exceptions include religious obligations, facilitating a peace process, grave risk of human rights violations, political and diplomatic efforts to

achieve the objective(s) of the sanctions, or the maintenance of peace and security. However, these general grounds have been used more frequently for measures under Article 41 of the Charter other than targeted financial sanctions, such as travel and aviation bans.<sup>15</sup>

General categories have the advantage of “covering the field”—extending the authority of the Committee or States to cover specific problems unforeseen at the time of drafting. This may be especially important if the resolution is drafted quickly. However, general categories may be interpreted differently across Committees and States, leading to inconsistent implementation.

Specific exemptions and exceptions have not been spelled out in detail in any Security Council resolution imposing targeted financial sanctions.<sup>16</sup> The most detailed list of specific items was developed by Working Group 3 at Interlaken II. This list (along with corresponding draft text) and comments about it following the 23 July Workshop are discussed in Annex C. There may be circumstances in the future where the Council considers that the detailed specification of exemptions or exceptions is appropriate to the objectives of sanctions.

Beyond categories of general and specific, exemptions or exceptions may be permitted where particular humanitarian organizations, including the UN and its agencies and the International Committee of the Red Cross (ICRC), are involved in a transaction. While institution-specific exemptions have been used in aviation related sanctions in the past, they may be relevant to targeted financial sanctions in certain circumstances. For example, if banks and financial institutions themselves were targeted, in a State with a state-run banking system, this might preclude the UN and its agencies or the ICRC from operating in the target state.

### *3.2 Determining exemptions or exceptions*

The resolution must decide whether payments out of frozen accounts require the authorization of the Sanctions Committee (exceptions) or whether States administer the process according to national practice (exemptions). To be clear, cases of exceptions contemplate that States will petition the Committee to consider whether the transaction is covered by the resolution (presumably

following an inquiry from a bank or financial institution). Cases of exemptions contemplate that States' practices at the national level will determine the procedures that banks and financial institutions must follow. Delegating exemptions to States may be more efficient but risks inconsistent implementation. Delegating the administration of exceptions to the Committee facilitates consistent implementation, but may complicate administration since there may be a large number of applications.

### 3.3 *Options for exemptions and exceptions*<sup>17</sup>

#### *Option 1:*

**The Security Council decides to list general categories of exemptions to be determined by States.**

#### **OPTION 1 DRAFT TEXT:**

*Decides that all States may authorize exemptions to the prohibitions referred to in paragraph 2 on the grounds of verified medical and humanitarian purposes;*

AS USED IN MODIFIED FORM IN: S/RES/1267 (1999) on the Taliban, para. 4(b).

*Decides that the activities of the United Nations and its agencies and the International Committee of the Red Cross shall not be restricted by the provisions of this resolution;*

#### *Option 2:*

**The Security Council decides to list general categories of exceptions to be determined by the Sanctions Committee.**

Where the Committee is tasked with this role, reference should be made in the section that enumerates the powers of the Committee (see section 5, below).

#### **OPTION 2 DRAFT TEXT:**

*Decides that the Committee established by paragraph 5 may authorize exceptions to the prohibitions referred to in paragraph 2 above on a case-by-case basis under a*

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*no-objection procedure on the grounds of verified medical and humanitarian purposes;*

*Decides that the activities of the United Nations and its agencies, the International Committee of the Red Cross and, upon decision by the Committee established by paragraph 5, further humanitarian organizations shall not be restricted by the provisions of this resolution;*

AS USED IN MODIFIED FORM IN: S/RES/1173 (1998) on UNITA, para. 13.

#### **4. International Organizations**

The membership of the United Nations is restricted to sovereign States, and therefore does not include international organizations. As a result, Council resolutions do not bind international organizations.<sup>18</sup> The Interlaken drafters considered it desirable “to call upon such organizations to take measures [...] to ensure the efficacy of the sanctions to be imposed pursuant to the resolution. It was recognized that the cooperation of international financial organizations might be vital to the comprehensive application of financial sanctions.”<sup>19</sup> The draft text recognizes this idea by calling upon international organizations to take measures consistent with UN targeted financial sanctions. In addition, there may be a role for international institutions in reporting on and monitoring the implementation of sanctions. For this reason, it is important that such organizations be made aware of sanctions resolutions and requested to undertake these tasks specifically. This is also discussed in the relevant sections below (7 and 8).

##### **DRAFT TEXT:**

*Calls upon international, regional, sub-regional, and all other organizations, to act strictly in accordance with the provisions of the resolution and to cooperate fully with the Committee established by paragraph 5 below [or other monitoring agencies] in the fulfillment of its/their tasks, including supplying such information as may be required by them in pursuance of this resolution;*

##### **AS USED IN MODIFIED FORM IN:**

- (i) S/RES/1127 (1997) on UNITA, para. 10, which calls upon international and regional organizations to act strictly in accordance with the provisions of the resolution.
- (ii) S/RES/1267 (1999) on the Taliban, para. 9, which calls upon all States to cooperate with the Committee in the fulfillment of its tasks.

### 5. Sanctions Committee

Sanctions Committees are normally established in the initial resolution imposing sanctions and their duties routinely include any or all of the following:<sup>20</sup>

- Matters relating to the target list;
- Administering the exceptions process;
- Soliciting and reviewing reports on national implementation;
- Reporting to the Council regarding the sanctions;
- Developing recommendations to both the Council and States on implementation, monitoring and enforcement, including the issuance of guidelines to States; and
- Aiding the Security Council in fulfilling its Article 50 obligations.<sup>21</sup>

The draft text below lists these duties, organized by category. Following the paragraph that establishes the Committee, possible duties are presented in the order in which they are discussed (and cross-referenced) in this document. These cross-references should be checked when drawing upon the text below to ensure that the drafter's intention is reflected accurately, as discussions of advantages and disadvantages are included elsewhere. More detailed discussion and text on the Committee's role in monitoring sanctions is provided in section 8.

The menu of duties has been compiled, based primarily on past resolutions, and is generally consistent with the duties for Committees given by the Bonn-Berlin Expert Working Group on Travel and Aviation Related Bans.<sup>22</sup> Two exceptions are worth noting.

First, paragraph (d) on the "quick and efficient" distribution of lists is included in response to a concern raised in conjunction with the 23 July Workshop, that lists of targets previously have been circulated as press releases only. It is recommended that this important information be communicated through official means.

Second, to reflect the discussion at the 23 July Workshop, the option of empowering the Committee to consider petitions under Article 50 of the UN Charter is included below and discussed

further in section 6.<sup>23</sup> Some participants considered it important that the right to consult the Security Council established in Article 50 be referred to specifically, in the interests of fairness.

### **DRAFT TEXT:**

Establishment of the Sanctions Committee:

*Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, which consists of all the members of the Council, to undertake the following tasks and to report on its work to the Council with its conclusions, observations, and recommendations:*

Issues regarding the list of targeted persons:

- (a) *to designate the persons subject to the measures imposed by paragraph 2 [by date] after having informed the country of nationality of the target, if not identical to the target country;*
- (b) *to seek from all States, international organizations, and other sources further information regarding the persons to whom the measures imposed in paragraph 2 should apply;*
- (c) *to decide on simplified procedures for listing and delisting targeted persons, and to review and maintain current the list of persons to whom the measures imposed in paragraph 2 apply;*
- (d) *to distribute quickly and efficiently the list referred to in paragraph 2 to States and relevant international organizations, through official channels, upon its creation and any subsequent modifications;*

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- (e) *to make information it considers relevant, including the list referred to in paragraph 2, publicly available through appropriate media, including through the use of information technology;*
- (f) *to request that additional information be provided to the Committee where appropriate;*

### Exceptions:

- (g) *to give consideration to, and decide upon, requests for the exceptions set out in paragraph 3 above;*

### Implementation of measures:

- (h) *to promulgate expeditiously such guidelines and to offer any other support to States as may be necessary to facilitate implementation of the measures imposed by paragraph 2;*

### Petition for removal: (see section 6)

- (i) *to take the necessary measures to fulfill its obligations set out in paragraph 6 below;*

### Reporting: (see section 7)

- (j) *to seek continually from all States and international organizations further information regarding the legal, administrative and practical actions taken by them with a view of effectively implementing the measures imposed by paragraph 2 above;*
- (k) *to examine the reports submitted pursuant to paragraph 7 [by States and international organizations];*



### Information sharing:

- (l) *where appropriate, to make available to States information received and facilitate information exchange;*

### Monitoring: (see section 8)

- (m) *to take the necessary measures to fulfill its obligations set out in paragraph 8 below;*

### Article 50 obligations:

- (n) *to provide opportunities for third States affected by sanctions to brief the Committee on unintended impacts they are experiencing and assistance needed by them to mitigate negative impacts;*

### Debt issues:

- (o) *to consider and submit to the Council claims pending against targeted persons by their public and private creditors with a view to facilitating the resolution of debt issues;*

### AS USED IN MODIFIED FORM IN:

- (i) S/RES/757 (1992) on FRY (S&M), para. 13(a), (b), (e), and (f).
- (ii) S/RES/1267 (1999) on the Taliban, para. 6(a), (e), (f), and (g).
- (iii) S/RES/1333 (2000) on the Taliban, paras. 12 and 16(a), (b), (c), (d), and (e).

## 6. Petition for Removal from List of Targets

Since targeted individuals could be designated erroneously, it is desirable for the Security Council to consider procedures that enable targeted individuals to petition for their removal from the list. Although such provisions have not been included in previous resolutions, participants in the 23 July Workshop generally endorsed such a measure. Since there are no routine procedures for listing targeted individuals, participants expressed concern that the process for removal should be developed with care, with sufficient flexibility to add names to lists as well as remove them if circumstances require such actions.

The Bonn-Berlin Expert Working Group on Travel and Aviation-Related Bans addressed the right of targeted individuals to contest being named, and concluded that resolutions should provide this option. Targets may petition the Chair of the relevant Sanctions Committee directly on the basis that their listing is unfounded or that they have changed their behavior.<sup>24</sup> However, the Expert Working Group recommended that this measure be implemented through a reference in the “Sanctions Committee” paragraph of a resolution, by empowering the Committee to keep the list up-to-date. The draft text expands upon this approach by offering a procedure for targeted persons to petition the Chair of the Sanctions Committee for removal from the list. It also authorizes the Committee to gather information in order to consider the petition.

Finally, participants in the 23 July Workshop discussed where the burden of proof regarding petitions for removal should lie, with some suggesting that the Committee should carry the burden in these cases. If the Council wishes for this to be the case, paragraph (b), below, should be redrafted to reflect this intention clearly.

### **DRAFT TEXT:**

- (a) *Decides that any individual [or] group of individuals listed as a target pursuant to this resolution may submit to the Chair of the Sanctions Committee established by paragraph*

*5 any information showing that the prohibitions contained in paragraph 2 should not apply or should no longer apply;*

- (b) Decides that the Committee may gather information relevant to deciding upon the submission received, pursuant to subparagraph (a), and requests that States and international organizations cooperate with the Committee in this regard;*
- (c) Requests that the Committee consider the petition received and any information gathered and decide whether the [prohibitions in paragraph 2] shall continue to apply to the individual [or] group of individuals making the submission under subparagraph (a);*

### 7. Reporting

As the preceding sections indicate, Sanctions Committees may be delegated duties that relate to both reporting and monitoring.

Reporting refers to the obligations of States to provide information to UN organs, most likely to the Committee.

Monitoring, discussed in detail in section 8, refers to the analysis of this information for purposes of determining effectiveness and enforcement actions.

Reporting is necessary to monitor sanctions effectively and should be relevant to the stated objectives of the sanctions. Further, the Sanctions Committee, as with all UN organs, knows little concerning implementation of the measures without States' cooperation. Failure to provide full and detailed information complicates efforts to monitor sanctions, possibly undermining effective implementation of targeted sanctions. This has been the case in the past, with many States providing reports limited to a few lines stating that "all necessary measures" have been taken or failing to report at all. In addition to requiring that States report, this section of the resolution should specify the matters on which States are to report and indicate how often reports are required.

#### 7.1 *Information to be reported*

Past resolutions have required States to report on two general types of information. First, an initial reporting requirement has been imposed regarding the "steps Member States have taken with a view to effectively implementing this resolution." Second, States are requested to supply "such information as may be required by the Committee in pursuance of this resolution."<sup>25</sup> While general requirements maintain the flexibility of the Committee, more specific information is likely to be more useful to the Committee. For example, the following types of information may facilitate more effective monitoring:

- Copies of national legal and administrative texts relevant to implementation;
- Aggregated amounts of funds and other financial resources frozen pursuant to the prohibitions in paragraph 2; and
- Information on the administration of exemptions.

It is also important that Sanctions Committees be more proactive in issuing specific guidance to States regarding categories of information required to facilitate effective reporting. To this end, the development of “templates,” as endorsed by the Security Council’s Working Group on General Issues on Sanctions, may be considered by future Committees.<sup>26</sup>

### 7.2 *Reporting requirements*

As indicated above, resolutions typically require States to report after an initial period and upon request of the Sanctions Committee thereafter. However, clearly specifying reporting intervals may enhance meaningful cooperation by States. Reports may be required on a periodic basis, for example, at intervals of 4 or 6 months. Alternatively, reporting requirements may be considered relevant to particular milestones in the life of the resolution, such as a stage in a peace process referred to in the Preamble or Objectives sections, or in a Sunset Clause.

#### **DRAFT TEXT:**

*Requests that all States and calls upon the international organizations referred to in paragraph 4 to report to the Committee established by paragraph 5 above on:*

Information to be reported:

- *specific legislation passed or enacted or other measures taken;*
- *specific prohibited transactions detected;*
- *aggregated amounts of funds and other financial resources frozen pursuant to the prohibitions in paragraph 2;*
- *amount of funds withdrawn or transferred prior to entry into force of this resolution and information which may aid in determining the current location and character of the funds [i.e. pursuant to the retroactive reporting provision in paragraph 2];*
- *publication of any list of targeted persons referred to in paragraph 2;*

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- *information on persons subject to prohibitions in paragraph 2;*
- *information on actions taken pursuant to [paragraphs on “open” list];<sup>27</sup>*
- *notification of persons added to the list of targeted persons as provided in paragraph 2;*
- *exemptions issued;*
- *other actions taken with a view to effectively implementing paragraph 2;*
- *any other action requested by the Committee or other monitoring body;*
- *matters relevant for the purposes of this resolution and any other relevant matters;*

### Reporting intervals:

- *within [xx] days of [the coming into force of this resolution] [or] [the promulgation of a list pursuant to paragraph 2 by the Committee], [and];*
- *[on a periodic basis or relevant to a milestone in the resolution];*
- *and as requested by the Committee;*

### AS USED IN MODIFIED FORM IN:

- (i) S/RES/1127 (1997) on UNITA, para. 13, requesting reports some 90 days after the passage of the resolution.
- (ii) S/RES/1267 (1999) on the Taliban, para. 10, requesting reports 30 days after the coming into force of the resolution.
- (iii) S/RES/1343 (2001) regarding Liberia, para. 18, requesting reports 30 days after the promulgation of the list by the Committee.

## **8. Monitoring**

Monitoring is critical to ensuring the effectiveness of targeted financial sanctions and usually occurs in conjunction with the monitoring of other measures under Article 41 of the Charter. The monitoring section of the resolution should specify the aspects of sanctions implementation to be evaluated and delegate the responsibility for doing so.

Two broad aspects of sanctions implementation are generally addressed through monitoring initiatives: any unintended impacts of sanctions, particularly negative humanitarian consequences; and the effectiveness of the sanctions, relevant to the stated objectives of the sanctions. Monitoring is likely to lead to recommendations for changes to limit the unintended consequences and/or improve the effectiveness of the prohibitions.

Effective monitoring requires time and resources. While the Sanctions Committee or Secretary-General is most likely to be delegated responsibility for monitoring, other bodies may be created or called upon. The Council has demonstrated the willingness to appoint Panels of Experts or establish Monitoring Mechanisms to investigate and make recommendations on specific topics, such as alleged violations of the sanctions. Through a Monitoring Mechanism, a private sector agency can be engaged to pursue specific monitoring activities.<sup>28</sup> These measures enhance the monitoring capacity of the UN and result in more detailed investigations and reports. Different aspects of monitoring may be delegated to various monitors.<sup>29</sup>

Draft text is provided to identify monitoring agencies and specify their duties. The duties are not exclusive of each other and are presented as a menu from which drafters may choose, consistent with their objectives. However, note that some duties are routinely assigned to a certain monitor. Descriptions of how and when these tasks have been assigned in the past are included.

Draft text for the establishment of a Panel of Experts or Monitoring Mechanism is provided, to reflect Security Council practice. Where the Council provides for the establishment of

such bodies, they may be delegated broad monitoring responsibilities, as indicated in the text below.

### **DRAFT TEXT:**

#### **MONITORS:**

*Decides that the [Secretary-General] [Secretary-General in consultation with the Committee] [Sanctions Committee, in addition to those set out in paragraph 5 above]<sup>30</sup> should undertake the following tasks:*

#### **DUTIES:**

Impact of the measures:

*(—) to review the humanitarian [economic,] [social,] [political,] [and] [security] implications of the measures imposed by this resolution and to report back to the Council within [amount of time] of the adoption of this resolution with an assessment and recommendations, to report at regular intervals thereafter on any humanitarian [economic,] [social,] [political,] [and] [security] implications [and to present a comprehensive report on [this/these] issue(s) and any recommendations no later than [amount of time] prior to the expiration of these measures];*

AS USED IN: S/RES/1333 (2000) on the Taliban, para. 15(d), where the Secretary-General, in consultation with the Committee, was to report on the humanitarian impacts. The preliminary report was due 90 days after the adoption of the resolution and the comprehensive report 30 days before the measures were to expire.

Implementation of measures:

The ability to perform the tasks under this heading, particularly the first, is largely dependent on the information that States and international organizations provide pursuant to reporting requirements (section 7). The Security Council Working Group on General Issues



on Sanctions has recommended that information be sought from additional sources, such as oral reports from relevant organizations, as well as statistics and data from outside sources. Also, travel to the region may be considered to improve monitoring of sanctions implementation.

*(—) to report to the Council by [date] regarding the actions taken by States and international organizations to implement the measures specified in paragraph(s) 2 above;*

AS USED IN:

- (i) S/RES/1173 (1998) on UNITA, para. 20(b), where the responsibility was given to the Committee.
- (ii) S/RES/1333 (2000) on the Taliban, para. 15(c), where the Secretary-General in consultation with the Committee was assigned this task.

*(—) to consider, where and when appropriate, a visit to countries in the region by the Chairman of the Committee and such other members as may be required to enhance the full and effective implementation of the measures imposed by this resolution with a view to urging States to comply;*

AS USED IN: S/RES/1333 (2000) on the Taliban, para. 16(f).

Change in behavior by targeted persons:

This aspect of monitoring is tied to the Objectives and Sunset Clause (sections 1 and 11). Since compliance of the target with the demands established is often the criteria for lifting the sanctions, this task obliges monitors to report on whether targets have altered their behavior to comply with the objectives. If Option 1 or 2 is employed in the Sunset Clause—whereby lifting the sanctions is tied to a decision made by the Secretary-General on the compliance by the target—this

responsibility should be delegated to the Secretary-General. If the Council decides on Option 3, where the measures expire on a certain date, the additional line requiring a comprehensive report may be included to assist in determining whether or not to extend the sanctions.

*(—) to submit a report to the Council by [amount of time], and every [period of time] thereafter, drawing on information from all relevant sources, [including ...] on whether [target] has complied with the demands in paragraph 1 above;*

*[...] and to present a comprehensive report on [this] issue no later than [amount of time] prior to the expiration of these measures;*

AS USED IN:

- (i) S/RES/1127 (1997) on UNITA, para. 8, which assigns this task to the Secretary-General.
- (ii) S/RES/1333 (2000) on the Taliban, 15(c) and (d), where the Secretary-General in consultation with the Committee was to produce the report and where a comprehensive report was due by a date tied to the expiration of the measures.
- (iii) S/RES/1343 (2001) regarding Liberia, para. 12, where the Secretary-General was required to submit the first report by a set date and report again at 6-month intervals.

Technical effectiveness:

*(—) to make periodic assessments of and recommendations on ways of increasing the technical effectiveness of the measures referred to in paragraph 2 above to the Council;*

AS USED IN: S/RES/1343 (2001) regarding Liberia, para. 14(g), where the Committee was given this task as well as that of recommending ways to limit the unintended effects of the sanctions.

### Violations of the sanctions:

As the Committee is responsible for receiving reports from States and international organizations, it is appropriate to include a role in dealing with violations of sanctions. The distinction in the two paragraphs is that the first deals with the interaction between States and the Committee, whereas the second paragraph deals with relaying this information on to the Security Council along with recommendations.

*(—) to consider any information brought to its attention by States and international organizations concerning alleged or actual violations of the measures imposed by this resolution, identifying where possible, persons, natural or legal, reported to be engaged in such violations, and to recommend appropriate measures in response thereto;*

*(—) to make periodic reports to the Council on alleged or actual violations of the measures imposed by this resolution, identifying where possible, persons, natural or legal, reported to be engaged in such violations, and recommendations for strengthening the effectiveness of these measures;*

AS USED IN MODIFIED FORM IN: S/RES/1333 (2000) on the Taliban, para. 16(g), where this task was assigned to the Sanctions Committee.

### Enforcement:

*(—) to assess the problems in enforcing the measures imposed by paragraph 2 above and make recommendations for strengthening enforcement;*

AS USED IN: S/RES/1333 (2000) on the Taliban, para. 15(c), where this task was assigned to the Secretary-General in consultation with the Committee.

### Arrangement of monitoring activities:

While monitoring duties may be divided among several bodies, it is helpful to have one agency coordinate the

monitoring activities. This responsibility is usually given to the Sanctions Committee.

*(—) to determine appropriate arrangements, on the basis of recommendations of the Secretariat, with competent international organizations, neighbouring and other States, and parties concerned with a view to improving the monitoring of the implementation of the measures imposed by paragraph 2 above;*

AS USED IN: S/RES/1267 (1999) on the Taliban, para. 12.

Panels of Experts and Monitoring Mechanisms:

The draft text below facilitates the establishment of a Panel of Experts or Monitoring Mechanism that may be delegated monitoring duties similar to those discussed above and also may be given a mandate beyond monitoring sanctions (e.g. “to identify parties aiding and abetting the violations of the measures”).<sup>31</sup> In addition, the reporting<sup>32</sup> and funding<sup>33</sup> requirements of these monitoring bodies will usually be spelled out in the resolution.

*Requests the Secretary-General to establish, within [one month] from the date of adoption of this resolution, in consultation with the Committee established by paragraph 5 above, a [Panel of Experts/Monitoring Mechanism] for a period of [six months] consisting of no more than [five] members, [drawing upon information from [...], with the following mandate [...]:*

AS USED IN MODIFIED FORM IN:

- (i) S/RES/1237 (1999) on UNITA, paras. 6, 7, and 11.
- (ii) S/RES/1295 (2000) on UNITA, para. 3.
- (iii) S/RES/1333 (2000) on the Taliban, para. 15.
- (iv) S/RES/1343 (2001) regarding Liberia, paras. 19 and 20.

## 9. Appeals to States

Resolutions may include exhortative paragraphs requesting that States take action related to specific measures. Generally, these paragraphs remind States of their obligation to implement the resolution, call upon States to cooperate with the Committee or other sanctions monitors and suggest measures that States may pursue to implement the resolution at the national level. Strictly speaking, they are superfluous, as the UN Charter predetermines the degree to which these and other paragraphs bind States; however, drafters may consider such paragraphs as a useful guidance to States in an effort to ensure consistent implementation. In this context, such guidance may be given greater weight if stated in a resolution rather than if issued by a Committee or a subsequent monitoring body. Following are different formulations used in previous resolutions.

### **DRAFT TEXT:**

*Reminds all States of their obligation to implement strictly the measures imposed by paragraph(s) 2 of this resolution;*

AS USED IN: S/RES/1333 (2000) on the Taliban, para. 4.

*Stresses the obligation of all States to comply fully with the measures imposed against [target] contained in paragraph 2 and emphasizes that non-compliance with those measures constitutes a violation of the provisions of the Charter of the United Nations;*

AS USED IN: S/RES/1295 (2000) on UNITA, para 1.

*Calls upon all States to cooperate fully with the Committee established by paragraph 5 above [or other monitoring agencies] in the fulfillment of its/their tasks, including supplying such information as may be required by them in pursuance of this resolution;*

AS USED IN: S/RES/1267 (1999) on the Taliban, para. 9.

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*Calls upon States to bring proceedings against persons within their jurisdiction that violate the measures imposed by paragraph 2 above and to impose appropriate penalties;*

AS USED IN: S/RES/1267 (1999) on the Taliban, para. 8.

*Calls upon all States to work with financial institutions on their territory to develop procedures to facilitate the identification of funds and financial assets that may be subject to the measures contained in this resolution and the freezing of such assets;*

AS USED IN: S/RES/1295 (2000) on UNITA, para. 21.

*Further urges all States to take immediate steps to enforce, strengthen or enact legislation making it a criminal offence under domestic law for their nations or other individuals operating on their territory to violate the measures imposed by the Council against [target], where they have not already done so, and to inform the Committee of the adoption of such measures, and invites States to report the results of all related investigations or prosecutions to the Committee;*

AS USED IN: S/RES/1295 (2000) on UNITA, para 27.

## 10. Nonliability for Compliance with Sanctions

Sanctions are intended to exert pressure on the targeted persons, and not to affect detrimentally the interests of third parties, including non-target States, entities, and private parties. Accordingly, this section is designed to protect States *and* financial institutions from claims arising from their compliance with sanctions resolutions (e.g. where banks are required to violate contractual terms). There are limited precedents in past resolutions, but international banks and financial institutions have emphasized the importance of these provisions in all resolutions imposing targeted financial sanctions. Since the freezing of funds required by targeted financial sanctions could violate a financial institution's obligations to its customers, it is crucial that a "nonliability" provision be included in the resolution to serve as a defense for those who comply with sanctions.

The first paragraph below obliges States and international organizations to implement sanctions notwithstanding existing obligations. The second paragraph absolves those dealing with the assets of targeted persons from liabilities that would otherwise arise from freezing those assets. Reflecting the discussion at the 23 July Workshop, the text has drawn upon the language of the common law of negligence (acting in "good faith").

### **DRAFT TEXT:**

*Calls upon all States and international organizations to implement the provisions of this resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the date of adoption of [the coming into effect of the measures contained in] this resolution;*

AS USED IN MODIFIED FORM IN: S/RES/757 (1992) on FRY (S&M), para. 9.

*Decides that all States shall ensure that no claim shall lie at the instance of any person referred to in paragraph 2 above, or of any person claiming through or for the benefit of any such person in connection with any*

## Targeted Financial Sanctions

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*contract or other transaction performed in good faith pursuant to the measures taken by the Security Council in this resolution;*

AS USED IN MODIFIED FORM IN: S/RES/883 (1993) on Libya, para. 8.



## 11. Sunset Clause

This section aims to provide a means for the suspension and lifting of sanctions, upon the achievement of the objectives identified in the resolution. The “*demands*” made of the target in the Objectives section of the resolution constitute the criteria for lifting the sanctions, and for this reason it is important that the language concerning objectives be clear and specific.

### *Options for sunset clause*

The three basic formulations provided below are typical of past Security Council resolutions. While they represent alternative options, a resolution imposing multiple Article 41 measures could use different approaches or different variations of an approach (i.e. with different dates of expiration) for each of the prohibitions.

#### *Option 1:*

**The Security Council *expresses its readiness to consider lifting the sanctions if certain measures are taken or conditions met.***

This same wording is also used to introduce the possibility of additional measures, and is generally a way for the Council to signal its willingness to consider lifting the prohibitions if targets change their behavior. If this approach is selected, the Monitoring section (section 8) should give the Secretary-General the responsibility of evaluating the targets’ compliance with the demands of the Council, as this text will oblige him or her to reach a conclusion on the matter.

#### **OPTION 1 DRAFT TEXT:**

*Expresses its readiness to review all the measures in the present resolution with a view to lifting them if, after the provisions set forth in paragraph 2 above have come into force, the Secretary-General reports to the Council that [target] has fulfilled the obligation(s) set out in paragraph 1 above;*

## Targeted Financial Sanctions

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AS USED IN:

- (i) S/RES/820 (1993) on FRY (S&M), para. 31.
- (ii) S/RES/841 (1993) on Haiti, para. 16.
- (iii) S/RES/883 (1993) on Libya, para. 16.
- (iv) S/RES/1173 (1998) on UNITA, para. 15.

### *Option 2:*

**The Security Council *decides to end the measures if certain conditions are met.*** This option is normally used if there is agreement in the Council on the terms for lifting the sanctions, or if the sanctions program's duration is viewed as being short. In one case, the terse wording of this paragraph contributed to the impression that the imposition of sanctions was merely symbolic, that the targets' compliance with the demands of previous resolutions was unlikely, and that the Council did not foresee much further debate on the issue. Again, if this option is selected, the Secretary-General should be responsible for monitoring compliance by the target, as reflected in the Monitoring section.

### **OPTION 2 DRAFT TEXT:**

*Decides to terminate the measures imposed by paragraph 2 once the Secretary-General reports to the Security Council that [target] has fulfilled the obligation(s) set out in paragraph 1 above;*

AS USED IN: S/RES/1267 (1999) on the Taliban, para. 14.

### *Option 3:*

**The Security Council *decides that the prohibitions are to be imposed for a set period, and undertakes to consider extending the imposition of sanctions at that time.***

### **OPTION 3 DRAFT TEXT:**

*Decides that the measures imposed by paragraph 2 are established for [time period] and that, at the end of that period, the Council will decide whether the [target] has complied with the demands in paragraph 1, and,*

*accordingly, whether to extend these measures for a further period with the same conditions;*

AS USED IN:

- (i) S/RES/1333 (2000) on the Taliban, para. 23, in combination with Option 2, above (para. 24).
- (ii) S/RES/1343 (2001) regarding Liberia, paras. 9 and 10.

### Endnotes

<sup>1</sup> For example, see S/RES/1173 (1998) on UNITA, Part B.

<sup>2</sup> This latter, broader sense of the term “targeted sanctions” is utilized by the Bonn-Berlin Expert Working Group for the purpose of aviation bans, but not travel bans. See Bonn International Center for Conversion, “Design and Implementation of Arms Embargoes and Travel and Aviation Related Sanctions: Results of the ‘Bonn-Berlin Process,’” (Bonn, 2001), pp. 4-48, 69 [hereafter “BICC”]. Kimberly Ann Elliott’s paper at Interlaken II stresses that a “clear distinction must...be made between *targeted* sanctions and *selective* sanctions. Selective sanctions are less than comprehensive sanctions involving restrictions on particular products or financial flows. Targeted sanctions are a subset of selective sanctions that specifically aim for narrow or targeted effects.” Published report of Interlaken II, p. 194.

<sup>3</sup> If this option is included, the Council must resolve the following questions, preferably by including specific references in the text of the resolution itself: What is the definition of “family?” Are the sanctions intended to apply only to adult family members, however family is defined? What is the age at which a child becomes an adult for the purposes of sanctions targeting? How will that age be verified? As elsewhere in the resolution (as in the sanctions in general) what is required is specificity; the Council needs to decide whether and which “family” members will be targeted.

<sup>4</sup> Although, see S/RES/1333 (2000) on the Taliban, para. 8(c), which names Usama bin Laden and the Al-Qaida organization. Also, the European Union, in imposing a targeted financial sanction over the matter of Kosovo (EC Regulation No. 1294/1999), issued an annex listing persons subject to the prohibitions.

<sup>5</sup> An example of a closed list is the targeted financial sanction imposed against members of UNITA is in S/RES/1173 (1998) on UNITA, para. 11.

<sup>6</sup> An example of an open list is EC Regulation 1294/1999 against the FRY over the issue of Kosovo (see Articles 1-3), which also includes a reporting requirement, so that States acting beyond the central list inform the European Commission and other Member States (Article 11) of their actions.

<sup>7</sup> This was the case in the Libya sanctions, see S/RES/883 (1993) on Libya, para. 3(iii), and following, where no provision for coordination was made.

<sup>8</sup> These past formulations include S/RES/883 (1993) on Libya, which referred to “all States in which there are funds or other financial resources” (para. 3) and S/RES/1173 (1998) on UNITA, which provides that one State (in this case, Angola) is exempted from having to implement sanctions (para. 11).

<sup>9</sup> For example, S/RES/1267 (1999) on the Taliban, para. 3.

<sup>10</sup> Discussions with government representatives revealed that in the case of the two-week delay between UN action and implementation associated with the Libyan sanctions, more than U.S. \$300 million in cash was withdrawn from the banks of one country.

<sup>11</sup> See EC Regulation 1294/1999 over the issue of Kosovo. Article 4 refers to activities “facilitating, promoting or otherwise enabling the acquisition or extension of a participation in, ownership of or control over” real estate and entities located in the target state or owned and controlled by the target governments. Article 5 prohibits activities pursued with the aim of circumventing the prohibitions.

<sup>12</sup> Anecdotal evidence, gleaned in particular from the interventions of sanctions experts and representatives from Permanent Missions to the UN at the Symposium on Targeted Financial Sanctions (New York, December 1998), suggest that the Committees tend to meet irregularly or not at all in some cases. Further, they are sometimes slow to issue guidelines (Libya), slow and imprecise in the identification of targets (Haiti), and vulnerable to the conflicting agendas of their constituent members (yet no more so than the Council itself).

<sup>13</sup> This general approach was used by the European Union in imposing measures against the Federal Republic of Yugoslavia over the matter of Kosovo (EC Regulation No. 1294/1999, see especially Articles 2 and 3) and again in EC Regulation No. 1081/2000 on Burma/Myanmar, Article 2. Notably, in the case of 1294/1999, to overcome the disadvantages of issuing a list before all information could be compiled, the EC ensured the list was open. The EC achieved this by providing concise definitions of the legal persons targeted by the regulation (Article 1), enabling Member States to target subsidiary entities and individuals (i.e. persons

“acting or purporting to act for or on behalf of” the targeted governments). The Annex merely “deems” that the latter are “acting or purporting to act for or on behalf of” the former. The outcome is that the annex is an initial list that binds States. For UN purposes, the draft text given has been adapted to achieve this outcome. In addition, Member States are specifically empowered to act beyond the list and are obliged to report when they do so.

<sup>14</sup> BICC, p. 58.

<sup>15</sup> For example, S/RES/1267 (1999) on the Taliban, para. 4(a) and S/RES/1127 (1997) on UNITA, para. 6.

<sup>16</sup> The closest that the Council has come to listing specific items is S/RES/942 (1994) on FRY (Bosnian Serbs), para. 13(a), which refers to payments for postal services.

<sup>17</sup> Note that general categories of exemptions or exceptions are sometimes dealt with in the paragraph imposing the prohibitions. See, for example, S/RES/1267 (1999) on the Taliban, para. 4(b).

<sup>18</sup> See Article 48(b) of the United Nations Charter. Note that this paragraph is exhortative, not mandatory.

<sup>19</sup> Published report of Interlaken II, p. 86.

<sup>20</sup> For the purposes of this document, it is assumed that the resolution is the first to impose sanctions. If the Committee was established by a previous resolution, the necessary changes should be made to the draft text which references the Committee.

<sup>21</sup> Article 50 of the United Nations Charter states: “If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out those measures shall have the right to consult the Security Council about a solution of those problems.”

<sup>22</sup> BICC, pp. 55-60.

<sup>23</sup> For a short discussion of Article 50, see the Informal Background Paper prepared by the UN Secretariat, Department of Political Affairs in the published report of Interlaken II, pp. 151-53.

<sup>24</sup> BICC, pp. 56-58.

<sup>25</sup> For example, see S/RES/1333 (2000) on the Taliban, paras. 20 and 19, respectively.

<sup>26</sup> See also BICC, p. 59 on this point.

<sup>27</sup> If the Council decides that the list of targets should be “open” (section 2), it is necessary to include this element in the reporting requirement to ensure that States inform the Committee of persons they deem subject to the prohibitions.

<sup>28</sup> See “Report of the Security Council Committee Established Pursuant to Resolution 864 (1993) Concerning the Situation in Angola,” issued as an Annex to S/2000/1255, 29 December 2000, para. 26.

<sup>29</sup> For example, S/RES/1333 (2000) on the Taliban, where duties are assigned to the “Secretary-General in consultation with the Committee.”

<sup>30</sup> Any of the responsibilities that would be delegated to the Sanctions Committee alone could also be dealt with by listing those responsibilities in the section on the Sanctions Committee (section 5).

<sup>31</sup> For example, S/RES/1237 (1999) on UNITA, paras. 6(a).

<sup>32</sup> For example, the resolution may require that a Panel of Experts report to the Council, through the Committee, on specified matters at certain intervals. See S/RES/1343 (2001), regarding Liberia, para. 19.

<sup>33</sup> The Security Council may fund a Panel of Experts or Monitoring Mechanism by creating a Trust Fund (S/RES 1237 (1999) on UNITA, para. 11) or may simply request the Secretary-General to provide the necessary resources (S/RES/1343 (2001) regarding Liberia, para. 19).

## **ANNEX A: Mock Resolution Containing All Draft Text**

RESOLUTION [NUMBER] (YEAR)

Adopted by the Security Council at its [ ... ]th meeting,  
on [DATE]

*The Security Council,*

*[PREAMBULATORY PARAGRAPH]*

*[...]*

*[PREAMBULATORY PARAGRAPH]*

*Determining that ... [the situation] ... constitutes a threat to international peace and security,*

*Acting under Chapter VII of the Charter of the United Nations,*



## **1. Objectives of Sanctions**

*Demands ...;*

## **2. Prohibitions**

### ***Option 1***

*Decides that all States shall ensure that all funds and other financial resources owned or controlled, directly or indirectly, by:*

- (a) officials of the [government], [name of political faction, parastatal organization, or military junta] in [target state];*
  - (b) the immediate families of any of the above;*
  - (c) legal persons owned or controlled by (a) or (b) [or as defined in Annex [xx]];*
  - (d) [insert reference to target list according to Option 1A or 1B, below];*
- are frozen and that no funds and other financial resources, including funds derived from property, shall be made available, by their nationals or by any persons within their territory, directly or indirectly, to or for the benefit of the persons, natural or legal, referred to in this paragraph;*

### ***Option 1A***

[closed list] “(d) persons, natural or legal, as designated by the Committee established by paragraph 5 below;”

[open list] “(d) persons, natural or legal, including as designated by the Committee established by paragraph 5 below;” [and additional paragraph on open lists, below]

**Option 1B**

[closed list] “(d) persons, natural or legal, as designated in Annex [xx] of this resolution;”

[open list] “(d) persons, natural or legal, including as designated in Annex [xx] of this resolution;” [and additional paragraph on open lists, below]

[additional paragraph for open lists]: *Decides that in cases where States acquire or possess well-founded information that a person is subject to the prohibitions in paragraph 2, they shall apply the prohibitions to this person, and decides that in such cases States shall notify the Sanctions Committee of their actions and forward any relevant information to the Committee, and further decides that the Sanctions Committee established by paragraph 5 below may decide that [prohibitions in paragraph 2] shall no longer apply to said person, or shall add said person to the list of targets;*

**Ban on Financial Services**

*Decides that all States shall prohibit the provision of financial services by their nationals or by any person within their territory in relation to any assets owned or controlled, directly or indirectly, by any person referred to in paragraph 2 above;*

**Option 2**

*Decides that all States shall ensure that all funds and other financial resources owned or controlled, directly or indirectly, by any person, natural or legal, who is a national of, or residing in or operating in [target state], are frozen and that no funds and*

## Designing Security Council Resolutions

*other financial resources, including funds derived from property, shall be made available, nor financial services provided, directly or indirectly, to or for the benefit of the persons referred to in this paragraph;*

*Decides that the comprehensive freeze on funds and other financial resources, and ban on financial services, as imposed in the paragraph above shall enter into force immediately and shall be limited by [deadline] [or upon the specification of targeted persons or categories of persons by the Sanctions Committee/Security Council] [or whichever of these occurs first] to a freeze on the funds and other financial resources of any persons or categories of persons as to be designated by the [Sanctions Committee/Security Council], and confirms that all funds and other financial resources of all other persons shall be released and financial services may be provided to them at this time;*

### **Tracing Funds Retroactively**

*Requests that all States trace the funds and other financial resources of targeted persons which were withdrawn from or transferred out of their jurisdiction during [xx] months preceding the entry into force of this resolution and report to [...] in accordance with paragraph 7;*

### **3. Exemptions and Exceptions**

#### **Option 1**

*Decides that all States may authorize exemptions to the prohibitions referred to in paragraph 2 on the grounds of verified medical and humanitarian purposes;*

*Decides that the activities of the United Nations and its agencies and the International Committee of the Red Cross shall not be restricted by the provisions of this resolution;*

**Option 2**

*Decides that the Committee established by paragraph 5 may authorize exceptions to the prohibitions referred to in paragraph 2 above on a case-by-case basis under a no-objection procedure on the grounds of verified medical and humanitarian purposes;*

*Decides that the activities of the United Nations and its agencies, the International Committee of the Red Cross and, upon decision by the Committee established by paragraph 5, further humanitarian organizations shall not be restricted by the provisions of this resolution;*

**4. International Organizations**

*Calls upon international, regional, sub-regional, and all other organizations, to act strictly in accordance with the provisions of the resolution and to cooperate fully with the Committee established by paragraph 5 below [or other monitoring agencies] in the fulfilment of its/their tasks, including supplying such information as may be required by them in pursuance of this resolution;*

**5. Sanctions Committee**

*Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, which consists of all the members of the Council, to undertake the following tasks and to report on its work to the Council with its conclusions, observations, and recommendations:*

## Designing Security Council Resolutions

- (a) *to designate the persons subject to the measures imposed by paragraph 2 [by date] after having informed the country of nationality of the target, if not identical to the target country;*
- (b) *to seek from all States, international organizations, and other sources further information regarding the persons to whom the measures imposed in paragraph 2 should apply;*
- (c) *to decide on simplified procedures for listing and delisting targeted persons, and to review and maintain current the list of persons to whom the measures imposed in paragraph 2 apply;*
- (d) *to distribute quickly and efficiently the list referred to in paragraph 2 to States and relevant international organizations, through official channels, upon its creation and any subsequent modifications;*
- (e) *to make information it considers relevant, including the list referred to in paragraph 2, publicly available through appropriate media, including through the use of information technology;*
- (f) *to request that additional information be provided to the Committee where appropriate;*
- (g) *to give consideration to, and decide upon, requests for the exceptions set out in paragraph 3 above;*
- (h) *to promulgate expeditiously such guidelines and to offer any other support to States as may be necessary to facilitate implementation of the measures imposed by paragraph 2;*
- (i) *to take the necessary measures to fulfill its obligations set out in paragraph 6 below;*
- (j) *to seek continually from all States and international organizations further information regarding the legal, administrative and practical actions taken by them with a view of effectively implementing the measures imposed by paragraph 2 above;*
- (k) *to examine the reports submitted pursuant to paragraph 7 [by States and international organizations];*
- (l) *where appropriate, to make available to States information received and facilitate information exchange;*
- (m) *to take the necessary measures to fulfill its obligations set out in paragraph 8 below;*
- (n) *to provide opportunities for third States affected by sanctions to brief the Committee on unintended impacts they are experiencing and assistance needed by them to mitigate negative impacts;*

- (o) *to consider and submit to the Council claims pending against targeted persons by their public and private creditors with a view to facilitating the resolution of debt issues;*

**6. Petition for Removal**

- (a) *Decides that any individual [or] group of individuals listed as a target pursuant to this resolution may submit to the Chair of the Sanctions Committee established by paragraph 5 any information showing that the prohibitions contained in paragraph 2 should not apply or should no longer apply;*
- (b) *Decides that the Committee may gather information relevant to deciding upon the submission received, pursuant to subparagraph (a), and requests that States and international organizations cooperate with the Committee in this regard;*
- (c) *Requests that the Committee consider the petition received and any information gathered and decide whether the [prohibitions in paragraph 2] shall continue to apply to the individual [or] group of individuals making the submission under subparagraph (a);*

**7. Reporting**

*Requests that all States and calls upon the international organizations referred to in paragraph 4 to report to the Committee established by paragraph 5 above on:*

Information to be reported:

- *specific legislation passed or enacted or other measures taken;*
- *specific prohibited transactions detected;*
- *aggregated amounts of funds and other financial resources frozen pursuant to the prohibitions in paragraph 2;*

- amount of funds withdrawn or transferred prior to entry into force of this resolution and information which may aid in determining the current location and character of the funds [i.e. pursuant to the retroactive reporting provision in paragraph 2];
- publication of any list of targeted persons referred to in paragraph 2;
- information on persons subject to prohibitions in paragraph 2;
- information on actions taken pursuant to [paragraphs on “open” list];
- notification of persons added to the list of targeted persons as provided in paragraph 2;
- exemptions issued;
- other actions taken with a view to effectively implementing paragraph 2;
- any other action requested by the Committee or other monitoring body;
- matters relevant for the purposes of this resolution and any other relevant matters;

Reporting intervals:

- within [xx] days of [the coming into force of this resolution] [or] [the promulgation of a list pursuant to paragraph 2 by the Committee], [and];
- [on a periodic basis or relevant to a milestone in the resolution];
- and as requested by the Committee;

**8. Monitoring**

**MONITORS:**

*Decides the [Secretary-General] [Secretary-General in consultation with the Committee] [Sanctions Committee, in addition to those set out in paragraph 5 above] should undertake the following tasks:*

**DUTIES:**

- (—) to review the humanitarian [economic,] [social,] [political,] [and] [security] implications of the measures imposed by this resolution and to report back to the Council within [amount of time] of the adoption of this resolution with an assessment and recommendations, to report at regular intervals thereafter on any humanitarian [economic,] [social,] [political,] [and] [security] implications [and to present a comprehensive report on [this/these] issue(s) and any recommendations no later than [amount of time] prior to the expiration of these measures];
- (—) to report to the Council by [date] regarding the actions taken by States and international organizations to implement the measures specified in paragraph(s) 2 above;
- (—) to consider, where and when appropriate, a visit to countries in the region by the Chairman of the Committee and such other members as may be required to enhance the full and effective implementation of the measures imposed by this resolution with a view to urging States to comply;
- (—) to submit a report to the Council by [amount of time], and every [period of time] thereafter, drawing on information from all relevant sources, [including ...] on whether [target] has complied with the demands in paragraph 1 above; [ ...] and to present a comprehensive report on [this] issue no later than [amount of time] prior to the expiration of these measures;
- (—) to make periodic assessments of and recommendations on ways of increasing the technical effectiveness of the measures referred to in paragraph 2 above to the Council;
- (—) to consider any information brought to its attention by States and international organizations concerning alleged or actual violations of the measures imposed by this resolution, identifying where possible, persons, natural or legal, reported to be engaged in such violations, and to recommend appropriate measures in response thereto;



- (—) to make periodic reports to the Council on alleged or actual violations of the measures imposed by this resolution, identifying where possible, persons, natural or legal, reported to be engaged in such violations, and recommendations for strengthening the effectiveness of these measures;
- (—) to assess the problems in enforcing the measures imposed by paragraph 2 above and make recommendations for strengthening enforcement;
- (—) to determine appropriate arrangements, on the basis of recommendations of the Secretariat, with competent international organizations, neighbouring and other States, and parties concerned with a view to improving the monitoring of the implementation of the measures imposed by paragraph 2 above;

*Requests the Secretary-General to establish, within [one month] from the date of adoption of this resolution, in consultation with the Committee established by paragraph 5 above, a [Panel of Experts/Monitoring Mechanism] for a period of [six months] consisting of no more than [five] members, [drawing upon information from [...], with the following mandate [...]:*

### **9. Appeals to States**

*Reminds all States of their obligation to implement strictly the measures imposed by paragraph(s) 2 of this resolution;*

*Stresses the obligation of all States to comply fully with the measures imposed against [target] contained in paragraph 2 and emphasizes that non-compliance with those measures constitutes a violation of the provisions of the Charter of the United Nations;*

*Calls upon all States to cooperate fully with the Committee established by paragraph 5 above [or other monitoring agencies] in the fulfilment of its/their tasks, including supplying such information as may be required by them in pursuance of this resolution;*

## Targeted Financial Sanctions

*Calls upon States to bring proceedings against persons within their jurisdiction that violate the measures imposed by paragraph 2 above and to impose appropriate penalties;*

*Calls upon all States to work with financial institutions on their territory to develop procedures to facilitate the identification of funds and financial assets that may be subject to the measures contained in this resolution and the freezing of such assets;*

*Further urges all States to take immediate steps to enforce, strengthen or enact legislation making it a criminal offence under domestic law for their nations or other individuals operating on their territory to violate the measures imposed by the Council against [target], where they have not already done so, and to inform the Committee of the adoption of such measures, and invites States to report the results of all related investigations or prosecutions to the Committee;*

### **10. Nonliability for Compliance with Sanctions**

*Calls upon all States and international organizations to implement the provisions of this resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the date of adoption of [the coming into effect of the measures contained in] this resolution;*

*Decides that all States shall ensure that no claim shall lie at the instance of any person referred to in paragraph 2 above, or of any person claiming through or for the benefit of any such person or body, in connection with any contract or other transaction performed or not in good faith pursuant to the measures taken by the Security Council in this resolution;*

**11. Sunset Clause**

***Option 1***

*Expresses its readiness to review all the measures in the present resolution with a view to lifting them if, after the provisions set forth in paragraph 2 above have come into force, the Secretary-General reports to the Council that [target] has fulfilled the obligation(s) set out in paragraph 1 above;*

***Option 2***

*Decides to terminate the measures imposed by paragraph 2 once the Secretary-General reports to the Security Council that [target] has fulfilled the obligation(s) set out in paragraph 1 above;*

***Option 3***

*Decides that the measures imposed by paragraph 2 are established for [time period] and that, at the end of that period, the Council will decide whether the [target] has complied with the demands in paragraph 1, and, accordingly, whether to extend these measures for a further period with the same conditions;*

**ANNEX ON DEFINITIONS**

*Further decides that for the purposes of this resolution, the term “[xx]” shall be defined to mean [...] [see Annex B]*

**ANNEX B: Critical Definitions**

CRITICAL PHRASE	INTERLAKEN II DEFINITION	EC REGULATION DEFINITION	COMMENT
<p>Funds and other financial resources</p>	<p>Financial assets and economic benefits of any kind, including (without limitation):</p> <ul style="list-style-type: none"> <li>• Cash</li> <li>• Cheques, drafts, money orders and other payment instruments</li> <li>• Deposits with financial institutions or other entities, balances on accounts, debts and debt obligations</li> <li>• Publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, derivatives contracts</li> <li>• Interest, dividends or other income or value accrued from or generated by assets</li> <li>• Credit, rights of set-off, guarantees, performance bonds or other financial commitments</li> <li>• Letters of credit, bills of lading, bills of sale</li> <li>• Documents evidencing an interest in funds or financial resources</li> </ul>	<p>Funds shall mean: financial assets and economic benefits of any kind, including, but not necessarily limited to,</p> <ul style="list-style-type: none"> <li>• Cash</li> <li>• Cheques, <b>claims on money</b>, drafts, money orders and other payment instruments</li> <li>• Deposits with financial institutions or other entities, balances on accounts, debts and debt obligations</li> <li>• Publicly and privately traded securities and debt instruments, certificates representing securities, bonds, notes, warrants, debentures, derivatives contracts</li> </ul>	<p>“Funds and financial resources” is a subset of the Interlaken II definition of assets, below, and the term used by the United Nations and European Union to impose targeted financial sanctions. To define assets more broadly is to move towards a more comprehensive sanction.</p> <p>The EC regulations mirror those developed at Interlaken II, but add two elements (shown in bold) in order to be more complete. The</p>

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CRITICAL PHRASE	INTERLAKEN II DEFINITION	EC REGULATION DEFINITION	COMMENT
		<ul style="list-style-type: none"> <li>• Interest, dividends or other income on or value accruing from or generated by assets</li> <li>• Credit, rights of set-off, guarantees, performance bonds or other financial commitments</li> <li>• Letters of credit, bills of lading, bills of sale</li> <li>• Documents evidencing an interest in funds or financial resources, <b>and any other instrument of export-financing.</b></li> </ul>	<p>second of these additional terms—“and any other instrument of export-financing”— makes it clear to States that targeted financial sanctions could have implications for trade.</p>
Owned or controlled, directly or indirectly	<p>Assets of which any authority, entity or person referred to in paragraph 1 is the legal or beneficial owner, is entitled to or has de facto control over.</p> <p>In determining ownership or control, a greater than 50% interest in the asset on the part of any authority, entity or person referred to in paragraph</p>	<p><i>Owning a company, undertaking, institution or entity</i> means: being in possession of 50% or more of the proprietary rights of a company, undertaking, institution or entity or having a majority interest therein;</p>	<p>Comments received following the 23 July Workshop acknowledge the advantage of having the term defined, particularly when the target’s shareholding in</p>

## Targeted Financial Sanctions

CRITICAL PHRASE	INTERLAKEN II DEFINITION	EC REGULATION DEFINITION	COMMENT
	<p>1, or in an intermediate person or entity having ownership of control of the asset, will be determinative.</p> <p>An interest of 50% or less in the asset, (or in an intermediate person or entity having ownership or control of the asset) may constitute ownership or control, depending on the factual circumstances, and in particular:</p> <ul style="list-style-type: none"> <li>• the representation of any authority, entity or person referred to in paragraph 1 in the management of the asset;</li> <li>• the extent of the interest of any authority, entity or person referred to in paragraph 1 in the asset;</li> <li>• the nature and identity of interests other than those of any authority, entity or person referred to in paragraph 1;</li> <li>• the spread and diversity of interests in the asset;</li> </ul>	<p><i>Controlling a company, undertaking, institution or entity</i> means any of:</p> <p>(a) having the right to appoint or remove a majority of the members of the administrative, management or supervisory body of a company, undertaking, institution or entity;</p> <p>(b) having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a company, undertaking, institution or entity who have held office during the present and previous financial year;</p> <p>(c) controlling alone, pursuant to an agreement with other shareholders in or members of a company, undertaking, institution or entity, a majority of shareholders' or</p>	<p>the entity is less than 50%. While the Interlaken II definition calls attention to factors that <i>may</i> constitute ownership/control in such situations, the EC goes further by actually operationalizing the term "control." Hence, if a formal definition of this term is to be included in the resolution, the EC definition should certainly be considered.</p>

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CRITICAL PHRASE	INTERLAKEN II DEFINITION	EC REGULATION DEFINITION	COMMENT
	<ul style="list-style-type: none"> <li>• the ability of any authority, entity or person referred to in paragraph 1 to influence decision-making in relation to the asset.</li> </ul> <p>These criteria are not exhaustive or restrictive, and any determination as to ownership or control of assets should be consistent with the objective of the assets freeze concerning [the Target State] and the authorities, entities and persons referred to in paragraph 1.</p>	<p>members' voting rights in that company, undertaking, institution or entity;</p> <p>(d) having the right to exercise a dominant influence over a company, undertaking, institution or entity, pursuant to an agreement entered into with that company, undertaking, institution or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that company, undertaking, institution or entity permits its being subject to such agreement or provision;</p> <p>(e) having the power to exercise the right to exercise a dominant influence referred to at (d), without being the holder of that right;</p>	

## Targeted Financial Sanctions

CRITICAL PHRASE	INTERLAKEN II DEFINITION	EC REGULATION DEFINITION	COMMENT
		<p>(f) having the right to use all or part of the assets of a company, undertaking, institution or entity;</p> <p>(g) managing a company, undertaking, institution or entity on a unified basis, while publishing consolidated accounts;</p> <p>(h) sharing jointly and severally the financial liabilities of a company, undertaking, institution or entity, or guaranteeing them.</p> <p>AS USED IN:</p> <ul style="list-style-type: none"> <li>• Council Regulation 1294/1999 over the issue of Kosovo; Article 1, paras. 5 and 6.</li> </ul>	



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CRITICAL PHRASE	INTERLAKEN II DEFINITION	EC REGULATION DEFINITION	COMMENT
Freeze	To freeze [funds and financial resources] means that [these] assets may not be moved, transferred, altered, used or dealt with in any way that would result in any change in their volume, amount, location, ownership, possession or character; including portfolio management, <i>except that any interest or income arising on any capital automatically repayable on maturity of any asset shall be paid into and held in a frozen account.</i>	<p><i>Freezing of funds</i> means: preventing any move, transfer, alteration, use of or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, <b>destination or other change that would make possible the use of the funds</b>, including portfolio management.</p> <p>AS USED IN:</p> <ul style="list-style-type: none"> <li>• Council Regulation 1294/1999 over the issue of Kosovo; Article 1, para. 4.</li> </ul>	Aside from the grammar, two differences exist between the definitions. First, the bolded element in the EC definition is an addition to the Interlaken II definition. Second, the italicized phrase in the Interlaken definition, “except that any interest or income arising on any capital automatically repayable on maturity of any asset shall be paid into and held in a frozen account,” is deleted from the EC definition and included as an exemption/exception to ensure clarity.

## Targeted Financial Sanctions

<b>CRITICAL PHRASE</b>	<b>INTERLAKEN II DEFINITION</b>	<b>EC REGULATION DEFINITION</b>	<b>COMMENT</b>
Financial services	<p>Any activity, discretionary or otherwise, conducted as principal or agent, involving the provision, custody, management, utilization, transfer, disposal, movement or exchange of funds or other financial resources and advice relating thereto, including (without limitation):</p> <ul style="list-style-type: none"> <li>• Banking Services, including the acceptance of deposits and movement of balances on accounts, lending, financial leasing, the extension of credit, money transmissions, purchasing or selling foreign exchange, issuing and administering means of payment, guarantees and commitments</li> <li>• Insurance and insurance-related services, including reinsurance and retrocession, insurance intermediation such as brokerage and agency, and services auxiliary to insurance such as consultancy, actuarial, risk assessment and claims settlement services</li> <li>• Trust creation and management</li> <li>• Investment services, including trading for own account or on account of customers,</li> </ul>	<p>The European Union does not directly ban “financial services” or give a definition for such a term. However, such activities are effectively banned by the Regulation by prohibiting activities related to or designed to circumvent the measures imposed in other paragraphs:</p> <p>“The participation, knowingly and intentionally, in related activities, the object or effect of which is, directly or indirectly, to circumvent the [sanctions] shall be prohibited;” Article 5, para. 1.</p> <p>AS USED IN:</p> <ul style="list-style-type: none"> <li>• Council Regulation 1294/1999 over the issue of Kosovo; Article 5.</li> </ul>	<p>The Interlaken definitions adopted for the purposes of prohibiting the use or creation of “funds and financial resources” may render the ban on the provision of “financial services” to targeted persons redundant. Comments received subsequent to the 23 July Workshop revealed disagreement on this point. Specifically, there was an unresolved question of how a ban on “financial services” can be operationalized beyond the measures required to give effect</p>

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CRITICAL PHRASE	INTERLAKEN II DEFINITION	EC REGULATION DEFINITION	COMMENT
<ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> </ul>	<p>whether on an exchange, in an over-the-counter market or otherwise, in money market instruments (including cheques, bills, certificates of deposit), foreign exchange, transferable securities, other negotiable instruments and financial assets such as bullion, derivatives products (including financial and commodities futures and options), exchange rates and interest rate instruments (including products such as swaps and forward rate agreements)</p> <ul style="list-style-type: none"> <li>• Participation in issues of all kinds of securities, including underwriting and placement as agent and provision of services related to such issues</li> <li>• Money broking</li> <li>• Settlement and clearing services for financial assets, including securities, derivatives products and other negotiable instruments</li> <li>• Provision and transfer of financial information, and financial data processing</li> <li>• Asset management, such as cash or portfolio management, all forms of collective</li> </ul>		<p>to the freeze on “funds and financial resources.” In order to be clear that the provision of “financial services” to targeted persons is to be prohibited, given the absence of conclusive expert opinion and the probability that definitions may not be included in future resolutions, the draft text of this document features a separate paragraph to implement this ban.</p>

## Targeted Financial Sanctions

CRITICAL PHRASE	INTERLAKEN II DEFINITION	EC REGULATION DEFINITION	COMMENT
Assets	<p>investment management, pension fund management, custodial, deposit and trust services</p> <ul style="list-style-type: none"> <li>• Advisory, intermediation and other auxiliary financial services, including auditing, investment and portfolio research and advice</li> </ul> <p>Any property or property interest, tangible or intangible, present, future, or contingent, and may include (without limitation):</p> <ul style="list-style-type: none"> <li>• Any funds or financial resources (as defined below)</li> <li>• Real property, including land and fixtures to land</li> <li>• Moveable property, including goods and chattels</li> <li>• Bullion, precious metals and stones</li> <li>• Patents, trade marks and copyrights</li> <li>• Contracts, licences, insurance policies</li> <li>• Goodwill</li> <li>• Judgements and claims having monetary value</li> <li>• Documents evidencing an interest in assets</li> </ul>		As noted above, the use of this broad definition would imply a comprehensive sanction. Feedback received subsequent to the 23 July Workshop questioned the appropriateness of including some of these terms (such as “contract”) in the definition of assets, without specifying their meaning.

## **ANNEX C: Specific Exemptions or Exceptions to Targeted Financial Sanctions**

Although it is most likely that the Security Council will decide to state exemptions or exceptions only in general terms, future circumstances may require the Council to designate the administration of specific transactions to either the Committee or States. The table below summarizes and gives commentary on possible items for inclusion in a specific list, as adapted from that developed by Working Group 3 at Interlaken II. Subparagraph (p) has been added subsequent to feedback received following the 23 July Workshop. Regardless of the source of the items below, the list is intended as a menu of options for consideration by the drafters of future resolutions.

For a list of specific exemptions, administered by States, the following opening paragraph should be used:

*Decides that all States shall ensure that the prohibitions in paragraph 2 above shall not apply to [payments from the organizations and agencies listed in Annex [xx]] to this resolution and/or] payments from accounts with banks or other authorized financial institutions for the following purposes:*

For a list of specific exceptions, administered by the Committee, the following opening paragraph should be used (and a Corresponding reference made in the Sanctions Committees section (5)):

*Decides that the Committee established by paragraph 5 shall have the authority to grant exceptions to the prohibitions referred to in paragraph 2 above on a case-by-case basis under a no-objection procedure, on the grounds of:*

## Targeted Financial Sanctions

INTERLAKEN DRAFT TEXT	COMMENT
<p>(a) <i>payments for medicines, pharmaceuticals, medical equipment and supplies, unless the Security Council has decided otherwise;</i></p> <p>(b) <i>payments for foodstuffs and basic agricultural equipment, unless the Security Council has decided otherwise;</i></p>	<p>Paragraphs (a)-(e) are the major humanitarian exemptions drafted at Interlaken, consistent with the Note by the President of the Security Council: Work of the Sanctions Committee (S/1999/92, 29 January 1999). The Interlaken report (p. 83) notes that the phrase “unless the Security Council has decided otherwise...” is intended to denote (although the phrase is technically superfluous) that such payments are automatically authorized unless the Security Council decides to make them subject to some specific authorization procedure; for example, by making them subject to Sanctions Committee approval.”</p>
<p>(c) <i>payments for educational items, news materials and items of a religious or cultural nature, unless the Security Council has decided otherwise;</i></p>	<p>This exemption is intended to allow payments for cultural items. The Interlaken Working Group noted that this would need to be monitored closely to ensure that such an exemption is not exploited as a loophole. The Working suggested that UNESCO may be consulted regarding what kinds of items would be appropriate to be included under this exemption.</p>
<p>(d) <i>payments for books and publications consistent with the goals and purposes of the United Nations, unless the Security Council has decided otherwise;</i></p>	

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INTERLAKEN DRAFT TEXT	COMMENT
<p>(e) <i>payments for other goods intended strictly for humanitarian needs and authorised under the authority of the Security Council (e.g. soap, detergents, clothing, footwear, etc);</i></p>	
<p>(f) <i>payments of debts owed to creditors other than those in [state X], or who are an authority, entity or person referred to in paragraph [xx], which debts are due or become due in respect of contractual obligations fulfilled by the creditor prior to the entry into force of this resolution;</i></p>	<p>The Interlaken Working Group felt that failing to include this paragraph “would penalize nationals of the sanctioning (as opposed to target) States, who are creditors of the target; but it was recognized that the exemption does give rise to a certain inequality of treatment, the availability of assets to meet debts being unequal between States. It also means that frozen assets that might otherwise have been used for humanitarian purposes may be exhausted by their use for settlement of debts” (Published report of Interlaken II, p. 84).</p>
<p>(g) <i>payments due in respect of taxes and utilities, to parties other than those in [state X];</i></p> <p>(h) <i>payments due in respect of rents, property maintenance and employee costs, to parties other than those in [state X] or who are an authority, entity or person referred to in paragraph [xx];</i></p>	<p>Subparagraphs (g) and (h) refer to interests, including property interests, of targeted persons outside of their country of nationality or habitual residence. The intent here is to prevent the situation that entities existing in sanctioning States are forced into closure for failure to meet local tax obligations.</p>

## Targeted Financial Sanctions

INTERLAKEN DRAFT TEXT	COMMENT
<p>(i) <i>payments for authorised goods or nonprohibited services;</i></p>	<p>Inclusion of this item implies that a broader trade sanction is in place against the State of nationality or habitual residence of the targeted persons. It is only appropriate to use this exemption where goods and services are prohibited, beyond a purely financial sanction on targeted persons.</p>
<p>(j) <i>payments by natural persons for nonprohibited personal use;</i></p>	<p>This subparagraph is intended to enable natural persons targeted by sanctions to access their own funds for living expenses.</p>
<p>(k) <i>payment of dues to the United Nations and other international organizations;</i></p>	<p>This subparagraph has a similar rationale to that of subparagraph (f) and is designed to enable a target state to honor its international obligations.</p>
<p>(l) <i>payments related to the conduct of diplomatic and consular relations in accordance with international law;</i></p>	<p>This subparagraph is designed to enable a target state to continue to fund the necessary operations of its diplomatic and consular missions abroad.</p>
<p>(m) <i>maintenance of accounts with banks or other authorized financial institutions, provided such accounts are frozen;</i></p>	<p>Recall the Interlaken definition of “freeze.” These subparagraphs ought to be included to permit the maintenance of bank accounts regardless of whether the ban on financial services is implemented through a separate paragraph in the resolution. “Subparagraph (m) is designed to enable the continued operation of otherwise frozen bank accounts, that is, the</p>



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INTERLAKEN DRAFT TEXT	COMMENT
<p>(n) <i>the services of auditors as necessary to comply with the requirements of law;</i></p> <p>(o) <i>insurance of existing assets outside state X and, to the extent required by law, on natural persons;</i></p>	<p>maintenance of the accounts and any non-prohibited activity in relation to the accounts. Subparagraph (n)...seeks to ensure that targets do not contravene regulations or other mandatory national laws by virtue of sanctions alone. Subparagraph (o) is designed to permit the acquisition or maintenance of insurance on frozen assets located outside the target state, and payments of employee liability and similar types of mandatory insurance designed to protect interests in sanctioning, rather than target, states" (Published report of Interlaken II, p. 85).</p>
<p>(p) <i>payments related to telecommunications, postal services and legal services consistent with this resolution;</i></p>	<p>This was added in response to feedback received following the 23 July Workshop and is intended to permit targeted persons freedom to communicate consistent with the aims of the resolution.</p>

**ANNEX D: Websites of Security Council Committees and Resolutions, and European Council Regulations**

SECURITY COUNCIL COMMITTEE	WEB ADDRESS
Committee established pursuant to Resolution 661 (1990) concerning the situation between Iraq and Kuwait	<a href="http://www.un.org/Docs/sc/committees/IraqKuwait/IraqSanctionsCommEng.htm">http://www.un.org/Docs/sc/committees/IraqKuwait/IraqSanctionsCommEng.htm</a>
Committee established pursuant to Resolution 748 (1992) concerning the Libyan Arab Jamahiriya	<a href="http://www.un.org/Docs/sc/committees/LibyaTemplate.htm">http://www.un.org/Docs/sc/committees/LibyaTemplate.htm</a>
Committee established pursuant to Resolution 864 (1993) concerning the situation in Angola	<a href="http://www.un.org/Docs/sc/committees/AngolaTemplate.htm">http://www.un.org/Docs/sc/committees/AngolaTemplate.htm</a>
Committee established pursuant to Resolution 985 (1995) concerning the situation in Liberia	<a href="http://www.un.org/Docs/sc/committees/LiberiaTemplate.htm">http://www.un.org/Docs/sc/committees/LiberiaTemplate.htm</a>
Committee established pursuant to Resolution 1132 (1997) concerning the situation in Sierra Leone	<a href="http://www.un.org/Docs/sc/committees/SLTemplate.htm">http://www.un.org/Docs/sc/committees/SLTemplate.htm</a>
Committee established pursuant to Resolution 1160 (1998) concerning the FRY (Kosovo)	<a href="http://www.un.org/Docs/sc/committees/1160Template.htm">http://www.un.org/Docs/sc/committees/1160Template.htm</a>
Committee established pursuant to Resolution 1267 (1999) concerning the situation in Afghanistan	<a href="http://www.un.org/Docs/sc/committees/AfghanTemplate.htm">http://www.un.org/Docs/sc/committees/AfghanTemplate.htm</a>

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RESOLUTION	YEAR	CONCERNING	WEB ADDRESS
661	1990	Iraq	<a href="http://www.un.org/Docs/scres/1990/661e.pdf">http://www.un.org/Docs/scres/1990/661e.pdf</a>
687	1991	Iraq	<a href="http://www.un.org/Docs/scres/1991/687e.pdf">http://www.un.org/Docs/scres/1991/687e.pdf</a>
724	1991	FRY	<a href="http://www.un.org/Docs/scres/1991/724e.pdf">http://www.un.org/Docs/scres/1991/724e.pdf</a>
757	1992	FRY	<a href="http://www.un.org/documents/sc/res/1992/s92r757e.pdf">http://www.un.org/documents/sc/res/1992/s92r757e.pdf</a>
820	1993	FRY	<a href="http://www.un.org/Docs/scres/1993/820e.pdf">http://www.un.org/Docs/scres/1993/820e.pdf</a>
841	1993	Haiti	<a href="http://www.un.org/Docs/scres/1993/841e.pdf">http://www.un.org/Docs/scres/1993/841e.pdf</a>
873	1993	Haiti	<a href="http://www.un.org/Docs/scres/1993/873e.pdf">http://www.un.org/Docs/scres/1993/873e.pdf</a>
883	1993	Libya	<a href="http://www.un.org/Docs/scres/1993/883e.pdf">http://www.un.org/Docs/scres/1993/883e.pdf</a>
917	1994	Haiti	<a href="http://www.un.org/Docs/scres/1994/9420793e.htm">http://www.un.org/Docs/scres/1994/9420793e.htm</a>
942	1994	FRY	<a href="http://www.un.org/Docs/scres/1994/9437272e.htm">http://www.un.org/Docs/scres/1994/9437272e.htm</a>
1127	1997	UNITA	<a href="http://www.un.org/Docs/scres/1997/97222693E.htm">http://www.un.org/Docs/scres/1997/97222693E.htm</a>
1132	1997	Sierra Leone	<a href="http://www.un.org/Docs/scres/1997/9726713E.htm">http://www.un.org/Docs/scres/1997/9726713E.htm</a>
1173	1998	UNITA	<a href="http://www.un.org/Docs/scres/1998/sres1173.htm">http://www.un.org/Docs/scres/1998/sres1173.htm</a>
1237	1999	UNITA	<a href="http://www.un.org/Docs/scres/1999/99sc1237.htm">http://www.un.org/Docs/scres/1999/99sc1237.htm</a>
1267	1999	Taliban	<a href="http://www.un.org/Docs/scres/1999/99sc1267.htm">http://www.un.org/Docs/scres/1999/99sc1267.htm</a>
1295	2000	UNITA	<a href="http://www.un.org/Docs/scres/2000/res1295e.pdf">http://www.un.org/Docs/scres/2000/res1295e.pdf</a>
1333	2000	Taliban	<a href="http://www.un.org/Docs/scres/2000/res1333e.pdf">http://www.un.org/Docs/scres/2000/res1333e.pdf</a>
1343	2001	Liberia	<a href="http://www.un.org/Docs/sc/committees/Liberia2/1343e.pdf">http://www.un.org/Docs/sc/committees/Liberia2/1343e.pdf</a>

## Targeted Financial Sanctions

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<b>EC REGULATION</b>	<b>CONCERNING</b>	<b>WEB ADDRESS</b>
Council Regulation (EC) No. 1294/1999 of 15 June 1999	FRY over the issue of Kosovo	<a href="http://europa.eu.int/eur-lex/en/index.html">http://europa.eu.int/eur-lex/en/index.html</a>
Council Regulation (EC) No. 1081/2000 of 22 May 2000	Burma/Myanmar	<a href="http://europa.eu.int/eur-lex/en/lif/dat/2000/en_300R1081.html">http://europa.eu.int/eur-lex/en/lif/dat/2000/en_300R1081.html</a>

## PART 2

# IMPLEMENTING TARGETED FINANCIAL SANCTIONS AT THE NATIONAL LEVEL

This section of the manual builds on previous accomplishments of the Interlaken Process while focusing on the specific legal and administrative elements necessary at the national level to implement targeted financial sanctions. The elements necessary for the effective implementation include a legal framework, designation of an administering agency or agencies, development and dissemination of information, compliance initiatives, consideration of exemptions, administration of assets, and enforcement efforts.

Consistent with the Interlaken approach,<sup>1</sup> this document uses the phrase “national measures” as a comprehensive label, covering secondary legislation, regulations, orders, ordinances, notices, instruments, and all other kinds of executive measures. “Primary legislation,” such as the Model Law, is understood as a principal act or statute that enables States to promulgate national measures to implement sanctions without engaging the legislative process.

While the function of primary legislation is to bring a resolution into domestic law, national measures must provide the means by which sanctions are administered. Effective implementation of targeted financial sanctions requires that timely and competent administrative action be performed at the national level. For example, information must be developed and disseminated to the

public, banks, and financial institutions regarding the imposition of sanctions; compliance activities must be pursued to ensure the integrity of the sanctions; exemptions to the measures imposed should be considered in line with the Security Council resolution; assets subject to sanctions should be administered appropriately; and enforcement measures should be pursued against violations.

Since experience with targeted financial sanctions is limited, the attempt to determine “best practices” is necessarily incomplete. Further, depending on the size and sophistication of a country’s financial system, certain practices may not necessarily be appropriate for all countries. Throughout this document, States are categorized in terms of the size of their national financial systems, consistent with accepted definitions of financial systems established by the Bank for International Settlements and the Financial Stability Forum.<sup>2</sup>

Implementation of targeted financial sanctions has significant implications for key private sector actors: therefore best practices have been suggested with a view to facilitating cooperation among these groups and national governments. Throughout this document, the phrase “banks and financial institutions” should be understood in its broadest sense to mean any individual or organization holding assets that may be subject to the sanctions.

### *Implications of anti-money laundering initiatives*

Interlaken II addressed briefly the lessons that could be learned from the work of the Financial Action Task Force on Money Laundering (FATF)<sup>3</sup> noting the similarities of evasion strategies to avoid the identification and freezing of funds employed by targets of UN sanctions as well as money launderers. Several aspects of the FATF process were considered relevant to targeted financial sanctions, such as the organization of regular meetings among States and greater emphasis on banks knowing their customers. However, the group concluded that the marked intrinsic differences between the objectives of anti-money laundering activities and UN financial sanctions (e.g. the basis for action in penal law, as opposed to a political decision of the Security Council) limited the relevance of one for the other.

In the past several years, anti-money laundering initiatives have advanced significantly, resulting in the adoption by a number of offshore financial centers of changes promoting banking supervision and transparency. In many countries, the nature of the changes potentially have the added benefit of improving the State's capacity to implement financial sanctions. While the purposes of targeted sanctions and anti-money laundering initiatives clearly differ, there are examples in which advances and developments in the one area can accrue to the other (e.g. designation of responsible officials, and "know your customer" and record-keeping requirements). The following sections also address these areas of opportunity and discuss how certain legal and administrative mechanisms adopted by countries as a result of anti-money laundering initiatives could be utilized to implement targeted financial sanctions more effectively.

### 1. Legal Framework

Under Article 41 the Council may

decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and may call upon the Members of the United Nations to apply such measures. Those measures may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communications, and the severance of diplomatic relations.

These decisions are binding upon all Member States. By virtue of Article 25 (“The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter”), States are obliged to implement decisions taken by the Council under Article 41. Where these decisions impose targeted financial sanctions, there is a broad consensus that States often need assistance in fulfilling their obligations.

To this end, and in response to concerns that failure to implement sanctions uniformly across national legal jurisdictions undermines their effectiveness, a draft Model Law was developed at Interlaken II, to give Security Council resolutions standing in domestic law. The Model Law, discussed in detail below, proposed general primary legislation enabling States to transform *all* Article 41 resolutions into national law through the adoption of “national measures.”

Without a means for giving effect to Security Council resolutions in domestic law, it is not possible for States to implement sanctions. The national legal framework therefore is crucial to the establishment of the administrative practices to implement financial sanctions. The essential question is: Does the State have the authority necessary to implement targeted financial sanctions? Since current practice indicate that States respond to this question in numerous ways, Working Group 2 at Interlaken II developed a Model Law to establish consistent criteria for national implementation.



### 1.1 *The Model Law*

The articles of the Model Law developed at Interlaken II are set out and discussed in the table overleaf. In Article 1, States are empowered through formal legal means to give effect to *all* Security Council resolutions under Article 41 of the UN Charter – a significant advantage of the Model Law approach. Articles 2-5 of the Model Law establish criteria regarding nonliability for compliance with resolutions, the reach of State action, penalties for breaches, and the supremacy of national measures to implement Security Council resolutions in the national legal system. Although these additional measures represent desirable features, some States may find it difficult to implement them due to constitutional, political and administrative constraints. For example, regarding Article 3 of the Model Law, which contemplates extraterritorial jurisdiction, some participants in the 23 July meeting in New York objected to including this provision as a necessary, let alone advantageous, element of primary legislation. While some see a benefit in having such authority, others maintain the efficacy of sanctions when every country implements sanctions within their own borders.<sup>4</sup>

Although the Interlaken Model Law is not necessarily a “one size fits all” approach to implementing sanctions, working groups at both Interlaken conferences concluded that a Model Law approach is the preferred means to give effect to the intentions of the Security Council. This approach both expedites implementation and achieves uniformity across national systems to the greatest extent possible. In addition, Article 1 of the Model Law enables States to implement *all* types of sanctions imposed by the Security Council, not just targeted financial sanctions. It also obviates the need for the State to pass legislation each time the Security Council passes a resolution imposing sanctions. Most participants in the 23 July Workshop endorsed the Interlaken Model Law as a benchmark against which domestic implementation may be measured. In addition, the provisions on nonliability for compliance and legislative supremacy are important; in that they provide legal security to banks and financial institutions<sup>5</sup> and enable restrictive banking secrecy laws to be superseded.

**Interlaken II Model Law**

ARTICLE	TEXT	COMMENT
1.	<p>Power to issue national measures</p> <p>If, under Article 41 of the Charter of the United Nations, the Security Council of the United Nations calls upon [<i>the State</i>] to apply measures to give effect to a decision taken under that Article, then in accordance with [<i>the State</i>]'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>This Article empowers the implementing State to adopt national measures in order to give effect to <i>all</i> decisions of the Security Council under Article 41 of the Charter. In this way, the Model Law functions as primary legislation to implement such Council resolutions into domestic law through national measures.</p>
2.	<p>Nonliability for compliance</p> <p>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 nonperformance of any such transaction.</p>	<p>This Article provides that compliance with the national measures mentioned above is a complete defense for the non-performance of obligations incurred prior or subsequent to the time that legislation came into force. This is necessary for banks and financial institutions to be fully protected against litigation arising from sanctions.</p>

## Implementing Resolutions at the National Level

ARTICLE	TEXT	COMMENT
3.	<p>Scope of national measures</p> <p>The <i>[national measures]</i> made under paragraph 1 shall apply within the territory of <i>[the State]</i> and to all nationals of and entities incorporated in or organized in accordance with the laws of <i>[the State]</i>, wherever located or operating.</p>	<p>This Article makes provision for the scope of national measures, such that it applies to all nationals of and entities incorporated in the implementing State, regardless of the location of that person or entity. Some States may not be capable of enacting the extraterritorial part of this provision. Feedback received subsequent to the 23 July Workshop indicates that this Article may be improved by including a specific reference to ‘dependent territories.’</p>
4.	<p>Penalties</p> <p>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>This Article makes contravention or evasion of the measures specified in the national measures an offence and requires penalties. The Security Council’s Working Group on General Issues on Sanctions has recommended that States make a violation of sanctions punishable under domestic law. Section 7 of this document (Enforcement) gives an in-depth discussion of penalties for breaches of sanctions at the national level.</p>
5.	<p>Legislative supremacy</p> <p><i>[National measures]</i> made in accordance with this law shall have effect notwithstanding the provisions of any other law.</p>	<p>This Article provides for the legislative supremacy of the national measures passed pursuant to Article 1, above, notwithstanding the provisions of any other law. A provision such as this may ensure that restrictive bank secrecy laws do not hinder the implementation of targeted financial sanctions by States.</p>

### *1.2 Current practices*

States can give effect to a resolution under Article 41 of the UN Charter in domestic law in more than one way. This section summarizes the four most common approaches to primary legislation taken by States.

#### *1.2.1 Primary legislation referring to Security Council resolutions*

Consistent with the first Article of the Model Law, some States have in place primary legislation that refers directly to decisions of the Security Council, thereby transforming Article 41 resolutions into domestic law through national measures. There are several strengths to this approach: the full range of measures contemplated by Article 41 of the UN Charter can be transformed into national law expeditiously; the intent and language of the resolution can be utilized directly in national measures, promoting the goal of uniformity across States; and specific provisions may ensure the precedence of sanctions measures over existing national laws.

Within this broad approach are alternative methods for adopting national measures. For example, where a resolution imposes a range of Article 41 sanctions, States may either pass omnibus national measures (under the primary enabling act) to bring about the specific measures or States may amend existing secondary legislation in specific sectoral areas (i.e. aviation, exchange control, trade, regulations). Depending on existing laws, States may choose a mix of both methods.

#### *1.2.2 Sector-specific primary legislation*

Similar to the Model Law approach, Security Council resolutions can be transformed into domestic law under sector-specific primary legislation. Within this broad approach are several distinct alternatives.

Whereas the Interlaken Model Law refers directly to Security Council resolutions in a general primary act, some States refer to resolutions in an issue or sector-specific act. For example, to

implement financial sanctions, the relevant banking or exchange controls legislation may be amended to refer directly to Council resolutions. Doing so allows national measures to be passed for each particular sanctions resolution imposed by the Council. This method integrates the administration of financial sanctions within existing legislative and administrative structures. To utilize this method, States generally require constitutional powers similar to those contemplated by the Model Law approach. Also, to enact the breadth of measures contemplated by Article 41, this method requires similar legislative provisions in a potentially broad range of primary legislation.

Other States have specific primary legislation relating not to decisions of the Security Council, but to the domestic imposition of sanctions. Typically, this type of legislation will give the government broad general authority to impose sanctions. Alternatively, the primary legislation may empower the government to intervene in economic relations under special circumstances, such as national defense or under emergency conditions. Under either approach to primary legislation, national measures are required. This method has the advantage of enabling States to implement sanctions in anticipation of a Security Council resolution. However, given the goal of uniform implementation across States, there may be limitations to this approach if the existing sanctions legislation diverges from the scope, intent, or language of the Security Council resolution, as is often the case. It also may be difficult politically to amend simultaneously standing banking, insurance, property ownership, and immigration legislation, as may be required by a particular Council resolution.

### *1.2.3 General purpose trade and financial legislation*

Some States draw upon existing trade, banking, financial services or exchange controls legislation to give effect to Security Council resolutions that impose targeted financial sanctions. Existing regulations are amended on a case-by-case basis under such general-purpose primary legislation to implement sanctions.

There are several advantages to this method. The presence of existing legislation typically suggests that an administrative

structure is already in place to oversee the implementation of sanctions. Use of existing mechanisms permits sanctions to be implemented expediently. Yet under this approach, existing legislation may constrain implementation if it diverges from the scope, intent, or language of the Security Council resolution. For example, a resolution may call for a range of measures, of which only some can be adopted under general-purpose trade or financial legislation. Thus, the goal of uniform implementation across national jurisdictions may be difficult to achieve.

In addition, the changing regulatory environment (i.e. the abolition of exchange controls) and a general trend toward freer trade may mean that mechanisms previously used to control finance and trade may not be available to implement sanctions. Therefore, while an existing administrative structure is likely to be in place, its capacity to ensure the full compliance with sanctions may be constrained. Also, the provisions of the Model Law that relate to defense for nonperformance of obligations affected by the imposition of sanctions and the primacy of sanctions laws, may not be guaranteed under this approach.

### *1.2.4 Generic constitutional authority*

For some States, primary legislation as described in the three alternative approaches above is not required. In such cases, there may be a general constitutional provision under which the government can give effect to Security Council resolutions. Alternatively, it may be considered that the Council's resolutions are directly applicable in domestic law. Member States of the European Union without existing implementing mechanisms may take an analogous approach by relying on Brussels to pass a regulation having domestic effect.<sup>6</sup>

Where prompt national measures are supported by existing administrative structures, the implementing State may be able to implement sanctions in a timely manner. However, it is critical to ensure that such an approach includes appropriate national measures and active administration. In this way, the existence of such a constitutional provision, or the interposition of a regional authority such as the European Union, may facilitate the uniform implementation of sanctions across States. States that implement sanctions successfully in this way employ the language of the

resolution in their national measures and identify a specific administering agency with a view to implementation.

### 1.3 *Best practices*

- Ensure that adequate legal authority to implement sanctions at the national level exists without engaging the legislative process for each Security Council resolution (for example, by enacting primary legislation similar to the Model Law and giving effect to resolutions through national measures).
- Use the elements of the Model Law as a benchmark to evaluate the national legal framework.

<b>KEY LEGAL AND ADMINISTRATIVE ELEMENTS FOR IMPLEMENTING TARGETED FINANCIAL SANCTIONS</b>
<p>Legal framework should:</p> <ul style="list-style-type: none"><li>• Ensure that States have legal authority to implement sanctions at the national level through national measures.</li></ul> <p>National measures should:</p> <ul style="list-style-type: none"><li>• Designate an official body or bodies to administer sanctions (administering agency);</li><li>• Empower an administering agency to develop guidance for banks and financial institutions and disseminate information;</li><li>• Empower an administering agency to undertake compliance activities;</li><li>• Specify the criteria and process for considering and giving effect to decisions regarding exemptions and exceptions;</li><li>• Determine procedures for the administration of assets;</li><li>• Specify what constitutes a violation of sanctions, and impose penalties for breaches.</li></ul>

### **2. Administering Agency**

Effective implementation of sanctions at the national level requires that agencies possess the *authority, expertise, and capacity* to give effect to Security Council resolutions. Authority refers to legal authority to perform necessary tasks as established by the legal framework discussed above. Expertise refers to the technical know-how to administer sanctions, including matters of UN sanctions policy and financial controls. Capacity refers to adequate staffing and resources to implement sanctions effectively.

#### *2.1 Current practices*

It is essential that an administering agency or agencies be empowered to implement sanctions at the national level. A review of current practices by States indicates that a broad range of different government agencies possess the relevant authority, expertise, and capacity to implement sanctions effectively in different countries.

Major financial centers, often with the authority to impose sanctions unilaterally, may have a standing administrative agency specifically charged with implementing sanctions. Such agencies derive their legal authority from domestic sanctions legislation empowering them to implement both UN and unilateral sanctions. Generally, such legislation provides broad authority to the designated agency and may include powers requiring that banks and financial institutions report on relevant matters. Expertise concentrated in such agencies is substantial, permitting dedicated staff and resources for compliance and enforcement functions.

It is neither required nor appropriate for all countries to establish a separate agency to administer UN sanctions. Administrative practices can and should be developed according to the needs and traditions of individual countries. New administrative machinery does not necessarily need to be created to implement targeted financial sanctions. Rather, several States delegate legal authority to a range of existing agencies while drawing upon the expertise and capacity of each and dividing administrative tasks among them. These agencies include:



### *2.1.1 The Ministry of Foreign Affairs (or equivalent)*

Legal authority for all aspects of implementation may be delegated to the Ministry of Foreign Affairs (MFA). For example, some States with primary legislation resembling the Model Law issue omnibus regulations across issue areas contemplated by Article 41, designating the MFA as the sole administering agency. Other States that draw upon generic constitutional authority issue secondary legislation, that identifies the MFA as the coordinating agency.

Regarding expertise, the MFA is the agency closest to the point where resolutions are drafted, discussed, and voted upon (this is especially the case for Council Members). Through officers in Permanent Missions to the UN, the MFA is a valuable source of knowledge regarding Security Council intentions. Coordination with the Sanctions Committee and UN Secretariat in New York may be especially important where the Committee has broad powers (e.g. the power to grant exemptions). As mentioned above, some States designate the MFA as the coordinating agency to oversee multiple agencies' implementation of the various measures pursued by the Security Council. In this way, the MFA may play the role of a lead agency, but may delegate the day-to-day administrative tasks to other agencies.

Overall, tasks that relate to the Council's administration of sanctions (such as providing reports to the Committee) can be effectively delegated to the MFA. The disadvantages of authority residing entirely with the MFA are that diplomats often lack the detailed technical expertise about the financial service sector required to implement financial sanctions. Further, diplomats may prefer consensus that compromises consistency of implementation.

### *2.1.2 Financial supervisory and regulatory agencies*

Bank supervisory agencies generally derive legal authority from standing legislation relevant to their area of competence. Authority to perform the tasks necessary for sanctions implementation often already exists in the standing legislation.

These institutions are likely to be the best source of technical expertise for the administration of sanctions. For example, the agency is likely to have an ongoing relationship with banks and financial institutions that can aid in the development and dissemination of guidance. Past experience in administering exchange controls may be especially helpful. Since experience with targeted sanctions to date has been limited, the preservation of corporate knowledge is important to effective implementation of sanctions. States of various sizes often create specialist offices within the central bank or finance ministry, but in many cases rely heavily upon the expertise of knowledgeable individuals.

### *2.1.3 Other agencies*

Some of the tasks required to implement sanctions are likely to require the assistance of agencies beyond those discussed above. For example, enforcement of sanctions may involve agencies whose principal duties include criminal investigations. Judicial authorities will necessarily be engaged in pursuing breaches of sanctions law. Further, Security Council resolutions may call upon States to assist the Council or relevant Sanctions Committees in identifying targets. It is also likely that specialist liaison and intelligence agencies will be best placed to implement specific aspects of sanctions often in cooperation with the MFA.

In response to anti-money laundering initiatives, some States have created new agencies recently, or refashioned existing agencies, to oversee their banking and financial services industries. These institutions have been given broad supervisory and investigatory powers that are in line with the FATF's recommendations. In some cases, the powers granted to these agencies are similar to those required to implement targeted financial sanctions (e.g. record keeping and information sharing obligations). In addition, some States have increased the administrative capacity of supervising agencies. One offshore financial center has undertaken to increase its staffing level in its monetary authority by seventy per cent to improve monitoring of bank licensees. In this way, States responding to anti-money laundering scrutiny are developing related authority, expertise, and capacity that could be useful for implementing targeted financial sanctions. In at least one case to date, a financial intelligence unit established according to FATF

recommendations, has indirectly assisted in the implementation of sanctions by investigating a possible breach.

### 2.2 *Best practices*

- Identify and delegate legal authority to an administering agency or agencies; an extensive new bureaucracy is not necessarily required to implement sanctions effectively.
- Consider how best to employ existing expertise and dedicate resources to the development and maintenance of knowledge on targeted financial sanctions.

### **3. Information**

It is critical that information regarding the imposition of and subsequent modifications to targeted financial sanctions should reach all individuals, banks, and financial institutions that may have access to the funds and other financial resources of targeted persons. The development and dissemination of this information takes place on two levels: *general* information on the background and objectives of the sanctions for the public at large, and *specific* information and guidance for banks and financial institutions. Information necessary for banks and financial institutions includes guidelines that contain essential elements, such as the precise time period within which transactions should be examined (for potential retroactive reporting); a clear statement of the legal basis for sanctions; identification of targets; a detailed statement of prohibited transactions; information on exemptions or exceptions; and explanation of the process by which inquiries and/or applications will be addressed and to whom.

In turn, information must be disseminated clearly and punctually. In many countries, official notice to the affected community is necessary for the requirements to be legally binding. Notification is also important to prevent inadvertent violations, and can play an important role in determining penalties, because negligence may be a mitigating factor in some countries (see section 7). The administering agency must employ a variety of methods to ensure that all relevant parties are notified of the imposition of sanctions.

While information on sanctions implementation should be developed and disseminated on a case-by-case basis, a central aspect of implementation is the nature of the relationship between the administering agency and domestic banks and financial institutions. Financial institutions benefit from receiving timely and detailed guidance on how to implement sanctions, while the administering agency relies on the compliance efforts and information provided by affected parties to ensure the effectiveness of sanctions. Implementation of sanctions is a two-way process that requires constant interaction and feedback between the administering agency and financial community. Steps should be taken to ensure the development of a cooperative relationship between these entities.

### 3.1 *Current practices*

In major financial centers, administering agencies develop and disseminate information in three principal ways.

First, where national measures concerning the implementation of sanctions are promulgated, notification will occur through official publication in a government journal. In addition to being a routine matter, many countries require this step to prosecute a breach of sanctions.

Second, general information is made available to the public through press releases, the posting of relevant material on websites, as well as making such information available through fax, email, and postal services. There may be a division of labor between administering agencies for this purpose. In one country where the economics ministry and the central bank share responsibility for administering sanctions, the ministry disseminates general information while the central bank deals with affected banks and financial institutions.

The third method of distributing information involves direct guidance and instructions to banks and financial institutions, as well as responding to inquiries. In one country, the central bank issues circulars to financial and business associations, explaining the regulations and giving the necessary instructions and contact information should questions be raised. Another administering agency develops a notice for each sanction that explains the legal nature of the sanctions, exactly who and what activities are being targeted, processes for administration of sanctions, as well as the procedure and necessary contact information for receiving exemptions and directing inquiries. Typically, these notices are distributed to financial associations, major banks, and financial institutions, import and export organizations, trade groups, and bank regulatory agencies. In some countries, notification is in written form only, but others also provide information electronically to facilitate incorporation of the list of targeted persons into computer software, frequently used by banks and financial institutions to screen transactions.

In addition to written and electronic dissemination of information, some agencies conduct outreach activities by sending speakers to

meet directly with segments of the industry that are particularly affected by the sanctions. When administering agencies can identify targeted assets, they also issue notices to the holders of blocked property, informing them of the restrictions concerning these assets.

Offshore financial centers use a process for developing and disseminating information consistent with that used by the major financial centers. Ordinances implementing financial sanctions appear in a journal of legal texts and are available upon request from the administering agency. In numerous offshore centers, the MFA or central bank issues circulars. One country publishes notices in all of its major newspapers upon the enactment of ordinances. Because of the small size of this State, simply issuing press releases through the media may be effective in ensuring that all concerned parties, particularly banks and financial institutions, will be notified of new regulations.

Several smaller European countries disseminate information through similar mechanisms. Legal texts are published electronically to overcome publication delays and make such information more immediately accessible. Press releases are also used to notify the public and announce changes to the regulations. The administering agency develops a circular for distribution to financial institutions that describes the regulations. Additionally, this agency notifies individually those entities (companies, agencies, etc.) that are particularly affected by the sanctions.

A similar approach to developing and disseminating information is being pursued by agencies responding to anti-money laundering initiatives. In one case, an offshore financial center has delegated broad powers to a newly established agency to develop information (e.g. through the promotion of public understanding and the establishment of a research office), as well as delegated specific powers to provide information to certain banks and financial institutions.

### 3.2 *Best practices*

- Inform the general public through notices in official journals and the media, and promote widespread dissemination of information via electronic means.

## Implementing Resolutions at the National Level

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- Maintain relationships with banks and financial institutions, including through outreach activities, and provide direct, specific and timely guidance to them regarding 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 applications for exemptions or exceptions and questions regarding sanctions should be addressed.

### **4. Compliance**

Initiatives to ensure that banks and financial institutions comply with targeted financial sanctions can be pursued at two levels.

First, States monitor banks and financial institutions to ensure their compliance with financial sanctions. States encourage compliance through reporting requirements, audits, and examinations to police sanctions implementation. They also ensure that restrictive banking secrecy provisions do not constitute a hindrance to sanctions implementation. Because the level of financial activity differs by country (varying also in the likelihood of targeted financial assets being held in different countries' institutions), each country's approach should be tailored to maximize its program's effectiveness.

At the second level are efforts undertaken within banks and financial institutions to fulfill supervisory and soundness requirements aimed at raising standards in banking administration.<sup>7</sup> While these initiatives are not specifically designed for sanctions, they are relevant for such purposes. For example, agencies and intergovernmental organizations such as the FATF recommend "know your customer" and due diligence procedures. Further, the use of technology such as name recognition software is an effective tool to promote compliance with targeted financial sanctions.

#### *4.1 Current practices*

Reporting and information sharing are important parts of a compliance program, and financial institutions are generally expected to report on sanctions implementation and the administration of targeted funds. Reporting enables the development of a "watch list" of financial assets that the administering agency can monitor. It is common practice in many countries for financial institutions to be legally required to report on any blocked accounts or to seek the permission of the administering agency before taking any action concerning such accounts.

To promote compliance, some major financial centers employ a system of random checks and audits to determine if banks have



overlooked assets or failed to report certain transactions. Branch offices of the central bank or the administering agency conduct on-premises audits of credit institutions. In some cases, banks found to be in violation are issued a warning—a practice that has reportedly been successful in altering internal institutional practices to comply with the regulations. In others, administrative violations constitute civil offenses and are punishable by fines, up to the withdrawal of a license to provide financial services.

A major financial center within the European Union performs an audit whenever a request for an exemption to sanctions is made. This offers advantages, not only for gathering information on which to make a decision on the exemption, but also because of the possibility that the institution may have other dealings with entities in the targeted country or connected with the target. In this case, as with others, any information received regarding violations of sanctions is investigated as part of the compliance program. Another country uses the banking sector to help examine methods of evading sanctions. This practice may assist a State in identifying loopholes used by targets or shortcomings of its compliance efforts.

Another major financial center gives special emphasis to compliance efforts by designating a separate division within the administering agency. Specific steps are taken to encourage compliance by banks and financial institutions: the list of targets is distributed electronically; recommendations on useful software are made; general and case specific guidance materials are produced; speakers address affected parties; and notices are issued directly to holders of blocked property. While such efforts are likely to be effective in encouraging or compelling compliance, they are possible only because of the significant resources (human and financial) devoted to this purpose that may not necessarily be available in other countries. Furthermore, while major efforts are devoted to helping institutions comply with sanctions, when auditing or monitoring results in the revelation of potential violations, compliance spills over into enforcement. Liaison with various agencies involved in criminal enforcement in the financial sector (e.g. anti-money laundering bodies) can also result in information that may aid in compliance efforts.

Stressing the low volume of economic and financial activity between itself and most targeted countries (and the entities within them), one regional financial center casts itself in a very limited role in ensuring compliance. This center informs companies and financial institutions of the rules about sanctions, specifically explaining what they can and cannot do, and to respond to inquiries. If the government considers an activity to be a potential violation of the regulations, it warns the concerned party. Since violations of sanctions are not a criminal offense in that country, the government is limited in its efforts to compel compliance and penalize sanctions-busting efforts.

In addition to sanctions compliance initiatives, broader initiatives aimed at raising standards in banking administration are relevant for targeted financial sanctions. In response to anti-money laundering initiatives, many States have taken steps that can be useful for implementing targeted financial sanctions—“Know-your-customer” and due diligence requirements, provisions lifting banking secrecy in criminal and sanctions cases, examination of methods of evasion, record-keeping requirements, and investigations of cases of financial wrongdoing—most ostensibly to counter money laundering, but which can be valuable tools in assisting States to more effectively implement targeted financial sanctions.

While some offshore financial centers have developed compliance programs that include reporting and auditing requirements, many also draw upon regulations and practices related to anti-money laundering initiatives to assist in implementing targeted financial sanctions. One such center amended its national legislation to require financial institutions to identify and record the beneficiaries of all assets, as well as to report on any funds and other financial resources that either have been frozen under the sanctions or are suspected of falling under the sanctions. This country also created a financial intelligence unit to examine methods of evasion used to launder money, increasing its capacity to perform compliance tasks related to sanctions implementation. Compliance with sanctions may also be aided by the obligation of all entities taking part in trade with foreign States, directly or indirectly, to provide relevant information and documents upon request by the competent authority.

A further general practice that financial institutions may utilize in implementing targeted financial sanctions is the use of technology such as name recognition or filtering software. Several offshore financial centers also report the use of this software in their banks and financial institutions, recognizing its value as a compliance tool. The box below discusses the application of this technology to implementing sanctions.

### **USING COMPUTER SOFTWARE IN IMPLEMENTING TARGETED FINANCIAL SANCTIONS**

The “filtering” or “interdiction” software employed by many banks and financial institutions works like the spell-check feature of a word processing program. Once installed, the software monitors every transaction, filtering out those that contain a name or information field (date of birth, place of birth, etc.) that matches those for which it was instructed to search. Matches or “hits” must be manually examined to determine whether the software has in fact located a targeted transaction or is merely a false alarm. Often the administering agency can assist in this determination. The benefits of using interdiction software are its ability to process a large volume of transactions rapidly, the ease and speed with which to add new targets (by typing or directly downloading their information), and the ability to assure on another level that a transaction has not been overlooked.

Even with the use of filtering software, it is important to have specific information on a target. The more information that is available, the better chance is of the software locating a targeted transaction. For instance, if the software is searching for a name and date of birth, it will catch a record where the target uses an alias. Yet it would not if only the target’s name was known. In reviewing hits, additional information can also be useful if the identified transaction involves the intended target or someone who, for instance, might happen to have the same name but lives in the “wrong” country.

Although the cost of maintaining interdiction software may deter some banks and financial institutions from using it, administering agencies can encourage its adoption by considering its use as a mitigating factor when assessing fines for violations.

### 4.2 *Best practices*

- 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 be encouraged to raise their internal supervisory standards to conform with multilateral initiatives and through the use of technology, and to employ methods to recognize and stop targeted transactions.

## **5. Exemptions and Exceptions**

In passing a resolution to impose targeted financial sanctions, the Security Council routinely identifies general areas or specific cases to which the prohibitions shall not apply. As stated earlier in this document, exemptions and exceptions are defined such that exceptions are cases that require prior approval by the Sanctions Committee and exemptions do not require Sanctions Committee approval.

The practices outlined below refer to the administration of both exemptions and exceptions. If a resolution sets out exceptions for submission to the Sanctions Committee, States act as a conduit, passing requests to New York. The details for activating this process should be spelled out clearly in information that is developed and disseminated to financial institutions when sanctions are imposed.

Individual States play a larger role in administering exemptions since each State exercises greater discretion in interpreting exemptions enumerated in the resolution. To administer exemptions, a State must establish a process by which entities can apply for exemptions, empower an agency to make decisions, and provide a means to give effect to those decisions (e.g. through a license, order, etc.). Since exemptions often involve payments for humanitarian goods, it is important that applications be considered on a timely basis. The administering agency should also try to reflect the intentions of the Security Council and practices of other States in its decisions on applications.

### *5.1 Current practices*

In major financial centers, the administering agency usually makes decisions regarding exemptions as part of its general administrative responsibilities. Countries generally require that all requests for exemptions be submitted in writing. Upon receipt, the agency often consults with other agencies (such as the MFA and its Mission in New York), and then either rejects or grants the exemption on humanitarian or “national interests” grounds. A written decision is routinely issued. In some countries, the administering agency is responsible for all aspects of

## Targeted Financial Sanctions

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implementing sanctions *except* for granting exemptions, which is done by the Ministry of Foreign Affairs. To proceed legally with a transaction, an institution must possess a certificate issued by the Minister stating either that the relevant Security Council resolution does not intend the act to be prohibited or, if the exception had been forwarded to New York, that the Sanctions Committee has approved it.

Several other countries employ a system of licensing capital transactions to process exemptions. The agency is then able to approve and deny licenses, as well as to alter or suspend the execution of an approved transaction.<sup>8</sup> Generally, a licensing system includes both general and specific (or “individual”) licenses. General licenses authorize whole categories of transactions (e.g. crediting interest to blocked accounts), and individual licenses governing transactions on a case-by-case basis. The ability to grant a general license, which in effect acts as an amendment to the regulation, can be an important timesaving measure in larger countries where there may be many similar requests. In fact, while one of these countries reports being able to deal with requests in two to three days, another reports that the process may take up to three weeks. In light of this, the latter country has established procedures to consider applications on an emergency basis (within twenty-four hours) if necessary.

Offshore financial centers follow similar procedures—all applications are submitted to the administering agency and are dealt with on a case-by-case basis. One country empowers the central bank to decide upon exemptions and requires that the bank give permission before frozen funds are released. Another country reports that a decision is issued through an official order to the applicant “usually within four weeks” after receipt of the application. While interagency consultations on applications (often with the MFA) can be helpful, they often increase the amount of time the exemption process takes. To aid in compliance efforts, one country employs a practice of sharing information among all relevant agencies concerning decisions on exemptions.

One regional financial center forwards all requests to its Mission in New York, where officers familiar with sanctions issues and the policy intentions of the Security Council decide on exemptions. Such an approach is likely to result in decisions

consistent with the spirit and intention of the resolution; however, the potential trade-off may be the amount of time necessary for securing exemptions and decisions, that may be more difficult to implement in practice.

### 5.2 *Best practices*

- Designate a responsible agency and determine the process to consider exemptions and exceptions.
- For countries with a large volume of exception requests, a process authorizing categories of approved transactions (general licenses) may expedite the process.

## **6. Administration of Assets**

Future Security Council resolutions that include definitions of key phrases may address the issue of how the frozen funds and other financial resources of targeted persons should be administered.<sup>9</sup> At present, banks and financial institutions, with direction from administering agencies, have developed general procedures regarding management of these funds. Specific issues of administering assets (which should be understood to mean the administration of any funds and other financial resources belonging to targeted persons frozen according to a Security Council resolution) include handling claims to frozen funds, crediting interest, debiting bank charges, and securing and maintaining the value of frozen funds.

### *6.1 Current practices*

General practice in each of the major financial centers is to credit interest to frozen accounts and debit bank charges from them, in lieu of a decision by the Sanctions Committee or a provision in the resolution that instructs them to do otherwise.<sup>10</sup> In most countries, these are not special procedures because bank charges are automatically debited as they would be if the account were active. The bank credits interest at whatever rate is applicable to the account. The only difference is that the interest must remain frozen like the rest of the account. One major financial center provides the exception to this rule, as a license is required from the administering agency for bank charges to be debited from accounts.

In the past, the administration of assets has differed in major financial centers when terms such as “economic benefits” and “property” have been used by the Security Council or the EC in imposing prohibitions. Other countries interpret “economic benefits” to exclude property. In these cases, a country may freeze any payments relating to property, without seizing control over it, and financial institutions are required to ensure that the value of the assets, including property, does not change. Differences in interpretation of such phrases may undermine the effectiveness of targeted financial sanctions by creating loopholes and allowing targets access to assets. In this case, the adoption of standard



phrases and definitions has been effective in moving towards uniform implementation across national jurisdictions.

Countries may use differing approaches in handling claims to frozen funds and other financial resources. One major financial center includes a freeze on claims against those assets under its general definition of “freeze” and the process for pursuing such a claim is to seek an exemption. Another country allows its banking laws or litigation to deal with these claims, if necessary. Note that the necessary consent as established by the sanctions regulations must be received, which is similar to handling requests for exemptions. One country assumes that any claim against frozen funds would not be admitted by a tribunal, but would be considered once the sanctions were suspended.

The policy of asset administration in offshore financial centers largely mirrors that of major financial centers. In such centers, normal procedures of crediting interest and debiting charges are provided for in the legal framework without changing the character of the assets. In one case, a clause in its primary legislation confirms that the value of any such property must be maintained. As for claims on frozen funds, such countries generally require an application for an exemption, which is granted by an administering agency on a case-by-case basis. Thus, any action regarding frozen funds also requires authorization by the agency.

### 6.2 *Best practices*

- Unless otherwise called for by the Security Council resolution or by the Sanctions Committee, standard practices concerning crediting interest to and debiting charges from frozen accounts should generally be followed.

### **7. Enforcement**

Each State requires the ability to detect and punish breaches of sanctions in order for them to be effective. The key elements of an enforcement program include a clear legal basis to prosecute violations, procedures to investigate and enforce sanctions, and criminal and/or civil penalties to deter and punish violators. Authority needs to be delegated to appropriate agencies. Penalties of monetary fines and possible imprisonment should be “effective, dissuasive and proportionate.”<sup>11</sup> Some countries also have seizure authority and the ability to require forfeiture of assets for violations.

#### *7.1 Current practices*

Whereas all States have elements of an enforcement program, certain capabilities can potentially increase the effectiveness of enforcement measures. Some practices may be difficult for certain countries to implement because they are inconsistent with constitutional or legal frameworks; however, to the extent that countries strengthen enforcement efforts and deter sanctions violations, the effectiveness of targeted financial sanctions will be enhanced.

All major financial centers have the authority to prosecute breaches of sanctions criminally, whether provided for in the primary or secondary legislation.<sup>12</sup> If the administering agency suspects a breach of sanctions, most countries have the option of either issuing a warning or requesting a detailed explanation from the concerned party. Since the relationship between the government and financial sectors is frequently cooperative, several countries report never having a situation escalate beyond a warning. Providing such flexibility to an administering agency can therefore be useful since costly prosecutions often can be avoided and the relationship between the administering agency and financial institutions remain cooperative.

Where necessary, these countries have the authority and capacity to prosecute sanctions breaches, although there is significant variation in penalties across States. While one country sets the maximum fine upon conviction as double the amount (value) of

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the infraction, major financial centers usually punish violations through a range of prison sentences and/or fines as shown below.

Since the costs (in time and money) of prosecuting a breach criminally may not be justified by its severity, some countries simply issue a warning to violators. Administering agencies of other countries possess the authority to assess civil penalties (fines) without any judicial hearings. This capability, like others whereby States can punish violators without a full-scale criminal proceeding (e.g. prescribing penalties for summary convictions), allows for the punishment of violators while helping to prevent inadvertent breaches—thereby increasing the effectiveness of the enforcement program.

The primary legislation of one offshore financial center defines penalties for noncompliance or any breach of financial sanctions as a fine (see table below), unless conviction under the penal code takes place, in which case the penalty is a prison sentence. Circumstances that mitigate punishment are those enumerated in the penal code (e.g. juvenile status, role of accessory, committing the offense out of fear) and negligence. Another offshore financial center considers a violation of executive orders as an offense and handles enforcement efforts on a case-by-case basis. The nature of the violation determines which ministry handles the case.

COUNTRY CATEGORY	MAXIMUM FINE <sup>13</sup>	MAXIMUM SENTENCE
Major Financial Centers	•9,506 - •1,840,652	3 yrs - 15 yrs
Offshore Financial Centers	•43,065 - •657,404	prescribed by penal code
Regional Financial Centers	•5,907 - •23,625	5 yrs

The primary legislation in most regional financial centers establishes a violation of sanctions as an offense that is punishable by a prison sentence and/or fine. In one of these countries, the executive prescribes penalties for the contravention of sanctions in regulations. Furthermore, any entity that knowingly assists, promotes, or intends to violate the sanctions regulations is subject to prosecution. In some countries only actual violations are

criminally prosecutable, whereas others also define attempts at evasion and contravention of sanctions as violations. In some regional financial centers, there is no legal authority to ascribe civil or criminal punishments to sanctions violations. Since the sanctions are implemented through decrees and no law explicitly makes sanctions violations a crime, the country enforces targeted financial sanctions by issuing government warnings to companies, banks, and financial institutions as a means of compelling compliance.

Several European countries also make a breach of sanctions punishable by a prison sentence and/or fine while employing other innovative practices. One country increases penalties for each subsequent breach by the same offender, and under special circumstances, may impose extra penalties such as the whole or partial discontinuation of the offender's enterprise. Some countries provide specifically for the confiscation of goods or property belonging to the violator or relating to the offense committed, while one country's primary legislation establishes the authority to intervene in existing contracts as necessary. In this State, virtually any object associated with the contravention of the sanctions may be confiscated, or the value of the objects forfeited, irrespective of the owner's identity and without a criminal case being initiated against the violator.

### 7.2 *Best practices*

- 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 of financial sanctions.
- Encourage compliance and foster cooperative relations with financial institutions through a system of warnings and civil penalties.

### 7.3 *Other initiatives*

To promote greater harmonization in the implementation of sanctions across national boundaries thereby increasing effectiveness, the following enforcement-related suggestions are offered for consideration.

### 7.3.1 *Harmonize penalties for violations of sanctions*

Penalties vary greatly according to national law and traditions, but efforts to harmonize penalties could increase the effectiveness of sanctions. Imposing more drastic penalties (higher fines and longer prison sentences) also could be an important and effective deterrent. Countries with penalties much less severe than most others could be viewed as the weakest link and be taken advantage of by potential targets (resulting in their becoming potential “target havens”). This step would obviously require much effort, in that States would need to amend standing legislation, but it would enhance the effectiveness of sanctions.<sup>14</sup> One major financial center has already demonstrated a willingness to harmonize its penalties with its European neighbors, and a bill to raise penalties is being considered in its legislative assembly.

### 7.3.2 *Consider additional penalties, such as forfeiture, for circumvention of sanctions*

While some countries have detailed provisions regarding the forfeiture or confiscation of assets where an attempt to circumvent sanctions is detected, others appear to have none. States should seek to provide authority for agencies to seize assets of parties violating sanctions. This may be important since sanctions violators will be less likely to operate in countries where the risks include loss all of their assets.

### 7.3.3 *Enhance international information-sharing*

There is also a need for greater international cooperation in exchanging information, particularly on methods of evasion. Just as all parties benefit from good information-sharing between the institutions within a State, the same advantages accrue from the exchange of knowledge among States. If a bank discovers an alias that is being employed by a target, other financial institutions trying to implement sanctions will benefit from this information. Similarly, one nation’s sharing of intelligence concerning methods of evasion will assist other countries in becoming aware of such practices. Moreover, multiple countries coming together to discuss these issues may lead to the discovery of new methods that were difficult to identify from a single domestic perspective.

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Some type of informal international information-sharing, perhaps under the auspices of the United Nations, might be helpful for countries to discuss common problems in implementing financial sanctions. If countries were to agree to take steps beyond information-sharing and agree upon steps that should be taken, action by the UN may be necessary to facilitate the domestic implementation of those measures.

While laundering money is explicitly criminalized by the FATF,<sup>15</sup> anti-money laundering initiatives have commanded a high degree of international attention. To the extent that this level of cooperation can be built upon and extended to related concerns, such as targeted financial sanctions, the effectiveness of the sanctions tool would be improved.

## Endnotes

<sup>1</sup> See published report of Interlaken II, p. 64.

<sup>2</sup> See the BIS' *Guide to International Banking Statistics* (July 2000) <<http://www.bis.org/publ/meth07.htm>>; and Financial Stability Forum, *Report of the Working Group on Offshore Financial Centres* (5 April 2000) <<http://www.fsforum.org/Reports/RepOFC.html>>.

<sup>3</sup> See <<http://www.oecd.org/fatf>>.

<sup>4</sup> On this matter, also see Part 1, section 2.2.

<sup>5</sup> On this matter, also see Part 1, section 10.

<sup>6</sup> In these cases, penalties prescribed domestically will be for a breach of EC regulations. The Expert Working Group on Travel and Aviation Related Sanctions make a similar point in noting that a "Common Position...could function as an enabling law for the [EC] for those matters...which fall under its competence" (BICC, p. 92).

<sup>7</sup> This document has already referred to the FATF, Financial Stability Forum, and Basel Committee on Banking Supervision. Also relevant are the G7 (now G8) Finance Ministers' meeting <<http://www.g7.utoronto.ca/g7/summit/2000okinawa/abuse.htm>> and the United Nations Office of Drug Control and Crime Prevention <[http://www.odccp.org/money\\_laundering.html](http://www.odccp.org/money_laundering.html)>.

<sup>8</sup> Many countries that formerly required approval for all transactions involving foreign entities or relied on exchange controls have moved toward liberalization and deregulation of their economies. It is important that such countries be conscious of the influence these changes may have on their ability to implement financial sanctions. It is possible that they will be forced to develop new means or legislative bases to enforce sanctions.

<sup>9</sup> For example, recall the Interlaken II definition of 'freeze' (Part 1, Annex B), which permits the crediting of interest to frozen accounts.

<sup>10</sup> The crediting of interest in this instance refers to applying standard rates of interest to the frozen accounts. To manage accounts beyond this (e.g. to maximize return) may amount to the provision of financial services—something that may be prohibited by Security Council resolutions.

<sup>11</sup> Published report of Interlaken II, p. 40.

<sup>12</sup> European Union countries that employ EC regulations to implement sanctions must still rely on their own national legislation to prosecute violators.

<sup>13</sup> The exchange rates posted by the *Financial Times* as of July 2, 2001, <<http://mwprices.ft.com/custom/ft-com/currency.asp>>, were used to convert all currencies to Euros (and then rounded-up to the nearest Euro) in order to facilitate comparison between the various penalties.

<sup>14</sup> To achieve this end, it would be helpful if a country's primary legislation left the responsibility of determining penalties to the national measures. This would permit the executive, minister or agency responsible for implementing sanctions to set "harmonized" punishments in place when imposing a new sanction.

<sup>15</sup> See Recommendation 4 of the FATF's Forty Recommendations: <[http://www.oecd.org/fatf/40Recs\\_en.htm](http://www.oecd.org/fatf/40Recs_en.htm)>.