

Sanctions and Security Research Program

Human Rights and Targeted Sanctions

An Action Agenda
for Strengthening
Due Process Procedures

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Human Rights and Targeted Sanctions: An Action Agenda for Strengthening Due Process Procedures

International sanctions intended to counter terrorism have been criticized for violating human rights and failing to comply with due process legal standards. Blacklisting practices have impeded the work of certain civil society groups and charities. The resulting controversy has eroded the credibility of UN Security Council counterterrorism sanctions and made it more difficult for some states and regional organizations to comply with these measures. Action is urgently needed to reform current listing and delisting procedures through a strengthening of due process procedures.

The goal of due process reforms is to enhance the effectiveness and credibility of United Nations Security Council targeted sanctions. As noted in numerous reports, targeted sanctions are suffering from a crisis of legitimacy. The legal and political problems associated with listing and delisting procedures have undermined the impact of this important instrument for advancing international peace and security. While improvements have been made to sanctions procedures in recent years, important challenges remain.

Opportunities for enhancing due process procedures will arise in the coming weeks as the Security Council renews the authority of the Analytical Support and Sanctions Monitoring Team (hereafter the Monitoring Team). Additional changes may be considered in 2010, after completion of the comprehensive review of the Consolidated List mandated in Resolution 1822 (2008).

This paper examines various policy reform options to improve listing and delisting procedures. It begins by evaluating reform efforts to date, and the work of the Focal Point. This is followed by an examination of options for improving information gathering and sharing through greater utilization of the Monitoring Team and Focal Point. The paper recommends specific steps to create more deliberative procedures for the consideration of delisting petitions and more robust procedures for the notification and review of initial listing decisions. Other options considered include an independent review mechanism and time limits on listing decisions. The paper concludes with a summary of recommendations.

Reform Efforts to Date

The courts, government officials, and legal experts have identified substantial legal shortcomings in the implementation of targeted sanctions.¹ The procedures for placing individuals and entities on sanctions lists and removing them do not fully respect internationally recognized human rights law. In its recent report, the Eminent Jurists Panel of the International Commission of Jurists received “virtually uniform criticism” of procedures that have been deemed “arbitrary” and discriminatory by numerous nations and international agencies. It is a system, said the panel, “unworthy of international institutions such as the United Nations and the European Union.”² The UN General Assembly declared in the 2005 World Summit Outcome

document that the Security Council and the Secretary-General should “ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them, as well as for granting humanitarian exemptions.”³

In recent years the Security Council has taken steps to improve its listing and delisting procedures with the adoption of Resolutions 1617 (2005), 1730 (2006), 1735 (2006), and 1822. These amendments to the committee’s methods “contain the germ of an administrative procedure based on the rule of law,” according to a recent analysis in the *German Law Journal*, but there is “still a long way to go.”⁴ These and other reform measures are examined in detail in the recent Watson Institute updated report.⁵ They are also summarized in the appendix to this paper.

Resolution 1822 was particularly significant in mandating new review requirements, better procedures to notify listed parties of the action taken against them, and public release of statements explaining the reasons for listing. The resolution directed the Al-Qaida/Taliban Sanctions Committee established by Resolution 1267 (1999)—hereafter the 1267 Committee—to review all the names on the Consolidated List by 30 June 2010, and each entry again every three years, “to ensure the Consolidated List is as updated and accurate as possible and to confirm that listing remains appropriate.”⁶

Despite these improvements, Security Council procedures still do not meet fundamental human rights standards for procedural fairness, including the right to be heard and the availability of a judicial remedy for those wrongly harmed. These rights form the very basis of due process of law and are guaranteed by leading international legal agreements, including the Universal Declaration of Human Rights and the United Nations Covenant on Civil and Political Rights.

The lack of human rights protections has prompted legal challenges in regional and national courts.⁷ These cases have not questioned the Security Council's authority to impose sanctions, but they have found fault with national and regional implementation efforts. The court rulings have generated concerns about the legitimacy of targeted sanctions and the effectiveness of the tool. Although the challenges have focused on the Al-Qaida/Taliban sanctions regime, the controversy over due process rights could impede the implementation of sanctions in other cases as well.

Before considering policy reform options, it is important to evaluate the political climate in which any of the proposals will be considered. Two contradictory trends are evident. On the one hand, momentum has been created by the advocacy efforts of a group of interested states,⁸ the various court rulings, and Security Council efforts to improve listing procedures. These developments have started to turn the tide toward greater respect for due process rights and have led to the incorporation of important legal protections in listing and delisting procedures. On the other hand, some permanent members of the Security Council have been reluctant to consider more far-reaching structural changes that might limit the authority of the Council and their role within it.

The discourse on reform thus appears trapped in a quandary. Proposals for independent mechanisms to guarantee full due process rights are politically infeasible, while proposals that may gain support from the Security Council contain shortcomings that do not guarantee due

process rights. Overcoming these dilemmas will require a reform strategy that takes incremental steps toward more fundamental structural change.

Assessing the Focal Point

Security Council Resolution 1730 enabled individuals and entities placed on sanctions lists to apply for delisting directly to the committee rather than through their state of citizenship or residence. Applications are submitted through the Focal Point, which consists of a single program officer in the Secretariat who processes the paperwork and has no decision-making authority. The right to petition is available to the listed parties of any sanctions committee and applies even if their state of nationality or residency does not support the delisting request. Once a petition is submitted, the Focal Point asks the state of nationality or residency and the designating state to review the application. If none of these states conducts a review or supports the petition, other members of the sanctions committee may provide information on the case and ask the committee to consider the petition.

Resolution 1730 is not clear on what happens if a member state recommends support for the delisting petition following opposition by one of the reviewing states. Approval requires unanimous consent so if any member disapproves the petition it is rejected.

Focal Point Use Patterns

The Focal Point has been utilized infrequently. Four sanctions committees have processed delisting actions through the Focal Point: the Al-Qaida/Taliban (1267), Liberia (1521), DRC (1533), and Iraq (1518) committees. The Sierra Leone committee (1132) has also delisted individuals, but has not utilized the Focal Point. Since it became functional in March 2007, the Focal Point has received a total of forty-three requests (all figures through 22 October 2009). These requests have been on behalf of a total of thirty-one individuals and thirty-four entities. This represents less than 7 percent of the approximately 1,000 names currently listed by the various Security Council sanctions committees.

The individuals and entities utilizing the Focal Point have not been very successful in obtaining relief. Of the total number of twenty-eight individual requests processed so far, nine have been approved, for an approval rate of 32 percent.⁹ Of the twenty-six entity requests processed, twelve have been approved, although their removal was the result of a single decision by the 1267 Committee and was linked to the delisting of an individual. The approval rate for entity requests is 46 percent. Table A presents these figures.

Table A: Delisting Actions Using the Focal Point (March 2007—22 October 2009)

Sanctions Committee	Requests Processed (Representing Individuals/Entities)	Delisting Requests Approved (Representing Individuals/Entities)	Number of Requests Denied (Representing Individuals/Entities)
<i>Al-Qaida/Taliban 1267 Committee</i>	12	3	6
	9 <i>Individuals</i> 12 <i>Entities</i>	3 <i>Individuals</i> 12 <i>Entities</i>	6 <i>Individuals</i> 0 <i>Entities</i>
<i>Liberia 1521 Committee</i>	20	5	11
	16 <i>Individuals</i> 9 <i>Entities</i>	5 <i>Individuals</i> 0 <i>Entities</i>	11 <i>Individuals</i> 9 <i>Entities</i>
<i>DRC 1533 Committee</i>	4	1	1
	2 <i>Individuals</i> 4 <i>Entities</i>	1 <i>Individual</i> 0 <i>Entities</i>	1 <i>Individual</i> 4 <i>Entities</i>
<i>Iraq 1518 Committee</i>	1	0	1
	1 <i>Individual</i> 1 <i>Entity</i>	0 <i>Individuals</i> 0 <i>Entities</i>	1 <i>Individual</i> 1 <i>Entity</i>
TOTAL	37	9	19
	28 <i>Individuals</i> 26 <i>Entities</i>	9 <i>Individuals (32%)</i> 12 <i>Entities (46%)</i>	19 <i>Individuals (68%)</i> 14 <i>Entities (54%)</i>

The Focal Point is not the only or most frequently used mechanism for removal from a target list. States of residence or nationality may also recommend delisting. Those on the list may appeal directly to their state of residency or nationality to petition on their behalf. Member states also have the possibility to decide that delisting requests be submitted exclusively through the Focal Point, but the only state to do so has been France.

Table B displays the number of delisting actions taken for both individuals and entities and the number of these actions that have been processed through the Focal Point.

Table B: All Delisting Actions (through 22 October 2009)

Sanctions Committee	Total Delisted EVER with or without Focal Point (Representing Individuals/Entities)	Total Delisted SINCE Focal Point, with or without Focal Point (Representing Individuals/Entities)	Number Delisted using Focal Point (Representing Individuals/Entities)	Percentage Delisted using Focal Point/Total SINCE Focal Point (Representing Individuals/Entities)
Al-Qaida/ Taliban 1267 Committee	19 Individuals	10 Individuals	3 Individuals	30% Individuals
	47 28 Entities	27 17 Entities	15 12 Entities	56% 71% Entities
Liberia 1521 Committee	13 13 Individuals	12 12 Individuals	5 5 Individuals	42% 42% Individuals
	0 Entities	0 Entities	0 Entities	--
DRC 1533 Committee	1 1 Individual	1 1 Individual	1 1 Individual	100% 100% Individuals
	0 Entities	0 Entities	0 Entities	--
Iraq 1518 Committee	0 0 Individuals	0 0 Individuals	0 0 Individuals	-- 0
	0 Entities	0 Entities	0 Entities	--
Sierra Leone 1132 Committee	51 51 Individuals	24 24 Individuals	0 0 Individuals	0% 0
	-- Entities	-- Entities	-- Entities	--
TOTAL	112 84 Individuals	64 47 Individuals	21 9 Individuals	33% 19% Individuals
	28 Entities	17 Entities	12 Entities	71% Entities

In general, the majority of actions to delist individuals are taken by the sanctions committees without passing through the Focal Point. Since March 2007, only 19 percent of individuals have been delisted via the Focal Point. This result is skewed somewhat by the data for the Sierra Leone sanctions committee, which initiated a process of delisting before the Focal Point was created and continued that process afterward.¹⁰ Of the individuals delisted by the 1267 Committee since the creation of the Focal Point, 30 percent were processed through the Focal Point. Of those delisted by the Liberia Committee, 42 percent were channeled through the Focal Point. The DRC Committee delisted one individual, processed through the Focal Point. The Iraq Committee received but disapproved one delisting request through the Focal Point. Among delisted entities, 71 percent were processed through the Focal Point, but this figure is skewed by the fact that all twelve entities were delisted as part of one decision. The five other entities delisted since the creation of the Focal Point were not processed through the Focal Point.

Utility of the Focal Point

Opinions vary among analysts and policymakers regarding the effectiveness and utility of the Focal Point process. Most observers agree that the Focal Point has functioned well within the limits of its mission. The process has been a partial success, providing access for listed persons and entities that might not otherwise have the opportunity to petition for delisting. Petitioners can approach the committee without depending on the initiative or support of their state of nationality or residence. Petitioners have obtained effective relief in a number of cases.

Criticisms also exist. Some consider the process cumbersome and limited. Those who have used the Focal Point complain of a lack of transparency. When a petition is denied, no information is given on the reasons for the decision. Nor can a petitioner find out which state originally designated his/her name or which states opposed their delisting request and why. No feedback mechanisms exist for the Focal Point to communicate concerns and problems that may arise to the sanctions committees. No requirement exists for periodic reporting on and review of the Focal Point's work.

A more fundamental problem is the role of the original designating state in considering a delisting request. As 1267 Committee procedures are currently written, the designating state has a primary responsibility in determining whether the delisting request should be approved. Delisting requests are forwarded by the Focal Point to designating states as well as states of nationality and/or residence. According to the committee's guidelines, "These states are urged to review de-listing petitions in a timely manner and indicate whether they support or oppose the request."¹¹ Essentially this asks the designating state to reverse a previous decision, one that may have involved a considerable process of interagency consultation. It is like asking a judge to find innocent someone previously determined to be guilty. This may create an inherent bias against approving a delisting petition, regardless of the merits of the appeal. The designating state certainly has an important role to play in evaluating a delisting request, but the process could be made fairer by developing a more objective set of procedures for obtaining additional information and determining the merits of the appeal.

In some instances a designating state that is no longer a member of the Security Council may wish to recommend a delisting. The decision to delist rests only with the members of the 1267 Committee, however. It may be appropriate to consider a larger role for former designating states and other member states in recommending delisting action. Since any member state can suggest a listing, it seems appropriate to grant the same privilege with regard to delisting.

Expanding the Monitoring Team's Information Gathering Role

As the 1267 Committee prepares to extend the mandate of the Monitoring Team, it should consider giving the team responsibility to assist with the review of delisting petitions. The ninth report of the Monitoring Team noted that the committee may wish to ask the team "to collect further information from states or clarify aspects of the petition with the individuals or entities that have submitted it, and provide a report, though without any recommendation regarding the merits of the case."¹² The 1267 Committee responded favorably to the suggestion. As noted in the tenth report of the Monitoring Team, "the Team is well placed to provide the Committee

with an analysis of the information known about the listed entry, and the Committee has agreed that it should gather information from various sources concerning individuals and entities that seek de-listing. Moreover, the Team can provide an assessment of the strength and breadth of the information about a listed party and its relevance to the threat, but without making any judgement about the appropriateness of a listing.”¹³

The proposal for an expanded role for the Monitoring Team is now under active consideration by several member states and could be adopted as part of a new resolution that will be approved before the end of the year. The changes under consideration would be modest, but they would contribute to the gradual improvement of listing and delisting procedures, and could help to build momentum for more sweeping changes in 2010 and beyond.

While many member states and experts generally support expanding the Monitoring Team’s role, concerns exist about how it would work. A major question is whether the Monitoring Team would simply receive information provided by others, or if it would have the authorization to acquire information and seek answers to particular questions. Another issue is whether the Monitoring Team should provide reports and recommendations based on its investigations.

Looking ahead, as their roles expand, the Monitoring Team and the Focal Point could be authorized to work more closely together as a support staff for the 1267 Committee. This would be essential if the committee were to adopt more deliberative listing and delisting procedures, as recommended below.

Information Gathering

The Monitoring Team should be authorized to investigate and research issues of concern to the committee and member states as they consider delisting and listing decisions. It would be of little value for the Monitoring Team to wait passively to receive information. Instead its role should be one of active support to the committee and its members in researching whether listings under review are still warranted. The Monitoring Team could also play a role in the process of removing dead people from the list. It could work with member states to investigate and verify information regarding the demise of listed persons.

Reporting

The Monitoring Team should provide written reports on its investigations to the 1267 Committee. The reports would synthesize the information provided by multiple sources, including the designating state, members of the committee, and other interested states. It would summarize the claims of the petitioning party and the responses of committee members. The report would canvass the range of opinions among member states on the continued appropriateness of the listing, but it would not provide a recommendation to approve or reject the petition. That decision would rest solely with the committee.

Building Upon the 1822 Review Process

The proposed information gathering role for the Monitoring Team could build upon the experience of the current comprehensive review of the Consolidated List. Dossiers are created for each name on the list and are circulated to committee members for one month to review and present relevant information. The completed file is then placed on the committee agenda. The Monitoring Team plays a support role in collecting the information and presenting the cases to the 1267 Committee.

The Monitoring Team's New Role in Operation

The proposed role for the Monitoring Team would fit well with current 1267 Committee procedures for reviewing delisting requests,¹⁴ although some adjustments would be necessary. Below is an outline of how the expanded role for the Monitoring Team could be integrated into existing 1267 Committee guidelines.

Currently, when a delisting request is submitted by the petitioner's state of nationality or residence, that state is asked to review all relevant information and seek information from the original designating state. The designating state is also encouraged to seek additional information from the state of nationality or residence.

The Monitoring Team could be tasked with collecting the relevant information, in cooperation with the designating state and the state of nationality or residency. It would share the findings of its investigations with those states. The Monitoring Team would summarize its findings in a report that would be made available to all committee members.

When a delisting request is submitted through the Focal Point, the same procedures would apply. The Monitoring Team could cooperate with the designating state and the state of nationality or residence to collect information during the one-month period provided for consideration of the request. It would share its findings with those states and with all committee members. If another member state on the 1267 Committee were to seek additional information on whether the delisting request is appropriate, it could, with the approval of the committee chair, ask the Monitoring Team to obtain additional information, which would be presented to that state and all members of the committee within a reasonable time period of perhaps two months.

When requested by the committee chair, the Monitoring Team could seek additional information from other sources, such as states where the petitioner may have lived for an important period, or states where the petitioner may control substantial assets. In such instances the Monitoring Team's report could be submitted to the committee chair, who could decide whether it should be shared with other committee members.

Preserving the Integrity of the Monitoring Team's Current Role

A concern may exist that expanding the Monitoring Team's role will detract from its core mission of monitoring and providing support for more effective implementation of sanctions against Al-Qaida and the Taliban. The primary task of the Monitoring Team has been and

remains providing information to the 1267 Committee on efforts to engage member states, international agencies, and regional organizations in freezing the assets, banning the travel, and prohibiting the supply of arms to international terrorists and those who support them. Improving the listing and delisting process is not a diversion from this task but is essential to enhancing the effectiveness of implementation efforts. Strengthening the effectiveness and credibility of targeting procedures will also strengthen international implementation efforts.

The information gathering role proposed here would not take the form of advocacy for or against any delisting proposal. Rather the team would simply present information for and against the proposed action, reporting the views of the various states. It is important that the Monitoring Team remain strictly neutral and objective in its information gathering role, so as not to jeopardize the trust and goodwill it has earned over the years among UN member states and international agencies.

Expanding the Focal Point's Role

A number of proposals have been suggested for better utilizing the Focal Point. Below are some of these proposals and suggestions for how they might be put into action.

Information Sharing

When a delisting request is currently denied, the Focal Point sends a short message to the petitioner indicating that the process is complete and his or her name remains on the list. Petitioners frequently ask for more information. New procedures could allow the Focal Point to give petitioners more information about the reasons behind the committee's decision. This could include a substantive summary of the reasons for denying the request, and responses to specific claims in the petitioner's appeal. This information could be posted on the relevant sanctions committee website. It would be reviewed by the committee chair prior to release, to ensure that confidential information sources are protected.

The Focal Point could also report periodically on its work and the concerns of petitioners. This information would be provided to the committee and could include recommendations for improving delisting procedures.

Notification

Proper notification is essential to fair procedures. As per Security Council resolutions, listed entities must be notified of their designation by their states of nationality or residence, according to the laws of the particular state. Experience has shown that listed individuals and entities are not always promptly notified. This could stem from difficulties locating an individual or entity, or from a lack of capacity or will.

To improve this process, the Focal Point could assist states by sending them information on the notification requirements and the guidelines of the relevant sanctions committee. This would include information on how to petition for delisting through the Focal Point, as authorized in Resolution 1730.

In order to strengthen state notification efforts mandated by the Security Council the Focal Point would automatically supply the listed party with information about the reasons for listing

and avenues for appeal. This would not remove the obligation of states to provide notification, but would help states meet that requirement. It would also ensure that affected individuals and entities are properly informed of their rights to appeal.

Exemption Requests

To assure that listed parties have full access to exemptions as provided in Security Council resolutions, the Focal Point could be tasked with receiving and transmitting requests for humanitarian exemptions. Because the Focal Point is already in touch with affected parties that inquire about review procedures, it is in an ideal position to transmit requests for exemptions. Providing an independent channel for exemption requests would enable the affected party to seek relief without having to obtain the cooperation of the state of nationality or residence. As with delisting petitions, the role of the Focal Point would be merely to transmit the request to the committee, which would make the decision.

The duties outlined above would resemble those of an ombudsperson, an official charged with addressing grievances and making recommendations for improved administration. Denmark proposed such a mechanism in 2006—an office that would not only assist with petitions but also raise issues and make recommendations on its own initiative, subject to 1267 Committee approval.¹⁵ The Security Council should take further steps in this direction.

Review Mechanisms

No issue in the due process debate has generated more controversy than the various proposals to establish mechanisms to review Security Council listing and delisting decisions. National and regional court rulings have determined that affected parties have the right to examine and challenge in a judicial proceeding the basis of punitive action taken against them. The group of interested states has advocated the creation of an independent review mechanism with an advisory role as a means of fulfilling this due process requirement. Permanent members of the Security Council have rejected such proposals. They consider any form of binding review as an unacceptable infringement on the supreme authority granted to the Security Council in the UN Charter for protecting international peace and security and fear that recommendations would prejudge their decisions. The debate has been and remains stuck.

Breaking the impasse will require creative thinking about establishing review mechanisms that remain within the existing structure of Security Council decision-making authority. The option of a fully independent arbitral body with authority to rule over decisions of the Security Council is probably not viable. It would be contrary to the UN Charter and is opposed by Council members who would have to approve it. Instead the focus should be on developing mechanisms that enhance procedural protections and provide quasi-judicial review procedures while preserving the prerogatives of the Security Council in matters of international peace and security.

Below are proposals for establishing review procedures that would provide greater due process protections in listing and delisting decisions. Adopting more deliberative procedures as recommended here would make it possible to establish review mechanisms that have greater

independence and impartiality, as suggested by the group of interested states, the Watson Institute, and other experts.

More Deliberative Delisting Guidelines

Current 1267 Committee guidelines for the consideration of delisting requests have been described as Kafkaesque.¹⁶ The procedures are opaque and lack documentation. There is no duty for states to disclose information or the reasons for their decisions. The petitioner, on the other hand, must justify the delisting request, which is “the opposite of the presumption of innocence,” according to legal scholar Clemens A. Feinäugle.¹⁷ The committee operates on the basis of bilateral consultations and a written silence procedure. Delisting requests do not routinely appear on committee agendas.

The process of placing holds on delisting petitions is of particular concern. States can place holds anonymously, and indefinitely, without offering any explanation or written justification. This arbitrarily short-circuits decision making. Such practices would be unacceptable in a formal legal proceeding and are contrary to principles of openness and accountability in governance.

Replacing these practices with more deliberative and formal procedures is an urgent priority for expanding due process rights. The committee’s guidelines “are the decisive legal instrument” for the implementation of sanctions, according to Feinäugle, and they should be restructured to conform with the rule of law.¹⁸

In a deliberative process states should be required to give reasons for the positions adopted. The use of holds should be eliminated or strictly limited, with time limits established for each hold and a requirement that a state give reasons for the decision to place a hold.

The expanded roles for the Monitoring Team and Focal Point suggested above could be integrated into a formal advocacy and review procedure for the 1267 Committee. Counterterrorism expert Victor Comras has proposed enlarging the duties of the Focal Point to include the examination of petitioner claims and the collection of information.¹⁹ These are roles that the Monitoring Team, with the expanded mandate suggested above, could assist in performing. The Focal Point and Monitoring Team would invite interested countries, including the original designating state, to respond to petitioner claims by presenting additional information. The responses and information would be presented to the sanctions committee in the form of a report, for formal consideration and decision. The committee would make public the reasons for the decision to accept or reject the delisting request and would publish a summary of its deliberations. As Comras observed, such arrangements “would provide all parties more assurance . . . that due considerations are being paid to all the evidence in determining if there is a reasonable basis for designation.”²⁰

The tenth report of the Monitoring Team includes similar recommendations for “reinforcing existing procedures.” The report urges greater transparency and procedural protections so that the committee can provide a genuine review process.²¹ The latest Watson Institute report also emphasizes the importance of a more structured and formal review process within the 1267 Committee.²² Replacing the current opaque and restrictive procedures of the committee with a

more transparent and deliberative process would enhance due process rights and establish procedures that approximate a fair hearing.

Committee voting rules also should be adjusted. Currently the 1267 Committee makes its decisions including delisting decisions on the basis of consensus, allowing any state on the committee to block action, even if every other state supports delisting. To avoid this problem the committee should be encouraged to revert more often to Security Council voting rules, where transparent qualified majority procedures operate. According to the current guidelines, the committee can submit a matter to the Security Council if consensus in the committee cannot be reached. It should do so more regularly in delisting cases.

The following are essential elements of a more deliberative process for the 1267 Committee. These would apply to the consideration of delisting requests.

- Alter 1267 Committee guidelines to create more transparent and fair procedures that comply with rule-of-law standards.
- Place all delisting petitions on the committee agenda and give full consideration to claims and information presented by the petitioning party.
- Establish efficient and timely procedures for promptly responding to the petitioner or the state seeking delisting, and for considering and deciding on petitions within a fixed time period (three months).
- Authorize the Monitoring Team to gather all relevant information from the petitioning party, the designating state, states of nationality or residence, other states on the committee, and other relevant states and parties. The information should be summarized in a report to the committee.
- Require that states provide a statement of their reasons for or against a delisting petition.
- Issue a public statement from the committee announcing delisting decisions and summarizing the substantive points of its deliberations. The Focal Point should be directed to communicate these results and the accompanying information to the petitioner. When rejecting a petition, the committee should post an updated narrative summary on its website.

The proposed procedures would increase the committee's workload, but much of the required effort could be performed by the Monitoring Team and Focal Point. Under the new procedures, member states may need to engage legal officers more frequently to assist in evaluating the delisting petition and accompanying materials.

The benefits of more deliberative procedures would outweigh the costs of the additional effort. As the updated Watson Institute report observes, more deliberative procedures "might begin to address the concerns of the European Court of Justice about the absence of any review mechanisms at the UN level."²³ This in turn would reduce legal and political concerns about due process issues and enhance the legitimacy of targeted sanctions against Al-Qaida and the Taliban.

A More Robust Listing Process

The European Union (EU) is currently working on a revision of Council Regulation 881/2002 regulating its implementation of 1267 Committee sanctions. This follows the European Court of Justice ruling on 3 September 2008 which annulled the listing of Mr. Kadi and the Al Barakaat International Foundation. It also follows changes introduced by Resolution 1822. The new regulation will provide strengthened notification and review procedures when a decision is taken by the EU to place a name on a sanctions list. The outlines of the proposed new system are as follows.

Upon notice of a new listing decision by the UN Security Council and the statement of that case, the European Commission (EC, empowered by the European Council) would make a listing decision by way of a Council Regulation. This would enable the Commission to act without delay in making a decision to freeze the assets of the named party. Prompt action would assure the effectiveness of the assets freeze.

In parallel with the listing decision, the European Commission would send formal notification to the affected party. The notification would include the statement of case received as a statement of the reasons for the action taken, as required by Security Council resolutions. The notification would also inform the party of available procedures for challenging the decision before an EC Court as well as the possibility to submit information with a view to having the decision reviewed. In effect the notification would invite and explain the procedures for the affected party to petition for redress. If the listed party chooses to respond, a review of the listing decision would be required.

The Commission would conduct a review. It would study the statement of reasons and the information provided by the listed party and would recommend whether to keep the listing or to delist. The recommendation would be submitted to a regulatory committee of EU member states in which special procedures would apply. This committee could overturn the Commission's recommendation by a qualified majority. If the committee agrees or fails to reach the required majority, the Commission's proposed course of action is followed. If the committee overturns the recommendation, the Council of Ministers will be required to make the final decision in the matter. The results of the review and the comments from the listed party will be communicated to the United Nations in New York.

The proposed procedures contain important innovations that help to enhance due process rights at the EU level and might inspire reform at the UN level. One is the creation of a more robust initial listing decision, which would provide a kind of two-stage process. The initial decision to list the name would be the constitutive act, providing for prompt action to freeze assets, but the decision would include a process and allow time for the affected party to appeal and for the council to review the appeal. If the affected party appeals, a review is compulsory. If the review process decides in favor of delisting, then a second decision to that effect would be necessary.

The second innovation is the creation of a review process for initial listing decisions. Most reform proposals to date, including those suggested above, focus on improved procedures for

delisting. It is equally important to assure proper due process safeguards in the initial listing decision. Proper legal protections at the outset would reduce the need for delisting procedures and court challenges later. Guaranteeing notification and the right of review when a listing is decided would help reduce the perception of arbitrariness and enhance the legitimacy and credibility of the overall process.

It is uncertain if the new European laws will satisfy national and regional courts concerned about legal protections for listed parties. Much will depend on whether the procedures are transparent and efficient in providing relief within a reasonable period of time. Courts will also want to know if petitioners can effectively challenge information contained in the statement of reasons and if their claims are properly considered. Even if the new European procedures are found to be satisfactory for the EU level, the listings will still depend on decisions taken and motivations formulated at the UN level.

The Security Council should monitor the new EU procedures and ask the Monitoring Team or another expert panel to evaluate them. An evaluation report should be submitted to the Security Council after the new procedures have been in operation for perhaps twelve months. It should include recommendations on how the Security Council might adopt similar procedures for a more robust listing process and the creation of procedures for reviewing initial listing decisions. In adopting such procedures the Council would assure: 1) a robust notification process that informs the affected party of options for appealing the decision, and 2) a mandatory review process in case of appeal. If this appeal process were to include a role for an independent and impartial review panel, as outlined below, the procedures would closely approximate requirements for a fair hearing, as outlined in recent court rulings.

The following are guidelines, based on the emerging European process, which might form the basis for new Security Council listing procedures:

- Establish a more robust process when designating a name to enable the affected party to file a petition for redress.
- Improve notification requirements so that the affected party is promptly informed of the action taken, including the narrative summaries of reasons for listing, and is fully informed of options and procedures for challenging the decision and providing any exculpatory information within a specified period of time.
- Create a review procedure for such petitions that is transparent and timely, allowing the listed party the opportunity to review the information upon which the listing is based and to submit observations on it, and providing a written record of the decision taken.
- Task the Focal Point and the Monitoring Team (or other relevant expert panels) to provide staff support for the sanctions committee in processing appeals. Follow the model outlined above for delisting requests, with the Monitoring Team and Focal Point tasked to collect information, including responses from the original designating state and other member states, along with the views of the affected party.
- Require an open and deliberative process within the sanctions committee when a review process is conducted and a decision is made. The deliberative procedures

outlined above for delisting requests could be applied to the proposed listing review process.

- Place the review request on the committee's agenda, similar to the more deliberative delisting procedure, rather than merely circulating the request in a written silence procedure.
- Include a role for an independent and impartial advisory review panel, as outlined below.
- Produce a written record of the decision with explanation of the reasons for the action taken.

An Impartial Review Panel

The proposed mechanisms for more deliberative review of delisting requests and more robust listing procedures would help to advance rule-of-law procedures in the implementation of targeted sanctions, but they would not constitute full due process rights as mandated by recent court rulings. They would not provide the right to independent and impartial judicial review. The 1267 Committee is not a judicial body, and it cannot meet that legal standard no matter how fair its procedures might become.

The group of interested states has advocated the creation of an independent and impartial review mechanism. A number of options have been proposed for creating such a mechanism, based on past practices of the Security Council. One option would be the creation of a specially constituted tribunal, comparable to the Independent Criminal Tribunal for the former Yugoslavia, created by and accountable to the Security Council but empowered to render independent judicial rulings. Other options include a confidential review process modeled on the Detention Review Commission created by the UN Mission in Kosovo, or an empowered ombudsperson institution.²⁴

Under the proposal of the group of states the review panel would be advisory in nature. The recommendations of the panel would be transmitted to the committee with a summary report, which would be shared with the petitioner. The panel would review information and render an opinion, but it would not have the authority to issue a legally binding judicial ruling. The proposals offered by the Watson Institute and other groups also envision a review panel that is able to provide independent and impartial judgment but that does not have the authority to override the decisions of the Security Council.

All proposals for an independent review mechanism face the inevitable limitation established by Articles 25 and 103 of the UN Charter, which give precedence to provisions of the Charter (including binding Security Council decisions) over all other international legal obligations. No legal option is available for a review mechanism that could render judgments overturning the decisions of the Security Council, including decisions to place designated parties on lists for targeted sanctions.

Nonetheless an independent and impartial review mechanism would further advance rule-of-law procedures in the implementation of targeted sanctions. Judicial rulings have identified the need for a review mechanism that is independent of the initial decision-making body. Improved review procedures by the committee are necessary but are not sufficient to meet this judicial standard. A more independent review panel also is needed. The creation of such a review mechanism would expand upon the improvements recommended above for more deliberative and robust listing and delisting procedures. It would strengthen the right of petitioners to be heard and to seek a remedy in cases of wrongful action.

The review panel could be constituted on an ad hoc basis or as a standing body that would be renewed perhaps every two years. The panel would include eminent jurists and distinguished persons selected on the basis of their experience, independence, and impartiality.

An independent review mechanism would fit well with the recommended deliberative and robust procedures. After the Monitoring Team gathers and disseminates relevant information on the petition or appeal, the committee would either appoint a panel of eminent persons or draw upon the standing body. The review panel would sit for a limited period of time to address one or more specific cases. The panel would conduct its review within a specified time period drawing upon the assembled documents and statements for and against the petition. The committee would pay heed to the panel's recommendation in making its final decision, and would provide a response to the panel in the written report on its deliberations and the final decision.

The responsibility for guaranteeing the judicial rights of individuals ultimately rests with individual member states and regional organizations, according to their particular laws and legal customs. The United Nations is a body of states and does not have jurisdiction over the legal rights of citizens within states. On the other hand, the UN has an obligation to uphold human rights and by its actions must seek to protect the rights of all peoples. The creation of an independent review mechanism, founded on more deliberative and robust procedures, would help to facilitate the exercise of those rights.

Fixed Terms for Listings

One of the dilemmas with targeted sanctions is that assets freezes designed as temporary administrative measures may end up becoming semi-permanent impositions equivalent to criminal penalties. Some names on the Consolidated List have been subjected to targeted sanctions for eight or more years, with little prospect of relief. This risks turning sanctions into punitive measures rather than preventive policies. It also intensifies political and legal concerns about inadequate due process protections. Some limitation of rights may be acceptable as a temporary security warrant, but not in cases of prolonged punitive action, where judicial rights are guaranteed by law.

To address this dilemma the Security Council could adopt new procedures for periodically renewing the decision to impose targeted measures. The Security Council has already taken steps in this direction with requirements established in Resolution 1822 to review all the names on the Consolidated List every three years. A review is not the same as an affirmative decision,

however, and is not sufficient to address legal concerns about the semi-permanent nature of punitive measures.

The Watson Institute has proposed establishing time limits on listings to ensure that they do not become semi-permanent.²⁵ Their proposal calls for designations to be fixed for a period of up to five years. The relevant sanctions committee would be required to reaffirm listing decisions after that fixed period. The decision to reaffirm would involve a thorough review of the case and the issuance of a new decision and explanation of reasons for maintaining the listing.

The provision for fixed terms would not imply a predisposition to delist or lift sanctions against named parties who continue to pose a threat to international peace and security. On the contrary, in cases of known terrorists and those who support them, the committee and the Security Council would make a conscious decision to reaffirm the imposition of sanctions. This could provide an opportunity for the Council and UN member states to recommit themselves to more vigorous enforcement of sanctions against those who commit or enable mass murder. Decisions to reaffirm sanctions could be accompanied by public diplomacy and media communications efforts by the Secretary-General, the 1267 Committee chair, and other committee members reminding the international community of the importance of vigorous targeted measures against global terrorists.

Reviewing Sensitive Information

One of the biggest challenges in establishing procedures for the review of listing and delisting decisions is the handling of sensitive information. Governments often rely upon information provided by law enforcement and intelligence agencies in making designation decisions. Governments are reluctant to share such information with other states or to allow its consideration in open court proceedings. They are also reluctant to bring such information into deliberations of UN political bodies such as sanctions committees. The Monitoring Team has argued that information based on intelligence and confidential sources “could not easily be made available to reviewers.”²⁶

Nonetheless, important precedents exist for the sharing of intelligence information in UN programs, even in highly sensitive security missions. The most prominent example involves UN weapons monitoring and inspection in Iraq during the 1990s. The UN Special Commission, UNSCOM, was able to establish cooperative arrangements with several governments and obtained high quality intelligence information in a multilateral setting. Soon after it was created UNSCOM formed an "Information Assessment Unit" with the capability to receive, protect, process, store, and analyze sensitive data from national intelligence agencies. The unit received a “broad stream of data” from national intelligence agencies, according to former chief inspector Rolf Ekéus. Active intelligence sharing from the United States and other major countries contributed to the commission’s success in uncovering and dismantling Iraqi weapons programs.²⁷ Multilateral intelligence sharing has played an important role in other UN programs as well, including the management of peacekeeping operations and the prosecution of war crimes in special tribunals for the former Yugoslavia and Rwanda.²⁸ In these and other settings the United States and other major powers have provided intelligence support for UN activities.

These examples confirm that methods for controlling sensitive information can be developed and utilized on a multilateral basis without jeopardizing intelligence sources.

The protection of sensitive sources of information is a legitimate state interest to which courts traditionally have deferred, although courts have begun to challenge this prerogative in cases of sanctions listings. The Court of First Instance indicated in the *OMPI III* case that a decision to freeze assets cannot be based solely on confidential information that is not shared with European courts.²⁹ Recent court rulings in the United Kingdom have questioned whether a fair hearing is possible when evidentiary information is withheld.

Judicial mechanisms are available for protecting intelligence sources while enabling plaintiffs to exercise legal rights. Options include the use of closed court proceedings and vetted or security-cleared counsel. The latter option was emphasized by Martin Scheinin, the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, in his 2006 report to the General Assembly. His report recommended that “consideration should be given to means through which a listed entity can still challenge the evidence against it” when sensitive information is involved.³⁰ Such an approach allows special advocates for petitioners to review sensitive information on behalf of their clients. These mechanisms do not apply to Security Council proceedings, since no right of legal appeal exists at that level, but they are highly relevant to legal challenges in national and regional courts. The use of special evidentiary procedures should be kept as limited as possible, however, applied only in cases where a compelling security need can be demonstrated, and should not set a precedent for creating parallel legal justice systems for terrorism-related cases.

In the United Kingdom procedures have been created for the utilization of sensitive information. The government has established a registry of special barristers who are permitted to review secret material in closed court proceedings. To acquire such access, a barrister must go through training and vetting procedures provided by the secret service. The certified barrister is then allowed to serve as a special advocate in sensitive hearings and is permitted to review restricted material. The special advocate is able to argue before a judge in the High Court on the admissibility of the sensitive information at issue. This strengthens due process rights by allowing advocates for petitioners to review information used as the basis for listing even if that information comes from intelligence sources.

The system of special advocates may not be sufficient to meet judicial standards. Courts in the United Kingdom have ruled that a petitioner has the right to see the evidence used against him or her. Recent cases relating to the implementation of targeted sanctions have challenged the legitimacy of procedures that withhold sensitive information from petitioners. The English High Court ruled in the *Hay* case in July 2009 that a lack of access to the full evidence upon which the listing action was based made effective judicial review impossible.³¹ In a similar case the House of Lords ruled that a person subject to control orders must be provided with sufficient information about the allegations that form the basis for the sanctions action.³² The Court of Appeal for England and Wales ruled in the so-called alphabet case that the requirement of a fair hearing may include appointing a special advocate who can share some of the evidentiary information with the affected party.³³ These cases pose significant challenges for current British procedures to implement targeted measures.

Producing a Smaller, More Accurate Consolidated List

The 1267 Committee has been making significant progress in conducting the full review of all names on the Consolidated List mandated by Resolution 1822, paragraph 25. Since the process began in early 2009, the committee has placed sixty-eight names on its agenda for review (as of 22 October 2009). Of these names fifty were confirmed to remain appropriate for listing, and eight were delisted, with ten names still pending.

As the review process unfolds, the committee should make every effort to continue to remove names that lack adequate identifying information and for which it cannot provide a compelling case for keeping on the list. It is well known that a majority of the names on the list were added in 2001, before clearer and more precise procedures were established. Many of these names are no longer appropriate, and can be safely removed without jeopardizing efforts to counter global terrorist threats. The updated Watson Institute report has described this as removing 'toxic designations'.³⁴ This is sound advice that should be followed by the committee as a core principle for the review process.

The tenth report of the Monitoring Team calls for a "cleaner, leaner list."³⁵ It recommends that the 1267 Committee remove names for which it cannot establish minimum identifying information and that are not backed by a solid case for designation. "As the Team has pointed out before, inadequate entries serve no useful purpose: sanctions cannot properly be applied against them, unintended members of the public with similar names suffer real consequences, the private sector and officials at borders and elsewhere waste valuable time and effort trying to identify matches which can never be confirmed, and the sanctions regime as a whole loses support."³⁶ The team recommends that the committee, with the help of the team, develop minimum identifying standards. Names without this information should be placed in an inventory and shared with designating states and states of nationality or residence. If sufficient information is not provided within three months, the names should be removed entirely from the list.³⁷

States increasingly recognize that the success of the 1267 sanctions depends not on the size of the designation list but on its quality. In the immediate period after the September 2001 attacks, the impetus was to sweep up suspects and create a large list. In recent years, officials have recognized the importance of accuracy. A smaller list can be more effective than a larger one, especially if it is based on more accurate information. A cleaner, leaner list will be easier to use, will be less likely to attract adverse judgments in national or regional courts, and by being more legitimate will reinvigorate the sanctions regime.

Summary of Policy Recommendations

Monitoring Team

- Authorize an information gathering role in the review of listing and delisting decisions
- Produce written reports summarizing the information collected
- Support the 1267 Committee as it engages in more deliberative listing and delisting procedures

Focal Point

- Increase information sharing with petitioners and the 1267 Committee
- Provide periodic reports on the work of the Focal Point
- Assist with notification requirements
- Receive and transmit requests for humanitarian exemptions

Sanctions Committees

- Adopt a two-stage process for listing decisions, linked to strengthened notification procedures and a review of appeals
- Establish formal deliberative procedures for reviewing delisting petitions and appeals of listing decisions
- Alter 1267 Committee delisting guidelines to confirm with the rule of law
- Appoint a review panel, drawn from a roster of distinguished persons, to review and make recommendations on specific delisting petitions
- Establish a fixed time period of five years for each listing decision, utilizing Security Council voting rules to make decisions on renewed listings

Member States

- Assure that national listing and delisting procedures comply fully with international human rights legal standards
 - Implement notification requirements that provide information on the reasons for listing and available procedures for seeking judicial review
 - Utilize closed-court proceedings and the security-cleared counsel for the review of sensitive information in petitioner appeals
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Appendix

A Summary of Improvements in Listing and Delisting Procedures

The following is a brief summary of the major procedural changes instituted by the Council since 2005:

Resolution 1617 (2005) specified that UN member states must henceforth provide to the committee a statement of case when submitting names for the Consolidated List. The resolution requested but did not demand that *when possible* states should provide written notice to individuals or entities of the measures imposed on them and of the available listing and delisting procedures.³⁸

Resolution 1730 (2006) established a Focal Point within the Secretariat's Subsidiary Organs Branch to handle delisting requests according to the procedures outlined in an annex to the resolution. The short three-point resolution defined the purpose of the Focal Point as facilitating requests for delisting. It was tasked with ensuring that requests are considered and submitted in a timely manner and with managing all communications between member states, sanctions committees, and petitioners.³⁹

Resolution 1735 (2006) established detailed specifications for the kind of information states must provide when submitting a name to be added to the Consolidated List, including identifying information, the basis for listing, and a narrative statement of case. It also asked states to specify information that can be released for notification purposes and that can be provided to other states upon request. The resolution required that the Secretariat notify the permanent mission of the country of origin and/or residence of newly listed individuals within two weeks of the listing. The notification must include the releasable public information in the statement of case and explain the committee's procedures for considering delisting requests.

Resolution 1735 was the first measure to require notification of those listed. It also was the first to establish formal delisting criteria. The resolution specified the factors the 1267 Committee may consider when determining whether to remove names from the Consolidated List, including mistaken identity, whether an individual or entity no longer meets the listing criteria, and if the individual is deceased or has severed all association with Al-Qaida, the Taliban, and/or Osama bin Laden.⁴⁰

Resolution 1822 (2008) contained extensive procedural improvements. It has been referred to as the "mother of all listing resolutions." Its provisions have been replicated in other targeted sanctions resolutions, including in the cases of Somalia, Resolution 1844 (2008), and the Democratic Republic of Congo, Resolution 1857 (2008). Resolution 1822 specified the kind of information that states must provide for release to the public and as notification to the affected individual or entity. These requirements were made mandatory. The resolution also directed the 1267 Committee to post this information and the narrative summaries of reasons for listing on the committee's website. The resolution reduced the time frame for the Secretariat to notify member states from two weeks to one week and demanded that states receiving notification take all possible steps to notify the listed individuals or entities in a timely manner. Resolution 1822 also urged states to review delisting petitions and respond to the committee with their indication of support or opposition to such petitions in a timely manner.

Resolution 1822 directed the 1267 Committee to conduct a review of all names on the Consolidated List by 30 June 2010, and thereafter directed the committee to conduct an annual review of all names not reviewed in three or more years.⁴¹ After several months of preparation to establish standards and procedures for the review, the committee began the comprehensive review process in the first quarter of 2009. To assist with the review process, states were requested to submit updated information in order to ensure the accuracy of the list. The committee was also requested to conduct a yearly review of the names of the deceased to ensure accuracy and to confirm that the listing remains appropriate.

Notes

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- ¹ Bardo Fassbender, *Targeted Sanctions and Due Process: The responsibility of the UN Security Council to ensure that fair and clear procedures are made available to individuals and entities targeted with sanctions under Chapter VII of the UN Charter* (study commissioned by the United Nations Office of Legal Affairs, Office of the Legal Counsel, Humboldt-Universität zu Berlin, 20 March 2006); Dick Marty, “Provisional Draft Report on UN Security Council and European Union Blacklists” (report of the Rapporteur, Committee on Legal Affairs and Human Rights, Council of Europe, Strasbourg, France, 12 November 2007); Iain Cameron, “UN Targeted Sanctions, Legal Safeguards and the European Convention on Human Rights,” 72 *Nordic Journal of International Law*, 159, 208–211 (2003).
 - ² International Commission of Jurists, *Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights* (Geneva: International Commission of Jurists, 2009), 116–17.
 - ³ United Nations General Assembly, *Resolution Adopted by the General Assembly 60/1: 2005 World Summit Outcome*, A/RES/60/1, New York, 24 October 2005, para. 109.
 - ⁴ Clemens A. Feinäugle, “The UN Security Council Al-Qaida and Taliban Sanctions Committee: Emerging Principles of International Institutional Law for the Protection of Individuals,” *German Law Journal* 9, no. 11 (1 November 2008): 2. Available at *German Law Journal*, <http://www.germanlawjournal.com/print.php?id+1031> (accessed 12 October 2009).
 - ⁵ Thomas Biersteker and Sue Eckert, “Addressing Challenges to Targeted Sanctions: An Update of the ‘Watson Report’,” (Published by the Watson Institute, Brown University, Providence, R.I. and the Graduate Institute, Geneva; with support from UNO Academia, October 2009).
 - ⁶ United Nations Security Council, *Security Council Resolution 1822 (2008)*, S/RES/1822, New York, 30 June 2008, para. 22.
 - ⁷ See Georg von Kalckreuth, “Summary of Litigation Related to Terrorism Designations,” Appendix B in Biersteker and Eckert, “Addressing Challenges to Targeted Sanctions.”
 - ⁸ These states include Denmark, Germany, Liechtenstein, the Netherlands, Switzerland, Sweden, Belgium, and Costa Rica—although other states have also joined the group. See Biersteker and Eckert, “Addressing Challenges to Targeted Sanctions,” 15.
 - ⁹ All percentages have been rounded to the nearest whole number.

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- ¹⁰ The delisting process in this case followed progress in resolving the armed conflict in Sierra Leone and neighboring Liberia.
- ¹¹ United Nations Security Council Committee Established Pursuant to Resolution 1267 (1999), *Guidelines of the Committee for the Conduct of its Work* (guidelines, adopted on 7 November 2002, as amended on 10 April 2003, 21 December 2005, 29 November 2006, 12 February 2007, and 9 December 2008, New York, 9 December 2008), 7 (g) v. Available online at the *United Nations*, http://www.un.org/sc/committees/1267/pdf/1267_guidelines.pdf (accessed 5 October 2009).
- ¹² United Nations Security Council Committee Established Pursuant to Resolution 1267 (1999), *Ninth report of the Analytical Support and Sanctions Monitoring Team, submitted pursuant to resolution 1822 (2008) concerning Al-Qaida and the Taliban and associated individuals and entities*, S/2009/245, New York, 13 May 2009, para. 32. All Monitoring Team reports are available online at: <http://www.un.org/sc/committees/1267/monitoringteam.shtml>.
- ¹³ United Nations Security Council Committee Established Pursuant to Resolution 1267 (1999), *Tenth report of the Analytical Support and Sanctions Implementation Monitoring Team submitted pursuant to resolution 1822 (2008) concerning Al-Qaida and the Taliban and associated individuals and entities*, S/2009/502, New York, 2 October 2009, para. 48.
- ¹⁴ United Nations Security Council Committee Established Pursuant to Resolution 1267 (1999), *Guidelines of the Committee for the Conduct of its Work*, paras. 7, a–h.
- ¹⁵ United Nations Security Council, *Fifth Report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to resolutions 1526 (2004) and 1617 (2005) concerning Al-Qaida and the Taliban and associated individuals and entities*, S/2006/750, New York, 20 September 2006, para. 49.
- ¹⁶ Paul Koring, “Trying to get off U.N.’s terrorist list is Kafkaesque,” *Toronto Globe and Mail* (16 May 2008). Available online at *ScrippsNews*, <http://www.scrippsnews.com/category/author/-paul-koring-toronto-globe-and-mail> (accessed 27 October 2009).
- ¹⁷ Feinäugle, “The UN Security Council Al-Qaida and Taliban Sanctions Committee” (1 November 2008): 14.
- ¹⁸ Feinäugle, “The UN Security Council Al-Qaida and Taliban Sanctions Committee” (1 November 2008): 3.
- ¹⁹ Victor D. Comras, “UN Terrorist Designation System Needs Reform,” *Perspectives on Terrorism II*, Issue 10, 27 August 2008, introduction. Available online at *Perspectives on Terrorism II*, http://www.terrorismanalysts.com/pt/index.php?option=com_rokzine&view=article&id=62 (accessed 5 October 2009).
- ²⁰ Victor D. Comras, “UN Terrorist Designation System Needs Reform,” *Perspectives on Terrorism II*.
- ²¹ United Nations Security Council Committee Established Pursuant to Resolution 1267 (1999), *Tenth report of the Analytical Support and Sanctions Implementation Monitoring Team*, paras. 50–51.
- ²² Biersteker and Eckert, “Addressing Challenges to Targeted Sanctions,” 22–23.
- ²³ Biersteker and Eckert, “Addressing Challenges to Targeted Sanctions,” 23.
- ²⁴ See Simon Chesterman, *The UN Security Council and the Rule of Law: The Role of the Security Council in Strengthening a Rules-based International System*, final report and recommendations from the Austrian Initiative, 2004–2008, Institute for International Law and Justice, New York University

School of Law, New York, N.Y., and Federal Ministry for European and International Affairs, Vienna, Austria, February 2008, para. 47.

- ²⁵ Biersteker and Eckert, “Addressing Challenges to Targeted Sanctions,” 24.
- ²⁶ United Nations Security Council Committee Established Pursuant to Resolution 1267 (1999), *[Eighth] Report of the Analytical Support and Sanctions Monitoring Team pursuant to resolution 1735 (2006) concerning Al-Qaida and the Taliban and associated individuals and entities, S/2008/324*, New York, 14 May 2008, para. 41.
- ²⁷ *Arms Control Today*, “Ambassador Rolf Ekeus: Leaving Behind the UNSCOM Legacy in Iraq,” (interview with Ambassador Rolf Ekéus) *Arms Control Today* 27, no. 4 (June/July 1997): 3-6.
- ²⁸ Timothy W. Crawford, “Learning to Share: The US Intelligence Community and Cooperation in UN Security Affairs, 1990–2000 (paper presented at the 2005 Annual Meeting of the International Studies Association, 2 March 2005), 2; See also Timothy W. Crawford, “Why Ever Not Never? Intelligence Cooperation in United Nations Security Affairs” (paper prepared for the Annual Conference of the Canadian Association for Security and Intelligence Studies, September 28, 2002).
- ²⁹ European Communities, Court of Justice, *People’s Mojahedin Organization of Iran v Council of the European Union (OMPI III)* [2009] Case T-284/08, 2009/C 19/55 [24 January 2009], Court of First Instance, Luxembourg, 4 December 2008.
- ³⁰ United Nations Security Council, *[Eighth] Report of the Analytical Support and Sanctions Monitoring Team*, para. 41.
- ³¹ Supreme Court of the United Kingdom, *Hay v Her Majesty’s Treasury and Secretary of State for Foreign and Commonwealth Affairs* [2009] EWHC 1677 (*Hay case*), 28 July 2009.
- ³² Parliament of the United Kingdom, House of Lords, *Secretary of State for the Home Department (Respondent) v AF (Appellant) (FC) and another (Appellant) and one other action* [2009UKHL 28 (*AF case*)], judgement on appeal from: [2008] EWCA Civ 1148, session 2008–09.
- ³³ Royal Courts of Justice, the United Kingdom, *A,K,M,Q &G v Her Majesty’s Treasury* [2008], EWHC 869 (*A,K,M,Q&G case*), High Court, Queen’s Bench Div., London, 24 April 2008.
- ³⁴ Biersteker and Eckert, “Addressing Challenges to Targeted Sanctions,” 24.
- ³⁵ United Nations Security Council Committee Established Pursuant to Resolution 1267 (1999), *Tenth report of the Analytical Support and Sanctions Implementation Monitoring Team*, 5.
- ³⁶ United Nations Security Council Committee Established Pursuant to Resolution 1267 (1999), *Tenth report of the Analytical Support and Sanctions Implementation Monitoring Team*, para. 13.
- ³⁷ United Nations Security Council Committee Established Pursuant to Resolution 1267 (1999), *Tenth report of the Analytical Support and Sanctions Implementation Monitoring Team*, para. 14.
- ³⁸ United Nations Security Council, *Security Council Resolution 1617 (2005)*, S/RES/1617, New York, 29 July 2005.
- ³⁹ United Nations Security Council, *Security Council Resolution 1730 (2006)*, S/RES/1730, New York, 19 December 2006.
- ⁴⁰ United Nations Security Council, *Security Council Resolution 1735 (2006)*, S/RES/1735, New York, 22 December 2006.
- ⁴¹ United Nations Security Council, *Security Council Resolution 1822*.

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