

## **.SIAK-Journal – Journal for Police Science and Practice**



Martino, Antonio-Maria (2014):

### **Reform of the UN Targeted Sanctions Regime – Mission Accomplished?**

SIAK-Journal – Journal for Police Science and Practice (International Edition Vol. 4), 30-41.

doi: 10.7396/IE\_2014\_C

*Please cite this article as follows:*

Martino, Antonio-Maria (2014). Reform of the UN Targeted Sanctions Regime – Mission Accomplished?, SIAK-Journal – Journal for Police Science and Practice (International Edition Vol. 4), 30-41, Online: [http://dx.doi.org/10.7396/IE\\_2014\\_C](http://dx.doi.org/10.7396/IE_2014_C).

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Note: A hard copy of the article is available through the printed version of the SIAK-Journal published by NWV (<http://nwv.at>).

published online: 8/2014

# Reform of the UN Targeted Sanctions Regime – Mission Accomplished?



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During the Cold War the United Nations applied only in very few cases economic and other sanctions against specific countries. From the early 1990s, after the end of the stalemate in the Security Council, the UN resorted more frequently to comprehensive economic sanctions such as trade embargoes against whole countries. However, the comprehensive sanctions applied by the UN have proven to be rather poorly effective and often had serious and adverse impacts on the most vulnerable groups in the targeted country. Hence, the Security Council started to rely on "targeted" (also called "smart") sanctions directed against individuals or entities. Targeted sanctions include financial and travel restrictions but also restrictions on arms and commodities. They aim to change the behavior of the targeted individuals or entities or to prevent actions contrary to international peace and security. In particular in connection with the global war against terror the United Nations adopted targeted sanctions against hundreds of individuals and entities. Growing criticism with regard to the effectiveness of UN targeted sanctions and their compliance with due process rights and human rights, coupled with several cases challenging the implementation of the sanctions regime (in particular with regard to the sanctions directed against the Taliban and Al Qaeda) have done much to weaken the credibility of such "smart" sanctions. Therefore, the United Nations have undertaken several measures to enhance the transparency and accountability of the various targeted sanctions regimes.

## INTRODUCTION

Chapter VII of the UN Charter allows the United Nations Security Council (UNSC) to take enforcement measures to maintain or restore international peace and security. According to Article 41 of the UN Charter "(t)he Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic

relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations". The use of mandatory "sanctions" shall "apply pressure on a state or entity to comply with the objectives set by the Security Council without resorting to the use of force".<sup>1</sup> The measures provided for in Article 41 "are not necessarily intended as a substitute for military action"<sup>2</sup>. These sanctions have been applied to "respond to serious violations of international law amounting to a threat or a breach of

peace, and to react to situations which, although not constituting a violation of international law, imperilled peace and security”<sup>3</sup>. The wording of Article 41 is not precise and leaves it open whether these measures could only be applied to states or state-like entities or also to individuals or other entities.

During the Cold War economic and other sanctions have been applied in very few cases.<sup>4</sup> Only after 1990 this instrument has been more widely used. The SC imposed economic sanctions or military embargoes against Iraq (Resolution 661 of 6 August 1990), Somalia (Resolution 733 of 23 January 1992), Libya (Resolution 748 of 31 March 1992), Yugoslavia (Resolution 757 of 30 May 1992), Liberia (Resolution 788 of 19 November 1992), Haiti (Resolution 841 of 16 June 1993), Sierra Leone (Resolution 1132 of 8 October 1997) and against the Taliban in Afghanistan (Resolution 1267 of 15 October 1999).<sup>5</sup> The basic requirement economic and other sanctions should meet is that they should induce the targeted state to stop the misbehavior addressed by the sanctions. Sanctions should not be misused in order to gain political or diplomatic or economic advantages. They are “primarily intended to dramatize and articulate the condemnation of a certain form of behavior and [...] to ‘delegitimize’ it”.<sup>6</sup>

The sanctions applied by the UNSC since 1966 have often proven to be poorly effective.<sup>7</sup> Over the years, it has become increasingly clear that the sanctions undertaken by the UNSC in the early 1990s, though on the one hand achieving the goal to politically delegitimize the misbehavior of the targeted states, on the other hand had serious and adverse impacts on the most vulnerable groups in the targeted country.<sup>8</sup> Mainly the sanctions against Iraq, Serbia-Montenegro and Haiti raised widespread concern about the hardship

caused on civilian populations. Concerns have been raised particularly about the effects of comprehensive economic sanctions which – through shortages in food and medication – tend to bring suffering to children, the elderly and the poor.<sup>9</sup>

In order to avoid harmful consequences for the civil population of the targeted country “and to reform the concept of UN sanctions as a whole, the Commission on Human Rights of the UN Economic and Social Council suggested that the Security Council should better apply targeted sanctions. Those should be directed at specific members of the regime or of the military of the country in question, by freezing their bank accounts in foreign countries and by limiting their access to the international financial market. To this end, the UN should compile ‘lists’ with the names of relevant persons belonging to the regime or to the military”<sup>10</sup>. For that purpose the Commission on Human Rights relied in particular on the preliminary works made within the framework of the “Interlaken Process”<sup>11</sup>.

### TARGETED SANCTIONS

The comprehensive sanctions against Iraq and their consequences for the civilian population led the international community to question the efficacy of such measures. Hence, the UNSC started to focus on “targeted” (“smart”) sanctions. Many considered the adoption by the UNSC of measures against the Uniao Nacional para a Independencia Total de Angola (UNITA) “as the inauguration of a new course of action”<sup>12</sup>. Targeted sanctions other than comprehensive economic sanctions against a country are intended to be directed at individuals, companies and organizations, or restrict trade with key commodities. The following instruments can be applied: Financial sanctions (freezing of funds and other financial assets, ban on transactions, investment restrictions);

trade restrictions on particular goods (e.g., arms, diamonds and oil) or services; travel restrictions; diplomatic constraints; cultural and sports restrictions; air traffic restrictions.<sup>13</sup> “Targeted sanctions are typically applied either as incentives to change behavior or as preventive measures, as in the case of sanctions against individuals or entities that facilitate terrorist acts. Sanctions to stem the financing of terrorism or to deny safe haven or travel by terrorists have become valuable tools in the global effort to counter terrorism.”<sup>14</sup> Despite controversies with regard to the identification of legitimate targets, the sanctions against UNITA conveyed the impression that targeted sanctions could effectively work in order to reach compliance with UNSC resolutions without affecting civilians. The UN gained confidence from this new instrument and, therefore, decided to adopt a similar strategy for the fight against the Taliban and Usama Bin Laden.<sup>15</sup>

### **SANCTIONS AGAINST AL-QAIDA AND THE FINANCING OF TERRORISM**

When targeted sanctions were first introduced, the rights of the individual targeted (usually dictators or autocratic leaders) were not considered, as the people targeted were generally not the subject of widespread sympathy. Only after the application of Resolution 1267 (1999)<sup>16</sup> to a vast number of individuals and entities, did concerns about the violation of human rights become increasingly relevant. Indeed, it has been the widespread application of targeted sanctions in support of counter-terrorism measures since 2001 that has raised the most questions about their potential violation of individual human rights.

The UNSC adopted Resolution 1267 on 15 October 1999. This resolution was a measure designed to put pressure on the Taliban regime in Afghanistan to hand

over Usama bin Laden for the attacks on two US embassies in Africa in August 1998. The resolution was unusual as it named an individual in the text of the resolution, Usama bin Laden, even though he was technically not initially the target of the sanctions.<sup>17</sup> Of the various sanctions regimes, the one established by UN Security Council Resolution (UNSCR) 1267 (1999) has gained particular practical importance because of the relatively high number (more than 500) of individuals and entities listed. The UN Member States are obliged to take, inter alia, the following measures in order to comply with UNSCR 1267 (1999)<sup>18</sup>: freeze without delay the funds and other financial assets or economic resources, prevent the entry into or transit through their territories and prevent the direct or indirect supply, sale or transfer of arms and related material, including military and paramilitary equipment, technical advice, assistance or training related to military activities, with regard to the individuals, groups, undertakings and entities placed on the “Consolidated List”. The SC Committee, established pursuant to paragraph 6 of UNSCR 1267 (1999) (hereinafter referred to as the Committee), oversees the implementation by states of the three sanctions measures (assets freeze, travel ban and arms embargo) imposed by the SC on individuals and entities associated with Al-Qaida. The Committee maintains a list of individuals and entities subject to the sanctions measures.

In order to strengthen the sanctions regime, UNSC Resolution 1267 (1999) was modified by subsequent resolutions, including Resolutions 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008), 1904 (2009), 1989 (2011) as well as Resolution 2083 (2012). According to the “1267 Guidelines”<sup>19</sup> (which, essentially, were introduced in order to overcome the lack

of transparency in the decision-making procedure) “(t)he Committee will meet in closed sessions, unless it decides otherwise. The Committee may invite any Member of the United Nations to participate in the discussion of any question brought before the Committee in which interests of that Member are specifically affected. The Committee will consider requests from Member States and relevant international organizations to send representatives to meet with the Committee [...]. The Committee may invite members of the Secretariat or other persons to provide the Committee with appropriate expertise or information or to give it other assistance in examining matters within its competence.”<sup>20</sup>

“The Committee shall take its decisions by consensus of its Members. If consensus cannot be reached on a particular issue, including listing and de-listing, the chairperson<sup>21</sup> of the committee should undertake further consultations in order to facilitate the agreement. If after these consultations consensus still cannot be reached the matter is to be submitted to the UNSC.<sup>22</sup> Where the Committee agrees, decisions may be taken by a written procedure. In such cases the Chairperson will circulate to all Members of the Committee the proposed decision, and will request Members of the Committee to indicate any objection they may have to the proposed decision within five full working days or, in urgent situations, such shorter period as the Chairperson shall determine.”<sup>23</sup>

As regards the listing and de-listing requests, the Guidelines establish that they shall be assessed, together with all relevant information, by the chairperson. If no objection is received within the specified period (usually ten working days), the decision will be deemed adopted. UN Member States are encouraged to establish a national mechanism or procedure to identify and assess names for the inclusion on the

Al-Qaida Sanctions List and to appoint a national contact point concerning entries on that list according to national laws and procedures.<sup>24</sup> In line with section 6 paragraph (c) of the Guidelines, Member States, before proposing a name for inclusion on the Al-Qaida Sanctions List, are “strongly encouraged, to the extent possible, to approach the State(s) of residence and/or nationality of the individual or entity concerned to seek additional information”. When proposing names, Member States should use the standard forms for listing available on the Committee’s website “and shall include as much relevant and specific information as possible on a proposed name, in particular sufficient identifying information to allow for the accurate and positive identification of the individual, group, undertaking or entity concerned by competent authorities, and to the extent possible, information required by INTERPOL to issue a Special Notice”.<sup>25</sup>

As regards the de-listing procedure, there are different provisions that apply, depending on whether Member States or the designating State(s) or the “Office of the Ombudsperson” requests the de-listing of an individual or an entity.<sup>26</sup> The Committee makes available basic information on de-listing procedures in a “Fact Sheet on de-listing”<sup>27</sup>. By Resolution 1904 (2009)<sup>28</sup>, the SC established an Office of the Ombudsperson<sup>29</sup> to assist the Committee in considering de-listing requests. The Guidelines stipulate that any individuals, groups, undertakings, and/or entities on the Al-Qaida Sanctions List may submit a petition for de-listing. The de-listing submission should explain why the individual or entity concerned no longer meets the criteria for inclusion on the Al-Qaida Sanctions List. Any documentation supporting the request can be referred to and/or attached together with an explanation of its relevance.

Resolution 1373 (2001)<sup>30</sup> encouraged states to establish their own terrorist listing systems and was the basis for the terror lists of the EU. UNSCR 1373 also established a Committee of the Council to monitor its implementation and called on all states to report on actions they had taken to that end. The SC decided that all states should prevent and suppress the financing of terrorism, as well as criminalize the wilful provision or collection of funds for such acts. The funds, financial assets and economic resources of those who commit or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts and of persons and entities acting on behalf of terrorists should be also frozen without delay. The SC urged Member States to prohibit their nationals or persons or entities in their territories from making funds, financial assets, economic resources, financial or other related services available to persons who commit or attempt to commit, facilitate or participate in the commissioning of terrorist acts. The SC decided that all states should prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other countries and their citizens. States should also ensure that anyone who has participated in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice. The Member States should also ensure that terrorist acts are established as serious criminal offences in domestic laws and regulations and that the seriousness of such acts is duly reflected in sentences served.<sup>31</sup>

### SHORTCOMINGS

Similarly to comprehensive (economic) sanctions, targeted sanctions can also interfere with human rights. Travel bans interfere primarily with the right of free movement. Financial sanctions have an

impact on property rights but can also affect a person's privacy and reputation.<sup>32</sup> If the sanctions are wrongly imposed on listed individuals without granting these individuals the possibility of being heard or of challenging the measures taken against them, there may also be a violation of the right of access to court, the right to a fair trial and the right to an effective remedy. In the extreme, sanctions could conceivably violate the right to life, for instance if a travel ban prevents a targeted person from leaving the country to seek medical aid, or when financial sanctions are so stringent that a targeted person does not have resources to buy basic goods such as food. However, existing UN sanctions regimes invariably include a possibility to grant exemptions precisely to avoid those kinds of situations. The travel ban could also conflict with rights and freedoms such as the freedom of religion, if the particular religion requires pilgrimages, and the right to seek asylum. It is noteworthy that UN sanctions committees have routinized exemptions for travel for religious purposes.<sup>33</sup>

When individuals or entities are potentially targeted, there is no prior notification. Member States can submit listing requests at any time. However, guidelines for the various Committees require designating states to provide a detailed statement of case in support of the proposed listing that forms the basis or justification for listing. The statement of case should also include sufficient identifiers to allow for the positive identification of the individual or entity. Those recommended for designation do not have access to sufficient information regarding the grounds for listing and, therefore, do not have the means at their disposal to challenge the designation and present an effective defense prior to their listing. Once the designated person or entity is informed of the Committee's intention to designate, the Committee should

allow the designee to present potentially exculpatory evidence.<sup>34</sup>

The Committee reflects the composition of the SC and, thus, can usually base its decisions only on the information provided by the “intelligence” services of the concerned states. That is probably also the reason why originally no information was given on the modalities and procedures related to the inclusion of a particular individual or entity on the list.<sup>35</sup> An independent review of the information brought forward by a state would, of course, represent a major step forward.<sup>36</sup> However, it seems obvious that states – as it is usually the case in matters related to internal and national security – are very reluctant to share classified information or even allow an independent *ex ante* review before a decision on a listing has been adopted. Not less important is the question of the possible establishment of certain criteria that shall apply with regard to the inclusion on a terror list. Neither the relevant resolutions nor the Guidelines give precise indications which quality or level the association with Al-Qaida, the Taliban and/or Usama bin Laden should have in order to justify targeting a particular individual or entity. Moreover, there is no indication on the level of probability required for the association with Al-Qaida, the Taliban and/or Usama bin Laden.<sup>37</sup>

### **MAJOR REFORMS OF THE AL-QAIDA SANCTIONS REGIME**

When targeted sanctions are implemented effectively, they can cause economic disruption and financial hardship to the targeted parties. These consequences are mitigated to some degree by exemptions to cover basic needs, as appropriate, which are administered by relevant sanctions committees. However, the stigmatizing and psychological impact of being wrongly listed may have more significant and

far-reaching effects than economic or financial hardships. From the standpoint of individuals engaged in business operations, a damaged reputation may be the most significant and longest lasting consequence of being (wrongly) targeted.<sup>38</sup>

The Interlaken Process triggered an international diplomatic and academic process on targeted sanctions. This process was initiated by Switzerland and focused on financial sanctions. It was followed by the initiative of Germany, the “Bonn-Berlin Process”, dealing with arms embargoes, aviation sanctions and travel bans. These processes brought together experts, academic researchers, diplomats, practitioners and non-governmental organizations. Two volumes with practical suggestions were presented to the SC in October 2001. At this occasion, Sweden announced the start of a similar, third process, the “Stockholm Process”, concentrating on the implementation of targeted sanctions.<sup>39</sup>

The sanctions regime established by UNSCR 1267 (1999) has been modified several times. The main improvements that aimed at addressing the major shortcomings of the targeted sanctions regime against Al-Qaida were in particular the following:

Resolution 1526 (2004)<sup>40</sup> established an “Analytical Support and Sanctions Monitoring Team” (hereinafter referred to as Monitoring Team) in order to assist the 1267 Sanctions Committee in evaluating the changing face of the Taliban and al Qaeda and gathering information necessary for strengthening and updating the Consolidated List. The team is composed of eight independent experts with experience in counter-terrorism, financing of terrorism, arms embargoes, travel bans and related legal issues. In UNSCR 1526 (2004) the SC also reiterated “the importance of proposing to the Committee the names of members of the Al-Qaida organization and the Taliban or associated

with Usama bin Laden and other individuals, groups, undertakings and entities associated with them for inclusion in the Committee's list, unless to do so would compromise investigations or enforcement actions"<sup>41</sup>. The SC also called upon "all States, when submitting new names to the Committee's list, to include identifying information and background information, to the greatest extent possible, that demonstrates the individual(s)' and/or entity(ies)' association with Usama bin Laden or with members of the Al-Qaida organization and/or the Taliban, in line with the Committee's guidelines"<sup>42</sup>.

On 19 December 2006, the SC adopted Resolution 1730<sup>43</sup> calling for the establishment within the Secretariat of a Focal Point to receive de-listing requests. UNSCR 1730 allows individuals to petition directly to the UN Secretariat for de-listing. The Focal Point, after receiving a request from a petitioner, acknowledges its receipt and informs the petitioner of procedures for processing de-listing requests. The Focal Point forwards the requests to the designating states and states of citizenship and residence, and informs the petitioner of the sanctions committee's decision (as the Focal Point serves all sanctions committees, not only the 1267 Committee). It allows petitioners seeking de-listing to submit requests to the Secretariat, in addition to their state of residence or citizenship. Prior to the Focal Point, targeted parties generally could only access the UN system through their country of residence or nationality.<sup>44</sup>

UNSCR 1267 (1999) contained no provision for de-listing when it was first introduced. Following the recommendations of the "Watson Report" in 2006, the SC adopted Resolution 1735 (2006), which elaborated minimal standards for statements of case, created a provision for the public release of that information, and estab-

lished a procedure to improve deficiencies in notification. Targets were to be provided with a redacted statement of case indicating the basis for listing.<sup>45</sup>

Review mechanisms were at the heart of a further reform introduced in 2008. The SC significantly expanded the 1267 committee's role in addressing listing and de-listing issues. UNSCR 1822 (2008)<sup>46</sup> required a review of all names on the list within two years (30 June 2010), and an annual review thereafter to ensure that every designation is reviewed at least every three years (including those deceased). Secondly, it required the development of narrative summaries (for all listings) which are published on the committee website, and explain the basis for inclusion of names on the list.

By Resolution 1904 (2009), the SC introduced a further improvement by establishing the Office of the Ombudsperson to assist the Committee in considering de-listing requests. The newly established office has the task to investigate any individual petitions for the removal of names from the 1267 Consolidated List. The mandated duties of the Office of the Ombudsperson include gathering information and interacting with petitioners, relevant states and organisations with regard to delisting. The Ombudsperson is expected to present a comprehensive report to the SC on each request submitted to the Committee, after which the outcome is communicated to the petitioner by the Ombudsperson.<sup>47</sup> The Ombudsperson replaces the Focal Point as the only avenue for listed individuals to directly petition the UN to be de-listed under the 1267 sanctions regime.<sup>48</sup>

## LEGAL CHALLENGES

Targeted sanctions have given rise to several concerns. In particular, listing procedures and the opportunity for review by wrongly designated individuals or en-

ties raise “serious accountability issues and possibly violate fundamental human rights norms and conventions”.<sup>49</sup> Targeted or smart sanctions are meant to be of a rather preventive nature and should not, in theory, be punitive. The inclusion on the list “is not a legal determination, but rather a political finding of association with al Qaeda and the Taliban”<sup>50</sup>. The designations are also intended to be temporary, at least in theory. As such, they do not require the evidentiary standards associated with legal prosecutions. Nonetheless, the open-ended nature of their application by UN sanctions committees, combined with the potential violation of elements of due process in their application to individuals, have led to legal challenges about their punitive nature.

Numerous legal challenges to UNSC targeted sanctions listings have been pursued in courts worldwide – e.g., in Europe, the US, Pakistan, Canada, Turkey – over designations made either by the UNSCR 1267 Committee or in the context of the implementation of UNSCR 1373. Some of the cases have been dropped, after individuals were de-listed by the 1267 Committee. Probably the most highly visible and significant challenges were the Kadi I and Kadi II cases that were dealt with by the European Court of Justice (ECJ).<sup>51</sup> The ECJ finally decided in favor of the two legal challenges and annulled the European Union regulation implementing UNSCR 1267 with specific reference to the two cases. In its judgments in the cases of Kadi & Al Barakaat<sup>52</sup>, the Court distinguished between the imposition of the sanctions by the 1267 Committee and the implementation of the sanctions at the EU level, holding that the latter are bound by fundamental rights when implementing the sanctions, and that therefore they must ensure that the persons affected have the right to be informed of the reasons for their listing and

the right to contest those reasons before an independent body. The Court specifically charged that the rights of the defense, in particular the right to be heard, and the right to effective judicial review of those rights, were patently not respected.<sup>53</sup>

Another more recent and very relevant case is the *Nada vs. Switzerland* case<sup>54</sup> decided on 12 September 2012 by the European Court of Human Rights (ECtHR). Switzerland was eventually condemned as the Court held that there had been a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights (ECHR), and a violation of Article 8 taken together with Article 13 (right to an effective remedy) ECHR. However, similarly to the Kadi approach of the ECJ, the ECtHR focused on the implementation of the UN measures by a state (Switzerland) and did not directly challenge the sanctions system of the UN.

## CONCLUDING REMARKS

The listing process can have a dramatic impact on people’s lives. The Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, affirmed in its report, “Assessing Damage, Urging Action”<sup>55</sup>, that though the freezing of assets of those involved in terrorism “is clearly an acceptable and indeed necessary tactic in effectively combating terrorism”,<sup>56</sup> the listing system is “unworthy” of international institutions like the UN and EU. Also other institutions such as the Council of Europe and the European Parliament have issued reports critical of the UN sanctions process for inadequate procedures for de-listing.<sup>57</sup> The legal challenges brought against several UN and/or EU provisions undertaken against Al-Qaida and the financing of terrorism have clearly shown that the original provisions of the Al-Qaida sanctions regime were lacking appropriate legal safeguards.

Despite the reforms of the Al-Qaida sanctions regime that have been undertaken throughout the last decade, there is still room to improve the procedures and legal safeguards. Some of the provisions that have been introduced to “strengthen” UNSCR 1267 (1999) may be too recent to be judged upon, others have already shown some effectiveness and again others may still be too weak to comply with international fundamental rights standards. Whereas the procedural changes to date are generally fairly good on addressing concerns about notification and improved accessibility<sup>58</sup>, the current de-listing procedure, for example, still seems to lack an effective remedy entailing elements of independence, impartiality and effectiveness. In particular the introduction and enhancement of the Office of the Ombudsperson through UNSCR 1904 and 1989 established basic rights of the suspects, such as the right to be informed of the measures taken by the UNSC against them and the right to be heard within a reasonable time by the relevant decision-making body. However, the current mechanism is still perceived to be inadequate. Apart from the lack of an effective remedy, the fact that the Ombudsperson’s recommendations are not binding on the Sanctions Committee is also to be considered a major deficiency of the current system.<sup>59</sup>

At the same time we have to consider that terrorism continues to be a major threat for many states (not only “Western” countries). The 1267 sanctions are counter-terrorism measures and, of course, their application usually involves classified information (up to the “secret” and “top secret” level of classification) that cannot easily be shared with independent reviewers.<sup>60</sup> Any advisory mechanism should have clear and specific regulations in place to deal with classified information. General declarations may not suffice in this

respect. Of course, listings should not be done purely on the basis of classified information in light of existing rights of targeted individuals to know the case against them and to have some insight into the evidence adduced against them.<sup>61</sup> However, it seems rather unlikely that “full transparency” could ever become a realistic approach when dealing with matters of national security.

Apart from the still remaining lack of due process rights, enhanced implementation of targeted sanctions would be equally necessary. Implementation could be improved “by making better use of existing resources through cooperation with other multilateral and regional organizations and with the addition of some vital new resources, particularly to enhance the capacity of the Secretariat to better administer sanctions and to enhance the capacity of Member States to fully implement sanctions”<sup>62</sup>. In this respect, the United Nations have undertaken steps to increase cooperation between the SC and INTERPOL. Further steps could be taken to enhance cooperation with the EU and its institutions such as Europol and the External Action Service.

Despite the still existing shortcomings of the targeted sanctions system, it cannot be denied that the UN have undertaken serious efforts, both to improve the efficiency and effectiveness of the sanctions system as well as to establish fair and clear procedures. Countering the financing of terrorism remains a core component of the UN strategies in the fight against terrorism. As terrorists and their supporters constantly modify their ways to collect, move and gain access to funds, there is a need of a robust and efficient but also fair sanctions system. If the measures against international terrorism adopted by the UN shall be effective, they must also comply with international human rights standards. Otherwise, in the long term, the efforts could be in vain.

<sup>1</sup> On the various sanctions regimes, see the dedicated UN Security Council Sanctions Committee website, available at <http://www.un.org/sc/committees/index.shtml>.

<sup>2</sup> Cassese 2005, 340.

<sup>3</sup> *Ibid.*

<sup>4</sup> The UNSC explicitly referred to Art. 41 in its sanctions against Southern Rhodesia (1966–1979) and against South Africa (1977–1994).

<sup>5</sup> See Cassese 2005, 341.

<sup>6</sup> *Ibid.*, 312.

<sup>7</sup> According to G. Holley, this lack of effectiveness has four reasons: “first, because the Security Council had [...] an outdated concept of international trade in mind, viewing it as bilateral trade flows; second, because they targeted only the trade in goods, but not the financial services, which made their evasion considerably easier than had the latter also applied; third, because there was no systematic monitoring by the respective ‘sanctions’ committees, whose task consisted only of gathering information about reported violations of sanction regimes; and fourth, because humanitarian exemptions were often granted in a rather generous way and because there were hardly any control mechanisms to ensure that exempted goods were in fact used for humanitarian purposes” (Holley 2011).

<sup>8</sup> See Cassese 2005, 312.

<sup>9</sup> See the first report of the Swiss Federal Office for Foreign Economic Affairs Department of Economy on the Expert Seminar on Targeting UN Financial Sanctions held in Interlaken from 17 to 19 March 1998, 14.

<sup>10</sup> Holley 2011, 1005.

<sup>11</sup> 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.

<sup>12</sup> Bianchi 2006.

<sup>13</sup> On the notion of “smart” or “targeted” sanctions, see also the website of the Swiss State Secretariat for Economic Affairs (SECO), available at <http://www.se.co.admin.ch/themen/>

00513/00620/00639/index.html?lang=en.

<sup>14</sup> Watson Institute for International Studies 2006.

<sup>15</sup> See Bianchi 2006, 882.

<sup>16</sup> S/RES/1267 (1999) was adopted by the Security Council at its 4,051<sup>st</sup> meeting on 15 October 1999.

<sup>17</sup> See Watson Institute for International Studies, 6.

<sup>18</sup> Paragraphs 2 and 4 of UNSCR 1267 read:

“2. Demands that the Taliban turn over Usama bin Laden without further delay to appropriate authorities in a country where he has been indicted, or to appropriate authorities in a country where he will be returned to such a country, or to appropriate authorities in a country where he will be arrested and effectively brought to justice;

4. Decides further that, in order to enforce paragraph 2 above, all States shall:

(a) Deny permission for any aircraft to take off from or land in their territory if it is owned, leased or operated by or on behalf of the Taliban as designated by the Committee established by paragraph 6 below, unless the particular flight has been approved in advance by the Committee on the grounds of humanitarian need, including religious obligation such as the performance of the Hajj;

(b) Freeze funds and other financial resources, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any undertaking owned or controlled by the Taliban, as designated by the Committee established by paragraph 6 below, and ensure that neither they nor any other funds or financial resources so designated are made available by their nationals or by any persons within their territory, to or for the benefit of the Taliban or any undertaking owned or controlled, directly or indirectly, by the Taliban, except as may be authorized by the Committee on a case-by-case basis on the grounds of humanitarian need;”

<sup>19</sup> Guidelines of the “Al-Qaida Sanctions Committee”, adopted on 7 November 2002, as amended on 10 April 2003, 21 December 2005, 29 Novem-

ber 2006, 12 February 2007, 9 December 2008, 22 July 2010, 26 January 2011, and 30 November 2011, available at [http://www.un.org/sc/committees/1267/pdf/1267\\_guidelines.pdf](http://www.un.org/sc/committees/1267/pdf/1267_guidelines.pdf).

<sup>20</sup> *Ibid.*, 2.

<sup>21</sup> According to section 1 paragraph (c) of the Guidelines, the Chairperson of the Committee is appointed by the Security Council to serve in his/her personal capacity. The Chairperson is assisted by two delegations who act as Vice-Chairpersons, and who are also appointed by the Security Council. The Chairperson can convene meetings of the Committee, both formal and informal, at any time he/she deems necessary, or at the request of a Member of the Committee. To the extent possible, four working days notice will be given for any meeting of the Committee, although shorter notice may be given in urgent situations.

<sup>22</sup> See *ibid.*, 2.

<sup>23</sup> See Guidelines, section 4 paragraph (b).

<sup>24</sup> See Guidelines, section 6 paragraph (b).

<sup>25</sup> Guidelines, section 6 paragraph (g).

<sup>26</sup> See Guidelines, section 7.

<sup>27</sup> The Fact Sheet on de-listing is available at [http://www.un.org/sc/committees/1267/fact\\_sheet\\_delisting.shtml](http://www.un.org/sc/committees/1267/fact_sheet_delisting.shtml).

<sup>28</sup> Resolution 1904 (2009) was adopted by the Security Council at its 6247<sup>th</sup> meeting, on 17 December 2009.

<sup>29</sup> On 3 June 2010, the Secretary-General appointed Ms. Kimberly Prost to serve as Ombudsperson. For further information concerning the Office of the Ombudsperson see <http://www.un.org/en/sc/Ombudsperson/>. On 17 December 2012 by Resolution 2083 (2012), the Security Council further detailed the criteria for designation as an individual or entity associated with Al-Qaida and subject to an asset freeze, travel ban and arms embargo. It also extended for 30 months the mandate the Office of the Ombudsperson established by resolution 1904 (2009) to handle de-listing requests and improve the regime's transparency and fairness. Resolution 2082 (2012) applied the same measures to individuals or entities "associated with the Taliban in constituting a threat to the peace and stability

of Afghanistan". In addition, the UNSC decided that the monitoring team should assist in monitoring implementation of those measures for 30 months to address issues of non-compliance, and to facilitate, upon requests by Member States, assistance on capacity-building for purposes of ensuring compliance.

<sup>30</sup> S/RES/1373 (2001) was adopted by the Security Council at its 4,385<sup>th</sup> meeting, on 28 September 2001.

<sup>31</sup> See Press Release SC/7158 of 28 September 2001 published after the 4,385<sup>th</sup> Meeting of the Security Council, available at <http://www.un.org/News/Press/docs/2001/sc7158.doc.htm>.

<sup>32</sup> Watson Institute 2006, 9–10.

<sup>33</sup> *Ibid.*, 10.

<sup>34</sup> Cha 2012, 4–5.

<sup>35</sup> See Ciampi 2007, 97.

<sup>36</sup> See *ibid.*, 102.

<sup>37</sup> See *ibid.*, 103.

<sup>38</sup> See *ibid.*, 5.

<sup>39</sup> See Wallensteen et al. 2003, iii.

<sup>40</sup> S/RES/1526 (2004) of 30 January 2004.

<sup>41</sup> *Ibid.*, paragraph 16.

<sup>42</sup> *Ibid.*, paragraph 17.

<sup>43</sup> S/RES/1730 (2006) of 19 December 2006.

<sup>44</sup> See Watson Institute 2009, 12.

<sup>45</sup> *Ibid.*, 14.

<sup>46</sup> S/RES/1822 (2008) of 30 June 2008.

<sup>47</sup> See Ramsey 2011, 2.

<sup>48</sup> See Willis 2011, 688.

<sup>49</sup> See Tully 2009.

<sup>50</sup> Watson Institute 2009, 6.

<sup>51</sup> See Watson Institute 2006, 8.

<sup>52</sup> Cases C-402 P and 415/05 P, Kadi & Al Barakaat International Foundation v Council and Commission, (2008) ECR I-6351.

<sup>53</sup> Watson Institute 2006, 8.

<sup>54</sup> ECtHR, *Nada v. Switzerland*, Judgement of the Grand Chamber, Appl. No. 10593/08, 12 September 2012.

<sup>55</sup> International Commission of Jurists 2009.

<sup>56</sup> *Ibid.*, 113.

<sup>57</sup> See also Watson Institute 2009, 10.

<sup>58</sup> *Ibid.*, 22.

<sup>59</sup> With regard to the reforms undertaken by the

UN see *Watson Institute for International Studies* 2012, 22–25.

<sup>60</sup> See *ibid.*, 19.

<sup>61</sup> See *ibid.*, 20.

<sup>62</sup> *Cosgrove* 2003–2008.

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