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Concept Note for UN International Law Week Briefing

“Assessment of Achievements and Challenges of the High Level Review of United Nations Sanctions”

Sponsor: Government of Australia

Organizer: CCSI (Compliance and Capacity Skills International, LLC)

Overview

The High Level Review of United Nations Sanctions was held from May 2014 to November 2015. Over the course of 18 months of intense consultations, workshops and other forms of dialogue among well over 70 Member States, plus representatives of international organizations and companies, much has been achieved, as the aggregated output of the three working groups in the HLR Compendium demonstrates. The 150 recommendations are an indicator of the creativity and commitment of the participants, as well as a signal of the need for continued improvement and reform of UN sanctions.

As many participants of the HLR observed, enhancing sanctions implementation practices must be an ongoing, shared responsibility led by Member States. Sanctions are always part of broader conflict resolution policies whose effectiveness depends on the political will, skills and capacities of Member States and the private sector. Australia's sponsorship of the Assessment of Achievements and Challenges of the HLR is intended to facilitate in a very practical manner efforts to arrive at enhanced sanctions implementation practices.

It should be noted at the outset that the HLR Compendium was not intended to "necessarily reflect unified views of the participants but rather presents ideas that were found by many to be useful for further consideration", as H.E. Ambassador Marja Lehto, Ministry for Foreign Affairs of Finland stated during the launch of the Compendium on 5 November 2015. "While the High Level Review was sponsored and supported financially by five governments – Australia, Germany, Greece, Sweden and Finland – the contents of the Compendium do not imply governmental endorsement by any sponsoring state." In a similar approach, the Assessment will not be a reflection of one or several governments, but will rather offer collective inputs and innovative ideas.

Key Outcomes of the HLR

The following brief review of themes and outcomes of the HLR, presented at its concluding session, may be particularly useful to participants in creating clusters for possible further attention in the Assessment's workshops and roundtables:

- The Permanent Representative of Australia, Gary Quinlan highlighted that Working Group 1, which he chaired, had heard from many participants about the importance of technical assistance and capacity building to support UN sanctions implementation. "Assistance providers need clear direction from both recipient governments and donors to include a sanctions assistance component in their broader assistance programs, which target sanctions-style measures, for example those relating to arms and weapons management, or customs and border control, or even financial regulation."

- Germany and Greece focused among other issues on possible enhancement of humanitarian values in UN sanctions practices. Germany's Minister Plenipotentiary Thomas Schieb pointed out that mitigating unintended humanitarian consequences depends on finding solutions to practical issues such as "vague financial sanctions in particular, [that] if insufficiently defined, can affect innocent individuals and entities, or cause problems for humanitarian actors". He also raised the "phenomenon of 'over-compliance', where private sector actors close off legitimate financial channels, including to humanitarian organizations because they fear the risks of non-compliance." He identified how information about the actual sanctions provisions and corresponding guidance would help to allay private sector concerns and help to overcome its tendency to "over-comply". Enhanced information-sharing among sanctions monitoring groups, humanitarian investigators and service providers, is an additional area that was pointed out as an effective way to foster greater understanding and trust.

- The Review was in large part also a process of analyzing the relationships between the UN sanctions system and the various related institutions, instruments and actors that have greatly expanded over the past decade. Observing the growth of the UN sanctions ecosystem, H.E. Ambassador Anders Rönquist Director General for Legal Affairs, Ministry for Foreign Affairs of Sweden, recommended the seizing of "opportunities for cooperation among UN sanctions actors and related international organizations and arrangements through strategic partnerships and specific technical arrangements." He pointed out the utility of "breaking down existing "stovepipes" of information and discussion both within the UN and between the UN and related organizations and institutions, and the creation of the UN Interagency Working Group on Sanctions, formed to provide inputs into the High Level Review.

He further underscored the need to promote awareness-raising, interaction, and communication at all levels of the sanctions implementation chain. This objective could be supported with the preparation and dissemination of practical and standardized sanctions implementation guidance, factsheets and other forms of implementation support. Enhancing implementation does, however, also require clear and standardized definitions in UNSC resolutions of commonly used sanctions terms for improved legal clarity and more harmonized implementation.

Another area of continued focus was due process in the listing and delisting procedures, concerning which Maria Telalian, Head of the Legal Department, Ministry of Foreign Affairs of Greece, emphasized the need “to enhance the fairness and transparency of sanctions procedures to address human rights and due process issues so as to ensure the effectiveness and viability of sanctions regimes,” and for extension of the Ombudsperson mechanism to all sanctions regimes.

- Focusing on the many emerging threats that must be confronted, Ms. Telalian highlighted that sanctions practices must be more responsive to the "plight of women and girls as the overwhelming majority of the victims of rape or other forms of sexual violence, and whose roles in the community often exposes them to heightened risks". She proposed that "enhanced coordination with all assistance providers in conflict regions, backed up with a credible threat of sanctions for those who impede these protection mandates" might offer a more effective outcome. Another area of concern are the challenges facing the international community with the use of digital technologies and the Internet for propagating hate speech, raising funds, and recruiting mercenaries, that must be addressed in a manner that is consistent with international law without unduly impacting commercial and individual freedom.

The Assessment

The continued need for adaptive, innovative, and effective sanctions implementation practices is self-evident for mapping the diverse requirements that face States and the private sector with the current 14 UN sanctions regimes and the ongoing process to unwind the Iran regime. In light of these ongoing challenges, participants to the Assessment might wish to examine the HLR Compendium to determine possible solutions to the following and other issues:

1. Do the 150 recommendations of the HLR Compendium answer pragmatically and concisely important sanctions implementation concerns? Which cluster of themes deserves further attention during the upcoming deliberations in order to further refine recommendations or practices? Have new developments occurred or fresh aspects arisen that merit closer consideration since the Compendium was released?

2. Is the delivery of the HLR recommendations in the form of the Compendium adequate - or could the format of presentation be changed to better assist beneficiaries?

3. What themes and challenges should the exploratory workshops focus on? Are the five themes proposed by the organizers among the priorities for sanctions policy makers and implementing actors?

4. Reviewing the evolving global situation and increased sophistication of threat actors under sanctions, what are currently unmet sanctions implementation requirements? Do UN sanctions serve the security requirements of all UN Member States adequately and globally, or do some states or some regional organizations perceive themselves as excluded?

Organizational Issues

Three Assessment Roundtables with Security Council state members and groups of UN Member States will be held in order to assess the HLR outcome and consult on priority issues

A Briefing during UN Law Week will gather participating legal counselors of government, to commemorate the one-year anniversary of the release of the HLR Compendium, and to broaden the consultations for the ongoing HLR Assessment

Five Exploratory Workshops will be held for interested groups of States and representatives of companies or industry groups with featured expert speakers from governments and the corporate sector. The topics of these events will be informed by the results of the assessment roundtables, and may include some of the following themes:

- Opportunities for Sanctions Committees, stakeholder states and regional organizations to come together and consider the best means to implement the Council's decisions.
- Improving the effectiveness of arms embargoes and nonproliferation sanctions: exploring best practices in monitoring, partial lifting or winding-down of embargoes.
- What measures can be taken to enhance the role of the private sector in sanctions implementation?
- What specific, practical capacity building assistance steps can be taken for states and private sector entities that are particularly burdened by the obligation to implement UN sanctions?

- Supplemental Consultations at the Geneva (Switzerland) Peace Week, in collaboration with the Geneva Center of Security Policy (GCSP); focused on exploring possible enhancements of sanctions together with Geneva-based experts. Topics include arms embargo/non-proliferation regimes, capacity enhancements and related assistance, humanitarian aspects of and emerging threats and the role of sanctions.

Because enhanced transparency and accountability, as well as system-wide training were highlighted in the HLR for their overarching importance in effective sanctions implementation, they will be introduced as integral aspects for each of the proposed events.

Assessment Reporting Event: The views shared by participants of the three assessment roundtables and the recommendations formulated during the five exploratory workshops will be presented in the HLR Assessment Report during a concluding event. Date and venue: January 2017, details to be announced.
