

# UN Targeted Sanctions and Human Rights

—Emerging legal challenges and political concerns—

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## Introduction

Kofi Annan, the former UN Secretary-General, described sanctions as a “vital tool” in dealing with threats to international peace and security and that they are “a necessary middle ground between war and words.”<sup>1</sup> Economic sanctions have been favored as a coercive measure by UN members because, compared to other coercive measures such as military action, they are less-costly, more convenient in that they can be tailored to specific circumstances, and authorized more easily by the UN Security Council under Chapter VII of the UN Charter.

Since the end of the Cold War, the UN Security Council has imposed economic sanctions more than two dozen times to deal with international threats. The objectives of the sanctions vary from ambitious to moderate. Some target the ending of conflicts, reversing aggression, stopping nuclear proliferation and combating terrorism. Others target supporting peace agreements, restoring democracy and protecting human rights.

In the early 1990s, the UN, however, experienced adverse humanitarian consequences that were directly/indirectly induced by comprehensive sanctions and

it was realized that sanctions were a vital but imperfect tool. Since then the UN has reconsidered the objectives, measures and supposed consequences of sanctions. In the mid-1990s, the UN shifted away from comprehensive sanctions to more targeted ones that scholars call “smart sanctions.” Targeted sanctions should be more effective as they target specific individuals and entities that have primary responsibility for breaching international peace and security, and they should be more humane with the purpose of avoiding or reducing damage to the innocent population of a target.

The objective of this paper is to analyze the current situation of smart sanctions after about 20 years since the UN first experimented with them. First, I overview the fundamental shifts in the use of UN economic sanctions. Second, I address the problems raised from a human rights perspective by UN sanctions countering terrorism. I deal with the issue at the universal level and inquire into what kind of protection the UN system provides to individuals and entities targeted by UN sanctions. Third, I discuss the movement for reform within the UN that has been building for years in order to respond to emerging legal challenges and political concerns about UN targeted sanctions. I make a modest attempt to evaluate the UN sanctions mechanism for the imposition and implementation of targeted sanctions.

## **1 Fundamental shift in the use of sanctions**

Known as the “sanction decade,”<sup>2</sup> the 1990s was when the UN Security Council frequently employed economic sanctions that were directed primarily at intra- and inter-state conflicts. These sanction efforts had ambitious goals and their strategic objective was compellence by, for example, reversing the policies of target states. In addition, they were comprehensive in scope and encompassed the totality of a target’s economy. However, the sanctions regimes were poorly implemented leading to tremendous economic costs to the target states but often they did not change the political behavior of the leaders of those nations. The economic impact on the states in question also had damaging social and humanitarian effects, leading many political scientists and researchers to question the morality of economic sanctions as policy instruments.<sup>3</sup> As a result, the UN started to reconsider the effectiveness, the strategic measures, and the objectives of sanctions and shifted from comprehensive to targeted ones.

Oudraat analyzes that the fundamental shift in the use of sanctions had three dimensions: strategic objectives, instruments, and focus.<sup>4</sup> The shift in objectives from compellence to deterrence helped improve the record, Oudraat says, as compellence is inherently difficult.<sup>5</sup> Deterrence is easier because it does not require immediate action from those who are deterring and because deterrence requires no public action by the one being deterred. Deterrence aims to maintain the status quo

which is easier than challenging it.<sup>6</sup>

The shift to targeted sanctions was accompanied by more modest and achievable goals such as: discouraging the adoption of threatening policies or behaviors; urging targets to constrain proscribed activities; sending particular signals to targets; asking targets to consolidate the implementation of peace agreements; urging them to defend human rights norms; and, demanding that they prevent the proliferation of weapons of mass destruction. In particular, the fight against terrorism became a top priority for the UN after the 11 September 2001 terrorist attacks in the United States.

The shift contributed to an improved track record of sanction efforts. Targeted sanctions, by virtue of their limited nature, are easier to implement than comprehensive sanctions and political support for targeted sanctions is easier to mobilize since these sanctions target only those directly responsible for dangerous behavior. Accordingly, sanctions efforts were redirected from conflicts to terrorism.<sup>7</sup>

### **1-1 Lessons from adverse humanitarian effects**

In the early 1990s, there were three sanctions regimes in particular that were ambitious and broad in scope: the comprehensive sanctions imposed against Iraq in 1990 because of its invasion and illegal occupation of Kuwait;<sup>8</sup> those against the former Socialist Federal Republic of Yugoslavia (FRY) in 1992,<sup>9</sup> in response to its involvement in the war in Bosnia-Herzegovina, and which were extended in 1994 because of FRY's actions against the Bosnian Serbs;<sup>10</sup> and, those imposed on the military junta in Haiti in 1994<sup>11</sup> because of its reversal of the 1991 election results.<sup>12</sup>

In all three cases, the sanctions led to deterioration in the economic and social conditions in the countries concerned but did not lead to changes in the behaviors of the political leaders. As a result of growing concern over the humanitarian impact of comprehensive sanctions, the Security Council stopped imposing them and turned exclusively to the use of financial, diplomatic, arms, aviation, travel and commodity sanctions that targeted the combatants and policymakers who were most responsible for reprehensible policies.

Regarding the poor record of the comprehensive sanctions of the early 1990s,<sup>13</sup> as Oudraat points out, broad international support was lacking, either because of disagreement over the objectives to be achieved or because there was no country that would take the lead.<sup>14</sup> And these sanction regimes resulted in great social and human costs that were politically difficult to sustain over a long period of time. In particular, the use of military force in each case produced worse humanitarian consequences and social turmoil.<sup>15</sup>

### **1-2 Formulating “smart sanctions”**

The reasons behind the poor record of comprehensive sanctions fueled the

search for targeted sanctions which was led by US-based scholars in the early-1990s.<sup>16</sup> Targeted sanctions, also known as “smart sanctions,” usually consist of travel bans, asset freezes, and embargoes or regulations on strategic goods such as diamonds and timber which can be used to purchase weapons by juntas and terrorists. It was only in the late 1990s that the UN started discussions over targeted sanctions. Such discussions were strongly backed by research institutions.<sup>17</sup>

The revision of comprehensive sanctions had been promoted separately by scholars and UN policymakers. But these separate approaches gradually merged through a series of international policy seminars that were organized to assess and refine the notion and scope of targeted sanctions. In order to initiate change, the Swiss government hosted seminars named the “Interlaken Process,”<sup>18</sup> in 1998 and 1999, mainly to discuss financial sanctions. These consist of the freezing of funds or other financial assets and economic resources that are owned or controlled by designated persons or entities. These measures are regarded as preventive in nature. In 2000, the German government and the Bonn International Center for Conversion organized an expert seminar called the “Bonn-Berlin Process,”<sup>19</sup> to discuss arms embargoes and aviation bans which were regarded as appropriate for smart sanctions as they would result in less harm to innocent people. And during 2001 and 2002 expert seminars named the “Stockholm Process” were hosted by the Swedish government and Uppsala University to reflect on previous seminars and discuss how to ensure that UN members and related actors could implement UN targeted sanctions.<sup>20</sup>

The series of policy seminars were closely related with the mainstreaming of human rights in the UN. The dissemination of universal values such as respecting human rights and promoting democracy under the norms of “Human Security” and “Responsibility to Protect” played an important role in formulating “humane” targeted sanctions. Some western scholars also stressed the necessity of introducing “morality” and/or “ethics” when formulating sanctions quoting the principles of the “Just War Doctrine” when analyzing economic sanctions. Some created new versions of the doctrine to analyze economic sanctions. These revised versions asked UN policymakers to stop and rethink about any unintended consequences that may result from sanctions. All these efforts were attempts to mitigate any adverse humanitarian consequences of sanctions.

Today, UN sanctions are, in general, targeted sanctions yet they still produce unintended consequences. The most common unintended consequences include corruption and criminality (58%), humanitarian consequences (44%), a decline in the credibility and/or legitimacy of the UN Security Council (37%), a strengthening of authoritarian rule (36%), and resource diversion (34%).<sup>21</sup>

## 2 Current targeted sanctions

Today, all UN sanctions are targeted sanctions in some way. By isolating violators of international standards and laws, even modest sanctions measures can serve an important symbolic purpose. The threat of sanctions can be a powerful means of deterrence and prevention. The UN nonproliferation sanctions, for example, send signals not only to the targeted states such as the Democratic People's Republic of Korea (DPRK) but also to other regimes who may be contemplating violating their Non-Proliferation Treaty (NPT) commitments.

### 2-1 Sanctions on individuals and entities

Since 1991, the UN Security Council has employed an average of one sanction per year and so far 25 regimes are in place with more than a thousand designations worldwide.<sup>22</sup> More than 60% of all the targeted sanctions are against individuals and entities.<sup>23</sup>

Today, sanctions are adopted as one form of diplomatic tool. Sending a strong message is one of the important functions of targeted sanctions. A signal can be sent simultaneously to more than one target which can prevent similar activities by other suspicious individuals or entities.<sup>24</sup> The signaling functions of targeted sanctions include the process of naming, shaming, and/or stigmatizing a target. These are used for the enforcement of prevailing norms such as compliance with NPT obligations, for the negotiation of the operational meaning of norms such as Human Security and the Responsibility to Protect, and for the articulation of a preference in the hierarchy of norms. The UN signals in the form of collective shame can function as a preventive diplomatic tool.

Bierstecker proposes analyzing targeted sanctions as signals from two different aspects: (1) the communication of a message from a sender; and, (2) the context or social domain of its reception by the target.<sup>25</sup> According to Bierstecker, with regard to the communications aspect, a signal must be correctly received by the target just as the sender intended. A signal needs to be clearly articulated, communicated, received and comprehended by the target. The social domain in which the message is received determines whether the signal communicated produces a sense of shame or of stigma in the target.

The UN has used targeted sanctions to name well over a thousand individuals and corporate entities since 1991. A sanctions committee creates a list of the target individuals and corporations and travel bans or asset freezes and so on are then imposed against the persons on the list. Nearly half of the total names designated have been added by the Al-Qaeda/Taliban United Nations Security Council Resolution (UNSCR) 1267 Committee (the so-called 1267 Committee) alone.<sup>26</sup> This was divided

into two separate sanctions committees in June 2011. More recently, related to the DPRK's nuclear test on 6 January 2016, the Non-Proliferation Committee has released the list of individuals and entities that are the targets of a travel ban and asset freeze.<sup>27</sup>

This listing measure was first introduced in the sanctions regime of Angola (the National Union for the Total Independence of Angola: UNITA).<sup>28</sup> The clearest indication of naming and shaming in the listing was observable in this case when the sanctions committee chair, former Canadian Ambassador Robert Fowler, publicly named the ruling African heads of state that were assisting Jonas Savimbi and UNITA with the purchase of Angolan diamonds in exchange for arms.

The strategic approach by the Angola sanctions regime was evaluated as effective in sending a strong signal and improving the implementation of the regime.<sup>29</sup> One important factor that enhances the clarity of listing and the effect of the signal sent by naming and shaming is the degree of consensus within the Security Council. In this case it was relatively easy for the Permanent Five (P5) members of the Council to reach a consensus because none of the P5 had a particular strategic interest in Angola. Since the Angola case, listing and naming and shaming has been introduced into UN targeted sanctions against other African nations.

## **2-2 Listing/delisting and human rights**

When targeted sanctions were first introduced in the early 1990s, the Security Council considered only sovereign heads of state and/or political/military leaders and elites. The Council did not consider the rights of targeted individuals.

The widespread application of targeted sanctions in support of counter-terrorism measures since 2001 has raised the most questions about their potential violation of individual human rights. UNSCR 1267 was a measure that was designed to put pressure on the Taliban regime to hand over Usama bin Laden for the attacks on two US embassies in East Africa in August of 1998. The resolution was unusual in the sense that 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.

A widespread extension of the asset freeze and travel ban on individuals designated as financial supporters of Al-Qaeda immediately followed the attacks of 11 September 2001. Bierstecker describes the period from late 2001 through the first half of 2002 as an extraordinary period due to insufficient investigation of targeted individuals. During the period, the names of individuals that the US proposed were added to the list with little or no questioning or opposition. As a result, many legal issues emerged and the implementation of Security Council targeted sanctions was challenged by individual Member States.<sup>30</sup>

The largest number of designations has been made by the 1267 Committee which, as of 23 October 2009, had designated 504 individual and entities: 397

individuals (255 associated with Al-Qaeda and 142 associated with the Taliban) and 107 entities associated with Al-Qaeda.<sup>31</sup>

Targeted sanctions are principally intended to be political and preventive measures, rather than punitive ones. Inclusion on a list is not a legal determination but rather a political finding of association with Al-Qaeda and the Taliban. A committee does not require 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.

### **3 Emerging legal challenges and political concerns**

The measures implemented through targeted sanctions are under significant and growing challenge. National and regional courts have increasingly found fault with the procedures used for listing designations of sanctions on individuals and entities, as well as with the adequacy of procedures for challenging designations. This is an unintended consequence of UN targeted sanctions. Human rights advocates have criticized the UN, contending that the prevailing UN procedures for making designations violate the fundamental norms of due process. National legislative and parliamentary assemblies also question the authority of their executive officials to implement UN targeted sanctions without their consent. As a result, a number of Member States have found themselves in the difficult position of being forced to choose between contravening the rulings of their domestic courts and decisions of their legislative bodies on the one hand, and their obligations to implement binding Chapter VII decisions of the UN Security Council on the other.

Although the most potent challenges come from the courts, the issue is not exclusively a legal one. There is a political problem associated with the legitimacy, not only of the instrument of targeted sanctions, but increasingly of actions taken under Chapter VII by the UN Security Council. This is a fundamental challenge to an essential instrument of the international community to counter threats to international peace and security.

There is no inherent contradiction between the defense of fundamental human rights and the maintenance of international peace and security. The UN Charter accords primacy to both goals in Article 1 with the statement of the fundamental purposes of the organization. The Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights came to a similar conclusion in its February 2009 report,<sup>32</sup> acknowledging the necessity of countering terrorism, but pointing out the need to do so whilst maintaining human rights standards. A broad international consensus on this point already exists, as manifested by the UN General Assembly's

Global Counter-Terrorism strategy which calls upon all Member States not only to undertake measures to counter terrorism, but to do so “in accordance with the Charter of the UN and the relevant provisions of international law, including international standards of human rights.”<sup>33</sup>

The issue of UN targeted sanctions designations continues to be framed by both policy practitioners and external observers in terms of a trade-off between security and human rights.

The report “Strengthening Targeted Sanctions through Fair and Clear Procedures,” known as the “Watson Report,”<sup>34</sup> recommended that the Security Council improve the four principal aspects of due process: notification, access, fair hearing, and effective remedy.

The Security Council has made reforms to improve the fairness and transparency of sanctions regimes since 2006. But legal challenges in national and regional courts, concerns in parliamentary assemblies, and criticism from human rights organizations still continue. The political problem has only grown worse, with criticism expanding beyond measures to counter terrorism to criticism of targeted sanctions in general.

### **3-1 Legal challenges at the regional and national levels**

The present study on UN targeted sanctions is focused on financial sanctions on individuals and entities administered by the 1267 Committee. Since most of the other UN targeted sanctions committees have relied on the 1267 Committee’s precedents, the tasks and procedures of this Committee are representative of the practices of other sanctions committees.

More than 30 legal challenges to UN Security Council targeted sanctions listings have been pursued in courts worldwide over designations made either by the 1267 Committee or in the context of the implementation of UNSCR 1373.<sup>35</sup> Some of the cases have been dropped after individuals were delisted by the 1267 Committee.

For an individual, being placed on a sanctions list is relatively easy but to be removed is much more difficult. While protection *ex-ante* — particularly the right to be informed and to be heard before interference with a person’s rights actually occurs — is practically non-existent, protection *ex-post* does not yet offer affected individuals or entities an appropriate remedy for effectively challenging, within a reasonable time from their adoption, the restrictive measures imposed against them.<sup>36</sup>

#### **(1) UN sanctions before the European Court of Justice**

The most highly visible decision to date was made by the highest court in the European Union, the European Court of Justice (ECJ), which decided in favor of two legal challenges on 3 September 2008 and disaffirmed the European Union regulation implementing UNSCR 1267 with specific reference to the two cases. In its judgments in the cases of *Kadi* and *Al Barakaat*,<sup>37</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 they must ensure that the individuals have the right to be informed of the reasons for listing and the right to contest those reasons. The ECJ granted that the EU Regulation implementing the UN listing would become void.

The Court charged that the rights of the defense, in particular the right to be heard and the right to an effective judicial review of those rights, were patently not respected. The EU subsequently applied the procedures it typically employs for EU autonomous sanctions, informing the two plaintiffs of the reasons for their designation and giving them an opportunity to respond. Then, the EU Commission decided to re-instate the designations of both.

There was serious concern at the time, however, that if Europe set a precedent by selectively implementing decisions by the UN Security Council acting under Chapter VII of the UN Charter, it would pave the way for other national and regional bodies to do the same. This would mean undermining the ability of the international community to impose and implement targeted measures with consistency across different jurisdictions.<sup>38</sup> Human rights lawyers charge that the implementation of UN targeted sanctions against individuals may violate fundamental human rights, as protected by regional or global conventions.<sup>39</sup>

## (2) UN sanctions and national courts

The individuals and entities targeted by UN sanctions should receive adequate protection through the international monitoring mechanisms under existing human rights treaties. At the universal level, Ciampi mentions the necessity of including the Human Rights Committee (HRC), a body created by the International Covenant on Civil and Political Rights, and at a regional level the European Convention of Human Rights.

In 2008, the HRC delivered its opinion related to Nabil Sayadi and Patricia Vinck, both Belgian nationals and residents, and, respectively, the director and secretary of *Fondation Secours International*, the European branch of an Islamic charity based in Illinois, US, that had been on the Consolidated List since 22 October 2002.<sup>40</sup> According to information provided by Belgium, criminal investigations of Sayadi and Vinck had started but, although they were subject to a travel ban and asset freeze, they were not given access to the relevant information justifying their listing. In February 2005, a Belgian civil court ordered the Belgian state to initiate the procedure to have their names removed from the list. In pursuance thereof, Belgium requested the committee to delist the authors. The criminal investigation was dismissed in December 2005.<sup>41</sup> Kadi reported this matter to the HRC in 2006 and the report was accepted by the committee. And finally in 2009 the names were delisted from the sanctions list by the judgement of the Security Council.<sup>42</sup>

This case is a peculiar one as Sayadi and Vinck were listed on the basis of information provided by their national state, which was later unable to obtain the removal of their names from the list because of the objections of some of the committee members.

For due process against individuals listed due to UNSCR 1267, Reich says that the series of policy seminars in early 2002 — the Interlaken Process, the Bonn-Berlin Process, and the Stockholm Process — may have been useful for paving the way to such conclusive legal challenges. This is because UN policymakers and scholars strove to develop a legal framework within international law to combine the effectiveness of an approach vested in the UN with respect for fundamental rights.<sup>43</sup>

### **3-2 Growing political concerns among Member States**

The issue of UN targeted sanctions has now gone beyond legal challenges and has spilled over into parliamentary debates and motions to limit the ability of Member States to implement UN sanctions under certain conditions. The UK Supreme Court, for example, has raised questions about the authority of the UK government to implement UN targeted sanctions against individuals without Parliamentary approval via primary legislation.<sup>44</sup> Germany derided the application of targeted sanctions and other UN Member States have indicated a growing reluctance to add names to the lists of individuals and entities targeted by Security Council sanctions because of these concerns. More than 50 Member States have expressed concern about the lack of due process and absence of transparency associated with listing and delisting.<sup>45</sup>

Moreover, the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights issued a report in 2009 titled “Assessing Damage, Urging Action” which strongly criticized the listing system as “unworthy” of international institutions like the UN and EU.<sup>46</sup>

The legal issues and human rights concerns are significant but, as the 2009 Watson Report points out, need to be placed in a broader political context.<sup>47</sup> Virtually all of the major legal challenges to date have stemmed from designations associated with efforts to counter terrorism, but not those associated with the enforcement of peace agreements, human rights violations, or nuclear proliferation.<sup>48</sup> Global terrorism has been characterized by the UN Security Council as a threat to international peace and security, and targeted sanctions have been imposed against individuals and entities as both preventive and deterrent measures. The growing negative reaction to targeted sanctions for counter terrorism purposes, however, risks the further erosion of the credibility and future utility of the instrument of multilateral sanctions in general.

#### 4 Developments and procedural improvements within the UN

The movement for reform within the UN has been building for years. The High Level Panel on Threats, Challenges and Change appointed by former UN Secretary-General Annan noted in 2004: “The way entities or individuals are added to the terrorist list maintained by the Council and the absence of review or appeal for those listed raises serious accountability issues and possibly violates fundamental human rights norms and conventions.”<sup>49</sup>

The 2005 World Summit Outcome document called on the Security Council “to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and removing them, as well as for granting humanitarian exceptions.”<sup>50</sup>

In response, Annan directed the Office of Legal Affairs (OLA) to begin an interdepartmental process within the UN to develop proposals and guidelines to address such concerns. The OLA 2006 report argued that the Security Council must strive to balance its principal duty of maintaining international peace and security with respect for the human rights and fundamental freedoms of targeted individuals to the greatest extent possible.<sup>51</sup>

Based on the OLA analysis, Annan submitted an informal paper to the Security Council titled “Targeted Individual Sanctions: Fair and Clear Procedures for Listing and Delisting,” in which he enumerated basic elements to ensure fair and clear procedures.<sup>52</sup>

##### (1) The Establishment of a Focal Point (UNSCR 1730)

The Security Council called for the Secretary-General to establish a focal point within the Secretariat in 2006.<sup>53</sup> The creation of the focal point allows petitioners seeking delisting to submit requests to the Secretariat; the Secretariat then acknowledges receipt of the requests and informs the petitioners on procedures for processing delisting requests, forwards the requests to the designating states and states of citizenship and residence, and informs the petitioners of the sanctions committee’s decision. The focal point represents an improvement in providing accessibility for those listed and is expected to ensure fair and clear procedures exist for placing individuals and entities on lists and for removing them as well as for granting humanitarian exemptions.<sup>54</sup>

##### (2) Further Reform of the 1267 Committee Procedures (UNSCR 1735)

The Al-Qaeda/Taliban sanctions regime has demonstrated impressive institutional development in the past ten years. UNSCR 1267 contained no provision for delisting in 1999 but today it represents the most procedurally advanced of the sanctions committees with formalized procedures for delisting.

UNSCR 1735 contained the Security Council’s efforts to improve the fairness and transparency of sanctions regimes.<sup>55</sup> The resolution elaborated minimal standards

for the statements of case, provided for the public release of that information, and created a procedure to improve deficiencies in notification. It also included the first measure to require notification of those listed. Another major change found in UNSCR 1735 was that the period of the “No Objections Procedure” (NOP) was extended from 48 hours to five working days. This allows more time for a serious review of cases which is important for a fair hearing in the listing process.

(3) Expanded Roles of the 1267 Committee (UNSCR 1822)

The Security Council expanded the 1267 Committee’s role in addressing listing and delisting issues through UNSCR 1822.<sup>56</sup> UNSCR 1822 contained requirements with the potential to drastically change sanctions committee procedures. First, it required a review of all names on the 1267 Consolidated List within two years, and that every designation should be reviewed at least every three years. Second, it required the development of narrative summaries for all listings on the committee website and an explanation for the inclusion of each name on the list.

The workload associated with the 1822 review has been extraordinary for the committee members, national governments and those states responsible for the most designations. Reviewing states are asked to indicate if the listing remains appropriate; if not, a delisting request is submitted according to the guidelines. After replies are received from the reviewing states, information is circulated to the committee members and the monitoring team for one month to review. However, the Watson Report points out that initial progress was slower than previously hoped for due to the significant workload and delays in getting necessary responses from Member States.<sup>57</sup>

(4) Appointment of an Ombudsperson (UNSCR 1904)

In order to create a clearer and fairer delisting procedure, UNSCR 1904 established the system and roles of an Ombudsperson.<sup>58</sup> The Ombudsperson, appointed by the Secretary-General, should be an eminent individual of high moral character, impartiality and integrity with high qualifications and experience in relevant fields, such as law, human rights, counter-terrorism and sanctions. The Office of the Ombudsperson receives requests from individuals and entities seeking to be removed from the Consolidated List. The Ombudsperson makes recommendations in consultation with Secretary-General to the Security Council on appeals regarding committee decisions on delisting. The person is expected to perform these tasks in an independent impartial manner and shall neither seek nor receive instructions from any government. Any final decision on delisting is made by the committee.

## **Concluding notes**

The Security Council has engaged in a continual process of self-assessment and reform of its practices with regard to designations, exemptions, and delisting; as

indeed it has since the first introduction of targeted sanctions in the mid-1990s. The Security Council has adopted UNSCRs 1730, 1735, 1822, and 1904.

Procedural changes to date generally address concerns about notification and improved accessibility, but there have also been improvements in providing elements for a fair hearing. The 2009 Watson Report points out that a completely fair hearing in advance of a designation is virtually impossible given the nature of targeted financial sanctions in particular. However, there have been improvements with regard to providing elements of a fair hearing, notably with regard to periodic review, extending the NOP, transparency, and most significantly, efforts to improve the quality of statements of case.<sup>59</sup>

Individuals and entities targeted by the Security Council have the right to be informed of those measures and to know the case against them; they have the right to be heard within a reasonable time by the relevant decision-making body; and, the right to review by an effective review mechanism. These elements, along with a regular review to mitigate the risks of violating the right to property and related human rights, represent the first articulation by UN officials of minimum standards of procedural fairness.

In order to protect the human rights of targeted individuals, the UN needs to work together with international human rights monitoring bodies such as the UN Committee of Human Rights and the European Court of Human Rights. In relation thereto, there is no clear answer as to whether these bodies are capable of protecting the rights of targeted individuals and entities when national as well as other international institutions have failed to do so.

It is too early for us to judge the UN's reforms in the reviewing mechanisms of targeted sanctions but, unless the Security Council overcomes legal challenges and growing political concerns over listing/delisting mechanisms, basic human rights cannot be guaranteed in the international community.

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16. For example, the Fourth Freedom Forum (Goshen, Indiana, US) and the Joan B. Kroc Institute for International Peace Studies (University of Notre Dame, Indiana, US) were known as pioneers in searching for smart sanctions. David Cortright and George A. Lopez initiated the research.
17. For example, “Toward More Humane and Effective Sanctions Management: Enhancing the Capacity of the United Nations System,” Occasional Paper #31, submitted by the Joan B. Kroc Institute for International Peace Studies, 1997; “The Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights,” submitted by Marc Bossuyt, President of the Constitutional Court of Belgium. These reports were submitted to the Department of Humanitarian Affairs (current UN Office for Coordination of Humanitarian Affairs: OCHA) and to the Sub-Commission on the Promotion and Protection of Human Rights.
18. The proceedings are available at [www.smartsanctions.ch/start.html](http://www.smartsanctions.ch/start.html) (Accessed 12 Feb. 2016).
19. The proceedings are available at [http://www.watsoninstitute.org/tfs/CD/ISD\\_Summary\\_of\\_Bonn\\_Berlin\\_Process.pdf](http://www.watsoninstitute.org/tfs/CD/ISD_Summary_of_Bonn_Berlin_Process.pdf) (Accessed 12 Feb. 2016).
20. The proceedings are available at [www.smartsanctions.se](http://www.smartsanctions.se) and also at Wallenstein, Peter, Carina Staibano and Mikael Eriksson, *Making Targeted Sanctions Effective: Guidelines for the Implementation of UN Policy Options*, Stockholm: Uppsala University, 2003.
21. *SanctionsAPP*, The Graduate Institute Geneva, Graduate Institute of International and Development Studies at <http://www.sanctionsapp.com> (Accessed 12 Feb. 2016).
22. *SanctionsAPP*, p. 4.
23. About 62%, 628 of 1,015, entail sanctions against individuals designated by the UN Security Council. (*SanctionsAPP*), p. 4.
24. For example, Bierstecker, Thomas, “UN Targeted Sanctions as Signals: Naming and Shaming or Naming and Stigmatizing?” in Friman, H. Richard (ed.), *The Politics of Leverage in International Relations: Name, Shame, and Sanction*, Palgrave Macmillan, 2015.
25. Bierstecker (2015), pp. 166–167.
26. UN Document, S/RES/1267, 15 October 1999.

27. UN Document, S/RES/2270, 2 March 2016. In the attached lists, 16 individuals and 12 entities were designated as the targets of a travel ban and/or asset freeze (Annex I and II).
28. The Portuguese acronym for União Nacional para a Independência Total de Angola.
29. For example, Boucher, Alix K., and Victoria K. Holt, "Targeting Spoilers: The Role of United Nations Panels of Experts," January 2009; Angell, David J. R., "The Angola Sanctions Committee," in Malone, David M. (ed.), *The UN Security Council: From the Cold War to the 21<sup>st</sup> Century*, Lynne Rienner Publishers, 2004, pp. 195–204; Möllander, Anders, "UN Angola Sanctions: A Committee Success Revised," Department of Peace and Conflict Research, Uppsala University, March 2009, p. 9.
30. Biersteker, Thomas and Sue Eckert, "Addressing Challenging to Targeted Sanctions: An Update of the 'Watson Report,'" October 2009, UNO Academia, The Graduate Institute, Geneva Centre on Conflict, Development and Peacebuilding, Watson Institute, p. 7.
31. Ibid.
32. "Assessing Damage, Urging Action" issued by the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, International Commission of Jurists. 16 February 2009, Geneva, pp. 113–117. Available online at [http://ejp.icj.org/hearing2.php3?id\\_article=167&lang=en](http://ejp.icj.org/hearing2.php3?id_article=167&lang=en)
33. Resolution adopted by the UN General Assembly, Measures to eliminate international terrorism, UN Document, A/RES/63/129, Distr. 15 January 2009. Available at <http://www.un.org/ga/63/resolutions.shtml>
34. *Strengthening Targeted Sanctions Through Fair and Clear Procedures* ("Watson Report") by the Graduate Institute, Geneva Centre on Conflict, Development and Peacebuilding, Watson Institute, March 2006. This is available online at [http://www.watsoninstitute.org/pub/Strengthening\\_Targeted\\_Sanctions.pdf](http://www.watsoninstitute.org/pub/Strengthening_Targeted_Sanctions.pdf). The report was made an official document of the UN General Assembly and the UN Security Council, UN Doc. A/60/887-S/2006/331.
35. UN Document, S/RES/1373, 28 September 2001.
36. Ciampi (2011).
37. For an analysis of the Kadi case, see, Posch, Albert, "The Kadi Case: Rethinking the Relationship between EU Law and International Law?" *The Columbia Journal of European Law Online*, Vol. 15, 2009.
38. *Watson Report* (2009).
39. *Watson Report* (2009), pp. 17–18.
40. The names were also placed on the lists appended to the European Union Council Regulation (27 January 2003) and a Belgium ministerial order (31 January 2003).
41. For further information on the Sayadi case, see Keller, Helen and Andreas Fischer, "The UN Anti-terror Sanctions Regime under Pressure," *Human Rights Law Review*, 2009.
42. UN Document, SC/9711, 21 July 2009.
43. Reich, Johannes, "Due Process and Sanctions Targeted Against Individuals Pursuant to Resolution 1267 (1999)," *33 Yale Journal of International Law*, 505, 2008.
44. *Watson Report* (2009), pp. 10–11.
45. Ibid.
46. Ibid.
47. Ibid.
48. In response to criticism from the Human Rights Committee, many scholars stressed the urgent need for reform of anti-terrorism sanctions. For example, Keller (2009) and Posch (2009).
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109. Available at <http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN021752.pdf> (Accessed 12 Feb. 2016).
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  55. UN Document, S/RES/1735, 22 December 2006.
  56. UN Document, S/RES/1822, 30 June 2008.
  57. *Watson Report* (2009), pp. 16–17.
  58. UN Document, S/RES/1904, 17 December 2009.
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