United Nations S/AC.37/2003/(1455)/44

Security Council

Distr.: General
23 May 2003
English
Original: French

Security Council Committee established pursuant to resolution 1267 (1999)

Note verbale dated 22 May 2003 from the Permanent Mission of Switzerland to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Switzerland to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) and, with reference to his note dated 4 March 2003, has the honour to transmit herewith the report of Switzerland submitted pursuant to Security Council resolution 1455 (2003) (see annex).

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Annex

Report of Switzerland submitted pursuant to Security Council resolution 1455 (2003)

Overview

Switzerland's constant practice is to implement in full all United Nations Security Council resolutions concerning non-military sanctions. These resolutions are implemented primarily through ordinances issued by the Federal Council (the Swiss Government), which are directly binding on all State authorities, individuals and companies. Since 1 January 2003, these ordinances have had their basis in the federal act on the implementation of international sanctions (the Embargo Act, RS 946.231), which is the framework act for the implementation of international sanctions. In the past, such ordinances were based directly on the Federal Constitution (RS 101).

The measures envisaged by the sanctions regime which is the subject of this report are implemented in Switzerland through the "Ordinance instituting measures against the Taliban", adopted by the Federal Council on 2 October 2000 to give effect to Security Council resolutions 1267 (1999) and 1333 (2000). Following the adoptions of resolutions 1388 (2002) and 1390 (2002), the Federal Council amended the Ordinance on 1 May 2002. The Ordinance, now entitled "Ordinance instituting measures against individuals and entities linked to Osama bin Laden, the al-Qa'idah group or the Taliban" (hereinafter "the Ordinance"), contains all the provisions necessary to implement the measures envisaged in paragraph 4 (b) of resolution 1267 (1999), paragraph 8 (c) of resolution 1333 (2000), paragraphs 1 and 2 of resolution 1390 (2002) and paragraphs 1 and 2 of resolution 1455 (2003). Annex 2 to the Ordinance lists the names of natural or legal persons, groups and entities subject to sanctions. The Ordinance and its annex can be consulted in French and German on the web site of the State Secretariat for Economic Affairs (www.seco-admin.ch, via "*politick économique extérieure*" (foreign trade policy), "*contrôle à l'exportation et sanctions*" (export controls and sanctions), "*sanctions*" (sanctions).

In many areas, the sanctions measures provided for by the Ordinance are strengthened by other legal provisions which are described below in the appropriate sections. All relevant legal instruments are published in the *Recueil systématique du droit fédéral (RS)* (Compendium of Federal Law) and are available on the Confederation's web site (www.admin.ch, via "*Recueil systématique*" (Compendium).

I. Introduction

1. Possible activities of Osama bin Laden, al-Qa'idah or the Taliban in Switzerland

Terrorism of Islamic origin by followers of a rigid form of Islam is a very minor element in Switzerland. Few Swiss residents have been implicated in violent

acts associated with Islamism. In come cases, militant members of al-Qa'idah have transited through Switzerland.[1]

Switzerland cannot be considered a centre for recruitment to al-Qa'idah, it has never harboured operational cells associated with Osama bin Laden's movement. None of the attacks have been proven to have been executed or planned with Swiss-based involvement at either the leadership or the logistical level.

II. Consolidated list

2. Incorporation of the consolidated list in the Swiss legal system

As mentioned at the beginning of this report, the consolidated list is incorporated into Swiss law in the form of an annex to Federal Council Ordinance of 2 October 2000 instituting measures against individuals and entities linked to Osama bin Laden, the al-Qa'idah movement or the Taliban. This annex is modified by the Federal Department of Economic Affairs each time the Committee established pursuant to resolution 1267 (1999) updates its consolidated list. Each modification of annex 2 is immediately communicated to the various administrative units concerned: for financial sanctions, the various authorities which oversee the financial market (see 14.1 below); for travel restrictions, the Federal Office of Immigration, Integration and Emigration (see 15 below); for the arms embargo, the division responsible for authorizations involving war materiel in the Secretariat of State for Economic Affairs (see 20 et seq. below). The general public is also informed (through press releases and publication on the Confederation Internet site). Moreover, financial intermediaries are specially informed of any change made to annex 2 (for more details, see 14.1 below).

3. Problems with regard to the consolidated list

The following problems should be noted:

Gaps in information

There are often gaps in the information on the consolidated list, which frequently makes identification of the individuals or entities covered by these measures very difficult and even impossible. As much detailed information as possible, including date of birth or identity card numbers for example, would significantly facilitate the rapid and effective implementation of the sanctions, in the financial area in particular.

Electronic format

The computerized format of the consolidated list also poses problems to financial intermediaries. The information available in the current formats (pdf and

[1] It will be recalled that four terrorists implicated in the attacks of 11 September 2001, including Mohamed Atta, transited through Switzerland. In addition, José Padilla, who was arrested in the United States of America on 8 May 2002, is accused of planning an attack using radiological materials. Padilla had a stopover in Zurich from 5 to 8 April 2002 between two flights: Karachi-Zurich and Zurich-Cairo; he stated that he had gone to Cairo to visit his wife and children. He again transited through Zurich on 7 May 2002 between his flight from Cairo and his flight to Chicago on 8 May 2002.

html) cannot be directly accessed by the financial intermediaries, but must be re-entered in the database of the particular financial intermediary. This not only represents a source of additional errors but also slows the monitoring process. For this reason, the question of issuing the consolidated list in the form of a database or, alternatively, as an xls file has been raised repeatedly. These two alternative formats would ensure more rapid and effective processing of the consolidated list than the current formats.

Problems of coordination with prior lists and frequent changes to the list

In practice, problems have arisen with the coordination of the various lists issued. Correspondence tables or cross-references would certainly be useful. These problems are further accentuated by the recent Committee practice of modifying the list of names frequently by adding single names. Less frequent updates covering several additions at a time would help to diminish such coordination problems.

4. Designated individuals/entities with links to Switzerland

Several natural persons or entities found on the consolidated list have their domicile or headquarters in Switzerland. The sanctions provided for under resolution 1455 (2003) and previous resolutions on the subject have been fully implemented in respect of those persons or entities.

5. Individuals or entities associated with Osama bin Laden or members of the Taliban or al-Qa'idah not yet included in the list

The Swiss Government has no such information.

6. Legal proceedings against the inclusion of names on the list

To date, no individual or entity affected by the sanctions provided for under the Ordinance has contested in court the inclusion of the relevant name in annex 2 of the Ordinance. On the other hand, several individuals have requested that their names be removed from the list and have initiated the de-listing procedure provided under the Guidelines of the Committee established pursuant to resolution 1267 (1999).

7. Additional information on individuals/entities with links to Switzerland

Additional information concerning these individuals/entities was already submitted in November 2002 to the Sanctions Committee established pursuant to resolution 1267 (1999).

8. Measures taken against al-Qa'idah

On 7 November 2001, the Federal Council banned al-Qa'idah and related organizations (Ordinance banning the al-Qa'idah group and related organizations (RS 122)). This prohibition also extends to cover groups, those which have their origins in al-Qa'idah and organizations or groups whose leadership, aims or methods are identical to those of al-Qa'idah, or which carry out its orders. Anyone in Swiss territory who becomes a member of such a prohibited group shall be liable to imprisonment or a fine, unless more severe criminal penalties are imposed. This Ordinance entered into force on 8 November 2001.

III. Financial and economic assets freeze

9. Legal basis to implement the asset freeze

Under article 3, paragraph 1, of the Ordinance, "the assets belonging to the natural and legal persons and the groups or entities cited in annex 2, or controlled by the latter, shall be frozen". By virtue of this provision of Swiss law, the assets of individuals or entities suspected of links to Osama bin Laden, the al-Qa'idah movement or the Taliban are frozen by right. Violations of this obligation are punishable by up to one year's imprisonment or a fine of up to 500,000 Swiss francs. In serious cases, the penalty is up to five years' imprisonment, which may be accompanied by a fine of up to 1 million Swiss francs.

Under Swiss legislation, there is no obstacle to the effective implementation of financial sanctions. In particular, banking secrecy does not present an obstacle to the full and effective implementation of financial sanctions. As discussed below under question 10, financial intermediaries are required under the Ordinance to declare frozen assets to the authorities. In addition, the Money Laundering Act requires financial intermediaries to send a communication to the competent authority and to freeze assets they have reason to suspect may be linked to criminal activity.

10. Administrative structures and mechanisms to identify financial networks linked to Osama bin Laden, al-Qa'idah or the Taliban

The Swiss legal system contains two complementary sets of legislative provisions to combat financial networks linked to Osama bin Laden, al-Qa'idah or the Taliban: the aforementioned Ordinance and the entire array of legislation to combat money-laundering, which has also proven to be effective in combating the financing of terrorism.

(a) Provisions based on the Ordinance

The Ordinance contains an obligation to declare, under which anyone holding or managing assets acknowledged to be covered by this freezing of assets under question 9 above, must immediately declare them to the State Secretariat for Economic Affairs, (SECO), the competent administrative agency within the federal administration for the implementation of international sanctions. Violations of this obligation to render the offender liable to arrest or a fine of up to 100,000 Swiss francs. The freezing of assets based on the Ordinance takes the form of a sanction and is maintained as long as the sanctions against the persons or entities in question remain in force.

(b) Provisions to combat money laundering

In addition to the mandatory declaration to SECO, financial intermediaries are also required to inform the Money Laundering Reporting Office (art. 9 of the Money Laundering Act, hereinafter MLA (RS 955.0)) when reports of dealings with these persons and entities give rise to a reasonable suspicion that property assets involved in the transaction are related to money laundering, that they are of criminal origin or that a criminal organization has the power of alienation over these assets. Violations of this requirement are punishable by a fine of up to 200,000 Swiss francs (art. 37 MLA).

The Money Laundering Reporting Office constitutes an intermediary providing an interface and a filter between the financial intermediaries and the criminal authorities. It is organically attached to the Federal Police Office. Its task is to analyse specific reports provided by financial intermediaries. In order to determine the action to be taken, it conducts the necessary research so that these reports may be analysed and a decision taken regarding their transmission to the competent criminal authorities. The notices are ultimately transmitted to the Office of the Public Prosecutor of the Confederation or to the cantonal criminal authorities.

When the Money Laundering Reporting Office receives a communication, the assets involved must immediately be blocked pending possible criminal proceedings (art. 10 of MLA). The financial intermediary maintains the block on the assets until it receives a ruling from the competent criminal prosecuting authority, for up to five business days from the time it notified the Reporting Office. While the block remains, neither the persons concerned nor third parties should be informed of the communication.

All financial intermediaries must make declarations to both authorities; a declaration made to one of the two authorities does not satisfy the obligation to report the same information to the other, as the two aforementioned declarations lead to two different and independent sets of proceedings, each with quite distinct objectives.

11. Due diligence requirements for financial intermediaries

The Money Laundering Act defines the requirements of due diligence which are the responsibility of all natural and legal persons covered by it:

– *Verification of the identity of the co-contracting parties (MLA art. 3)*

When a business relationship is established, the financial intermediary must verify the identity of the co-contracting party on the basis of proof of identity.

– *Identification of the economically eligible party (MLA art.4)*

The financial intermediary must require the contracting party to make a written declaration indicating the identity of the economically eligible party.

– *Renewal of the identification and the particular obligation of clarification (MLA arts. 5 and 6)*

The financial intermediary must renew the verification of the identity of the co-contracting party or the identity of the economically eligible party when, during the business relationship, doubt arises as to the identity of the co-contracting party or the economically eligible party.

The intermediary bears a special obligation of verification when the transaction or business relationship appears to be unusual or if there are indications that the assets are the proceeds of a crime or that a criminal organization has the power of alienation over those assets.

– *Establishment and retention of documents (MLA art. 7)*

The aforementioned obligations concerning identification would have little effect if the intermediary were not required to record the results of the various investigations and retain them. According to the Money Laundering Act, the

financial intermediary must keep the documents for at least 10 years after the end of the business relationship or the completion of the transaction.

In the event of suspicion that assets belong to Osama bin Laden, members of al-Qa'idah or the Taliban, financial intermediaries are required to make the two declarations described under question 10 above.

Observance of these due diligence requirements is monitored by four authorities that oversee the financial market:

– *the Federal Banking Commission*, which oversees banks, investment fund administrations and real estate agents;

– *the Federal Private Insurance Office*, which monitors private insurance companies;

– *the Federal Gaming Commission*, which monitors casinos;

- the *Anti-Money-Laundering Authority*: Any financial intermediary that is not already subject to one of the three aforementioned monitoring authorities is required either to become affiliated with a self-regulation body recognized by the monitoring authority or to request direct authorization from the Anti-Money-Laundering Authority to conduct its activities.

12. Assets frozen under the Ordinance

On the basis of the Ordinance, 82 bank accounts comprising a total of approximately 34 million Swiss francs are currently blocked in Switzerland. Virtually all of these accounts belong to individuals or entities added to the consolidated list under resolution 1333 (2000). The great majority of these accounts were blocked when changes were first made to the consolidated list after 11 September 2001. Since then, only a few accounts, comprising more modest amounts, have been blocked.

13. Release of funds for humanitarian reasons

As already mentioned in the report of Switzerland of 21 June 2002 on the implementation of resolution 1390 (2002), by way of exception payments from blocked accounts and transfers of frozen capital assets may be authorized if they serve to protect Swiss interests or to prevent hardship cases (arts. 3 and 4 of the Ordinance). Under this provision, the competent authorities, after a thorough examination of each case, have released funds on several occasions before the entry into force of the procedure established by resolution 1452 (2002). In the meantime, a request for a release of funds has been transmitted to the competent Committee in accordance with the procedure set forth in paragraph 1 (a) of resolution 1452 (2002).

14. Legal basis to control the movements of funds or assets to designated individuals and entities

Article 3, paragraph 2, of the Ordinance prohibits the provision of funds to the natural and legal persons and the groups or entities listed in annex 2 or the making available of funds to them, whether directly or indirectly.

14.1 Notification of financial intermediaries

Financial intermediaries are notified of any changes made to annex 2 of the Ordinance by the four oversight authorities listed under question 11. With this notification, they are reminded both of their obligation to freeze funds belonging to persons or entities listed in annex 2 and of the prohibition on providing funds to these persons or entities or making them available to them, whether directly or indirectly.

In practice, notification through the monitoring authorities for the financial market has proven to be particularly speedy and effective. The Federal Banking Commission notifies all the financial intermediaries that it oversees by means of electronic mail addressed to the heads of their respective legal offices. The Anti-Money-Laundering Authority notifies the self-regulating agencies as well as the financial intermediaries under its direct authority through its Internet site. The Federal Private Insurance Office notifies by mail the institutions that it oversees of any changes to the annex. Likewise, the Federal Gaming Commission formerly notified casinos through the mail; today the communications are in electronic form.

14.2./14.3. Reporting suspicious transactions

The Swiss legal system for combating money-laundering is also instrumental in detecting transactions and property assets linked to terrorism and ensuring that they are reported to the competent authorities. The Money Laundering Act stipulates that the Money Laundering Reporting Office must be notified immediately if a financial intermediary has reason to suspect that a criminal organization within the meaning of the Penal Code has the power of alienation over assets (art. 9). Given that terrorist organizations are equivalent to criminal organizations, a financial intermediary must immediately report its suspicions to the Money Laundering Reporting Office when clarification of an unusual transaction reveals a possible link with a terrorist organization, terrorism or the financing of terrorism. This is also the case when the client is on the list of persons or organizations suspected of having links to terrorism. (The actions taken under question 10 above concerning reporting under art. 9 MLA apply mutatis mutandis.)

14.4. Regulation of the movement of precious commodities

The provisions described above concerning money laundering are also applicable to persons engaging in trade in precious metals, raw materials or real estate and their derivatives (MLA, art. 2, para. 3 (c))

With regard to trade in rough diamonds, it should be noted that Switzerland participates in the international system for certification of rough diamonds adopted under the Kimberley Process. This certification system is implemented in Switzerland through the Ordinance of 29 November 2002 on international trade in rough diamonds (RS 946.231.11), which entered into force on 1 January 2003. Since that date, the import, export and entry and removal from a customs warehouse of rough diamonds have been possible only if the diamonds are accompanied by a certificate that cannot be forged. The trade in rough diamonds is authorized only with States participating in the certification system. These measures were originally intended to prevent the financing of civil wars through the trade in conflict diamonds (rough diamonds originating from regions under the control of rebel

groups, particularly in Africa). Nevertheless, they can also prove useful in combating the financing of terrorism.

14.5. Regulation of non-profit-making organizations

Switzerland does not have a special legal form for non-profit-making organizations. In practice, it is the legal forms for foundations and associations that are usually used.

14.5.1. Foundations

Foundations are governed by articles 80 ff of the Swiss Civil Code of 1 January 1912 (SCC; RS 210). Since foundations are under the supervision of the administrative entity (Confederation, canton or commune) under whose jurisdiction they fall by reason of their purposes (art. 84 of the Swiss Civil Code), it is the Confederation that has the primary responsible for oversight of foundations engaged in international activity.

Prior to subjecting a foundation to its oversight, the federal authority verifies in particular the source of its initial capital.

Thereafter, the foundation has to submit annually to the supervising federal authority a number of documents, i.e., the annual report, annual statement of accounts, report of an external and independent oversight body (trust) and the extract of the minutes of the foundation's council attesting to the adoption by the council of the accounts.

During this process, the supervisory authority verifies that the assets are effectively used for the purposes mandated by the statutes of the foundation. In the event of any doubts as to the origin or beneficiaries of the gifts, the supervisory authority requests additional information and proof from the foundation.

14.5.2. Associations

It has thus far not deemed necessary, beyond the measures described under 14.5.3, to exercise greater oversight over associations.

14.5.3. Additional control measures with respect to foundations and associations

(a) Indirect monitoring of financing through bank operations

Since the bulk of financial transactions goes through bank accounts, the application of the provisions of banking regulations (including the reporting of suspicious transactions, rules on identification of clients) constitutes an additional tool for monitoring the financing of foundations and associations.

(b) Monitoring by the cantonal tax authorities

Legal persons engaged in public service activities or activities solely for the public interest may be exempted from taxes on profits and capital exclusively and irrevocably allocated to these purposes (art. 23 (f) LHID; RS 642.14). Donations to legal persons based in Switzerland, which are exempted from taxes by reason of their public service activities or activities solely for the public interest may be deducted from the tax return (art. 25 (c) LHID). The federal tax administration has

laid down strict exemption criteria for the two cases. In considering a request for exemption, the cantonal authority therefore also considers the financial situation of the foundation and the association.

(c) Monitoring by the trade register

Foundations must be registered with the trade register of the canton in which they are based. Associations also engaged in profit-making activities are subject to the same requirement. Registered foundations and associations are required to keep accounts. Such bookkeeping will make it possible to verify how the financial resources of the foundation are used. Lastly, any amendment to the statutes or the composition of the bodies must be notified to the official in charge of the register.

(d) Oversight of the collection of funds

The collection of funds for use in the public interest is governed by cantonal and communal law. However, where necessary, for example in the case of collection for the purpose of financing terrorism or other unlawful activities of an association, the Federal Council is empowered to enact ordinances or take decisions designed to quell or prevent existing or potential unrest that poses a serious threat to law and order, or external or internal security (art. 184, para. 3, and 185, para. 3, of the Federal Constitution (RS 101)). In this regard, the Federal Council may also stop the collection of funds. Surveillance is then undertaken as part of the investigative activities of the police and intelligence services. Necessity, emergency, the primacy of public interest and proportionality are the triggers for prohibition by the Federal Council.

(e) "Oversight" by a private body, the Central Office for Charitable Organizations (ZEWO)

The ZEWO foundation is the Swiss specialized agency for charitable organizations that collect donations. The purpose of ZEWO is to encourage transparency and honesty on the donations market in Switzerland. With the introduction of a seal of approval that is granted to institutions that meet stringent criteria, ZEWO guarantees the quality of charitable institutions that collect donations. The ZEWO Foundation is a founding member of the International Committee on Fund-raising Organizations (ICFO). It is thus in close contact with organizations throughout the world that perform similar functions in their country.

(f) Legal dissolution of foundations and associations

Under articles 78 and 88, paragraph 2, of SCC, a foundation or an association may be dissolved legally when it has goals that are unlawful or are not in keeping with moral standards.

IV. Travel ban

15. Legislative and administrative measures for implementing the travel ban

16./18. Reference list for border posts and Swiss diplomatic missions abroad

Under article 4 of the Ordinance, the entry into and transit through Switzerland are prohibited for the natural persons listed in the annex. To further strengthen this ban, the Swiss Federal Office of Immigration, Integration and Emigration (IMES), the authority responsible for the entry and stay of aliens, has issued visa directives for Swiss diplomatic missions abroad and border posts. The list of individuals is an integral part of those directives. These individuals have been "flagged" in the computer-based visa issuance system of IMES. Thus, if one of these individuals applies for a visa, the diplomatic mission or border post must submit the request to IMES, which takes a decision in consultation with the Federal Department of Foreign Affairs and the State Secretariat for Economic Affairs. It should be noted, in this regard, that the vast majority of individuals on the list in annex 2 require a visa to enter Switzerland. Thus the travel restrictions come into play when the visa application is considered and not just when the applicant enters Switzerland.

The problems that have arisen in this context highlight the difficulty in identifying individuals because the information on the list is not accurate enough (see point 3 above). In order to make the identification process more reliable, the consolidated list should be supplemented with additional information such as the date of birth, passport or identification document number, as well as possible alternative spellings of names.

17. Frequency of list updates

Any change in the annex to the Ordinance is immediately reflected in the computer-based visa issuance system. The addressees of these directives work on the basis of a constantly updated list.

18./19. Application/attempt to enter Switzerland by the individuals on the list

Thus far, the Swiss diplomatic missions and border posts have not submitted any applications for visas submitted by any of the persons on the list.

V. Arms embargo

20. Legal bases for the arms embargo

22. Licensing system

23. Anti-hijacking measures

The ban on the supply of weapons to the persons/entities on the list is implemented in Switzerland on the basis of the Ordinance and legislation on War Materiel (Federal Act on War Materiel (FAWM; RS 514.51) and the Ordinance on War Materiel (OWM; RS 514.511).

Under article 2 of the Act on War Materiel, authorization is required for the manufacture, trade in, brokerage, import, export and transit of war material as well

as the transfer of intangible assets, including know-how and the granting of related rights concerning war materiel. The Secretariat for Economic Affairs is the competent authority empowered to approve applications for authorization. As a rule, an export authorization can only be granted for supplies to a foreign government or an enterprise working for such government, provided the latter has issued a declaration stating that the material will not be re-exported (non-export declaration) (art. 18 FAWM). Nevertheless and on an exceptional basis, whoever wishes to export weapons to a recipient other than a foreign government or to an enterprise working for the latter, must either prove that the required import authorization from the end-user country exists or that such authorization is not necessary (art. 5 (a) OWM).

Legislation on war materiel imposes very strict conditions on the acquisition of weapons by private individuals. The Ordinance instituting measures against the persons and entities linked to Osama bin Laden, the al-Qa'idah group or the Taliban strengthens such legislation by prohibiting the supply, sale and brokerage of weapons of any kind to natural or juridical persons, groups or entities mentioned in annex 2. The supply, sale and brokerage of technical advice and means of assistance or training linked to military activities to the above-mentioned persons or entities (article 1 of the Ordinance) are also prohibited.

In view of the measures taken, it is not possible for Osama bin Laden, al-Qa'idah or the Taliban or persons or entities linked to the latter, to legally acquire weapons.

It should also be noted that article 7 of FAWM prohibits the development, production, trade or engagement in any activity related to nuclear, biological and chemical weapons.

21. Criminal penalties for violation of the arms embargo

The Act on War Materiel provides severe penalties for violation of the authorization regime. The heaviest penalty shall be imprisonment or a fine of up to 1 million Swiss francs. In serious cases, the penalty shall be up to 10 years' imprisonment, which may be accompanied by a fine of up to 5 million Swiss francs (art. 33, paras. 1 and 2, of FAWM).

Similarly, under the Ordinance, violations of the arms embargo shall carry a penalty of up to a year's imprisonment or a fine of up to 1 million Swiss francs. In serious cases, the penalty shall be up to five years' imprisonment, which may be accompanied by a fine of up to 1 million Swiss francs (art. 9 of the Embargo Act (RS 946.231)).

Where an act constitutes a violation of both the Act on War Materiel and the Ordinance — which is often the case — only the criminal provisions providing for the severest punishment are applicable (art. 11 of the Embargo Act).

VI. Assistance and conclusion

24.-26. Assistance and additional information

The Government is currently considering the possibility of offering assistance to other States in the implementation of measures provided for by the relevant United Nations resolutions.