

Sanctions and Security Research Program

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Impede Compliance
with UN Sanctions?
A Critical Assessment

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Policy Brief SSRP 0912-01

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The Sanctions and Security Research Program is a leading source of scholarly expertise and analysis on the use of targeted sanctions as instruments of international peacemaking. The program provides research, consulting services, and policy recommendations to governments and organizations seeking to make sanctions more effective means of resolving conflict and enforcing international norms. The program is a partnership of the Fourth Freedom Forum and the Kroc Institute for International Peace Studies, University of Notre Dame.

This research report was produced with support from the foreign ministries of Sweden, Finland, and Belgium, and from the Dutch nongovernmental organization Cordaid, as part of the Project on Strengthening Targeted Sanctions through Improved Due Process Procedures.

The author wishes to thank the following individuals for their input and critical comments: Eliot Fackler, Linda Gerber-Stellingwerf, George A. Lopez, Sarah Persinger, and Joshua Weaver. Editing assistance and support also came from Erika de Wet, Peter Wallensteen, Alistair Millar, Per Saland, Arto Haapea, and Jennifer Glick.

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Patterns of Implementation: Do Listing Practices Impede Compliance with UN Sanctions? A Critical Assessment

It is widely assumed that concerns about due process rights in listing and delisting procedures have impeded compliance with targeted sanctions against Al-Qaida and the Taliban. While most governments regard UN sanctions as essential tools in the fight against global terrorism and consider them among the most important instruments available to the Security Council, a growing number of states are concerned about flaws in the listing and delisting process. Of particular concern is the absence of mechanisms for independent legal review and the inability of listed parties to verify information used as the basis for actions taken against them. In some countries the perception of unfairness has generated skepticism about the legitimacy of the Consolidated List maintained by the Al-Qaida and Taliban Sanctions Committee. The updated study of the Watson Institute for International Studies reported that “more than 50 Member States have expressed concern about the lack of due process and absence of transparency associated with listing and delisting.”¹ A May 2009 paper by a group of interested countries asserted that “States are reluctant to submit names for listing out of concern that such a designation might lead to legal problems at the domestic level and not be reversible once a decision is taken by the Sanctions Committee.”² Interviews with various experts have confirmed that some states are unwilling to submit names for designation.

The salience of the due process issue varies considerably among states. Concerns are highest among European states that are constitutionally and politically bound to the enforcement of rigorous human rights standards. Many of these states also have concerns about broader UN reform issues related to the representativeness of the Security Council and the legitimacy of its working methods. For other states the controversy over due process reinforces a general skepticism about sanctions, and may serve as an excuse for inaction. In some cases, states have been reluctant to designate names for listing even after the Council has imposed targeted sanctions against perpetrators of human rights abuse. In the case of the Democratic Republic of the Congo (DRC), it took the sanctions committee nearly three years after sanctions were imposed against recruiters of child soldiers to designate a list of targets.³ In the Somalia case, the Council imposed targeted sanctions in November 2008 (Resolution 1844), but a year later no names had been designated. In the cases of Côte d’Ivoire and Sudan, the sanctions committees designated only a handful of names, despite evidence of widespread human rights violations in both countries. The irony is that while some states are deeply concerned about

human rights standards in sanctions targeting, others acquiesce to armed violence and human rights violations through their reluctance to impose targeted sanctions.

This paper examines designation patterns in sanctions targeting to determine if due process concerns are impeding the willingness of states to implement these measures. Implementation refers here to the obligation of states to comply with Security Council measures adopted under Chapter VII of the UN Charter. It encompasses a range of actions by states, regional organizations, and private actors to comply with measures imposed by the UN Security Council. The degree of compliance in a particular sanctions episode depends upon multiple factors, including the political interests of the major powers and relevant states, the legal and administrative capacities of key actors and stakeholders, and the programmatic coherence of Security Council decision-making and implementation efforts.⁴ Compliance also depends upon political legitimacy. While the implementation of Security Council measures is legally binding on all UN member states, the degree of actual compliance varies greatly and inevitably depends on political factors within member states and regional organizations. When political will is lacking, UN policies are ineffective. In the current instance, when the fairness and credibility of Security Council procedures are questioned, the implementation of targeted sanctions suffers.

This paper measures implementation by examining patterns and trends in listing designations. The focus is on UN Security Council sanctions against Al-Qaida and the Taliban,⁵ but the analysis also includes observations and general conclusions about patterns of implementation for other Security Council sanctions. The paper begins with a review of court challenges and expert group reports that highlight legal and political difficulties affecting sanctions implementation. It examines various reports and analyses pointing to significant limitations in international compliance with sanctions against Al-Qaida and the Taliban. The bulk of the paper is devoted to a review of quantitative trends in sanctions listing and delisting. It analyzes the number of names submitted annually for sanctions designation as an indicator of sanctions implementation. The paper concludes with an assessment of the qualitative and quantitative findings and a critical evaluation of the assumption that sanctions implementation is weakening.

Legal Challenges

The reports of the Analytical Support and Sanctions Monitoring Team (hereafter the Monitoring Team) contain multiple references to problems arising from the lack of due process rights afforded listed individuals and entities. The ninth report of the Monitoring Team, issued in May 2009, observed that some states disregard the sanctions regime “because they believe it ineffective, and some have questioned its legitimacy.”⁶ Previous reports similarly found that some states consider the listing and delisting procedures “insufficiently in tune with human

rights concerns or too inflexible to allow for the speedy addition or removal of names,”⁷ and that the implementation suffers because some states “question the fairness of its application.”⁸ The Monitoring Team found that states often cited legal reasons for their failure to submit names for listing, particularly “when a State might fear the consequences of a legal challenge to its application of the measures.”⁹

Government agencies have been facing numerous legal challenges from listed individuals and entities. In recent years court cases have appeared in the United Kingdom, United States, Canada, the European Union, Turkey, and Pakistan. The updated Watson Institute report estimates that more than thirty legal challenges have been filed in national and regional courts, with about half of them still active.¹⁰ The number of cases is not large, given that there are more than 500 names on the Al-Qaida/Taliban list, but they attract attention and arouse political concerns. While the courts have upheld the legality of Security Council sanctions and the validity of the Al-Qaida/Taliban sanctions in particular, they have found shortcomings in national and regional implementation of these measures.¹¹ The cases have generated negative publicity and political criticisms that erode the credibility of Security Council sanctions. These legal and political challenges, according to the latest report of the Monitoring Team, “have the potential to undermine the authority of the Security Council to impose sanctions.”¹²

One of the most important cases has been that of *Kadi* and *Al Barakaat International Foundation*.¹³ The European Court of Justice ruled in September 2008 that implementation of the sanctions in this case violated European legal standards and denied plaintiffs their due process rights. The Court ordered that the measures be annulled—a ruling that counterterrorism expert Jonathan Winer described as a “devastating blow” to the system for imposing financial sanctions against terrorist groups.¹⁴ The European Commission responded to the ruling by issuing a new regulation in November 2008 reimposing the measures on *Kadi* and *Al Barakaat*. The plaintiffs have since brought new action in European courts to annul this regulation. If the *Kadi* case or other legal challenges are ultimately successful in undermining the legal basis for sanctions implementation, European states and other affected countries could be faced with the choice of either following court orders in defiance of the UN Security Council or violating those orders by proceeding to implement Security Council sanctions.

Some UN officials interviewed for this report argue that the number of court cases is not an indication of diminished implementation and declining political will, but rather a sign that the sanctions are having a tangible impact on the finances and livelihoods of those affected. No one would go to the expense and difficulty of filing court challenges if the measures were not effective. While court cases may be a sign of the concrete impact of sanctions, they raise concerns that complicate the policymaking process. Officials in the United States and other countries often go to elaborate lengths to try to make their decisions ‘litigation proof.’ Lawyers

representing affected individuals and entities have become more skilled and creative in raising procedural challenges to listing decisions. Policymakers in turn have been forced to spend a great deal of time on questions of procedure and legal rights. At times more attention is paid to process than to compliance.¹⁵ Court cases have generated pressure for more rigorous legal standards for due process rights, but judicial rulings to date have not established binding mandates for full human rights legal protection. Policymakers have responded by adjusting some of their procedures, but many unresolved legal and political challenges remain.

Designation Dilemmas

Against this backdrop of official concerns and increasing litigation, scholars argue that the importance and utility of the Al-Qaida/Taliban list has been diminishing. Matthew Levitt and Michael Jacobson report that only a “handful” of countries now regularly submit names for designation. Many countries “lack confidence” in the list and do not view it as a “useful operational tool in counterterrorism.”¹⁶

Significant technical flaws in the list have frustrated enforcement efforts and raised questions about its credibility. Of the approximately 500 names on the list, at least sixteen named individuals are considered dead, and another fifteen are likely also deceased.¹⁷ Some names on the list lack passport numbers and basic identifying information. These ambiguities have made it virtually impossible in certain cases for government officials and the banking sector to enforce the sanctions. The Monitoring Team noted in its eighth report that “effective implementation of the sanctions regime is directly related to the quality of the information available on its targets.” It observed that “limited information creates frustration and disaffection among the people responsible for checking the List, on whom effective implementation most depends, increasing the risk that listed names will not be spotted and that the measures may be applied to unintended targets.”¹⁸ Levitt and Jacobson report on the frustration of one European banker who “accused the UN of ‘polluting the sanctions environment’ by including too many listings without adequate identifying data.”¹⁹

The problem of inadequate identifying information is a long-standing one in targeted sanctions and is not confined to the Al-Qaida/Taliban sanctions. Those remaining on the aging travel ban list for Sierra Leone, for example, are still only identified by their name and rank, and title when available. No birthdates or passport numbers are included.²⁰ While Security Council practices have improved considerably since then and greater information on those listed is now provided by sanctions committees, problems remain. There are inherent limitations on the ability of government agencies to obtain accurate information on individuals who may be accused of committing crimes and may face police or military pressures.

Identification problems are greatest with the Al-Qaida/Taliban list. In the immediate aftermath of 9/11, the sanctions committee added a large number of names to the list, mostly at the behest of the United States.²¹ U.S. officials have acknowledged that evidentiary standards during these “aggressive” rounds of designations were “weak.”²² At the time some officials feared “the government’s haste in this area . . . might result in a high level of false designations that would ultimately jeopardize the United States’ ability to persuade other countries to designate groups as terrorist organizations.”²³ Their concerns seem to have been partly justified.

The Monitoring Team has called attention to the problems associated with names that lack proper identifying information. In its latest report the team notes that 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.”²⁴

Compliance Capacity

Aside from ambiguities in the UN listing process, problems with inadequate implementation capacity at the national level have also complicated sanctions enforcement. The 1267 sanctions regime obliges member states to enforce a travel ban, assets freeze, and arms embargo against individuals or entities associated with Al-Qaida or the Taliban. Some states have neither the legal authority or administrative capacity to freeze financial assets, nor the institutional capacity to verify travel documents and enforce travel bans. International capacity-building programs have helped to address these problems in many states, but gaps remain that limit the effectiveness of sanctions enforcement.

The inadequacy of compliance efforts is confirmed in reports submitted by member states to the Al-Qaida/Taliban sanctions committee, pursuant to resolution 1455 (2003). Reports covering the first two years of the travel ban show that the committee was not informed of a single instance of a designated individual being stopped at a state border.²⁵ More recently, the ninth report of the Monitoring Team noted that “the few reports of officials having stopped individuals . . . have all turned out to be cases of mistaken identity.”²⁶ Levitt and Jacobson describe how a Swedish national, Ahmed Ali Yusef, who was delisted in 2006, was able to travel freely across European borders while he was on the Consolidated List.²⁷ Some states have struggled simply to distribute the names on the list across all levels of government.²⁸ Such reports indicate serious implementation problems, but they may also reflect a lack of reporting from member states.

In some instances governments may block the travel of listed persons without involving UN officials or reporting on their actions. A case in point is that of Abousfian Abdelrazik, a Sudanese-born Canadian and Sudanese dual citizen who was arrested on terrorism charges in Sudan and later released. In July 2006 he was placed on the Al-Qaida/Taliban list. When Abdelrazik requested a passport, Canadian officials denied the request on the basis of their obligation to implement the 1267 sanctions. The Canadian government was ordered to allow Abdelrazik to return in June 2009, following a decision of the Federal Court of Canada. The court found that the Canadian Security Intelligence Service had requested his arrest in Sudan.²⁹

In the area of freezing assets, many states have made progress in introducing legislative and regulatory frameworks to freeze and confiscate terrorist assets, but compliance problems remain. The reports submitted pursuant to Resolution 1455 revealed that the measures adopted by some states “may not easily allow the detection of funds that are destined to be used to commit a terrorist act.”³⁰ The Al-Qaida/Taliban sanctions committee noted that “certain concrete steps, such as regulating the activities of non-banking financial entities, cash couriers, and charities, have yet to be implemented in a number of countries.”³¹ A 2004–05 study by the IMF and World Bank assessing implementation efforts by eighteen countries reported: “All assessed countries showed weakness on the freezing and confiscation of terrorist assets.”³²

Levitt and Jacobson argue that international cooperation with UN efforts to counter terrorist financing issues has waned. “The UN—an organization that played an important role in bolstering international counterterrorist-financing efforts in the first few years after September 11—has seen its counterterrorism role shrink since 2004.”³³ This is an overstatement that ignores the broad range of UN counterterrorism programs, including the UN General Assembly strategy that was adopted in September 2006. While the utility of the UN assets-freezing requirement has diminished in recent years, the same has been true for other assets-freezing programs, including those of individual governments and international financial institutions. As terrorist networks have become more decentralized, they have tended to rely less on formal banking systems to cover the costs of their relatively low-cost operations. The financing of terrorist networks increasingly depends on alternative remittance systems and less detectable methods of cash transmission.

Countries are showing less interest in reporting data on frozen assets. The Monitoring Team has reported that states “do not believe they are under any obligation to report these actions to the Committee,” and that “the lack of information suggests that the overall total of reported frozen assets is now inaccurate.”³⁴ Based on the fragmentary evidence in the Monitoring Team’s reports nos. 4–8, the total amount of frozen assets that was actually reported declined from

\$93.4 million to \$91.4 million between January 2006 and July 2006 and again declined to \$85 million by November 2007.³⁵ No explanation was offered by the Monitoring Team for the first reported decline in frozen assets, which could be the result of diminished reporting by states, lower asset values, or perhaps the delisting and lifting of sanctions on certain entities and individuals. However, the second decline was attributed to “one State’s discovery that assets it had reported frozen did not in fact belong to a listed party, and the deduction of Taliban assets that had been frozen but were later released to the Afghan Government.”³⁶ The subsequent ninth and tenth reports of the Monitoring Team say nothing about the amount of frozen assets. Without accurate information, it is difficult to determine the efficacy of this sanctions measure. The lack of reported data creates ambiguity about the degree of actual assets freezing that has taken place, and makes it difficult to assert definitively that financial sanctions have become less effective.

Reportage to the UN on the enforcement of the arms embargo has also been minimal. No cases of implementation were reported to the 1267 Committee within the first two years of the arms embargo.³⁷ The committee has argued that “A practical measure of the effectiveness of the arms embargo and of its comprehensive implementation is whether Al-Qaida, the Taliban and their associates are forced as a result to use less efficient arms and related materiel with less sophisticated military skills.” The committee claims that while success varies greatly across the globe, terrorists in many areas are fighting with less technologically advanced weapons.³⁸ Insurgents and terrorist groups do not lack for arms, however, which continue to flow freely across borders.

This brief overview suggests that compliance problems with the 1267 sanctions are profound and widespread. Similar findings of weak and inadequate implementation have been reported for other sanctions cases, as documented in the reports of the panels of experts associated with the relevant sanctions committees. As noted, these problems are generic, and are the result of systemic issues of inadequate capacity and uncertain political will among some states in relation to the implementation of Security Council sanctions. Concerns over a lack of due process rights may reinforce political doubts about the legitimacy of the 1267 sanctions, but they are not the primary cause of these underlying implementation challenges.

Sanctions Designations Patterns for the Al-Qaida/Taliban Sanctions Committee

One means of measuring the willingness of states to implement targeted sanctions is to examine trends in the number of designations of individuals and entities subjected to targeted sanctions. In the pages that follow I present quantitative information on designation trends for the Al-Qaida/Taliban list. Later in the paper I discuss trends in designations for other Security Council sanctions cases.

As I note below, the number of designations is not an ideal indicator for sanctions implementation. A decline in the number of designations does not necessarily signal a lessened commitment to sanctions implementation. Many factors could account for such a trend, including the fact that previous designations might have been sufficient to encompass the most significant targets. Political developments such as a peace settlement or power-sharing agreement might lead to the removal of a significant number of names—as was the case with the Sierra Leone and Liberia sanctions beginning in 2003. Policymakers may determine that a smaller, more accurate list is better than a larger list with numerous flaws. Because of these and other possible explanatory considerations, caution is needed when interpreting these indicators. Nonetheless, the data helps to shed light on patterns of sanctions implementation and illustrates Security Council political priorities.

The tables and graphs below give data on designations to the Al-Qaida/Taliban list on an annual basis from January 2000 to 13 December 2009.³⁹ Table A presents the total number of Taliban and Al-Qaida individuals and entities added and removed from the list in this period. Graph 1 illustrates the listing trends. The table and graph indicate a sharp drop in the number of annual designations after the initial bulk designations of 2001. It is important to note that most of the Taliban designations were made en masse in 2001 prior to the 9/11 attacks. In 2001, 142 individuals associated with the Taliban were listed. One more individual was added in 2007. Only one Taliban individual has since been delisted, leaving 142 Taliban individuals on the list.

TABLE A: Combined Total of Al-Qaida and Taliban Individuals and Entities Added and Removed*

Year	Total Added	Total Removed	Total Remaining on List
2000	7	-	7
2001	267	-	274
2002	53	15	312
2003	77	-	389
2004	44	1	432
2005	32	1	463
2006	24	3	484
2007	8	15	477
2008	32	3	506
2009	7	10	503

* Figures as of 13 December 2009.

GRAPH 1: 1267 Committee Consolidated List: Total Listed by Year from 2000 through 13 December 2009



The data on the Taliban have remained fairly static with few new listings or delistings since the beginning of the sanctions regime. Thus, the Taliban portion of the list is less useful when looking for trends. The following tables and graphs specifically focusing on Al-Qaida however, illustrate a drop in designations after the initial years. Table B shows the combined totals for the Al-Qaida portion of the list, showing the number of individuals and entities associated with Al-Qaida that were added and removed from January 2001 to 13 December 2009.

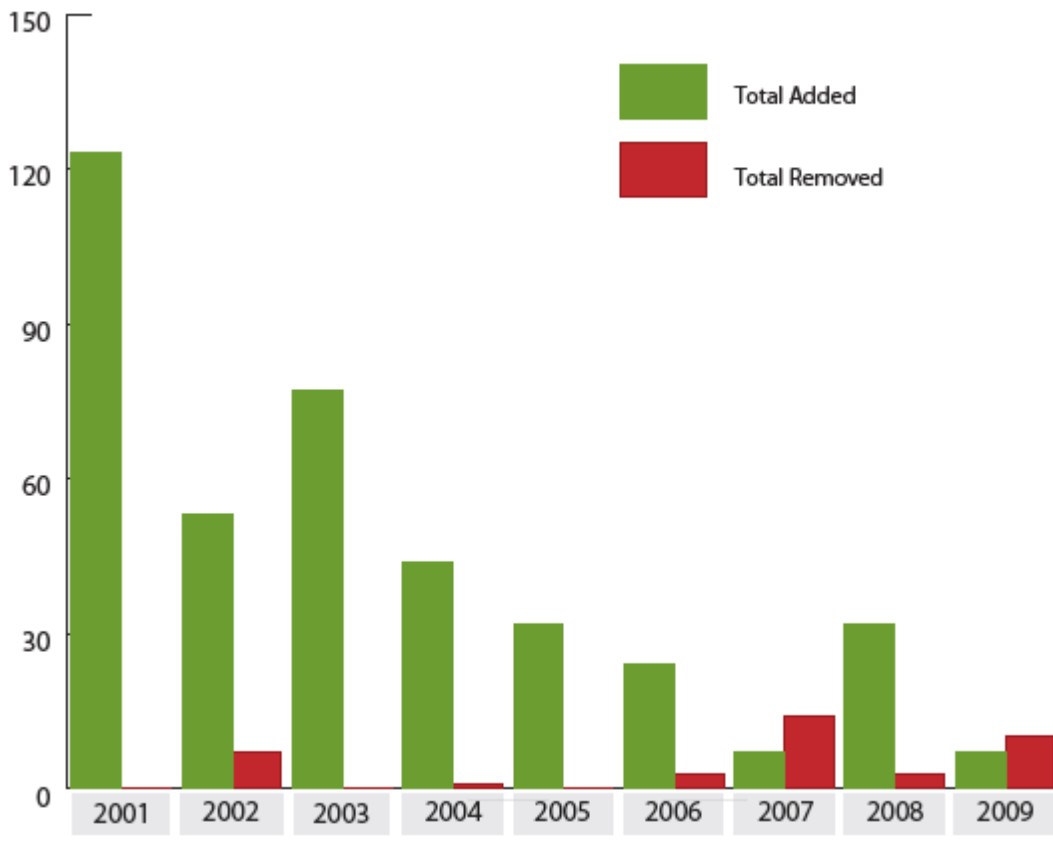
TABLE B: Combined Total of Al-Qaida Individuals and Entities Added and Removed*

Year	Individuals Added	Individuals Removed	Entities Added	Entities Removed	Total Added	Total Removed
2001	56	-	67	-	123	-
2002	27	4	26	3	53	7
2003	70	-	7	-	77	-
2004	29	1	15	-	44	1
2005	28	-	4	-	32	-
2006	18	3	6	-	24	3
2007	7	2	-	12	7	14
2008	31	3	1	-	32	3
2009	7	6	-	4	7	10

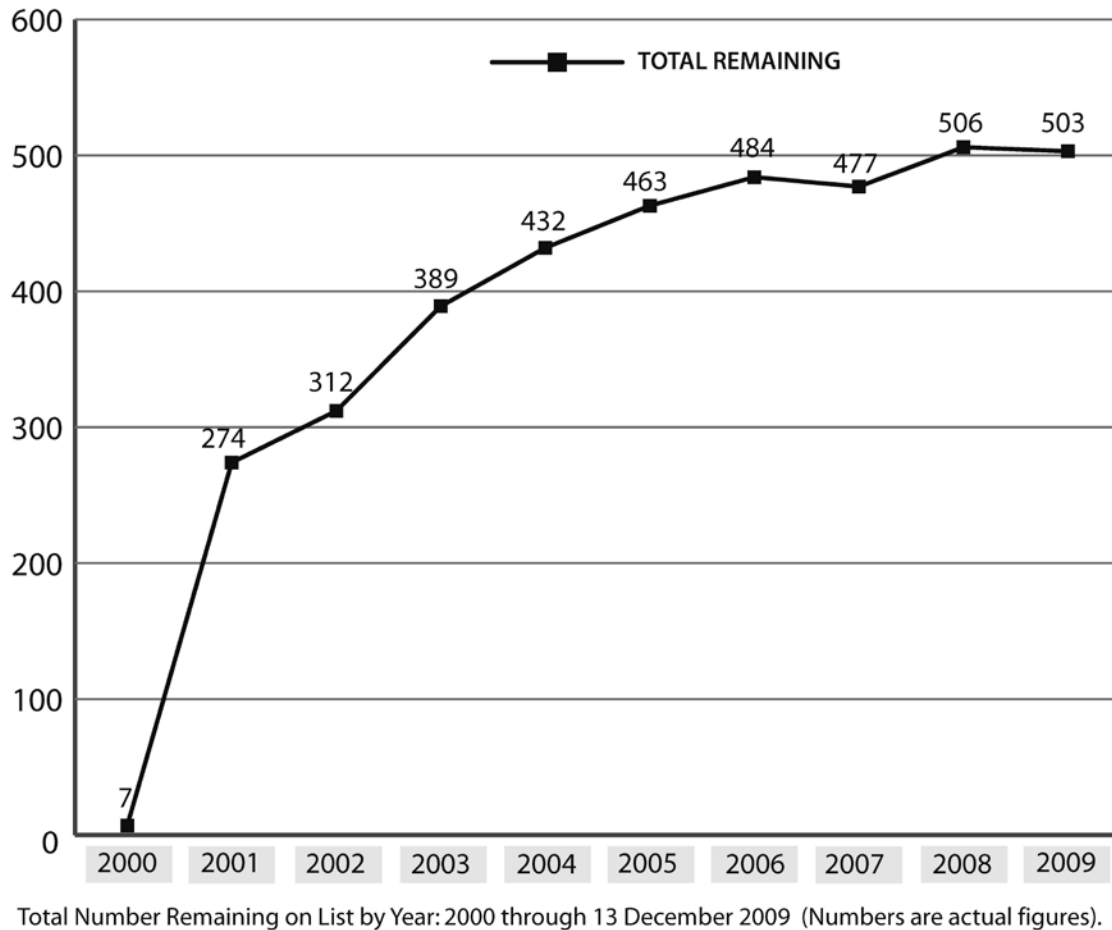
* Figures as of 13 December 2009.

Graph 2 below illustrates the trends for the addition and removal of Al-Qaida individuals and entities since 2001. It shows a general downward pattern in the numbers of names added, punctuated by increased designations in 2003 and 2008. According to the Consolidated List, the greater number of designations in 2008 included the listing of eight individuals and one entity associated with the Filipino Rajah Solaiman Movement, which is related to the previously listed Abu Sayyaf Group. This reflected a focus at the time on Asian militant groups loosely associated or ideologically affiliated with Al-Qaida.

GRAPH 2: Combined Total of Al-Qaida Individuals and Entities Added and Removed From 2001 through 13 December 2009



**GRAPH 3: 1267 Sanctions against Al-Qaida and the Taliban—
General Trends of the Consolidated List**



Graph 3 shows the trend line for the combined total of designated Al-Qaida and Taliban individuals and entities. The total number on the list has continued to grow since 2001. Each year, aside from 2007 and 2009, there have been more listings than delistings.

The graphs show that the growth rate of Al-Qaida designations has slowed in recent years. There are many possible explanations for this. As stated, the high volume of listings in 2001 may have netted the most important targets. Some scholars and intelligence community officials argue that the social base of support for Al-Qaida is shrinking.⁴⁰ Many fighters have been captured or killed in police or military operations and missile strikes. More critically, Al-Qaida's image in the Islamic world has been tarnished by mass killings and the deaths of innocent Muslim civilians. This has made it more difficult for Al-Qaida to raise money and recruit.⁴¹

The Taliban portion of the 1267 list has been almost completely dormant. Despite an ongoing war effort and the expansion of Taliban influence in Afghanistan in recent years, almost nothing has been done to add new Taliban names or to remove those who have reconciled with the Afghan government. Nearly all the Taliban names on the Al-Qaida/Taliban list were added prior to the 9/11 attacks. Only one new individual was listed after that. The fact that the Afghan government, the United States, and the other coalition partners have not added designations raises questions about the perceived efficacy of the sanctions in the Afghan war environment. A western journalist in Afghanistan recently expressed skepticism about the impact of the 1267 sanctions on insurgents. “The militant Taliban have not needed an account at Barclay’s to wage their seven-year war on the international troops in Afghanistan, nor do they seem to be hurting for weapons, which come from over the borders with Iran, Pakistan and Tajikistan, in return for opium or heroin.”⁴² It is interesting to note that the Pakistan Taliban chief Baitullah Mehsud, who died after being hit by a CIA drone in August 2009,⁴³ was not on the Al-Qaida/Taliban list.

International officials and representatives of the Kabul government view the delisting of reconciled Taliban as part of a potential reconciliation peace strategy in Afghanistan. Since 2001, however, only one Taliban individual has been delisted. Michael Semple, the deputy to the EU’s special representative to Afghanistan from 2004–2007, reports that twelve of the 142 Taliban figures on the Al-Qaida/Taliban list have reconciled with the Karzai administration and have reintegrated into public life.⁴⁴ Yet these individuals remain on the list. Since the insurgency escalated in 2005, Semple reports that there has been “almost no reconciliation of top-level leaders.”⁴⁵ The Afghan government has complained that its efforts to pursue reconciliation with moderate Taliban elements have been hampered by the 1267 Committee’s delisting procedures. The Monitoring Team noted in its tenth report that the “sanctions regime can help to divide the Taliban and isolate irreconcilable elements if it is used as a political tool.”⁴⁶ In its ninth report the team noted that the list “should be dynamic and should tend more towards helping any peace process than impeding it.” The team recommended that the committee work with the Afghan government, with the help of the team, to develop specific criteria for delisting requests for Taliban individuals.⁴⁷

Designation Patterns in Other Security Council Cases

Policymakers and experts have expressed concern that legitimacy problems associated with the 1267 sanctions may spill over into other sanctions regimes and weaken the Security Council’s ability to address other critical security issues, such as nuclear nonproliferation. The updated report of the Watson Institute notes that the problem has become urgent “with criticism expanding beyond measures to counter terrorism to criticism of targeted sanctions in general.”⁴⁸ Criticisms of UN sanctions are indeed commonplace, but this has always been the case. Some governments, including permanent members of the Security Council, routinely state

in public that sanctions do not produce results. It is difficult to determine whether negative comments have increased in recent years because of the listing controversy. An examination of designations patterns in other sanctions cases casts doubt on the suggestion of a spillover effect.

In addition to the Al-Qaida/Taliban list, Security Council sanctions committees maintain target lists in eight other cases. The procedures for committee designations in these other cases differ from those of the 1267 Committee. The reports of the expert panels in these cases tend to place greater emphasis on violations of sanctions implementation. The reports include evidentiary details about specific individuals and entities found to be acting in contravention of Security Council mandates. The expert panels play a greater role in providing information about such names to the relevant sanctions committee for possible targeting designation. In the 1267 Committee, states rely less on the advice of the Monitoring Team. They put forward names for designation primarily on the basis of information provided by their own security and intelligence services.

In the other sanctions cases, three broad categories of targeting activity emerge:

1. cases where listings have declined as armed conflict has ebbed,
2. cases where listing activity has been stagnant, and
3. active nonproliferation cases where listings have increased.

Each category contains cases with distinct characteristics that are relevant to particular sanctions episodes or issues, with no evident connection to the controversies associated with the 1267 sanctions. An analysis of targeting activity in the three categories shows a mixed record of differing designation patterns, with no discernible general trend. The DRC sanctions regime is not easily classified in any of these categories. The Security Council has been active and innovative in applying a range of sanctions measures in this case, but designation and implementation efforts have been sporadic and uneven.

In the first category of cases are Sierra Leone and Liberia, where an end to armed conflict and improved political conditions have led to a decline in the total number of listings. No new names have been added to either list for several years. The process of removing names has been utilized as a means of encouraging political reconciliation and improved governance.

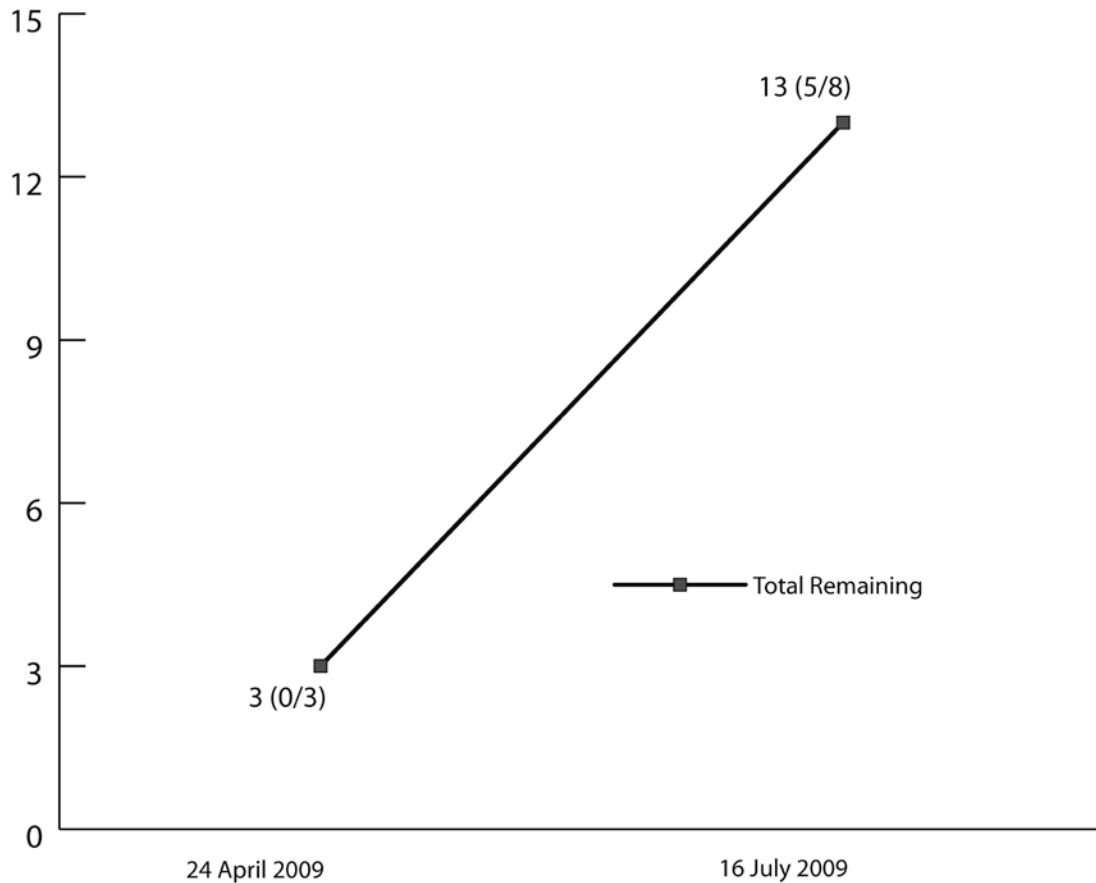
In a second category are cases where designations have been stagnant. In some instances, such as Iraq, the relevant sanctions committee initially designated a significant number of names—totaling 288 by 2004—but added only a handful of names after that, and none in the last three years. The cases of Côte d'Ivoire and Sudan indicate a minimalist approach. The Security Council approved the imposition of targeted sanctions and authorized the creation of target lists in each case, but the relevant sanctions committees designated only three and four individuals

respectively. No other names were added to either list. In the case of the Hariri assassination in Lebanon and the situation in Somalia, the Security Council established sanctions committees and authorized targeted measures, but no lists were created.

A third category illustrates a very different pattern of active sanctions designation to address nonproliferation concerns in North Korea and Iran. In both cases sanctions have been imposed against designated persons and entities, and the relevant sanctions committees created lists that have expanded as a result of additional designations. Both lists have grown steadily rather than beginning with mass designations.

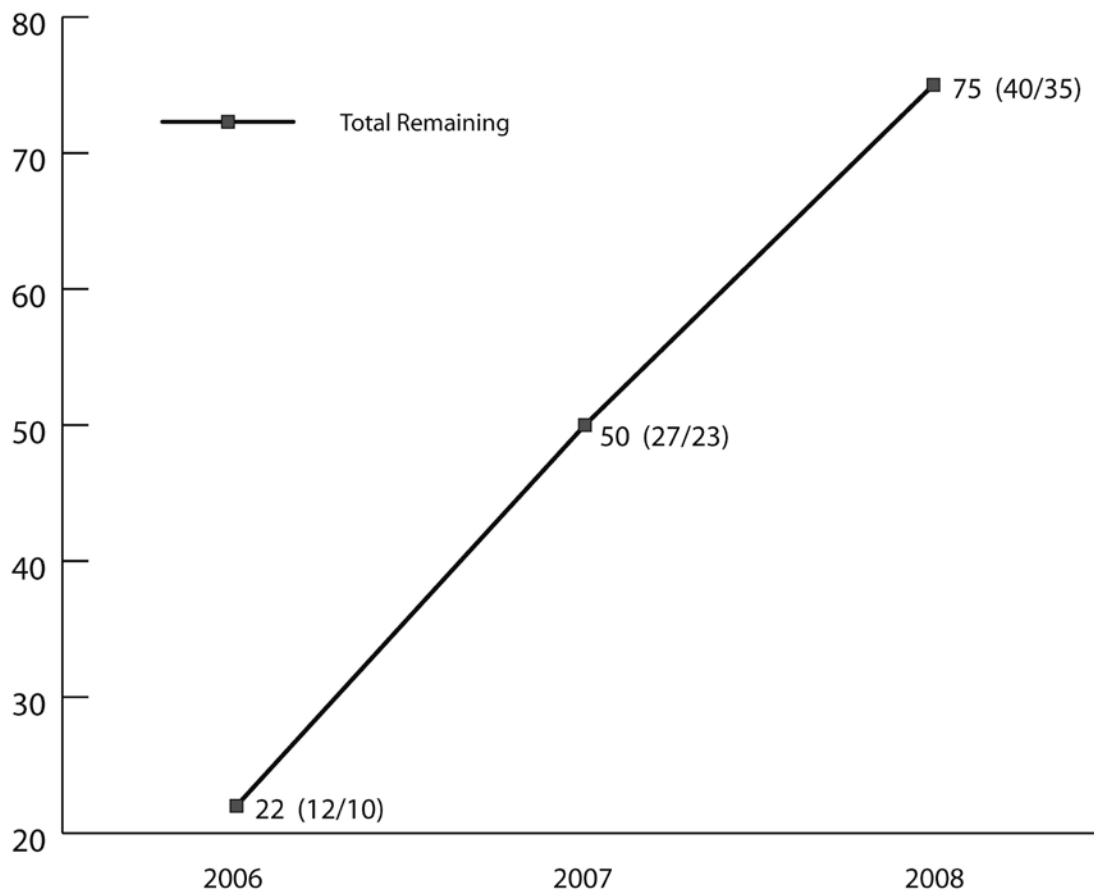
The sanctions committee for the North Korea case announced two rounds of designation of sanctioned persons and entities in 2009. The first designation occurred shortly after North Korea conducted a missile test in early April 2009. Three entities were listed. The second came in July 2009, following the underground explosion of a nuclear weapon in May 2009. Five individuals and five entities were added. There have been no delistings to date. The total number listed is thirteen (five individuals/eight entities). The pattern for North Korea follows:

GRAPH 4: North Korea: Resolution 1718 Sanctions Committee Consolidated List—Total Listed (figures are actual totals)



The sanctions committee for the Iran case announced designations of approximately the same number of persons and entities each year from 2006 through 2008. Twelve individuals and ten entities were listed in 2006, fifteen individuals and thirteen entities in 2007, and another thirteen individuals and twelve entities in 2008. The designation list has steadily expanded since sanctions were first implemented. It currently totals seventy-five names (forty individuals and thirty-five entities). There have been no delistings. The pattern for the Iran case follows:

GRAPH 5: Resolution 1737 Sanctions Committee Consolidated List—Total Listed (figures are actual totals)



It is interesting to note that the proportion of entities among total designated names in counter-proliferation sanctions is greater than in counterterrorism measures and other categories of targeted sanctions. This undoubtedly reflects the significant role that industrial-technical firms and agencies play in the development of nuclear weapons capability.

Conclusions

It is difficult to compare trends in listing processes, given that sanctions arise out of such different political circumstances. Sanctions committees also have differing guidelines determining which states can propose designations or block them, which means that listing processes are politicized and subject to the interests of particular decision-making states. The comparative data on sanctions committees, however, indicates that Security Council members are still serious about using sanctions as tools of international diplomacy. States have shown no reluctance to use sanctions in nonproliferation cases involving North Korea and Iran. The

growth rates in these lists, compared to the less dynamic patterns in the Al-Qaida/Taliban list and other sanctions target lists, reflect a much higher Security Council priority for nonproliferation issues. Nuclear weapons capabilities in North Korea and Iran pose serious potential threats to the international community. The terrorist attacks of 9/11, on the other hand, occurred eight years ago, and the urgency of the issue has declined.

The quantitative data presented here shows that the number of designations to the Al-Qaida/Taliban list slowed after the initial years following the 9/11 attacks, although designations have continued at a modest rate. Some states have been reluctant to propose new designations to the 1267 list because of concerns about the lack of fairness in the committee's listing procedures. Reports from the Monitoring Team, the Watson Institute, and others have emphasized the need for greater efforts to improve due process protections in listing and delisting procedures. This will enhance the credibility of the regime and improve the willingness and ability of states to implement targeted measures against those designated.

Resolving the legal issues associated with the 1267 regime is important for the effectiveness of counterterrorism sanctions, but there is no evidence that the controversy over due process has directly affected targeting and implementation activities in other sanctions regimes. In the nonproliferation cases, designation activity and implementation efforts have been robust and show no signs of negative spillover effects. In other sanctions cases, especially those related to armed conflict and human rights abuse in Africa, significant implementation problems exist, but these reflect a general lack of political will and enforcement capacity and have no relation to the 1267 due process controversy.

As states continue to address the legitimate need for greater human rights legal protections in sanctions targeting, it is important that they keep in mind the broader human rights purposes for which sanctions are imposed. Security Council measures in the major Africa cases are intended to prevent gross violations of human rights such as mass killing, the recruitment of child soldiers, and sexual violence against women and girls. More effective implementation of targeted sanctions in the Sudan, DRC, and other cases could help to alleviate mass suffering. These broader implications and implementation challenges deserve greater attention as states seek to enhance international cooperation in support of human rights protection and the prevention of armed violence.

Notes

¹ Thomas J. Biersteker and Sue E. Eckert, *Addressing Challenges to Targeted Sanctions: An Update of the "Watson Report"* (Providence, R.I.: Watson Institute for International Studies, Brown University, October 2009), 10.

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- ² Staff, Permanent Missions of Switzerland and Liechtenstein, “Working on Strengthening Targeted Sanctions – Ideas Options” (talking points, Permanent Missions of Switzerland and Liechtenstein, New York, 26 May 2009), 4.
- ³ Sanctions were expanded to include the recruiters of child soldiers by United Nations Security Council, *Security Council Resolution 1698 (2006)*, S/RES/1698 (2006), New York, 31 July 2006, para. 13. It was not until 3 March 2009 that names were added to the list under this explicit justification, United Nations Security Council, *Press Release SC/9608*, SC/9608, New York, 3 March 2009.
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- ⁸ United Nations Security Council, *[Seventh] Report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to Security Council resolutions 1617 (2005) and 1735 (2006) concerning Al-Qaida and the Taliban and associated individuals and entities*, S/2007/677, New York, 29 November 2007, para. 10.
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- ¹⁰ Thomas J. Biersteker and Sue E. Eckert, *Addressing Challenges to Targeted Sanctions: An Update of the “Watson Report”* (Providence, R.I.: Watson Institute for International Studies, Brown University, October 2009), 7.
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- ¹² United Nations Security Council, *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, summary, p. 5.
- ¹³ Documents of the European Communities use the transliteration “Kadi,” while United Nations documents prefer “Qadi.”
- ¹⁴ Jonathan Winer, “EU High Court Invalidates Sanctions Against Al Qaeda,” *Counterterrorism Blog*, 3 September 2008, http://counterterrorismblog.org/2008/09/eu_high_court_invalidates_sanc.php (accessed 2 December 2009).
- ¹⁵ The trend toward devoting ever greater attention to legal rights began in relation to the Al-Qaida/Taliban sanctions but it has spread to other sanctions cases. The procedures adopted in Resolution 1822, for example, have been adopted in other cases, including Somalia and the Democratic Republic of Congo (DRC). In Resolution 1844 (2008), the Security Council expanded and strengthened targeted sanctions in the Somalia case. Of the 27 paragraphs in Resolution 1844, 11 are devoted to the elaboration of procedures for listing and

delisting, with the language adopted largely from Resolution 1822. Of the 27 paragraphs in Resolution 1857 (2008) pertaining to the DRC, 10 paragraphs are devoted to listing and delisting procedures.

- ¹⁶ Matthew Levitt and Michael Jacobson, *The Money Trail: Finding, Following, and Freezing Terrorist Finances*, Policy Focus #89 (Washington, D.C.: The Washington Institute for Near East Policy, November 2008), 24.
- ¹⁷ Security Council Report, "Update Report No. 9: Counter-Terrorism; Al Qaida and Taliban," *Security Council Report*, 26 June 2008, http://www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.4294269/k.73F4/Update_Report_No_9brCounterTerrorism_Al_Qaida_and_Talibanbr26_June_2008.htm (accessed 2 December 2009).
- ¹⁸ United Nations Security Council, [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. 25.
- ¹⁹ Matthew Levitt and Michael Jacobson, *The Money Trail: Finding, Following, and Freezing Terrorist Finances*, Policy Focus #89 (Washington, D.C.: The Washington Institute for Near East Policy, November 2008), 24.
- ²⁰ United Nations Security Council Committee Established Pursuant to Resolution 1132 (1997) Concerning Sierra Leone, "List of Individuals Affected by the Measures Contained in Paragraph 5 of Resolution 1171 (1998)," New York, 9 June 2008. Available online at the *United Nations*, <http://www.un.org/sc/committees/1132/tblist.shtml> (accessed 2 December 2009).
- ²¹ E. Anthony Wayne, Assistant Secretary for Economic and Business Affairs, in his testimony to Congress on 26 March 2003, stated, "A key weapon in this effort has been the President's Executive Order 13224, which was signed on September 20, 2001, just 12 days after September 11. That Order initiated an unprecedented effort in history to identify and to freeze the assets of individuals and entities associated with terrorism across the board. Under that Executive Order, the Administration has frozen the assets of some 267 individuals and entities." Wayne continued in his testimony to indicate that the UN Consolidated List was "proving invaluable in helping to internationalize asset freezes and to underscore the global commitment against terrorism," and that because of it "people around the world do not need to have the United States telling them and their Governments to take actions against specific targets; these names are listed in the UN; these are UN obligations." E. Anthony Wayne, Assistant Secretary for Economic and Business Affairs, "International Dimension of Combating the Financing of Terrorism," Testimony to House Committee on International Relations, Subcommittee on International Terrorism, Nonproliferation and Human Rights, 108th Cong., 1st sess. Washington, D.C., 26 March 2003.
- ²² John Roth, Douglas Greenburg, and Serena Wille, *Monograph on Terrorist Financing: Staff Report to the Commission* (Washington, D.C.: National Commission on Terrorist Attacks Upon the United States), 79. Available online at *National Commission on Terrorist Attacks Upon the United States*, http://govinfo.library.unt.edu/911/staff_statements/index.htm (accessed 2 December 2009).
- ²³ John Roth, Douglas Greenburg, and Serena Wille, *Monograph on Terrorist Financing: Staff Report to the Commission* (Washington, D.C.: National Commission on Terrorist Attacks Upon the United States), 79. Available online at *National Commission on Terrorist Attacks Upon the United States*, http://govinfo.library.unt.edu/911/staff_statements/index.htm (accessed 2 December 2009).
- ²⁴ United Nations Security Council, *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. 13.
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- ²⁶ United Nations Security Council, *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. 73.
- ²⁷ Matthew Levitt and Michael Jacobson, *The Money Trail: Finding, Following, and Freezing Terrorist Finances*, Policy Focus #89 (Washington, D.C.: The Washington Institute for Near East Policy, November 2008), 25.
- ²⁸ United Nations Security Council, *Written assessment pursuant to paragraph 15 of Security Council resolution 1455 (2003) of action taken by States to implement the measures contained in paragraph 1 of resolution 1455 (2003)*, S/2004/1037, New York, 31 December 2004, p. 4.
- ²⁹ *Aboufian Abdelrazik v. The Minister of Foreign Affairs and the Attorney General of Canada*, T-727-08, 2009 FC 580 (Reasons for Judgment and Judgment, Federal Court of Canada, Ottawa, Ont., 4 June 2009).
- ³⁰ United Nations Security Council, "Assessment of 131 Member States' Reports under Resolution 1455 (2003): Prepared by the Analytical Support and Sanctions Monitoring Team; October 2004," encl. *Written assessment pursuant to paragraph 15 of Security Council resolution 1455 (2003) of action taken by States to implement the measures contained in paragraph 1 of resolution 1455 (2003)*, S/2004/1037, New York, 31 December 2004, para. 23.
- ³¹ United Nations Security Council, *Written assessment pursuant to paragraph 15 of Security Council resolution 1455 (2003) of action taken by States to implement the measures contained in paragraph 1 of resolution 1455 (2003)*, S/2004/1037, New York, 31 December 2004, p. 4.
- ³² IMF: Monetary and Financial Systems and Legal Departments and World Bank: Financial Sector Vice Presidency, *Anti-Money Laundering and Combating the Financing of Terrorism: Observations from the Work Program and Implications Going Forward* (Washington, D.C.: International Monetary Fund and World Bank, 31 August 2005), para. 8, pt. 2. Available online at the *International Monetary Fund*, <http://www.imf.org/external/np/pp/eng/2005/083105.pdf> (accessed 2 December 2009).
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- ³⁴ United Nations Security Council, *Sixth report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to Security Council resolutions 1526 (2004) and 1617 (2005) concerning Al-Qaida and the Taliban and associated individuals and entities*, S/2007/132, New York, 8 March 2007, para. 51.
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Patterns of Implementation
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and delisting procedures and assesses
international trends in the quest for
greater due process rights.

This report is produced with support
from the Swedish, Finnish,
and Belgian foreign ministries
and the Dutch nongovernmental
organization Cordaid as part of
the new sanctions process to examine
options for improving implementation
of Security Council measures.