BRIEFING ON UN SANCTIONS

NINE POINTS ON DESIGNING UN SANCTIONS TO BETTER PROTECT HUMANITARIAN ACTIVITIES
UN SANCTIONS: NINE POINTS ON LANGUAGE

There are nine specific areas in which Member States can build upon existing language in order to ensure that the design of UN sanctions measures are less likely to unduly hamper humanitarian activities and access or negatively impact the broader civilian population.

Each of these provisions are either based on current language or on recommendations issued in processes mandated by the Security Council, requested by the Secretary-General, or reviewed by wider coalitions of Member States and sanctions experts.

If the design of the current measures is not revisited, current practice is likely to contribute to the growing crisis of legitimacy around sanctions measures. In turn, this crisis of legitimacy may hamper UN sanctions effectiveness and the credibility of the Council implementing them. Drafters can pre-empt this brewing crisis by continuing to take proactive measures to tweak the design, as they have quite effectively done twice before by moving from comprehensive to more targeted sanctions and through the establishment of the office of the Ombudsperson.

Two points to note:

- The points to come apply both to the risk of impact on the civilian population in general and the risk of impact to humanitarian organizations’ access and activities.
- Each of the suggestions have either already been mandated in a past instance by the Security Council or are currently mandated in at least one regime in some form.
In drafting a sanctions resolution, be explicit about the purpose as this will give much needed guidance on how to interpret the measures.

- For example: one could add: "measures [in this regime] are not intended to have adverse humanitarian consequences for civilian population" Or "measures [in this regime] are not intended to affect negatively or restrict activities carried out by humanitarian NGOs or international organizations for the benefit of the civilian population".

Once this purpose is included, mandate panels of experts to report on it (as is the case in DPRK and ISIL, Da’esh and Al-Qaida (IDAQ) regimes); ensure panels have the adequate expertise to do so; and, once the mandate exists, hold the experts accountable for this reporting.

- Moreover, either sanctions resolutions or reports of panels of experts could request the Secretary-General to issue an annual report on the impact of the measures.
- For example: "The Secretary-General should request the Secretariat to carry out an assessment of the humanitarian impact of sanctions in x country."

Prioritize permissive language with exceptions over prohibitive language with exemptions.

- For example: consider language such as: "this restriction shall not apply to impartial humanitarian activities/items needed for such activities except for cases of a, b, and c…" instead of "any activity/item is prohibited except a, b or c…".

Privilege reporting requirements over authorization requirements (when standing exemptions are not politically feasible).

- For example: a resolution could “request a humanitarian organization to report to the UNSC every six months, on the implementation of paragraphs X and Y, and on any impediment to the delivery of humanitarian aid in the country in question” as it the case in Somalia (resolution 1916/2010)
5. **Consider granting a larger number of impartial humanitarian organizations direct access to the Sanctions Committee when applying for humanitarian exemptions rather than requiring them to apply through a State (as is the case for ICRC and two others).**

- There has been some progress on this element in the DPRK regime, which now enables access of non-governmental organizations to the UN Resident Coordinator and then Committee Secretary if Member States are not available. But the provisions does not grant direct access to the relevant 1718 Sanctions Committee.

6. **Add a standing exemption from sanctions measures for a broader category of humanitarian actor.**

- For example, currently resolutions state: “these asset freeze provisions shall not apply to financial transactions [solely for the purpose of x], that are undertaken by or in coordination with the UN; and”
- by the UN and organizations having observer status with the UN General Assembly (that provide humanitarian assistance) or their implementing partners.
- Think about how wide one could make this status-based provision – i.e. “any impartial humanitarian organization” as suggested by some here? Or something in-between the status quo and this proposal?

7. **Avoid “proof by the impossible” provisions for dual use items. To ask states or humanitarian entities to demonstrate that a particular dual-use item will never be used for military purposes and only for humanitarian purposes, is often unrealistic. Instead of asking for the impossible, ask for a balancing of probabilities or risks vs. needs. This could include language such as, that a state or organization:**

- Must demonstrate that it is more likely than not that the item in question would be used only for humanitarian rather than military uses
- Or, in ascending order,:
  - Must demonstrate ….Sufficient grounds, or:
  - Must demonstrate …Clear and convincing evidence…
  - Or, simply avoid the use of “only” / [ e.g. a presumption of “zero risk”).
8. Ensure sufficient guidance documents – what are known as “Implementation Assistance Notices” (IANs) - to accompany any new design feature. Currently only a few of the existing notices provide guidance on the scope of the assets freeze or deal with exemptions. More IANs should be issued for the remaining regimes and any future regimes.

9. Add designation criteria to regimes where it does not already exist regarding the “Obstruction and the delivery of, or access to, or distribution of humanitarian assistance.”

- Currently at least 6 of the 14 sanctions regimes possess such criteria (Somalia, Mali, Yemen, Central African Republic, the Democratic Republic of the Congo and South Sudan).

If built upon or applied more broadly, these nine elements of the language used in current Security Council resolutions may better protect humanitarian activities.