

~~SECRET~~

E183

OSD Initial Comments on 3rd Draft of Sanctions Paper

1. The objectives paragraph continues to confuse the "objectives" of a sanctions policy with the "characteristics" of such a policy. Objectives are: deter violations, pressure violators into compliance, and punish violators. Characteristics include: flexibility, non-hinderance of unilateral or collective action, non-interference with U.N. Security Council, non-retroactive, and non-discriminatory.
2. The questions posed by NSD 24 need to be stated and addressed with appropriate pros and cons so as to facilitate decision-making. For example:
  - A. Should the U.S. propose sanctions against treaty violations (other than use) for inclusion in the CWC?  
PROS...  
CONS...
  - B. If yes, what is the mechanism for determining that a violation has occurred? (as written, the paper assumes that the Executive Council will determine whether a violation has occurred, p 6) The question for decision is: Should the Executive Council be the mechanism for determining whether a violation has occurred?  
PROS...  
CONS...
  - C. If yes to A.,  
Should sanctions in CWC be mandatory (or recommendatory)? (6-8)  
PROS and CONS for each approach.
  - D. If yes to C.,  
Should the mechanism for imposing mandatory sanctions be an Executive Council determination of "conclusively demonstrated" (p 8) and a "special majority vote" of the States Party?  
PROS...  
CONS...
  - E. If yes to A., should U.S. propose sanctions against non-signatories for "violations" (anomalies? unclear circumstances?) for inclusion in the CWC? (If yes, mandatory or recommendatory?) (pg 6)  
PROS...  
CONS...
  - F. The paper describes three compliance concerns: a violation, an anomaly, and unclear circumstances without discussing the appropriateness of sanctions for each concern (pg 5). The question for decision is: Should the U.S. propose sanctions for an anomaly and/or unclear circumstances for inclusion in the CWC?  
PROS...  
CONS...

~~SECRET~~

DECLASSIFIED BY  
JS  
10/09/09

54040153, 01D304, 2

~~SECRET~~

2

G. The paper begins to explore the notion of "compliance restoration measures." It appears that this broader term would include sanctions (to deter, pressure, or punish) and "prophylactic measures" "such as increasing the inspections of the suspect State Party." The question for decision is: Should the U.S. propose prophylactic measures against treaty violators, anomalies and/or unclear circumstances for inclusion in the CWC? (If yes, mandatory or recommendatory?)

PROS...

CONS...

(intermediate questions include: What are the objectives of prophylactic measures? What is the mechanism for determining/declaring that an anomaly or unclear circumstances exist? At what point does a prophylactic measure become punitive? Are punitive measures appropriate for anomalies and unclear circumstances?)

3. NSD 24 asks "what kinds of sanctions would be most appropriate and effective for each type of violation?" The third draft does not discuss the effectiveness of any of the proposed sanctions or compliance restoration measures and does not attempt to match specific sanctions with specific violations.

4. The Annex should distinguish between punitive sanctions and (add) compliance restoring "prophylactic measures."

~~SECRET~~