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How can the accuracy and effectiveness of targeted sanctions be improved and how can sanctions evasion be addressed?

Scope:

The key feature of targeted sanctions is the limited scope of the sanctions and their focus on specific actors, i.e. targeted Governments and/or ruling elites, non-state actors, entities and individuals. Targeted sanctions include financial sanctions, asset freezes, arms embargoes, aviation sanctions, travel bans, diplomatic sanctions and restrictions on trade in specific natural resources and commodities (e.g. diamonds, oil). Key differences from comprehensive sanctions such as those imposed on Iraq include the overriding issue of minimizing the impact of sanctions on the civilian population. At the same time, targeted sanctions require greater attention to monitoring whether or not sanctions are modifying the behaviour of targets in a desirable direction.

Improving the Accuracy and Effectiveness of Sanctions – Issues of Concern

Tools available to the Security Council in designing accurate and effective sanctions

- Expertise and institutional memory is/should be available in the Secretariat if Council Members wish to seek advice about lessons learned from previous targeted sanctions.
- Importance of existing reports of monitoring and expert bodies for Council Members to use when drafting new resolutions on targeted sanctions.
- Assessment reports (humanitarian impact/pre-imposition reports).

The clarity of the resolution enhances implementation of sanctions measures

- Clarity of the issues of concern to the Council (preamble)
- Clarity of the demands on the target government or other targeted actors (objectives of the sanctions and behaviour that must change)
- Clarity and definitions of the specific measures that Member States must implement (the sanctions measures)

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Clarity of lists of individuals and entities subject to targeted sanctions

(when such lists are part of a sanctions regime) is crucial to accuracy and effectiveness of these measures. Key issues arising from lists include:

- Justification, transparency and speed of nominating States regarding selection of individuals and entities for listing.
- Possibility of administrative or judicial processes (e.g. regular reviews of names on the lists) to address mistakes that may occur in listing and to take into account compliance by listed individuals and entities.
- Maximum specificity by Council Members in identifying individuals and entities to be targeted (e.g. accuracy of names, translations of names, addresses and affiliations of targets, passport numbers, and potentially: photos, short descriptions of activities/affiliations making the individual/entity eligible for inclusion on the list).
- Dissemination of up-to-date lists via the Internet

Capacity – lack of national capacity in some States to implement sanctions

- CTC reporting provisions provide valuable information on capacity for implementing measures in states.

Review, monitoring and assessment of sanctions once they are in place

- Importance of Sanctions Committee's role in conducting frequent, regular reviews of the implementation of targeted sanctions.
- Can Members of the Security Council Sanctions Committees be encouraged to demonstrate their willingness to review concerns about inaccurate or problematic targeting (e.g. through public briefings or the Sanctions Committees)?
- How can resolutions provide maximum flexibility for Sanctions Committees to follow up with Member States regarding implementation of targeted sanctions?

Reactions of Targeted Actors and Third States

- Member States may be reluctant to implement sanctions mandated by resolutions that they believe are overly broad or that conflict with country-specific legal rights of their citizens/residents, such as free speech (bans on representation), right to asylum (bans on residence), or economic and social rights (asset freezes).
- Inducements and positive measures to promote compliance and cooperation from third states.

Sanctions Evasion

- Careful pre-assessment by Security Council as well as industry specialists or outside research organizations (where possible) can suggest likely evasion measures targets will take.

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- Sanctions-busting is not always disguised. Where there are no enforcement mechanisms, violations frequently occur openly.
- Is it possible to include enforcement of a targeted sanction, such as arms embargoes, in the mandate of UN or regional peacekeepers when they are present in or near the vicinity of a targeted actor?
- Certification regimes for targeted goods are generally not standardized (e.g. end-user certificates for arms purchases or rough diamonds). This creates opportunities for sanctions evasion using false documents.
- Unintended consequences of targeted sanctions – may stimulate indigenous production of banned goods (e.g. increased production of small arms, munitions, etc. in states subject to arms embargoes, or diamond polishing industry in states subject to sanctions on rough diamonds).
- Targeted sanctions on specific entities are flouted by targets that change names of organizations; create front companies or front organizations.
- Targets evade travel bans by obtaining new passports through legal and illegal means, or using false names.
- Targets evade financial sanctions (e.g. by sending money to secure locations or by converting assets to cash and withdrawing it from financial institutions before sanctions are imposed).

Recommendations

Pre-Assessment

- Urge Security Council to consider capacity of targeted states to counter sanctions by increasing indigenous production of sanctioned goods or services (e.g. small arms, light weapons, ammunition, equipment for internal repression).
- Identify Achilles heel by developing a detailed profile of target in order to ensure that targeted sanctions selected for implementation are those with greatest possibility of speedily achieving the objectives of sanctions.
- Time may not permit detailed pre-assessments in all cases, but every effort should be made to “front-load” the assessment and planning process to achieve better outcomes when sanctions are applied.
- Pre-assessment (or when time constraints do not permit -- early assessment) of targeted sanctions should also try, where possible, to anticipate potential country-specific legal issues that Member States may encounter in implementing sanctions and clarify to the greatest extent possible the specific measures that Member States have to take in order to implement UN sanctions and to fully comply with the resolution.

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Timing

- Consider pros and cons of short period of delay/probation prior to implementation of sanctions (e.g. two months for certain sanctions in Liberia case).
- Consider pros and cons of time-limited sanctions (e.g. for periods of 3 to 6 months, or one year) with option of renewal.

Clarity in design

- Include definitions of targeted sanctions from previous sanctions processes (Interlaken, Bonn/Berlin) and related processes that have credible, agreed, unambiguous definitions for the types of sanctions under consideration. With respect to financial sanctions, the Interlaken process and FATF have produced useful definitions for the terms used in targeted sanctions (e.g. assets, firms, etc.).
- In cases where the Security Council does not include definitions in the text of the resolution, Sanctions Committees should be encouraged to direct Member States that raise questions about definitions to widely agreed sources for clarification, such as those contained in the reports of previously completed sanctions processes.

Capacity

- Build on information and understandings resulting from CTC reporting process and use it as guidance for improving capacities of Member States to implement targeted sanctions.
- Utilize regional arrangements or processes to enhance both implementation capacity and awareness of targeted sanctions in Member States.

Monitoring

- In all cases, encourage Council Members to include a monitoring or reporting requirement to the implementing institutions after imposition of sanctions covering the period just prior to the imposition of sanctions (i.e. retrospective reporting). This can help Council Members to track evading tactics that the target may have taken and to track movements in assets or arms flows. Example: ask banks to provide the Security Council with the previous six months of records of the target's financial asset transfers when sanctions are imposed.
- The reporting by Member States should be as specific as possible, which can be encouraged by having the Committee pose specific questions to all Member States on a recurring basis.

Positive measures/inducements

- Consider "package approach" including assistance to Member States to help them implement targeted sanctions that includes financial and technical assistance for implementation, particularly for third states that are key implementers of sanctions.

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- Public recognition by the Security Council of Member States that complete their reporting and implementation measures quickly and fully.
- Exhortative language in the resolution urging donors to maintain strong levels of aid and assistance to populations in targeted states.
- Public information campaigns on the rationale of sanctions (e.g. to end a conflict and save lives) to encourage compliance.

Communications Policy

- Public information campaigns oriented towards civilian populations in the target state as well as in third states on the rationale of sanctions (e.g. to end a conflict and save lives). Suitable communication with the target to encourage compliance.

Delisting

- Consider possible mechanisms to enable individuals listed as targets to submit information to the Chair of the Sanctions Committee showing that the listing should not or no longer apply. Is it possible to create mechanisms at the UN level to address and decide on such requests? Create appropriate means of information exchange with Member States.

Research

- Timing sanctions – experience with sunset clauses in sanctions regime.
- Psychological, financial and other impact of being on a list for targeted sanctions measures and of being named in a UN Monitoring Mechanism (or similar) report as a violator of sanctions.
- Role of media and/or the UN in publicizing the objectives of targeted sanctions and in educating key actors about compliance issues.
- Models and possibilities for standardization of end-user certificates for targeted goods, in particular arms and military equipment and related machinery.
- Freezing of financial assets – legal and practical problems and their solutions.
- Survey Missions to the United Nations and Governments of Member States not in the Security Council to inquire about their experiences with implementing sanctions and their recommendations for improving related procedures.
- Usefulness of Panels of Experts/Monitoring Mechanisms in assessing the reactions of the targeted actors and third states/spoilers.