
SUMMARY OF THE INTERLAKEN PROCESS

As a result of the growing interest in the use of targeted sanctions, the Swiss Government convened in March 1998 and again in March 1999, seminars of experts to explore ways of making United Nations targeted financial sanctions more effective. The sessions gathered representatives of governments, the private sector (financial community), the United Nations and other international organizations, as well as academia to discuss the challenges of designing and implementing targeted financial sanctions. The purpose of the sessions was to elaborate the specific requirements of financial sanctions, and to develop new options to refine the tool for exerting pressure directly on a targeted country's decision-makers through freezing their assets in the world financial markets. The results of the 'Interlaken Process,' as it has come to be called, significantly advanced the collective understanding of the promise and feasibility of targeted financial sanctions. The Interlaken Process website – www.smartsanctions.ch – provides the findings and discussions of the Process, including the published outcomes of Interlaken I and II.

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 the UN sanctions instrument. The first order challenge concerns the target, and the need for analysis regarding the vulnerability of targeted governments and elites; success of targeting depends to a large extent on the characteristics of the targeted country. In addition, a clear delineation of parties covered by the sanctions, as well as the nature of the sanctions themselves (extending to all financial assets, including property, or just blocking financial transactions) is necessary. Participants also noted that speed and discretion in determining targets and the specific sanctions –which are often difficult to accomplish – are critical to success.

The second Interlaken meeting further developed recommendations on the technical aspects of targeting, but most importantly, addressed issues arising from differences in implementation of financial sanctions among States. Experts noted that many Member States lack the legal authority necessary to implement the requirements of Security Council resolutions, and even among those with such capacity, great variation exists among implementation and enforcement – undercutting the overall effectiveness of UN sanctions. In response, Interlaken II examined the basic elements required for national implementation, and developed a model law that would enable States to implement UN-authorized targeted financial sanctions quickly, fully and consistently. Also, to promote more uniform implementation across Member States, standardized texts or building blocks of language were developed that the Security Council could use in drafting sanctions resolutions. Overall, the Interlaken seminars concluded that targeted financial sanctions are *technically* feasible, but that concrete measures on national and international level are necessary for the instrument to be developed more fully and made effective.

To consolidate the contributions of the Interlaken Process into practical tools to refine the use of financial sanctions, the Swiss Government asked the Watson Institute's Targeted Financial Sanctions Project to develop a manual for practitioners. *Targeted Financial Sanctions: A Manual for Design and Implementation* provides draft language for those developing Security Council resolutions imposing targeted financial sanctions (with options for different scenarios), and identifies "best practices" for the implementation of those measures at the national level. The Manual, which was presented to the Security Council in October, 2001, is intended to serve as a guide for both Security Council members and national officials responsible for designing and implementing targeted financial sanctions.

Part 1 suggests that resolutions should be comprised of 12 parts and provides model text for each:

- A Preamble, establishing the context of the resolution;
- Identification of the objectives of sanctions, defining the goals of the sanctions and serving as the criteria against which responses of the target may be measured;
- A statement of the specific prohibitions imposed by the sanctions, answering four critical questions:

Whom are the measures to be imposed against?

Who will implement the measures?

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

What are the components of the financial sanctions?

It is in this section of a resolution that definitions of key phrases, such as "funds and other financial resources", may be given. Such definitions are critical for consistent and effective implementation of targeted financial sanctions. Further, innovative methods for implementing prohibitions are elaborated. For example, the "retroactive reporting" option requests that States submit reports on the movement of targets' assets in the period immediately prior to the imposition of sanctions, in order to track the movement of funds and constrain their future use.

- Acknowledgement that there may be exemptions and exceptions to the measures imposed, for example, for humanitarian purposes;
- A clause calling upon international organizations to observe the sanctions, even though they are not bound by Security Council resolutions;
- Establishment of a Sanctions Committee and the specification of its duties;
- An outline of procedures to enable individuals to petition the Sanctions Committee for removal from the list of targets, to minimize the consequences of erroneous

targeting;

- Reporting requirements to be imposed upon Member States, their scope and frequency;
- Measures to enable the effective monitoring of the sanctions imposed, such as to allow for the creation of an Expert Panel;
- An appeal to States to recall that the measures imposed are binding under the Charter;
- A clause to enable implementing States to ensure non-liability for compliance with sanctions, facilitating effective implementation by the private sector notwithstanding other existing rights and duties; and
- A “sunset clause” to provide the means for the suspension and lifting of sanctions upon the achievement of the objectives identified in the resolution.

Part 2 of the Manual specifies the legal and administrative elements necessary at the national level, and focuses on “best practices” for implementing targeted financial sanctions:

- Legal Framework
 - Ensure that adequate legal authority to implement sanctions at the national level exists without needing to engage the legislative process for each Security Council resolution (e.g. by enacting enabling legislation such as the Interlaken Model Law – see Appendix for further discussion of the Model Law).
 - Give effect to resolutions through regulatory or administrative actions.
- Administering Agency
 - Designate an official body or bodies to administer sanctions – including the consideration and determination of requests for exceptions and exemptions, where permitted – such as the MFA or the financial supervisory agency.
 - Ensure effective communication at all levels – between the UN and Member States, between UN missions and capitals, and within the capitals (among those responsible for implementation).
- Information
 - Inform the public through notices in official journals and through the use of media and information technology.

- Communicate with banks and financial institutions; notify them directly, including through outreach activities, and provide specific and timely guidance for the implementation of sanctions.
- Notification should include a statement of the legal basis for sanctions; the precise time period within which transactions should be examined; definition of targets; detailed guidelines about what is prohibited; information on exemptions; and information concerning to whom reports should be sent, and applications for exemptions or exceptions and questions regarding sanctions should be addressed.
- Compliance
 - States should monitor the activities of banks and financial institutions to encourage compliance with financial sanctions, including capacity building, reporting and external auditing requirements.
 - Financial institutions should employ methods to recognize and stop transactions, and be encouraged to raise their internal supervisory standards to conform to multilateral initiatives, including through the use of technology.
- Exemptions and Exceptions
 - Designate a responsible agency and determine the process to consider exemptions and exceptions.
 - Where many requests are made to national level authorities, consider a process authorizing categories of approved transactions (general licenses) to expedite administration.
- Administration of Assets
 - Unless otherwise called for by Security Council, standard practices concerning crediting interest to and debiting charges from frozen accounts should generally be followed.
- Enforcement
 - Clearly define acts constituting a breach of sanctions, the nature of such violations (civil or criminal), and specific penalties (prison sentences and/or fines) appropriate to deter violations.
 - Encourage compliance and foster cooperative relations with financial institutions through a system of warnings and civil penalties.