

HLR

High Level Review
of United Nations Sanctions



Australian Government



Assessment Report

Achievements, Challenges and
Opportunities resulting from the
Recommendations of the Compendium
of the High Level Review of UN Sanctions

August 2017



Compliance &
Capacity Skills
International, LLC

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Preface

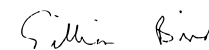
In 2014, representatives of Member States, the UN system, civil society and the private sector convened over a series of workshops to undertake the first comprehensive review of United Nations Sanctions. The outcome of this review was a compendium, launched in November 2015 and containing 150 practical recommendations to further refine sanctions and their implementation to better protect nations and victim communities, enhance the preventive benefits of sanctions, and shape targeted measures with even greater precision. Australia, as one of the co-sponsors of the Compendium along with Finland, Germany, Greece and Sweden has been pleased with the uptake of many of these recommendations as well as the ongoing use of the Compendium as a reference tool.

The recommendations in the Compendium were also envisaged as a starting point for further initiatives and discussion. It was in this spirit that Australia undertook an Assessment of the HLR.

The direction of the Assessment was largely left in the hands of Member States and other stakeholders and, in the course of an eight-month long outreach process conducted with our partners from *Compliance and Capacity Skills International*, several core themes emerged. These themes included cooperation, collaboration, transparency and capacity-building and form the central elements of the Assessment report.

Overwhelmingly the input we received from stakeholders was positive and highlighted the importance of UN sanctions as a critical non-military response to threats to global peace and security and focused on ways and means to refine the tool for the betterment of all.

I would like to thank all those that contributed to the Assessment Report. I sincerely hope the Report will play a part in further strengthening UN sanctions and serve to continue the important discussions commenced through the HLR Compendium.



H.E. GILLIAN BIRD

Permanent Representative of Australia to the United Nations

Acknowledgements and disclaimer

The Assessment report reflects views expressed by representatives of United Nations Member States who participated in an outreach program of consultations, roundtables, and workshops, between 13 September 2016 and 13 April 2017. The Report concludes the Assessment, the process sponsored by the Government of Australia and supported by the original conveners of the High Level Review of United Nations Sanctions (HLR), Finland, Germany, Greece, and Sweden, as well as many other participating Member States. The participation of any Member State's representatives in the consultations related to the Assessment Report does not imply an endorsement by these states.

Australia facilitated the relevant research and together with the governments of Sweden and Chile convened Assessment meetings, as well as contributed to the drafting of the text. Enrico Carisch and Loraine Rickard-Martin of Compliance and Capacity Skills International (CCSI) organized the Assessment and drafted the report, as they did with Sue Eckert of the Watson Institute for International and Public Affairs the preceding High Level Review of UN Sanctions (2013-2014) (HLR).

The Assessment project was intended as an opportunity for Member States to reflect on the 150 recommendations developed during the HLR and published in the Compendium. Efforts were undertaken to allow for broad consultations while the objective was to identify priority recommendations and to format these into a more pragmatic and succinct manner to facilitate consideration of possible next steps.

The HLR Compendium and the Assessment report are intended to serve as a basis for ongoing dialogue and engagement in promoting more effective and collaborative UN sanctions procedures. To ensure continuing access to the output of this sanctions reform process, CCSI has built and will maintain a dedicated password-controlled web page for the HLR and the Assessment. The present document will be available in digital format, in print as a booklet, and as an official UN document.

All workshops and roundtables were conducted following Chatham House rules. Member States are identified in a few instances according to their request.

On behalf of the sponsor, we thank all participants in the Assessment for their continued contributions of time, insights, and ideas to this UN sanctions reform effort.

Abbreviations

1267 COMMITTEE	Sanctions Committee for ISIL (Da'esh), Al-Qaida
AML	Anti Money-Laundering
BAFA	Bundesamt für Wirtschafts and Ausfuhrkontrolle
CCSI	Compliance and Capacity Skills International
CFT	Combating the Financing of Terrorism
CIPS	China International Payment System
DPA	Department of Political Affairs
DPKO	Department of Peacekeeping Operations
DPRK	Democratic People's Republic of Korea
E10	Elected Ten Member States to the Security Council
FATF	Financial Action Task Force
HLR	High Level Review (of UN Sanctions)
IAEA	International Atomic Energy Agency
IAN	Implementation Assistance Notice
ICAO	International Civil Aviation Organization
ICC	International Criminal Court
NAM	Non-Aligned Movement
SC	Security Council
SCAD	Security Council Affairs Division
SWIFT	Society for Worldwide Interbank Financial Telecommunication
UN	United Nations
UNDSS	United Nations Department of Safety and Security
WA	Wassenaar Arrangement
WCO	World Customs Organization

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Summary

The government of Australia decided to mark the one-year anniversary of the launch of the High Level Review of United Nations Sanctions (HLR) Compendium with a stocktaking exercise. It envisioned an assessment by Member States of how the 150 HLR recommendations had already advanced the implementation of UN sanctions and where further focus and attention were required. Australia's initiative also follows the views shared by the sponsors of the High Level Review of UN Sanctions (HLR), Australia, Finland, Germany, Greece, and Sweden, who frequently pointed out that the HLR's outcome was not intended as the final result, but rather a staging point for more granular reviews to follow. Accordingly, the HLR results propelled further enhancements to the effectiveness, fairness and transparency of the UN sanctions system almost immediately after the 150 recommendations contained in the HLR Compendium were released in November 2015.

The HLR Assessment commenced in September 2016 with a series of exploratory roundtables and bilateral meetings. These events were held with current and incoming members of the Security Council (SC) and with UN Member States with specific regional or thematic affiliations. Outreach briefings open to all Member States were held in November 2016 during Geneva Peace Week (Switzerland) and in October 2016 during UN Law Week (UN Headquarters, New York), as well as in March 2017 (UN Headquarters, New York, USA). Additionally, an assessment survey was provided to interested Member States and interactions with approximately 350 international companies were initiated. A password-protected website provided interested actors with access to review and comment on all pertinent documents.

The consultations helped to identify important advances already made during the HLR and in the intervening months since the release of the HLR Compendium. For example, increased transparency in the form of open briefings by some sanctions committees, higher rates of visits of sanctions committee chairpersons to sanctions-affected countries and regions, as well as far more effective communication on measures included in sanctions regimes and designations of persons and entities for individual targeted sanctions, as facilitated by the Secretariat. Intensified

cross-thematic exchanges among sanctions monitoring experts have also been reported. Elaboration of areas deserving sustained further attention yielded substantive contributions related to six thematic clusters:

- Strengthening overall cooperative efforts within the UN sanctions system;
- Enhancing cooperation between the UN sanctions system and the private sector;
- Improving definitions and standards used in sanctions resolutions and related documents;
- Refining the due process practices of the UN sanctions system;
- Supporting states that bear a disproportionate sanctions implementation burden;
- Addressing other and new issues.

This Assessment Report reviews key arguments raised by Member States for or against an approach to resolve these issues. It also summarizes suggestions for tangible improvements, without necessarily advocating specific actions or language related to such efforts. Several states suggested that it was time for informal consultations and recommendations to lead to formal Security Council decisions. However, others considered it more prudent if interested states were to proceed with informal deliberations in order to arrive at proposals that might garner support from Security Council members and eventual consideration and adoption by the Council. Accordingly, the Report will frequently refer to “informal working groups”, leaving a path open for any state that may wish to participate in taking an issue to the Security Council for consideration.

This Report endeavors to fairly reflect the varied views expressed by representatives of Member States including permanent members of the Security Council who participated in this outreach program. In this regard, we wish to note that a permanent member of the Council disagreed with the HLR process and observed that the 2006 report of the Informal Working Group on General Issues of Sanctions drafted under Greek leadership, addressed adequately all relevant issues (S/2006/997)¹.

¹ See: https://www.un.org/en/ga/search/view_doc.asp?symbol=S/2006/997

Achievements and Opportunities

Participants to the assessment consultations and outreach events reported tangible progress on a number of HLR recommendations. While the full potential of the envisioned enhancements were in no aspect fully realized, it is evident that many stakeholders have taken the spirit and the letter of the HLR to heart. Notable achievers are the chairs and members of sanctions committees, and the Security Council Affairs Division (SCAD) for its responses to some of the recommendations despite ongoing budgetary and other resource constraints.

Reported achievements can be grouped in three categories:

- A. Procedures for more effective cooperation and transparency among all sanctions stakeholders;
- B. Processes that promote more accurate and collaborative sanctions implementation;
- C. Augmenting the sanctions implementation capacity of states that bear a disproportionate implementation burden.
- D. Other and new issues

A. More effective cooperation and transparency among all sanctions stakeholders

Discussions and recommendations to strengthen cooperation and transparency in the UN sanctions system were aimed at the following sanctions actors:

1. Committee chairs and members and expert monitoring groups;
2. Sanctions-affected states and related regional organizations;
3. The private sector

1. Enhancing external and internal cooperation and transparency of the UN sanctions system (sanctions committee chairs and expert groups)

More transparent and collaborative procedures would lift the curtain on the UN sanctions system, dispel misunderstandings and boost implementation. Several participants of the Assessment reported that sanctions committee chairs and members had already heeded the call for more transparency. Some examples are the convening of far more open briefings and debates and Arria-Formula meetings on sanctions-related themes; inviting affected states and regional organizations to some committee deliberations; and conducting visits to sanctions-affected countries for consultations including with regional actors. The release of Implementation Assistance Notices (IAN) was considered to be a particularly helpful method to ensure better cooperation and transparency concerning the Council's intentions as contained in sanctions resolutions. The 1718 committee on non-proliferation sanctions related to the Democratic People's Republic of Korea (DPRK), in collaboration with its related expert panel, was leading the way with the drafting and adoption of a total of seven IANs and additional efforts to facilitate the implementation efforts of states.

During the HLR consultations and after the launch of the Compendium, sanctions committee chairs intensified their efforts to brief their successors among the incoming elected members of the Security Council (E10) to provide practical hands-on information not included in the substantive handover briefings conducted by the Secretariat. An informal group of committee experts also met periodically to seek ways of streamlining committee paperwork. A specific outcome was the creation of a template for use by committees in their deliberations on requests for exemptions to the various sanctions measures (see Annex 1). A participant noted that these advances add to earlier improvements that include narrative summaries for new listings, periodic reviews of listings, clearer criteria for listings, enhanced exemption procedures, and Focal Point for De-listing's procedures for basic and extraordinary exemption requests.

Discussions also centered on creating specific tools to assist incoming chairs and experts from the E10, and new expert group members. Such guidelines or manuals could elaborate rights and obligations, working methods, practices and procedures, and standard operating procedures. They could also include the relationship with penholders and the Secretariat, and support by committee secretaries to the committee chairpersons and members, and expert groups. The examples of Spain

and New Zealand who at the end of their chairmanship of sanctions committees shared insights and lessons-learned with their successors were mentioned as a good starting point for such guidelines.

Recommendation 1. *Some states suggested that working within the format of the HLR, an informal working group of interested states should initiate drafts of appropriate manuals for incoming chairs, E10 members and expert groups.*

It was emphasized that one of the challenges faced by sanctions committees related to the decision-making consensus rule that, in effect, affords each of the 15 state members a veto vote, including on procedural and substantive decisions. While consensus is ideal given the strength shown by such unity and the requirement to take all views into account, the need for full consensus on technical and procedural matters can lead to unnecessary politicization which could hamper the effectiveness of the committee's work.

Recommendation 2. *New Zealand recommended that committee members avoid decisions that encumber the effectiveness of the committee's work. It also proposed that the Council review committees' consensus decision-making practice with a view to changing it.*

2. Sanctions-affected states and related regional organizations and institutions

Several participants commented positively on the significant outreach to states affected by sanctions and undertaken by some sanctions committee chairs since the inception of the High Level Review consultations commenced in Spring 2014. Progress related to this effort includes more frequent committee meetings with these states for discussions of specific compliance questions, findings by expert groups, and visits by the chairs and some committee members to the regions and countries to which sanctions regimes apply.

During 2012 only three of nine sanctions committees with a requirement to report periodically to the Security Council did so in public, and only two meetings between sanctions committees and subject/regional countries were held in the preceding seven years (DRC and Somalia, both in 2007). However, for the year 2015, seven of eleven sanctions committees reported in public, plus five sanctions committees held meetings with subject and regional states.

According to their annual reports for 2016, sanctions committee chairs held 20 informal consultations with representatives of international or regional organizations, or special representatives of the Secretary-General (SRSGs). They held 22 consultations or briefings with UN delegations of non-E10 member states. They further visited 14 sanctions-affected states, and held two open briefings. Sanctions committees issued at least 12 notes verbales providing guidance on implementation-relevant issues and procedures. They updated existing IANs and lists of WMD-related items or conventional dual use materials, sent letters to international organizations, and issued numerous press releases.

A view shared by many participants is that states to which sanctions are applied could benefit further from meetings with the committee if the discussions focused in greater detail on potential capacity assistance requirements. With regard to capacity constraints, expert groups are reported in the context of nonproliferation sanctions and the related 1540 Committee process to have provided particularly valuable services in the form of technical advice and guidance.

Recommendation 3. *Some states recommended enhancing collaboration and communication between the UN sanctions actors and their counterparts in regional organizations and institutions to ensure more timely adoption of Security Council sanctions by their state members. Several states also expressed support for additional collaborative assistance to enable sanctions-affected states to strengthen their institutional capacities.*

3. Outreach to the private sector

Increasingly complex UN sanctions measures require sophisticated implementation capacities not only from states but also from companies. Participants to the Assessment noted that while the largest global private companies had considerable skills and capacities to comply with UN sanctions, thousands of medium-sized companies, operating from countries with lesser oversight and sanctions implementation capacities, tended to be overstretched by compliance demands.

In the context of nonproliferation sanctions and the related 1540 process outreach to companies and states that suffer from capacity bottlenecks was frequently cited, including with regard to implementation of the complex 1718 (DPRK) regime's sanctions provisions. Germany's export control authority, the Bundesamt für Wirtschafts und Ausfuhrkon-

trolle (BAFA) and its Wiesbaden Process were mentioned as a model that could perhaps be emulated and adjusted to fit the requirements of the UN's nonproliferation sanctions measures.

Some participants recalled that national prerogatives for enforcing UN sanctions might be diluted by an excessive focus on private sector sanctions implementation issues and expressed the view that outreach to the private sector should not be the responsibility of the UN. On the other hand, a number of states, and institutional shareholders who own significant percentages of companies operating around the world, expressed an interest in ensuring that their companies incur no material or reputational risks associated with UN sanctions. They would like to restrain corporate activities that may contribute to violations of UN sanctions or human rights. In order to achieve this objective, investors would like to obtain periodic briefings on potential threats, policies and sanctions responses. They seek the establishment of an informal working group with interested UN Member States to develop guidelines and compliance verification procedures. They intend to urge their companies' compliance departments to apply these tools and insights

B. More accurate and collaborative sanctions implementation

The consultations on this topic revolved around the following themes:

1. Harmonization of sanctions definitions and terms and related texts and procedures;
2. Independence and working conditions of the Office of the Ombudsman;
3. Enhancing overall due process procedures.

1. Harmonization of sanctions definitions and terms and related texts and procedures

The efforts of sanctions chairs and the Secretariat to streamline procedures and in particular the committee webpages have contributed to a sense of an incrementally improved harmonization of sanctions processes. This advance was notable despite the continuous complexities of the counterterrorism and non-proliferation regimes and processes, and the

need for all sanctions regimes to retain distinct responses to the particular threats and risks to international peace and security they confront. While the challenge of diverse sanctions policies and objectives was recognized, so was the need to take account of their advantages.

Participants emphasized that sanctions committees had developed harmonized texts for the various forms of exemptions to targeted sanctions, although no common template was currently applied except the questionnaire developed by New Zealand during its chairing of the 1267 committee. Some states called for systematic collaboration by all sanctions committees with the International Criminal Court (ICC) to provide standard travel ban exemptions for individuals required to attend procedures in international judicial venues. The second issue raised was an automatic designation of all individuals under an ICC arrest warrant. Several committees have already adopted relevant travel ban exemptions, although the ICC has not provided more detailed explanations for either of the two requests.

The 1718 (DPRK) Committee contributed another incremental clarification with the release in December 2016 of the first consolidated list of items applicable under the luxury goods sanctions. Beyond these efforts, no system-wide definition of widely used terms was yet available. Those interested in expanding definitions emphasize the need to build on the already accepted and internationally used standardization work by FATF, WCO, ICAO, IAEA and related international nonproliferation instruments.

The dissemination of information related to designated individuals and entities has markedly improved with the creation of a consolidated, multi-language list, including a list search platform (<https://scsanctions.un.org/search/>). This and other efforts were undertaken by SCAD in part to compensate for an envisioned Sanctions Technical Committee proposed in 2014 in a Security Council resolution that was not adopted.

Additional tasks that the Secretariat had undertaken include retooling of the sanctions committees' webpages, which now contain detailed discussions of sanctions measures and their background. Applicable exemptions are presented in a standardized format that also includes pertinent public data on the individual sanctions committee, its chair, mandate and guidelines for its work. Where relevant, the webpages also provide explanations for listing criteria that the committee must consider before it designates an individual or an entity for targeted sanctions. The web-

pages continue to provide access to all relevant resolutions, press releases, expert group reports and appointments, the committees' annual reports to the Security Council as well as implementation reports by individual states. Furthermore, each committee website also contains links to the guidelines for the committee's work, and where available, to Implementation Assistance Notices.

Recommendation 4. *A number of participants, including current and former chairs of sanctions committees, suggested that an informal working group of interested states could compile texts and definitions for terms routinely used for sanctions implementation and draft, where appropriate, standardized forms or language. In order to maximize buy-in for these drafting products, they further recommended that committee chairs, E10s and non-members of the Council be invited to participate in such a working group.*

2. Independence and working conditions of the Ombudsperson

The Group of Like-Minded States elaborated on recommendations contained in the HLR Compendium for the expansion of the mandate of the Ombudsperson and the Focal Point for Delisting. They released in November 2015 a document that proposed a number of additional measures. While many of these issues remain the subject of ongoing discussions among members of the 1267 Committee, incremental progress has been reported on the question of how the independence of the Office of the Ombudsperson could be further safeguarded. The Ombudsperson has provided regular progress updates in her reports (Security Council documents S/2016/671 and S/2017/60).

While the expected upgrading of the status of the Ombudsperson within the UN system could not be easily accommodated by current UN regulations, an informal arrangement by the Secretariat is now in force to better protect the integrity of the Office. Specifically, HLR recommendation 44² has been implemented in part with the following four accommodations:

- 2 Recommendation 44. The Secretary-General, in reviewing arrangements for appointing and supporting Security Council mandated experts, should propose options for ensuring that the administrative, contract and other support arrangements for the Ombudsperson are specific to the distinct role and include institutional protections to actually meet the definition of an "independent office".

- The views of the Ombudsperson will be taken into account in performance appraisals of staff supporting the Office;
- All recruitment processes for staff supporting the Office will involve the Ombudsperson and her views will be taken into account;
- The Ombudsperson will have access to all material, including electronic drives, relevant to the work of the Office;
- The Ombudsperson will have full editorial control of the Office website.

In opposing the view held by many participants that the mandate of the Office of the Ombudsperson should be expanded to cover all sanctions regimes, a participant expressed the view that such an expansion was unnecessary because the Focal Point mechanism fulfills the delisting element.

Recommendation 5. *A majority of participant Member States expressed their interest in further exploring opportunities to expand the mandate of the Office of the Ombudsperson, perhaps in incremental steps, across all UN sanctions regimes. One suggestion was to seek initially a conceptual consensus among permanent (P5) and elected 10 (E10) Member States on the expansion of the Ombudsperson's functions to non-counterterrorism sanctions regimes, rather than seek immediate agreement on an expanded Ombudsperson's mandate.*

3. Enhancing overall due process procedures

Shortly after the release of the HLR Compendium, interested states and other sanctions system stakeholders initiated discussions on ways to enhance due process procedures across the entire UN sanctions system. It was held that notwithstanding efforts to improve the mandate of the Office of the Ombudsperson, all other actors in the sanctions implementation system require higher awareness of their due process obligations in order for the system to be effective and fair.

To better understand possible further remedies, some participants expressed an interest in exploring all potential incremental steps that the UN sanctions system could take in order to protect an actual or potential designee's rights. This interest is prompted in part by ongoing court challenges on the basis of procedural inequities.

Participants discussed how expert groups could be encouraged to strengthen their evidentiary standards and the bases on which sanctions committees may question their adherence to such standards. As part of a system-wide due process approach, both members of expert groups and sanctions committees were encouraged to explore methods for the determination and communication of culpability³, seek ways to accord the right of reply to alleged perpetrators without risking the flight of assets, and to ensure that exculpatory information is investigated and where relevant reported. Sanctions committees could be encouraged to verify reporting standards, in particular information that may lead to designations. They should also ensure designees are informed in a timely manner about their designations, as well as all Member States and their relevant law enforcement organizations while maintaining continuous monitoring to ensure that reasons and criteria for designations remain valid. The various suggestions by participants are summarized in Annex 4.

Recommendation 6. *Participants recommended that an HLR-styled working group of interested states, members of sanctions committees, former members of expert groups, the Ombudsperson and the Focal Point for UN sanctions, as well as external legal professionals, draft a manual with step-by-step due process guidance for all sanctions implementation actors. It was further suggested that the resulting draft manual should serve as a basis for a Security Council document, as well as for ongoing sanctions training.*

C. Augmenting the sanctions implementation capacity of states that bear a disproportionate implementation burden

A substantial number of states and UN organizations stressed during the HLR consultations the need for fundamental improvements in how the international community strengthens the sanctions implementation capacities of States that assume a disproportionately high implementation burden owing to geographic location or trade-flows. The resulting HLR recommendations anticipated that these challenges would be mostly met by the UN system. However, it became apparent that without significant

³ Perhaps elaborating on the current practices by some expert groups to review the degree of confidence experts have in the credibility of information and sources.

supplemental funding most UN agencies would not be able to expand assistance to states. Consequently, discussions began, even before the Assessment was initiated, on determining new and alternative capacity-promoting avenues. One participant referenced FATF's peer review process through which states assess one another's capacities to regulate their financial industries and implement structural requirements, including those pertaining to financial sanctions processes.

A group of likely recipient states met informally several times to elaborate preferences and principles to guide their capacity enhancement efforts. A primary capacity constraint experienced by most states is the lack of accurate and pragmatic information on all sanctions implementation issues. It was further noted that capacity requirements are not equal for all states and should be determined on the basis of a state's individual exposure to risks and threats.

It was further resolved that once specific capacity assistance projects were implemented, they tended to yield dual benefits, by not only enhancing the ability to monitor and enforce sanctions, but by strengthening related functions. Beneficial synergetic effects would likely accrue to a state's overall rule of law, security and border control, or its financial infrastructure. Based on these consultations, a template was drafted (Table 1) that summarizes desirable areas of sanctions implementation capacity assistance.

Table 1: Implementation assistance requirements

Laws					
Drafting laws and legislative texts		Translation of all relevant text into official national languages		Dissemination in print and electronic format	
Rules, regulations, oversight procedures and implementation guidance					
Financial oversight authority	Export control agencies and air-/sea-ports directorates	Airspace, coastal and riverine regions	Immigration, refugee, and IDP controls	Defense production, trade and export	Law-enforcement and national security
Guides for exemptions					
Translation					
Technical tools and systems for border control					
Fingerprinting and biometrics	Advance passenger identification systems	Cargo scanners and X-ray equipment	Advance cargo inspection and identification		
Drone-based surveillance	Metal and explosive scanners	Geiger counters	Digital tracking for sensitive transit cargo		
Critical infrastructure monitoring					
Robot/video surveillance of sensitive border regions			Video- and scanner surveillance of defense installations		
Training					
Financial oversight authority	Export control agencies and air-sea-port directorates	Airspace, coastal and riverine regions	Immigration, refugee, and IDP controls	Defense-production, trade and export	Law-enforcement and national security

Recommendation 7. Participants recommended an exploration of the following priorities through an informal working group of interested states and private sector actors:

- The development of a self-assessment tool for states' requirements for technologies, services and institutional support in order to meet all sanctions implementation obligations;
- Enhancing knowledge of technologies, services and support available either from institutions or the private sector;
- Mobilizing the private sector's ability to provide pertinent services and technologies; Exploration of funding technologies.
- Exploration of potential funding sources.

Important capacity-building steps were already undertaken, for example in the 1718 (DPRK) sanctions regime. The committee chair, ably assisted by the Panel of Experts, initiated the drafting of a number of IANs, most notably the Guidelines on the Preparation and Submission of National Implementation Reports that also includes a detailed checklist. This experience suggested that expert groups could be engaged more directly in assessing states' implementation capacity requirements.

A particularly trenchant outcome of HLR Working Group 2, which focused on interaction and integration among sanctions actors, resulted from the participation of the Society for Worldwide Interbank Financial Telecommunication (SWIFT) at one of the earliest HLR workshops. Noticing the lack of effective and direct communications between the UN sanctions system and global financial institutions, a pragmatic collaboration with the Secretariat was formed. SWIFT, as the most widely used conduit for transactions and compliance information to the global financial industry, instituted an information and screening tool through which the members of SWIFT gain real-time access to accurate and updated UN sanctions designation information. Participants encouraged ongoing collaborative arrangements with SWIFT and similar services, and ensuring that emerging complementary services such as the China International Payment System (CIPS) are integrated into these efforts as well.

D. Other and new issues

As the UN sanctions system evolves, participants have observed that implementation requirements must be continuously adapted as well. After the release of the HLR Compendium two areas of particular broad interest were raised by participants to the Assessment:

1. De-risking of financial flows in conflict zones;
2. Integrating Chapter VI considerations into UN sanctions procedures
3. Field security for expert groups

1. De-risking

A number of participants pointed to a recently observed challenge faced by UN and other organizations that provide humanitarian aid to civilian populations in areas under the control of armed forces or terrorist orga-

nizations. It was noted that under the prevailing asset freeze measures and AML/CFT mechanisms it is virtually impossible to transmit funds to such organizations operating in these high-risk regions. Often, few financial institutions, or more likely, remittance services continue to serve long-established clients, usually individuals and small merchants. But they tend to deny services to new organizations and for large remittances out of fear of being perceived as a sanctions violator. Those who were engaged in de-risking studies, for example, the World Bank or other international institutions, caution that finding solutions to this unintended consequence may be a fraught exercise.

Recommendation 8. *While recognizing that de-risking (or minimizing) the effects of conflict and instability on innocent populations is a concern that the global financial system has been grappling with for some time, participants point to the need for a very narrow UN sanctions system-relevant solution. Taking into consideration the need for a very focused de-risking approach, participants suggested that model exemption language should be drafted by an informal working group of interested states. It was also suggested that the concerns of financial institutions must be alleviated so as to facilitate an effective but narrow flow of funds to aid providers in sanctioned territories. At the same time, recipients must be accountable to the relevant sanctions committees for the transmitted funds to ensure that they are used for authorized purposes and are not diverted to individuals and entities under an asset freeze.*

2. Integrating Chapter VI considerations into UN sanctions procedures

Weak political will was widely recognized by participants as one of the primary causes of inadequate sanctions implementation. An important HLR goal was to address the underlying skepticism of some Member States concerning the UN sanctions system. A participant state member of the Non-Aligned Movement (NAM) raised attention to the Final Document of the Summit Conference of the Non-Aligned Movement, held in Margarita (Venezuela) on 17-18 September 2016. Under Article 98.5 the declaration of the heads of state expressed that “Security-Council-imposed sanctions remain an issue of serious concern to Non-Aligned Countries in view of the tenable legal grounds, impartiality and justice.” Among other concerns, the following two were highlighted:

- The adoption and implementation of UN sanctions is only permissible after all provisions under Chapter VI of the UN Charter are exhausted;

- The implementation of UN sanctions tends to victimize innocent citizens.

Recommendation 9. *Some participants suggested that interested states should convene an HLR-style informal consultation to explore whether and how Chapter VI measures could be applied more effectively before sanctions are adopted. More active engagement of state members of the NAM, as the largest block of states and populations in the world, could assist in building a more effective UN sanctions system.*

3. Field-security for expert groups

Concerns related to the composition and recruitment of expert groups, their methodology and independence, were important points of consultations during the HLR and the Assessment. There is widespread agreement that experts deliver an indispensable service to sanctions committees and states while often finding themselves in the midst of political contests. Predictably, some states see room for improvement in expert group reports they deem to be subject to uneven methodological standards. Some participants to the Assessment have noted that implementation of HLR recommendations 36 to 41 have so far lagged⁴.

⁴ 36. The Secretary-General should ensure that appointments of experts are made on the basis of expertise and merit, to deliver a consistent standard of expertise across all expert groups, free of conflict of interests.

37. The Council should request the Secretary-General to review present arrangements and recommend options for the establishment of a sustainable system for appointing and supporting Security Council mandated experts. The conditions of service should facilitate the performance of their functions, attract and retain the very best professionals for this role, as well as be supported with timely and high-quality administrative and logistical support.

38. DPA, OHRM, and representatives of expert groups should consult on terms and conditions that are reflective of their important specialised role.

39. The Security Council should request that the Secretary-General ensure that expert groups receive the necessary administrative and substantive support to effectively, safely, and in a timely manner, fulfil their mandates, including with regard to duty of care in high-risk environments.

40. The Security Council should request an improved performance assessment system for expert groups to include both an assessment of expert groups, and an assessment of the UN's administrative and logistical support to expert groups, based on structured feedback from experts themselves.

41. The Secretary-General should authorise upon request access by expert groups to UN system reporting on relevant situations, including code cables and the DSS feed, on the condition that such information would only be used for background understanding and would not be cited in public reports without the consent of the originators.

Expert groups have been deployed in a total of 13 sanctions regimes over the 16 years of the existence of such groups. The tragic killings of two experts in the DRC Group of Experts while on a mission in the DRC and disappearance of their support team, in March 2017, raise the need for careful re-evaluation. Contract, physical security and risk issues were addressed in the HLR Compendium, most presciently in the final paragraph under *Chapter V. Supporting sanctions infrastructure B. Expert Groups*:

Expert Group members consulted by the Review drew particular attention to the physical threats to which their functions exposed them. Depending upon the nature of the group's investigation, the threat could extend beyond dangers inherent in field work in conflict zones to include direct personal threat from the individuals or entities being investigated (for example, terrorist organisations). These experts contended that fieldwork should be conducted with proper duty of care from the United Nations, with effective duty of care policies in place, whereas much of the risk was borne by individual experts, which placed them in a precarious position.

The Secretary-General has announced that a review of the circumstances surrounding the killings will be undertaken.

Recommendation 10. *The call made by the participating expert group members during the HLR consultations for "proper duty of care from the United Nations, with effective duty of care policies in place" remains the only pertinent suggestion. This point is self-evident considering that along with expert group mandates the Security Council also mandates the Department of Political Affairs (DPA), Department of Peacekeeping Operations (DPKO) and the Department of Safety and Security (DSS) to assist logistically, with tactical information and security. The Security Council, the Secretariat and Member States should seek transparency on what specifically this duty of care entails, if these killings are to remain a tragic exception to the otherwise remarkably effective and safe UN sanctions monitoring system. The Security Council might wish to request briefings on the progress on any internal review that the Secretariat is conducting.*

Annex 1: Form for travel ban and assets freeze exemption requests by the Government of Afghanistan

Explanation of form and process

This form is to support applications from the Government of Afghanistan for exemptions to the travel ban and assets freeze measures in paragraphs 1(a) and (b) of resolution 2255 (2015). The Committee will decide upon exemptions within 10 days.

Any requested exemption to the travel ban should be accompanied by a request for an exemption to the assets freeze measures for funds to support the proposed travel. This will be considered in tandem with the requested exemption to the travel ban measures.

This form is to assist the Government of Afghanistan, in close coordination with the High Peace Council, to submit for the Committee's consideration travel ban and assets freeze exemption requests for listed individuals for whom it confirms travel to such specified location or locations is necessary to participate in meetings in support of peace and reconciliation.

For further detail on the process for exemptions please consult the exemptions section of the 1988 Committee's website and the 1988 Committee guidelines.

Draft form for travel ban and assets freeze exemption requests under paragraph 19 and 20 of resolution 2255 (2015)

The Permanent Mission of (Afghanistan) to the United Nations presents its compliments to the Security Council Committee established pursuant to resolution 1988 (2011), and has the honour to request a travel ban exemption for (*insert name of individual on the 1988 Sanctions List*), and an exemption from the assets freeze measures to support this travel, as set out below.

Individual's name(s) and address(es)	
Permanent reference number(s) on Sanctions List	
A. Travel ban exemption	
i. Passport or travel document number(s)	
ii. Location(s) the individual(s) will travel	<i>(include transit points)</i>
iii. The period of time the individual(s) is/are expected to travel	<i>(provide timeframe which is not to exceed nine months)</i>
B. Assets freeze exemption	

1) Recipient's bank information (if appropriate)	
2) Details of funds to be released	<i>(provide total amount)</i>
i. Transportation	<i>(provide details and amount if relevant / known)</i>
ii. Lodging	<i>(provide details and amount if relevant / known)</i>
iii. Other expenses	<i>(provide details and amount if relevant / known)</i>
3) Payment starting date	
4) Payment frequency	One-off / monthly / other <i>(insert)</i>
5) Number of instalments (if relevant)	
6) Form of payment (if relevant)	Bank transfer / direct debit <i>(delete one)</i>
7) Interest (if relevant)	<i>(provide amount if known)</i>
8) Other information	<i>(please provide any other information considered relevant to assist the Committee in its consideration and attach any relevant documents)</i>

C. Point of contact

(Please provide details of contact point at Mission should there be any questions on this submission)

Name:

Phone number:

E-mail address:

Annex 2: Applications for exemptions to the assets freeze measures in paragraph 2(a) of resolution 2253 (2015)

Explanation of form and process

This form is to support applications for exemptions to the assets freeze measures in paragraph 2(a) of resolution 2253 (2015). The Committee will decide upon exemptions pursuant to paragraph 75(a) of resolution 2253 (2015) ("**basic expenses exemption**") within three working days of notification, provided all necessary information has been provided. The Committee will decide upon exemptions pursuant to paragraph 75(b) of resolution 2253 (2015) ("**extraordinary expenses exemption**") within five working days of a request. For further detail on the process for exemptions please consult the

exemptions section of the 1267 Committee's website and the 1267 Committee guidelines.

Draft form for assets freeze exemption request

The Permanent Mission of *(insert country name)* to the United Nations presents its compliments to the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities, and has the honour to notify you of our intention to authorise certain expenditures for the benefit of *(insert name of individual or entity on the Sanctions List)*.

The envisaged authorisation of *(insert total amount; please ensure it matches amounts given below)* concerns:

Individual's/entity's name

Permanent reference number on Sanctions List

Individual's/entity's address

Recipient's bank information *(if appropriate)*

Purpose of payment *(please select one)*

Basic expenses *(please complete sections A, C and D)*

Extraordinary expenses *(please complete sections B, C and D)*

A. If basic expense(s) exemption pursuant to paragraph 75(a) of resolution 2253 (2015):

i. Food	<i>(please provide amount if relevant/known)</i>
ii. Rent or mortgage	<i>(please provide amount if relevant/known)</i>
iii. Medicines or medical treatment	<i>(please provide amount if relevant/known)</i>
iv. Taxes	<i>(please provide amount if relevant/known)</i>
v. Insurance premiums	<i>(please provide amount if relevant/known)</i>
vi. Public utility charges	<i>(please provide amount if relevant/known)</i>
vii. Payment of professional fees and reimbursement associated with the provision of legal services	<i>(please provide amount if relevant/known)</i>
viii. Fees or service charges for frozen funds or assets	<i>(please provide amount if relevant/known)</i>

ix. Anything else considered a basic expense but not covered above *(please specify)*: *(please provide details and amount if relevant/known)*

B. If extraordinary expense(s) exemption pursuant to paragraph 75(b) of resolution 2253 (2015):

Anything not covered above *(please specify)*: *(please provide details and amount if relevant/known)*

C. Further information

Payment starting date	
Payment frequency	One-off / monthly / other <i>(insert)</i>
Number of instalments <i>(if relevant)</i>	
Form of payment <i>(if relevant)</i>	Bank transfer / direct debit <i>(delete one)</i>
Interest	<i>(please provide amount if relevant/known)</i>
Other information	<i>(please provide any other information considered relevant to assist the Committee in its consideration and attach any relevant documents)</i>

D. Point of Contact

(Please provide details of contact point at Mission should there be any questions on this submission)

Name:

Phone number:

E-mail address:

Annex 3: Applications for exemptions to the assets freeze measures in paragraph 1(a) of resolution 2255 (2015)

Explanation of form and process

This form is to support applications for exemptions to the assets freeze measures in paragraph 1(a) of resolution 2255 (2015). The Committee will decide upon exemptions pursuant to paragraph 18(a) of resolution 2255 (2015) (“**basic expenses exemption**”) within three working days of notification. The Committee will decide upon exemptions pursuant to paragraph 18(b) of resolution 2255 (2015) (“**extraordinary expenses exemption**”) within five working days of the request. For further detail on the process for exemptions please consult the exemptions section of the 1988 Committee's website and the 1988 Committee guidelines.

Draft form for assets freeze exemption notification

The Permanent Mission of *(insert country name)* to the United Nations presents its compliments to the Security Council Committee established pursuant to resolution 1988 (2011), and has the honour to notify our intention to authorise certain expenditures for the benefit of *(insert name of individual or entity on the Sanctions List)*.

The envisaged authorisation of *(insert total amount; ensure it matches amounts given below)* concerns:

Individual's/entity's name

Permanent reference number on Sanctions List

Individual's/entity's address

Recipient's bank information *(if appropriate)*

Purpose of payment (please select one)

Basic expenses *(please complete sections A, C and D)*

Extraordinary expenses *(please complete sections B, C and D)*

A. If basic expense(s) exemption pursuant to paragraph 18(a) of resolution 2255 (2015):

i. Food *(please provide amount if relevant/known)*

ii. Rent or mortgage *(please provide amount if relevant/known)*

iii. Medicines or medical treatment *(please provide amount if relevant/known)*

iv. Taxes *(please provide amount if relevant/known)*

v. Insurance premiums *(please provide amount if relevant/known)*

vi. Public utility charges *(please provide amount if relevant/known)*

vii. Payment of professional fees and reimbursement associated with the provision of legal services *(please provide amount if relevant/known)*

viii. Fees or service charges for frozen funds or assets *(please provide amount if relevant/known)*

ix. Any other basic expenses not covered above *(please specify):* *(please provide details and amount if relevant/known)*

B. If extraordinary expense(s) exemption pursuant to paragraph 18(b) of resolution 2255 (2015):

Anything not covered above *(please specify)* *(please provide details and amount if relevant/known)*

C. Further information

Payment starting date

Payment frequency *One-off / monthly / other (insert)*

Number of instalments *(if relevant)*

Form of payment *(if relevant)* *Bank transfer / direct debit (delete one)*

Interest *(please provide amount if relevant/known)*

Other information *(please provide any other information considered relevant to assist the Committee in its consideration and attach any relevant documents)*

D. Point of Contact

(Please provide details of contact point at Mission should there be any questions on this submission)

Name:

Phone number:

E-mail address:

Annex 4: Suggested system-wide due process enhancements

The following compilation of recommended measures reflects input from participants of the Assessment workshops, and previously held HLR-consultations. They are intended for illustrative purposes for those who are interested to engage in further consultations on system-wide due process issues.

Situation	Responsible sanctions actors	Due process requirements
Start of mandate	Expert Group; Sanctions Committee	Develop and adopt evidentiary standards, working methods for collection and handling of evidentiary material, as well as reporting standards.
Decision to initiate a specific monitoring / investigation	Expert Group, Sanctions Committee	Credible prima facie information must meet reasonable standards that justify Experts' inquiries and information requests; Consider all exculpatory information.
Monitoring or investigations of specific situations	Expert Group, Sanctions Committee	Verify prevalence of evidence; Review exculpatory information; Ensure right of reply is provided to target, while taking all precautions to preserve the effectiveness of an eventual asset freeze ⁵ ; and respecting any member States' national security prerogatives; Ensure evidence for culpability meets expert groups' methodology standards.
Reporting of findings	Expert Group	Report all pertinent evidence including exculpatory information; Report substance of replies by target; Describe conditions under which the right of reply was granted.

⁵ Meeting due process standards and preserving the effectiveness of an eventual assets freeze are two tasks skillful and disciplined finance experts should be able to balance. Technically, experts are not supposed to speculate about possible consequences of actions that could constitute a sanctions violation before they have concluded all investigative tasks. Meeting these dual expectations is standard and in 16 years of expert groups' work no incident is known where assets were successfully hidden by the prospective designee.

Consideration of Expert Group reporting and evidence in confidential annexes	Sanctions Committee	Verify that presented evidence was collected in accordance with UN and Experts' own methodologies and standards; Verify authenticity of reported evidence; Verify that right of reply was granted and exercised; Verify that efforts were undertaken to seek and report exculpatory information.
Post-Designation	Sanctions Committee	Ensure that target is informed about designation; Ensure that target is advised about opportunity to communicate new information to the Expert Group; Ensure that target is aware of Focal Point and Ombudsperson; Ensure periodic review of designation criteria.
Petitions to Focal Point / Ombudsperson	Sanctions Committee	Ensure that relevant Expert Group is consulted; Communicate decisions and their reasons to target;
Granting of exemption	Sanctions Committee	Ensure that relevant member states inform law enforcement organizations and related organizations about specific exemptions.
Post-designation monitoring	Sanctions Committee, Expert Group	Maintain continual monitoring of designee to ensure that reasons and criteria for designation remain valid.
Delisting	Sanctions Committee	Ensure that delisting decision is communicated to all relevant Member States; Ensure that all relevant UN documents reflect the delisting.

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