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Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions

Report of the Secretary-General

Summary

The present report is submitted in compliance with paragraph 16 of General Assembly resolution 65/31. It highlights arrangements in the Secretariat related to assistance to third States affected by the application of sanctions; the operational changes that have occurred in the light of the shift in focus in the Security Council and its sanctions committees towards targeted sanctions; and recent developments concerning the activities of the Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions.

* A/66/150.

I. Introduction

1. In its resolution 65/31, the General Assembly requested the Secretary-General to submit a report to the Assembly at its sixty-sixth session on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions. The present report has been prepared in compliance with that request.

II. Measures for further improvement of the procedures and working methods of the Security Council and its sanctions committees related to assistance to third States affected by the application of sanctions

2. As noted in previous reports of the Secretary-General (A/62/206 and Corr.1, A/63/224, A/64/225 and A/65/217), the Chair of the Security Council Informal Working Group on General Issues of Sanctions transmitted the report of the Working Group (S/2006/997, annex) to the Security Council. Several of the recommendations and best practices set out in that report related to improved sanctions design and monitoring, but the report did not contain any recommendations that explicitly referred to ways to assist third States affected by the unintended impact of sanctions. By its resolution 1732 (2006), the Council decided that the Working Group had fulfilled its mandate as contained in document S/2005/841, took note with interest of the best practices and methods set out in the report of the Working Group and requested its subsidiary bodies to take note of them also.

3. During the period under review, and in keeping with the shift of the Security Council from comprehensive economic sanctions to targeted sanctions, there were no pre-assessment reports or ongoing assessment reports concerning the likely or actual unintended impact of sanctions on third States.

4. In a periodic report delivered to the Council on 24 June 2011, the Chair of the Committee established pursuant to resolution 1970 (2011) concerning the Libyan Arab Jamahiriya stated that the Committee had answered, or was in the process of answering, a total of 15 requests for guidance concerning the scope and implementation of the assets freeze.¹ In several of those requests, the Committee's advice was sought on how to minimize the potential unintended consequences of that measure in third States.

5. In nearly every case in which the Security Council has decided that States shall freeze the assets owned or controlled by designated individuals and entities, the Council has also adopted exceptions by which States can signal to the relevant sanctions committee their intention to authorize access to frozen funds for a variety of basic and extraordinary expenses.² Such expenses can include tax payments, insurance premiums and public utility charges; reasonable professional fees and reimbursement of expenses associated with the provision of legal services; and fees

¹ See S/PV.6566.

² See Security Council resolutions 1452 (2002) (as amended by resolution 1735 (2006)), 1532 (2004), 1572 (2004), 1591 (2005), 1596 (2005), 1636 (2005), 1718 (2006), 1737 (2006), 1844 (2008), 1907 (2009) and 1970 (2011).

or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources.

6. Furthermore, in paragraph 15 of its resolution 1737 (2006), and paragraph 21 of its resolution 1970 (2011), the Security Council decided that the assets freeze imposed under those resolutions would not prevent a designated person or entity from making payment due under a contract entered into prior to the listing of such a person or entity, provided that certain conditions had been met, and after notification by the relevant States to, respectively, the Committee established pursuant to resolution 1737 (2006) and the Committee established pursuant to resolution 1970 (2011) of the intention to make or receive such payments or to authorize, where appropriate, the unfreezing of funds, other financial assets or economic resources for that purpose, 10 working days prior to such authorization.

7. To date, through his 90-day reports to the Security Council, the Chair of the Committee established pursuant to resolution 1737 (2006) has informed the Council of a total of 48 such notifications received.³ Similarly, in a periodic report to the Council, the Chair of the Committee established pursuant to resolution 1970 (2011) informed the Council of a total of 25 notifications received.⁴ Thus the provisions of paragraph 15 of resolution 1737 (2006) and paragraph 21 of resolution 1970 (2011), as well as the exceptions to the assets freeze for basic and extraordinary expenses,² can help to mitigate economic burdens arising from the implementation of Council assets freezes.

III. Recent developments related to the role of the General Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions

8. Pursuant to paragraph 7 of General Assembly resolution 59/45, the Assembly and the Economic and Social Council have continued to play their respective roles in mobilizing and monitoring, as appropriate, the economic assistance efforts of the international community and the United Nations system on behalf of third States affected by the application of sanctions.

A. General Assembly

9. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization met from 28 February to 4 March and on 7 and 9 March 2011. The report of the Special Committee contains a summary of the discussions on the question of the implementation of the Charter provisions related to assistance to third States affected by sanctions (A/66/33, chap. III.A).

³ See S/PV.5702, 5743, 5807, 5853, 5909, 5973, 6142, 6235, 6280, 6384, 6442, 6502 and 6563. The 90-day report of 9 September 2009, which is also relevant, was not delivered at a public meeting; the text is however available on the Committee's website: www.un.org/sc/committees/1737.

⁴ See S/PV.6566.

B. Economic and Social Council

10. At the opening meeting of its substantive session of 2011, on 4 July 2011, the Economic and Social Council approved its programme of work (E/2011/L.12) and decided to include in the agenda of the general segment of the session a sub-item, 13 (j), entitled “Assistance to third States affected by the application of sanctions”. No advance documentation was requested. The Council considered the matter on 27 July 2011 but took no action under that sub-item.

IV. Arrangements in the Secretariat related to assistance to third States affected by the application of sanctions

11. In accordance with the relevant resolutions of the General Assembly,⁵ the competent units within the Secretariat have maintained their capacity to monitor and evaluate information pertaining to any special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Security Council, to identify solutions to the special economic problems of those States, and to evaluate any appeals to the Security Council made by such affected third States under the provisions of Article 50 of the Charter of the United Nations.

12. One of the objectives of such monitoring and evaluation exercises is to develop and strengthen capacity within the Department of Economic and Social Affairs to refine and improve the modalities, technical procedures and guidelines for the coordination of technical assistance to affected third States (A/64/225, para. 12). As mentioned in previous reports, the shift from comprehensive to targeted sanctions in recent years has reduced the incidence of unintended harm to third States. In fact, no official appeals have been conveyed to the Department of Economic and Social Affairs to monitor or evaluate since June 2003.

13. Effective and targeted sanctions are focused financial and travel sanctions and arms embargoes which are designed to minimize the potential economic, social and humanitarian impact in targeted as well as non-targeted countries, if they are implemented properly. The shift to targeted sanctions has implied that changes need be introduced to the methodological approaches used to assess the economic problems of third States caused by this type of sanction. These changes would involve detailed case-by-case assessments of targeted sanctions and the possible adverse economic, social and humanitarian impact in individual countries, both those that were targeted and those that were not, which would need to be evaluated against the baseline assessments drawn from recent historical trends in humanitarian conditions in the country or region.⁶

14. Little progress could be made in developing and applying specific methodologies to make such assessments, since these can be elaborated properly only on a case-by-case basis. Assessments can be initiated only following

⁵ See resolutions 50/51, 51/208, 52/162, 53/107, 54/107, 55/157, 56/87, 57/25, 58/80, 59/45, 60/23, 61/38, 62/69, 63/127, 64/115 and 65/31.

⁶ For the methodology for designing, implementing and evaluating sanctions, see the report of the Working Group (S/2006/997, annex), and the Sanctions Assessment Handbook published by the Office for the Coordination of Humanitarian Affairs, available from www.humanitarianinfo.org/sanctions/handbook/docs_handbook/iascsanchb.pdf.

corresponding requests by third States. As mentioned above, no such appeals have been referred to the Department of Economic and Social Affairs since June 2003. The Department of Economic and Social Affairs, however, will continue to seek opportunities for collaborative work with other relevant parts of the Secretariat, as well as with other international organizations and academic institutions, so as to keep abreast of similar and related methodologies assessing the impact of sanctions more in general and to be responsive when appeals are made.
