The Consolidated ("terrorist") List maintained by the United Nations Security Council

Assessing human rights and due process concerns

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1 Introduction

1.1 Subject and purpose of the thesis

For more than a decade, the working methods of the United Nations Security Council have been a topic of much debate within and outside the Security Council. Over the past few years, Council working methods and procedures related to its counter-terrorism work has received much attention from the media, regional organisations and legal scholars. The underlying issue being the 2005 World Summit Outcome which called on the Security Council "to ensure that fair and clear procedure exist for placing individuals and entities on sanctions lists and removing them".[1]

This paper analyses the procedures and working methods of the Security Council Sanctions Committee pursuant to Resolution 1267 (1999). The focus of the paper is the Consolidated List maintained by this Committee. The Consolidated List, also known as the "UN terrorist list", forms a catalogue over individuals and entities belonging to or associated with Al-Qaida and the Taliban. Pursuant to Chapter VII of the United Nations Charter, listed individuals and entities are subjected to sanctions in which all Member States are obliged to implement. It falls within the scope of the thesis to describe and analyse the procedural rules of the Committee and the sanctions regime. While political and administrative in nature, the Committee's procedures for including or removing names from this list poses legal challenges with respect to human rights norms. The thesis will be conducted from the hypothesis that listing and subsequent sanctions raise legal concerns related to the right to a fair trial, the right to effective remedies and civil rights.

[1] A/Res/60/1(2005), pp. 25-26, paras 106-110. The document outlines agreement between Heads of States at the High-Level Plenary Meeting, 60th session of the UN General Assembly.

1.1.1 Delimitations

At present there exists a variation of so called terrorist lists administrated by regional organisations such as the EU, or domestic (federal) lists such as the one compiled by the US Government.[2] These lists fall outside the subject and purpose of the thesis.

When reading this paper, one must keep in mind the distinction between the work of the Sanctions Committee pursuant to Security Council Resolution 1267 and the Counter Terrorism Committee (CTC) pursuant to Resolution 1373 (2001). Both Committees share the same objective in fighting terrorism. However, the CTC is not a sanctions committee but an instrument to monitor the implementation of Resolution 1373.[3] The CTC does not administer a list of terrorist organisations or individuals.

It also falls outside the scope of the thesis to discuss Member State's implementation and the effectiveness of the Al-Qaida/Taliban sanctions regime. Consequently, compliance by Member States will not be discussed.

1.1.2 Terminology

The paper will use terms and language consistent with the United Nations. There are for example many ways of writing the names "Al-Qaida" and "Usama bin Laden". To achieve consistency, the language and terminology applied by the UN in its official documents and publications will be utilized.

The term "due process of law" has in Common Law and Civil Law tradition been attributed various meanings. Due process may for example be interpreted as the conduct of legal proceedings according to established rules and principles for the protection and

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[2] Cf. EU Council Regulation of 27 May 2002, (EC) No 881/2002, Annex I. Cf. US Department of the Treasury, Office of Foreign Assets Control's list over "Specially Designated Nationals and Blocked Persons". Available at: http://www.treas.gov/offices/enforcement/ofac/ [sited: 14 November 2007].

[3] According to UN doc. SC/7827, press release (2003).

enforcement of private rights, including fair hearing before a tribunal.[4] The Committee employs the terms "procedural fairness" or "due process" in its official documents.[5] Hence, one may deduce that the content of the term "procedural fairness" is comparatively similar to due process of law. It must be noted that this paper will focus on procedural due process as reflected in fundamental principles such as fair trial, effective remedies and judicial review.

1.1.3 Methodology

The legal setting for the thesis is the Charter of the United Nations.[6] It forms the constitutional basis for the organisation and contains norms that regulate the mandate for the work of the Security Council.

The paper will as point of departure examine Security Council resolutions related to the work of the 1267 Sanctions Committee. At present, there is no treaty under international law regulating the interpretation of Security Council resolutions. However, the Vienna Convention on the Law of Treaties will serve as guidance as it prescribes codified principles of customary international law.[7] According to the main rule in Article 31 of the Convention, treaties should be interpreted in good faith in accordance with the ordinary meaning of the text and in light of the context and purpose of the treaty. In accordance with Article 32, supplementary sources (preparatory work of the treaty, judicial decisions or legal theory) are relevant if they confirm an interpretation based on the ordinary meaning of the treaty.

The Guidelines of the 1267 Sanctions Committee prescribes the procedural rules for the conduct of its work.[8] These guidelines are not defined by the Committee as a legal

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[4] *Black's Law Dictionary* (2004), pp. 538-539.

[5] For example in UN doc. S/PV.5446 (2006) pp. 8 and 10.

[6] Signed 26 June 1945 (San Francisco) entered into force 24 October 1945.

[7] Adopted 23 May 1969 (Vienna). Customary status as referred to in Shaw (2003), p. 839.

[8] See analysis of the Guidelines in sections 2-3.

instrument but rather seen as a policy document which may be amended under the consent of all members of the Committee. Interpretation of the Guidelines must therefore be conducted in relation to corresponding language in Security Council resolutions or public statements made by the Committee's Chairman or the Monitoring Team for the Committee.[9]

Under international law, certain international rules are recognized as more significant than others. These norms are defined as concepts of *jus cogens* and form a hierarchy of international law.[10] The scope of these norms has long been debated, and the legal consequences for the Security Council have been questioned. The paper will examine both questions.

The United Nations sanctions regime and procedures for listing does not fit into the traditional pattern of international law, hence human rights law. Human rights norms generally address States and their duty to promote and protect human rights.[11] Here, fundamental rights are applied in connection with the actions of Member States when acting (collectively) in the Security Council. This approach has been voiced by legal commentators in recognized law journals and does also find support in recent regional jurisprudence. Both sources will be examined. When referring to the Universal Declaration on Human Rights (UDHR) it is primarily meant to underline the recommendations laid down, as it is not a legally binding instrument.[12]

Although my main approach will be to identify legal arguments, this thesis will also illustrate the interrelationships between policy and law on this subject.

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[9] Monitoring Tem, cf. footnote 29.

[10] These norms will be examined in section 4.2.5.

[11] *Theory and Practice of the European Convention on Human Rights* (2006) p. 6.

[12] Brownlie (2003) pp. 534-535.

1.1.4 Structure

I will in the next section give an overview of the 1267 Sanctions Committee composition and mandate, in order to analyse its legal basis and functions within the UN counter-terrorism framework. Section 3 will analyse the Consolidated List. Procedural rules for listing and the substantive criteria for inclusion are important aspects in this regard. I will also examine the sanctions under the Committee's mandate in order to give a better understanding of the scope of the Council's non-forcible measures. In section 4, I pose the question as to whether or not the Security Council, when acting under Chapter VII of the Charter, is obliged to respect human rights. The aim is to present the arguments that the discussion has generated and in so doing outline the basis for my subsequent discussions. Section 5 discusses human rights (substantive and procedural), and challenges following directly from listing procedures and sanctions. Finally, in section 6 the aim is to address the existing lacuna with regard to judicial review for affected individuals and entities. Recent case law by European Courts will be applied.

2 The UN Security Council and the 1267 Sanctions Committee

2.1 Introduction

The Security Council is granted primary responsibility under the Charter of the United Nations (hereafter the Charter), for the maintenance of international peace and security.[13] Charging the Security Council with the primary responsibility is intended to "ensure prompt and effective action by the United Nations".[14] With a view to this responsibility, specific competences for the discharge of its duties are laid down in Chapter VII of the Charter.

Chapter VII of the Charter contains provisions concerning: "Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression". The Security Council may determine the existence of one of these situations under the Charter's Article 39. It can decide provisional measures under Article 40 with the object of preventing an aggravation of the situation.[15] Pursuant to Article 41 of the Charter, the Security Council may decide what measures "not involving the use of armed force" to be applied in order to "give effect to its decisions". When the Security Council compiles a list over Al-Qaida and Taliban related terrorists and imposes sanctions against them, it is in fact applying non-forcible measures.[16] Decisions made by the Security Council under Chapter VII of the Charter are binding upon all Member States, as set out in Articles 25 and 48.

[13] UN Charter, Article 24.

[14] Cf. wording in Article 24 (1), UN Charter.

[15] *The Charter of the United Nations, A Commentary* (1994) p. 619.

[16] Ibid, p. 625. Wording in Article 41 should not be interpreted as exhaustive.

2.2 The 1267 Sanctions Committee

2.2.1 Background

Resolution 1267 was unanimously adopted by the Security Council on 15 October 1999. In this Resolution the Council voiced the indictment of Usama bin Laden and his associates for, *inter alia*, the bombing of the United States embassies in Kenya and Tanzania on 7 August 1998.[17]

Acting under Chapter VII of the Charter, Resolution 1267 was adopted for the purpose of overseeing the implementation of sanctions on Taliban-controlled Afghanistan.[18] The Council was determined that the continued use of the Afghan territory to shelter, train and plan terrorist acts constituted a threat to international peace. Furthermore, the Security Council expressed its concerns with regard to the Taliban's support of Usama bin Laden, and their refusal to turn him over to authorities in the country where he had been indicted.[19]

2.2.2 Legal basis and establishment

The 1267 Sanctions Committee, also known as "the Al-Qaida and Taliban Sanctions Committee" (hereafter the Committee), is a subsidiary body of the Security Council. The Committee was established pursuant to paragraph 6 of Resolution 1267 and in accordance with Article 29 of the Charter. The Committee is currently one out of twelve sanctions committees and represents one of the three subsidiary bodies that deal with terrorism.[20]

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[17] S/Res/1267 (1999) p. 2.

[18] S/Res/1267, p. 2, para. 4.

[19] S/Res/1267, p. 2, para. 2 – "Country" effectively meaning the United States.

[20] As of 12 November 2007, the following thematic Sanctions Committees exists: Somalia (1992), Rwanda (1994), Sierra Leone (1997), Al-Qaida/Taliban (1999), Iraq/Kuwait (2003), Liberia (2003), The D.R of Congo (2004), Côte d'Ivoire (2004), The Sudan (2005), Former Lebanese Prime Minister R. Hariri i.e. (2005), The Democratic People's Republic of Korea (2006) and Iran (2006). Other Counter-terrorism bodies are; The Counter-Terrorism Committee pursuant to Resolution 1373 (2001) and the Security Council Committee pursuant to Resolution 1540 (2004).

2.2.3 The delegation of powers

In accordance with Article 29 and as reflected in Rule 28 of the Council's Provisional Rules of Procedure: "The Security Council may establish such subsidiary bodies as it deems necessary for the performance of its functions".[21] The objective of the Council's delegation of powers was to create a body to coordinate, support and monitor the United Nations counter-terrorism work with respect to Al-Qaida and the Taliban.

2.2.4 Committee composition and mandate

The Committee is comprised of all members of the Security Council.[22] The Chairman of the Committee (rotating presidency) is appointed by the Council and is assisted by two delegations which act as Vice-Chairmen.[23] The Chairman is in his or her personal capacity in charge of Committee meetings.[24]

It falls under the Committee's mandate to administrate the Consolidated List and oversee the effective implementation of the sanctions regime.[25]

2.2.5 Decision-making

The Committee acts by procedural guidelines, it writes and adopts itself.[26] Revisions or amendments to these guidelines are subjected to adoption by unanimous vote. Consequently, the Committee decides its own procedures. At first glance such a procedure may seem extraordinary. However, there are no provisions in the Council's Provisional

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[21] Cf. UN doc. S/96/Rev.7 (1983).

[22] UN Charter, Article 23; five permanent members and ten non-permanent members (term of two-years).

[23] Committee Guidelines, para. 2b).

[24] H.E. Johan Verbeke (Belgium), term will expire on 31 December 2007.

[25] S/Res/1267 p. 2, para. 6 and S/Res/1735 (2006), pp. 2-6.

[26] Guidelines available at: http://www.un.org/sc/committees/1267/pdf/1267_guidelines.pdf [sited: 19 November 2007].

Rules of Procedure that restricts such decision-making. Practice in fact shows that various UN sanctions committees have adopted the same approach.[27]

As a primary rule, the Committee meets in closed sessions, by oral procedure.[28] Participation in Committee meetings is restricted to delegations of the members of the Committee, their own Secretariat and members of the Analytical Support and Sanctions Monitoring Team.[29] However, the Committee may invite any member of the United Nations to participate in discussions, should any questions specifically affect that Member State.[30]

Pursuant to paragraph 3b) in the Committee Guidelines, open discussions are facilitated only if the Committee considers it necessary. Practices by the various sanctions committees indicate that closed meetings have become an accepted working method.[31]

All Committee decisions are based on consensus.[32] In practice, this means that each member has a veto. The rationale behind the principle of consensus is to resolve or mitigate the objections of the minority. In this context, minority means non-permanent Member States of the Security Council. Should the Committee fail to reach consensus, the rules of procedure calls upon the Chairman of the Committee to undertake further consultations to facilitate agreement.[33] The role as facilitator implies encouraging further discussions and

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[27] Cf. Guidelines of the Committee pursuant to Resolution 1572 (Côte d'Ivoire), para. 6e), available at: http://www.un.org/sc/committees/1572/pdf/guidelines_ci_eng.pdf [sited: 19 November 2007].

[28] Committee Guidelines, para. 3b).

[29] Committee Guidelines, paras 3 a, b and c).

The New York based Monitoring Team was established under Resolution 1526 (2004), para. 7 to assist the Committee in fulfilling its mandate.

[30] Committee Guidelines, para. 3b).

[31] Not limited to situations prescribed under Rule 48 of the Council's Provisional Rules of Procedure.

[32] Committee Guidelines, para. 4a).

[33] Ibid.

bilateral exchanges. If consensus cannot be reached after subsequent discussions; the case may be submitted to the Security Council.

In the international effort to fight terrorism, consensus on the threat of Al-Qaida and the Taliban is of great importance and seen as a tool to increase credibility, legitimacy and effectiveness of decisions.[34]

[34] *The UN Security Council: from the Cold War to the 21st century* (2004) pp. 237-238.

3 The Consolidated List

3.1 Introduction

As outlined above, the 1267 Committee has the overall responsibility for the Consolidated List. But what does this list consist of and who are subjected to listing? How are they designated and what kind of information can be found on the Consolidated List? These are some of the questions to be examined in the first part of this chapter.

In the second part, the objective is to address the legal effects of being placed on the Committee's List. The effects are clearly linked to the List itself and must therefore be described to further understand the comprehensive scope of the Security Council's counter-terrorism strategy against Al-Qaida and the Taliban.

The last part of the chapter seeks to analyse the procedures (as revised 12 February 2007) and corresponding resolutions utilized by the Committee for removing names from the List (de-listing). The question on how one can contest an inclusion on the List is important in this regard.

3.2 The List pursuant to Al-Qaida, Usama bin Laden, Taliban and their associates

3.2.1 Purpose and legal basis of the List

The Consolidated List (hereinafter the List), was introduced 8 March 2001 with legal basis under Resolution 1267. The list has been expanded in accordance with the extended mandate of the Committee.[35]

Today, the List contains information about individuals, groups, undertakings and entities associated with or belonging to Al-Qaida, Usama Bin Laden and the Taliban. The List is a

[35] UN S/Res/1333 (2000), UN S/Res/1390 (2002), UN S/Res/1455 (2003), UN S/Res/1526 (2004), UN S/Res/1617 (2005) and UN S/Res/1735 (2006).

key instrument for States to use when enforcing and implementing the sanctions regime against these subjects.

3.2.2 Composition of the List

The List is created as a printable document (PDF, XML or HTML-format) which consists of five sections.[36] Sections A and B gives an overview of individuals and entities belonging to or associated with the Taliban.[37] In sections C and D, individuals and entities belonging to or associated with Al-Qaida are listed.[38] Finally, section E contains information on individuals and entities that have been removed from the list.[39] Each name has a permanent reference number.

The List is widely circulated to Ministries, banks and other financial institutions, border points, airports, seaports, customs agents, intelligence agencies and other relevant institutions in order to implement the sanctions regime.

A total of 479 individuals and entities are currently listed, making it the largest and the most developed list of the Security Council Sanctions Committees.[40] However, the List compiled by the Committee should not be viewed as an exhaustive compendium of every individual or entity known to be associated with or belonging to Al-Qaida and the Taliban. According to the Committee, not all individuals who should be on the List are in fact on it.[41] The List is rather seen to reflect an international consensus on which members or associates of Al-Qaida and the Taliban present the main threat to the peace. Accordingly,

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[36] Available at the Committee's official website: http://www.un.org/sc/committees/1267/index.shtml [sited: 19 November 2007]. Please note that a new format of the List was introduced 14 November 2007.

[37] As of 14 November 2007: 142 individuals and 0 entities listed.

[38] As of 14 November 2007: 225 individuals and 112 entities listed, making it the largest section.

[39] Since the List was introduced in 1999, a total of 11 individuals and 24 entities have been removed. As reported on the official website14 November 2007.

[40] In comparison, by the end of February 2005, the List had 433 entries. By the end of July 2006, 478 entries. In July 2006 the List contained 19 de-listed individuals and entities.

[41] Certain well-known names are absent from the List, cf. UN doc. S/2006/22 (2006) p. 9, para. 32.

one might say that the credibility and legitimacy of the List is strengthened by the fact that all 15 Member States have agreed to place all 492 names on this list.

3.2.3 Identifiers – information about listed individuals and entities

For listed individuals the following set of identifiers exists: name(s), aliases, gender, title, occupation, date of birth, place of birth, nationality, residence, numbers of passports or travel documents, national identification number, current and previous addresses, date of listing and other information that might be relevant for identification.[42] For groups, undertakings and entities: name(s), acronyms, address, headquarters, subsidiaries, affiliates, nature of business activity, leadership and current location is applied. A study of the List shows that many entries lack some of these identifiers. This might cause confusion when identifying targets and imposing sanctions.[43]

3.2.3.1 The case of Mullah Krekar

An illustrative example with regards to identifiers is the case of Mullah Krekar. On 7 December 2006 the Committee listed Najmuddin Faraj Ahmad, also know as Mullah Krekar.[44] This is currently the only name linked to Norway on the List. Najmuddin is currently residing in Norway as a refugee since 1991. Identifying information on the List refers specifically to his address in Oslo as well as date and place of birth and nationality.

On 8 November 2007, the Norwegian Supreme Court unanimously upheld a government order to expel Najmuddin on the grounds that he represents a threat to Norwegian national security.[45] The Court supported the government's conclusion that Najmuddin was formerly a leader of Ansar al-Islam, a group with ties to the Al-Qaida network.[46] In its ruling, the

[42] For example information on possible whereabouts, political affiliation, civil status or convictions.

[43] Cf. Annex I to this paper.

[44] The Consolidated List, reference QI.A.226.06.

[45] HR-2007-01869-A.

[46] Ibid, para 68. Ansar al-Islam was added to the Consolidated List on 24 February 2003 (QE.A.98.03).

Supreme Court noted that Najmuddin in his book had described meetings with prominent members within Al-Qaida.[47]

3.2.4 Procedural rules for listing individuals and entities

Names and relevant identifiers are proposed by Member States of the UN.[48] States need not wait for a national administrative, civil or criminal proceeding to be brought or concluded against the individual or group before proposing the name for inclusion on the List. Once a proposal is received, it is circulated to all 15 Committee members, who have five working days to raise an objection.[49] The final assessment and decision to apply the name to the Consolidated List is made collectively (on the basis of consensus).[50]

As provided for in the Committee Guidelines, members of the Committee may challenge (block) a listing proposal or alternatively place a hold on the matter.[51] The latter creates the legal basis for pending cases which must be reviewed no less than once a month.[52]

3.2.5 Statements of case (the evidence)

Member States are advised to submit a confidential statement of case as justification for the name proposed for listing. According to the *Watson Institute for International Studies*, the Committee requires a narrative description and documentation for each listing.[53] States are encouraged to provide as much information as possible and submit the names as soon as they gather the supporting evidence that demonstrates involvement with Al-

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[47] Ibid, para 69.

[48] In S/Res/1735 (2006), the Council encouraged Member States to submit names. Cf. Committee Guidelines paras 6b).

[49] Committee Guidelines, para. 4b).

[50] Decision can be made after 5 working days (but after some weeks on average) if no objection is received. Information on which States have proposed which individuals or entities are not generally made public. Furthermore, multiple states may have proposed a name. Cf. Committee Guidelines, paras 4b) and 6f).

[51] Committee Guidelines, para. 4c).

[52] Ibid, para. 4d).

[53] Watson Institute (2006), p. 26.

Qaida/Taliban.[54] According to paragraph 6d) of the Committee Guidelines, the following would qualify as evidence: findings demonstrating "association", nature of the evidence (e.g. intelligence, law enforcement, judicial, media) and supporting evidence or other documentation that can be supplied.[55] There is little transparency concerning the sources of information cited in these statements. The main reason for this is that statements consist of intelligence information, thus the need to preserve the confidentiality of classified documents is evident. However, current procedural guidelines, seeks to promote States to indicate what portion(s) of the statement might be made public.[56]

What has to be further examined are the substantive rules by which an individual or entity may be added to the list.

3.2.5.1 Criterion for listing

The point of departure is paragraphs 2 and 3 in Resolution 1617 (2005). Paragraphs 2 and 3 reads as follows:

2.

> *"Further decides* that acts or activities indicating that an individual, group, undertaking, or entity is "associated with" Al-Qaida, Usama bin Laden or the Taliban include:
>
> – participating in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of;
>
> – supplying, selling or transferring arms and related materiel to;
>
> – recruiting for; or
>
> – otherwise supporting acts or activities of;
> Al-Qaida, Usama bin Laden or the Taliban, or any cell, affiliate, splinter group or derivative thereof;"

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[54] States may contact other States bilaterally to seek additional information. Cf. Committee Guidelines para. 6c).

[55] Cf. annex I to S/Res/1735 (2006), enclosed as annex II to this paper.

[56] This was first emphasised in the revised Guidelines of 29 November 2006.

3.

> "*Further decides* that any undertaking or entity owned or controlled, directly or indirectly, by, or otherwise supporting, such an individual, group, undertaking or entity associated with Al-Qaida, Usama bin Laden or the Taliban shall be eligible for designation."

As laid down in the paragraphs referred to above, sanctions are to be imposed on individuals or entities, natural persons, groups, or undertakings *"associated with"* Al-Qaida, Usama bin Laden or the Taliban. This includes undertakings owned or controlled (directly or indirectly) by Al-Qaida or the Taliban. Association is understood as a precondition for listing.

The meaning of "association" was not specified in earlier resolutions drafted by the Council.[57] According to *Husabø*, one of the problems was that the criterion of "association" did not relate to any acts of the individual.[58] It is clear that the purpose of the provisions pursuant to Resolution 1617 (2005), has been to establish a legal definition and clarification of the acts and activities that indicate "*association"* with Al-Qaida or the Taliban.

First, Resolution 1617 paragraph 2 provides for a definition of the criterion of association by listing a number of "acts or activities" to be assessed. The set of listed activities in conjunction with the wording *"or"*, indicates that these are alternative requirements. Thus, it is only necessary to assess the activity which seems to be most relevant. This is done on a case-by-case basis as soon as the Committee receives a listing request and supporting statements.

Secondly, subparagraph 2 in paragraph 2 lists examples of preparatory acts, participation and acts that *de facto* have been carried out. The resolution does not specify what level of

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[57] Cf. S/Res/1333 (2000), p. 4, para. 8c).

[58] *Harmonization of Criminal Law in Europe* (2005), p. 71.

preparation, facilitation or other support may constitute association. With regard to "acts or activities", only terrorist financing is explicitly mentioned in the Resolution. However, one should not interpret this as exhaustive. A wider interpretation is arguably supported by the extensive scope of the sanctions regime.

Third, a person who "supplies, sells or transfers arms and related material" to the subjects outlined above, could also be defined as an associate.

Finally, individuals or entities – "*otherwise"* supporting acts or activities conducted by Al-Qaida, the Taliban and their associates would likewise be eligible for listing.[59] But when is an individual or entity otherwise supporting acts of Al-Qaida/Taliban? The wording is found to be vague, thus signalizing a broad objective. Presumably covering activities not explicitly mentioned, such as for example kidnapping, murder, trafficking of arms, supplying fraudulent travel documents or recruitments for terrorist training camps.[60] The rationale behind this flexibility may be the need to respond to changes in the situation. Nevertheless, the *Watson Institute* has recommended more detailed (but non-exhaustive) criterion for listing.[61]

Furthermore, subparagraph 2 requires that the acts or activities should "*indicate*" association with Al-Qaida/Taliban. A natural interpretation of this wording implies that the acts or activities should point towards association. However, when determining whether the activities "indicate" association, Resolution 1617 does not call for requirements of a uniform standard of evidence such as the principle provided for in criminal law procedure. It is therefore the suspected or documented (should such material be available) participation, cooperation or facilitation which supports the Committee's decisions.

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[59] Cf. S/Res/1617, para. 2, subpara. 5.

[60] UN doc. S/2005/83 (2005) p. 11, para. 30, which refers to theses activities.

[61] Watson Institute (2006), p. 38.

With respect to listings of entities or undertaking, there exists no public interpretation on what should be regarded as "owned or controlled, directly or indirectly" by Al-Qaida or the Taliban.

As has been pointed out, the Committee does not require that the individual or group in question has been faced with a criminal charge or conviction.[62] In light of the wording provided for in resolutions and the Guidelines, it is not clear what level of evidence is required to list an identified individual or entity. Since it is held that the Consolidated List should not be viewed as a criminal mechanism but one of preventive nature, it must be deduced that evidentiary standards for listing may be lower than what is required for criminal legal action.[63]

3.2.5.2 Lack of a uniform norm

The term "*associated with"* leaves much leeway for interpretation and there is no authoritative explanation of the term made public. This is problematic from a legal perspective because it creates a lacuna with respect to information on the Committee's interpretations of the criterion. It also remains unclear where to draw the lower and upper lines with regard to "association".[64]

It could be questioned whether the definitions set out in paragraphs 2 and 3 of Resolution 1617 resolves previous difficulties concerning the content of the criterion for listing. The serious nature of the List heightens the need to provide persons and groups with sufficient notice of conduct that might result in their listing. More information and increased transparency would effectively provide a better understanding and reassurance of impartial and non-arbitrary decisions.

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[62] Committee Guidelines, para. 6c).

[63] UN doc. S/2005/83 p. 17, para. 53 and Committee Guidelines para. 6c).

[64] UN doc. S/2005/83 (2005) p. 11, para. 32. Monitoring Team has encouraged Member States to consult them for an informal view on how they should interpret "association with". This illustrates the complexity of this issue.

What is clear however, is that in the absence of an internationally accepted definition of terrorism, the criterion: *"association with* Al-Qaida/Taliban" avoids the need for such an assessment. The rationale behind this is of course that if the criterion for listing were "terrorist activity" or even "association with terrorists or terrorist organisations", consensus would be difficult to achieve. *The Watson Institute* argues that the criterion is too broad, but notes the positive progress following from Resolution 1617.[65] The Organization for Security and Co-operation in Europe (OSCE) has stated the need to ensure a good listing process which is transparent, based on clear criteria and with an appropriate, explicit, and uniformly applied standard of evidence.[66] Furthermore, in its third report, the Monitoring Team for the Committee emphasized the need for a basic definition of *"association with"*.

3.2.6 Notification and dissemination of decisions

The notification procedure is described in paragraph 6h) of the Guidelines. After a name and supporting identifiers are added to the List, the Secretariat of the Committee (provided by the Secretariat of the United Nations) makes a public announcement on the Committee's official website (press release).[67] The Permanent Mission of the country or countries where the individual is a citizen or believed to be located, are formally notified after the addition to the List is made public. According to the Guidelines, Governments (through their Permanent Missions to the UN) will receive notification within a two week period.[68]

But at what point in the process is the designated individual notified?

Notification of affected parties is not a precondition for listing. However, targeted individuals or entities are generally informed after the Committee's decision is made

[65] Watson Institute (2006), p. 26.

[66] Report: Expert Workshop on *Human Rights and International Co-operation in Counter-Terrorism* (2007), para. 42.

[67] Cf. Committee's official website: http://www.un.org/sc/committees/1267/index.shtml [sited: 19 November 2007]

[68] Committee Guidelines, para. 6h).

public. The actual obligation to inform designated individuals lies on the affected State(s).[69] This effectively means that the individual is the last in a chain of addressees. Thus, an individual or entity will receive notice after two weeks – at the earliest. Therefore, one cannot rule out that the individual or entity may receive notice through the media or other sources who have obtained information through the Committee's own press releases.

The formal notification from States must include information on the measures imposed on the individual/entity, listing and de-listing procedures and procedures for granting exemptions. The Guidelines does not require that Member States inform affected individuals about the reasons for inclusion on the List.[70]

A clear weakness in the procedures is the lack of a time limit for notifications. With respect to current procedures, an individual may not obtain actual notice before weeks or even months have past. The procedure has been criticized as inadequate with respect to due process because many Member States lack general capacity or will to carry out notifications.[71] From the designated individuals' perspective, proper notification is essential when assessing if treated fair. Direct or parallel notification by a UN body should therefore be considered built into the current system.[72]

3.2.7 Periodic review of listings

As a main rule, there are no time limits to listings unless the Committee decides otherwise. However, current procedures mandate periodic reviews of issues already pending before the Committee. Pending issues are reviewed monthly.[73] Names on the Consolidated List that have not been updated in four years or more are subjected to circulation between members of the Committee to assess update or removal. Despite the possibility of review, a

[69] A written statement is preferred but not required.

[70] Committee Guidelines, para. 6h).

[71] Watson Institute (2006) p. 30.

[72] Ibid, p. 39. Cf. recommendation in para. 4a).

[73] Committee Guidelines, para. 4d).

listing can continue indefinitely. It can therefore be argued that the List not always reflects the changing nature of the threat.

In spite of the norms for identifiers, there is often a gap between the amount of information required and the details available on the List.[74] The Committee has acknowledged the problem with inaccuracy and with the help of the Monitoring Team taken a more proactive approach with regard to updates - thereby reducing the possibility of innocent parties with names similar to those listed being caught up by sanctions.[75]

3.3 Targeted Sanctions

3.3.1 Background

Sanctions against Al-Qaida and the Taliban have their origin in SC Resolution 1267, by which the Council required Member States to impose sanctions on designated members of the Taliban (Afghan territory). The Council modified the targets under Resolutions 1333 (2000), 1363 (2001) culminating in Resolution 1390 (2002) to include Al-Qaida and their associates.

The sanctions regime consists of three principal measures: asset freeze (financial measures), travel ban and the arms embargo.[76] All Member States are obliged to implement the sanctions on individuals and entities on the Consolidated List. All three measures are automatically applied on the national level without a judicial process against the affected parties.[77] This follows from the binding effect of Security Council decisions under Articles 25 and 48 of the Charter.

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[74] Cf. Annex I enclosed to this paper.

[75] UN S/Res/1735 p. 3, paras 7-9 and Committee Guidelines, para. 6a).

[76] S/Res/1267, S/Res/1333, S/Res/1363, S/Res/1390 and S/Res/1735.

[77] Cf. For example Forskrift av 22.12.199 nr. 1374 om sanksjoner mot Osama bin Laden, al-Qaida og Taliban

3.3.2 The freezing of assets

The point of departure is paragraph 4b) in Resolutions 1267 and paragraphs 1 and 2a) in Resolution 1390. The resolutions introduced the obligation to freeze Taliban and Al-Qaida's financial resources. Assets or financial resources are broadly defined as cash, cheques, money orders, deposits, balance on accounts, trusts, stocks, insurance money and precious commodities to name a few.[78]

An important modification to the asset freeze is the practice to grant derogation from the freezing of funds on humanitarian grounds.[79] The asset freeze does not apply to funds and other financial assets or economic resources determined by the relevant State(s) as: necessary for basic expenses (food, utilities, rent, mortgage, medical treatment, tax, legal services) or necessary extraordinary expenses.[80] It can be argued that targeted sanctions are proportionate because individuals are not deprived of funds for basic needs.

To exempt (release or add to) frozen funds, the Committee must be notified for consideration and authorization on a case-by-case basis.[81] In the case of the release of funds, Member States play an important role as intermediary between the listed individual or entity and the Committee. However, there may be circumstances were Member States lack resources or for some reason are reluctant to forward petitions for exemptions.[82] It should be noted that there are no formal records on how many exemption requests that do not reach the Committee because of reluctance from Member States.

3.3.3 The arms embargo

The arms embargo is one of the most traditional measures employed by the various Sanctions Committees. The arms embargo against Al-Qaida and the Taliban was

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[78] Cf. UN doc. S/2004/679 (2004) p. 13, para. 52 referring to these assets.

[79] S/Res/1452 (2002) pp. 1-2 and Committee Guidelines para. 9a).

[80] S/Res/1452 (2002) p.1, paras 1a- b).

[81] Three working day notification period according to Committee Guidelines, para. 9a).

[82] Watson Institute (2006), p. 31.

established under paragraph 2 of SC Resolution 1390 (2002) and aims at "preventing the direct or indirect supply, sale or transfer of arms and related material" in order to interrupt possible military operations. According to the Committee arms are defined as (but not limited to) weapons and ammunition, military vehicles and equipment, technical advice, assistance or training related to military activities.[83]

3.3.4 The travel ban

The travel ban has its legal basis in Security Council Resolution 1333 (2000), enhanced by Resolution 1390 (2002). The travel ban is only applicable to listed individuals. According to the Monitoring Team for the 1267 Committee, travel restrictions have been used as sanctions measures for nearly 40 years.[84] In accordance with the Consolidated List, all Member States through their designated national border authorities are required to deny entry, transit through or departure of listed individuals. Entry, transit or departure is denied by seizing travel documents, identity cards, driving licences as well as by executing cancellations of visas or residence permits. Accordingly, the travel ban requires attention to the possible use of altered, fraudulent or stolen travel documents.

3.3.5 From comprehensive sanctions to targeted sanctions

Within the scope of the Security Council resolutions outlined above, all these sanctions are amongst scholars defined as "targeted sanctions" or "smart" sanctions.[85] Both conceptions has gained general acceptance. The terms refer to sanctions that are imposed directly on individuals or entities whose identity and whereabouts are known. Thus, targeted sanctions are imposed on non-State actors, without any necessary link to a specific territory or regime.[86]

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[83] UN doc.*"Explanation of Terms: Arms Embargo*" (2006).

[84] UN doc. S/2005/572 (2005) p. 34, para. 117.

[85] Luck (2006) uses the term "targeted", in *Review of the Security Council by Member States* (2003) the term "smart" is used.

[86] Sanctions regime against expanded after the Taliban were removed from power in Afghanistan.

Historically, the Security Council has been accustomed to imposing sanctions on States. The sanctions regime against Al-Qaida and the Taliban however, orders each Member State to implement sanctions on identified individuals and entities as reflected on the List. It is argued that such "targeted" sanctions or "smart" sanctions represent a qualitative change in Security Council sanctions policy and arguably a change in the interpretation of Chapter VII of the UN Charter.[87]

What is the legal and political explanation for targeting individuals and not States?

First, Member States and humanitarian organizations have expressed concerns about the unintended effects of comprehensive economic sanctions on vulnerable segments of the population and the work of humanitarian agencies.[88] Second, concerns have also been expressed about the possible negative impact sanctions have on the economy of third countries or neighbour countries.[89] Targeted sanctions must be seen as a result of lessons learned from these experienced difficulties. Targeted sanctions are also seen as less controversial because they are not meant to affect the population as a whole. "Smart sanctions" targets identified actors and are strictly seen as preventive.[90] Yet, it is argued that the general aim is behavioural modification.[91] Whilst the Security Council emphasizes that the measures against Al-Qaida/Taliban are preventive in nature, *Cameron* has argued that the sanctions are quasi-criminal in nature.[92]

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[87] *International Sanctions*; *Between Words and Wars in the Global System* (2005), p.16.

[88] UN doc. A/50/60-S/1995/1 p. 13, para. 70, as noted by former Secretary-General, Boutros Boutros-Ghali.

[89] Possible problems for third countries also recognized in Article 50, UN Charter.

[90] Watson Institute (2006), p. 25.

[91] *International Sanctions*; *Between Words and Wars in the Global System* (2005), p. 184.

[92] Cameron (2006), p. 17.

3.4 Removing names from the Consolidated List (de-listing)

A positive decision by the Committee to remove a name from the List means that, sanctions (as outlined above) seize to have effect and that the name is moved to the "de-listed" section of the Consolidated List. At present it is not clear how many parties have sought to be de-listed, claiming to have been wrongfully placed or retained on the List.

3.4.1 Procedural rules for de-listing individuals and entities

The point of departure is Security Council Resolution 1735 (2006) and paragraph 8 of the Committee Guidelines. The petitioner (individual, group, undertaking or entity on the Consolidated List) must as a main rule actively approach the Committee by submitting a petition requesting review of his/her case.

There are currently two ways in which a petitioner may submit a request for de-listing: Either through the **focal point** at the United Nations Secretariat or through its **State of residence/citizenship**.[93] The latter may be described as the diplomatic remedy.

If the petitioner should choose the diplomatic remedy, paragraph 8e) of the Guidelines provides that the request must be submitted to the State where he or she is a citizen or resident. The State of residence/citizenship *should* review relevant information in support of de-listing and approach the original designating State(s) bilaterally. After bilateral consultations, it *should* forward the petition to the Committee. According to the wording in the Guidelines, the petitioned State is not obliged to pursue bilateral consultations or even review the information. It is only encouraged to do so.[94] However, should the State wish to conduct a review of the case, it is still within the State's discretion to assess whether or not to pursue the Committee with an actual de-listing request.[95] According to the *Watson Institute*, the diplomatic remedy has been met with concerns.[96] Practice has shown that if a

[93] Before February 2007, only the "diplomatic remedy" was available for petitioners.

[94] Committee Guidelines para. 8e) iii, the wordings "should" or "may" indicates that no obligation is implied.

[95] Ibid.

[96] Watson Institute (2006), p. 36.

Member State refuses or is not sympathetic to de-listing, the petition might not be presented for the Committee, regardless of its merits.[97] Thus, the diplomatic remedy leaves the petitioner no guarantee of review. It is necessary to note that there are no formal records over requests through States that never make it to the Committee.

The focal point process, however, is an institutionalized administrative appeal procedure. It was established pursuant to Resolution 1730 (2006), partly resulting from concerns that the diplomatic remedy might be insufficient.[98]

Committee Guideline paragraph 8b) provides that a petitioner may submit the request for deletion of its name straight to this focal point. The administrative focal point would then acknowledge receipt of the request and inform the petitioner about general procedures. It should be added that the focal point has no mandate or competence to assess the substance of the request.[99] It is strictly a facilitator for discussion and in charge of notifying the petitioner of the Committee's final decision. One could define the role of the focal point as a securer for correct procedure and a liaison between designating and petitioned Governments.

On this basis, the focal point forwards the de-listing request to the designating Government(s) and to the Government(s) of citizenship and residence.[100] This is done mainly in order to inform, but also to facilitate possible comments. The procedural rules encourage Government(s) of citizenship and residence to consult with the designating Government(s) before recommending de-listing.[101] In addition, bilateral consultations can

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[97] Ibid.

[98] The focal point is an administrative office within the UN Secretariat; operational from 29 March 2007. States may now decide (by declaration) that all petitions from their country must go through the focal point. As of 13 November 2007 only France has agreed to this. Cf. UN doc. S/2007/178 (2007) p. 1.

[99] Cf. Committee Guidelines para. 8d).

[100] Ibid, para. 8d) v.

[101] Ibid.

be facilitated by the focal point. After such consultations, recommendations of the involved Governments are forwarded by the focal point to the Chairman of the Committee, in order to place the petition on the Committee's agenda.[102] This recommendation would be accompanied by an explanation.

Should none of the Governments involved recommend de-listing, then the focal point would after a reasonable period (three months) forward the petition to all members of the Committee for additional review.[103] At that point, any member could make recommendations for de-listing. If after one month no Committee member recommends de-listing, then it shall be deemed rejected.

It must be stressed that the focal point procedure pursuant to Resolution 1730 (2006) does not generate new rules for decision-making. For both de-listing procedures, it is within the Committee's prerogative (consensually) to remove the name from the List. Thus removal can still be prevented by the objection of one single member.[104]

3.4.2 Criterion for de-listing

The substantive criteria for de-listing are specified in Resolution 1735 (2006). Paragraph 14 provides that the Committee in determining whether to remove names from the Consolidated List may consider (amongst other things): first, whether the initial inclusion on the List was due to mistake of identity. Second, whether the individual or entity no longer meets the criterion set out in Resolution 1617. In making the assessment the Committee *may* consider (amongst other things) whether the individual is deceased or whether it has been affirmatively shown that the individual or entity has severed all association with Al-Qaida/Taliban. The meaning of "association" in Resolutions 1735 and 1617 are effectively synonyms. However, it is difficult to assess what "severing all

[102] UN doc. S/2007/132 (2007) p. 16, para. 40b).

[103] Committee Guidelines para. 8 vi. (c).

[104] As of 14 November 2007, the Focal Point has received 16 requests (4 individuals and 12 entities). Cf. UN doc. S/PV.5779 (2007), p. 5.

association" requires in this context. A natural interpretation of the wording implies separation or disconnection from something or someone. Again, with this wording the Security Council has left the Committee wide discretional powers.

Furthermore, the Guidelines of the Committee provide that it is the petitioner who must justify the request to be removed from the List.[105] This should be done by compiling information in support of the requirements for de-listing. However, there exists no guidance as to what constitutes an adequate or satisfactory justification. Furthermore, there exists no explanation as to the degree of information required. In other words, the petitioner has the burden of proof whiles not knowing what decisive proof to present to the Committee. Due to confidentiality and lack of transparency one cannot contradict the content of the documentation compiled by Member States. The principle of presumption of innocence seems absent here. I will return to this question in section 5.2.5.

3.4.3 Concluding observations

On the background of the arguments provided for above, it could be said that it is solely within the discretional powers of the Committee to ensure that the conditions for de-listing and listing are met and that each case fits the scope of the sanctions programme. Consequently, Member States (especially countries not currently serving on the Security Council) must entrust that the Committee and the Council, in its pursuit to determine who constitutes "a threat to the peace", makes thorough assessments in each case, striking a balance between the "threat" and the sanctions to be imposed. Yet one must acknowledge that neither the Security Council nor the Committee can guarantee that no error of assessment of the facts and evidence relied upon have been made.

[105] Committee Guidelines para. 8a).

4 Human Rights law – is it applicable to the work of the Security Council?

4.1 Introduction

As examined above, the Security Council may affect a person's individual rights when placing his/her name on the List and applying sanctions. The High Commissioner for Human Rights contends that certain procedural rules of the Committee may infringe upon human rights standards and principles of due process.[106] In determining whether listing and de-listing procedures possibly infringe upon human rights norms, one must first assess whether human rights law poses legal constraints on the work of the Security Council.

4.2 The Security Council and human rights obligations

Since 1945, a comprehensive framework of human rights law has been drafted. The Universal Declaration of Human Rights was adopted by the General Assembly in 1948. Following the International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights, both adopted in 1966. In addition, regional human rights instruments such as the European Convention for the protection of Human Rights and Fundamental Freedoms have been drafted.

4.2.1 Constituent legal basis for human rights

According to the preamble of the Charter, Member States "reaffirm faith in fundamental human rights, in the dignity and worth of the human person…" It is further stated in the Charter's Article 1(3) that the promotion and respect for human rights are one of the purposes and principles of the United Nations. Article 1(3) is an umbrella provision, relevant to the application of all other Articles of the Charter.

Article 24(2) of the Charter emphasizes that the Security Council, in discharging its duties, "shall act in accordance with the Purposes and Principles of the United Nations". Furthermore, Articles 55(c) and 56 reaffirms the organisations task to promote universal respect for, and observance of human rights and fundamental freedoms. Therefore, in

[106] UN doc. A/HRC/4/88 (2007) p. 10, para. 25.

accordance with the wording of the provisions and the principle of constitutionality, the Security Council has an obligation to secure that decisions are in conformity with their constituent instruments. Thus, listing pursuant to sanctions should be evidence of the application and consideration for fundamental human rights.

However, the references to human rights in Articles 1(3) and 55(c) are broad and vague, as the drafters of the Charter did not specify the scope of human rights. According to the legislative history, the purposes and principles were designed to provide a guide to the organs of the United Nations in a flexible manner.[107] *De Wet* argues that this wording does not prevent one from identifying the core content of human rights in question because they can be derived from the rights guaranteed in the International Bill of Rights (i.e. UDHR, ICCPR and ICESCR), which represents the Charter's original vision of human rights.[108] This provides the argument that the Council has human rights obligations on the basis that part of this legal framework is seen as created under the organisation's own auspices.

4.2.2 Implications of the Vienna Convention on the Law of Treaties

The idea behind fundamental human rights is to protect interests of individuals.[109] They are rights not disposable by any State and drafted with a view to the performance of States.[110] Therefore, the UN being an autonomous subject is not and cannot become a party to or accede to any universal or regional human rights treaties. This follows from the Vienna Convention on the Law of Treaties Article 34(1). Moreover, this provides the argument that the Security Council is not directly bound to international human rights instruments. Furthermore, the proposition that the Council is bound to the treaties (as referred to above) simply because most Member States and permanent members of the Council have ratified human rights instruments seems insufficient.[111]

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[107] *The Charter of the United Nations, A Commentary* (1994) p. 50, operative para. 2.

[108] *Review of the Security Council by Member States* (2003) p. 13.

[109] Orakhelashvili (2006) p. 53.

[110] Ibid.

[111] *Review of the Security Council by Member States* (2003) p. 125.

4.2.3 The relevance of Security Council practices and statements

There is also the argument that the Security Council has generated an "expectation of respect" for human rights standards because of the institutional practice of the Council and other UN organs. For example, in the course of time and by consensus, practice can result in a new interpretation of the Charter's provisions and obligations. *Alvares* has opted for the view that such institutional practice is relevant for the interpretation of the Charter, as provided for under the standard rules of treaty interpretation in Article 31(2) of the Vienna Convention.[112] On 12 February 2007, the Committee unanimously agreed upon comprehensive revisions to its own procedures. In this process the Committee observed possible implications for the rights of affected individuals. Former Chairman of the Committee, *Mayoral (Argentina)*, has also voiced that international human rights standards are of high importance when countering terrorism.[113] In this way, the Council and the Committee create the presumption that human rights are to be considered when implementing Chapter VII measures.

4.2.4 Chapter VII measures versus human rights

The UN Charter Article 1(1) stresses that the main purpose of the Security Council is to maintain international peace and security and take effective collective measures for the prevention and removal of threats to the peace. In *Lysén's* view; "This means that the promotion of human rights is of supplementary means only to this main task…"[114] He further argues that this prime objective (maintenance of international peace and security) prevails over any other obligations of states under international law.[115]

The Security Council is mandated to ensure prompt and effective action by the UN. This is evident when the Committee executes its decisions to place names of individuals or entities on the List with the objective to apply immediate sanctions. It can therefore seem as if the

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[112] Ibid, p. 127.

[113] UN doc. S/PV.5599 (2006), p. 3. H.E. Mr. César Mayoral, Permanent Rep. to the UN.

[114] Lysén (2003), p. 3.

[115] Ibid.

absence of international peace offers less room for practicing human rights. And rightly so, under Chapter VII of the Charter the Council may in its lawful right restrict the application of human rights and international law when acting in the interest of international peace and security. The Council may do so with legal basis in the human rights instruments which – by analogy permits derogation from certain provisions during states of emergency.[116]

The question is however, whether the wording in Article 103 of the Charter can be interpreted as legal basis for the Council to restrict the application of human rights by Member States in the event of conflict between the UN Charter and other treaty obligations. In a judgement concerning the Al-Qaida/Taliban Sanctions Committee, the Court of First Instance of the European Communities (CFI) held that UN Member State's obligations under the Charter prevail *(lex superior*) over any other treaty obligation.[117] This includes obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms.[118] It was also held that this paramountcy extends to decisions of the Security Council in accordance with Article 25 of the Charter.[119] Should one support the Courts interpretation, one must at the same time acknowledge that Member States may derogate from human rights obligations when acting collectively in the Security Council. However, in the European Court of Human Rights' view, State action taken in compliance with legal obligations under the Charter is justified as long as the relevant organisation is considered to protect fundamental rights.[120] This interpretation seems in line with the principle of good faith and the Charter's purposes and principles.

4.2.5 The impact of peremptory norms (*jus cogens)* on Security Council measures

If one were to conclude that the Charter does not oblige the Security Council to consider human rights when placing individuals on the List, then the question becomes if Article

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[116] As prescribed under the ICCPR, Article 4(1).

[117] Case T-315/01 Yassin Abdullah Kadi v. Council and Commission, paras 183-184 [hereafter Yusuf].

[118] Ibid.

[119] Ibid.

[120] Bosphorus v. Ireland, para. 155.

1(3) in the Charter imposes the Council a presumptive duty to respect all customary human rights norms. The vast majority of States and authoritative writers recognize that the fundamental principles of human rights form part of customary or general international law.[121]

The Charter does also impose a presumptive duty to respect norms that are *jus cogens*. Jus cogens is understood as peremptory norms of general international law, accepted and recognized by the international community of States as norms from which no derogation is permitted.[122] It is found to be generally accepted international law that the Security Council must respect peremptory norms and cannot oblige Member States to act contrary to rules of *jus cogens*.[123] Thus, peremptory human rights norms prevail over the UN Charter and become an inherent limitation on the Committee's powers. As Judge *Lauterpacht* of the International Court of Justice emphasized in the Bosnia case, *jus cogens* unconditionally binds the UN Security Council.[124] Reference should also be made to the concurring statement made by the Appeals Chamber for the International Criminal Tribunal for former Yugoslavia (ICTY), in the *Tadic* case of 1999.[125]

[121] Brownlie (2003) p. 537.

[122] Vienna Convention on the Law of Treaties, Article 53.

[123] NOU 2003:18 p. 187-188.

[124] Separate opinion on the application of the Convention on Genocide, pp. 440-441 operative paras 100-102.

[125] Prosecutor v. Tadic, para. 296.

5 Human Rights concerns following from listing procedures and sanctions

5.1 Introduction

In the document entitled *"A more secure world: our shared responsibility"*, the United Nations High-Level Panel on Threats, Challenges and Change noted that: "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 raise serious accountability issues and possibly violate fundamental human rights norms and conventions".[126] The same view seems to be shared by the High Commissioner for human rights. In a recent report before the Human Rights Council, the High Commissioner voiced that: "While the system of targeted sanctions represent an improvement over the former system of comprehensive sanctions, it nonetheless continues to pose a number of serious human rights concerns related to the lack of transparency and due process in listing and de-listing procedures".[127]

In the present section, it falls to be further identified - the potentially violated substantial and procedural rights related to individuals on the List. I shall first identify the relevant rights and then discuss possible legal challenges. There will be a focus on the financial sanctions.

Since, a common agreement on which human rights norms the Council and the Committee are bound to do not exist, I will (where relevant) as secondary argument assess whether the applicable rights can be regarded as norms of *jus cogens*. Recent case law by the Court of First Instance of the European Community (CFI) will also be analysed.

[126] UN doc. A/59/565 (2004), p. 47, para.152, refers to the work of Al-Qaida/Taliban Sanctions Committee.

[127] UN doc. A/HRC/4/88, (2007), p. 10, para. 25.

5.2 Procedural rights (due process)

5.2.1 The right to a fair trial

One of the most pressing human rights concerns with respect to individuals on the Consolidated List relates to the right to a fair trial.

The right to a fair trial is generally included in Article 10 of the Universal Declaration of Human Rights (UDHR). The provision states that:

> "Everyone is entitled to a fair hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

In the International Covenant on Civil and Political Rights (ICCPR), the right to fair trial is recorded in Article 14(1) and provides that:

> "… In the determination of any criminal charge against him, or of his rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law…"

The European Convention on Human Rights and Fundamental Freedoms (ECHR) Article 6(1) further specifies that:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal…"

5.2.2 Impartiality

The terms "competent" and "established" by law in Articles 14(1) of the ICCPR and 6(1) of the ECHR are effectively synonyms aimed at ensuring that the jurisdictional powers of a tribunal is determined generally and independently. Furthermore, courts and tribunals must be independent and the judges impartial.[128] By analogy, this institutional principle is put to the test when applied to the Committee's de-listing procedures. As has been pointed out, the final decision to remove a name from the List is taken pursuant to consensus by all 15 Committee members. This means that the same members of the Committee who decided to place an individual on the list must also vote in favour or against a de-listing request. In the same way that a judge participating in a judgement at first instance is disqualified from judging in the appeal; one may comparatively question the objectiveness behind Committee decisions in de-listing cases.[129] With regard to de-listing, there is also reason to believe that the principle of consensus combined with the lack of an independent review body may lead to decisions suffering from arbitrariness. One could for example contend that when the State that proposes a name for listing (designating State) also is a member of the Committee – an impartial review process is threatened. One must subsequently ask whether the members of the Committee are able to assess a de-listing request with fresh eyes, solely on the grounds of what is put forward by the petitioner. This question will be discussed further under section 5.2.5.

5.2.3 Determination of a "criminal charge"

Article 14(1) of the ICCPR and the standards set out by Article 6(1) of the ECHR only applies to cases where the determination of a "criminal charge" is involved or where "rights and obligations in a suit of law" are at stake. The term "criminal charge" in Article 14 (1) of the ICCPR has not yet been determined by the Human Rights Committee. As this term corresponds with the wording in Article 6(1) of the ECHR, the jurisprudence by the European Court of Human Rights (hereafter ECtHR) will serve as guidance.

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[128] Cf. *Theory and Practice of the European Convention on Human Rights* (2006), pp. 612-623.

[129] Cf. Principle set out in Oberschlick v. Austria, paras 50-52.

The first question to be assessed is whether listing and the imposition of sanctions qualifies as "criminal" within the ambit of the ICCPR and the ECHR or whether they are administrative measures outside the scope of the Conventions.

"Criminal charge" bears an autonomous Convention meaning which applies irrespective of the definition of a criminal charge in domestic law.[130] According to the ECtHR a "charge" can be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence".[131] The notification marks the beginning of the "charge". From this definition, one could argue that when the State of residence notifies an individual of his/her inclusion on the List, the person may deduce that there is incriminating evidence against him. Consequently, notification may very well be experienced as implying an allegation of involvement in terrorism. Thus substantially affecting his situation and the need for the guarantees provided for by the Convention.

5.2.3.1 Classification of the allegedly violated norm

On the domestic level States Parties are free to designate matters as either disciplinary or administrative. If the charge is classified as criminal, Article 6 will apply automatically.[132] However, if the charge is *not* classified as criminal, then this is not decisive for the application of the fair trial guarantees.[133] The Monitoring Team for the 1267 Committee has consistently held that the List should not be viewed as a criminal list and that sanctions do not impose a criminal punishment or procedure such as for example detention, arrest or extradition.[134] Instead, asset freezing and the prohibition of international travel are defined as administrative measures.[135] Based on ECtHR jurisprudence, how the Committee or the Monitoring Team defines these measures are not decisive in order to statute a "criminal

[130] *Theory and Practice of the European Convention on Human Rights* (2006), pp. 539-540.

[131] Deweer v. Belgium, paras 42, 44 and 46.

[132] *Theory and Practice of the European Convention on Human Rights* (2006), p. 543.

[133] Engel v. The Netherlands, para. 81.

[134] Cf. UN doc. S/2005/572, p. 16, para. 41.

[135] Ibid, pp. 16-17, paras 39 and 41.

charge". What is relevant is the "autonomous meaning", hence the nature and purpose of the offence, and the severity of the penalty or sanction at stake.[136]

With regard to the "criminal" aspect, this assessment has to be made based on objective principles. The ECtHR has in its case law developed the following additional criteria.

5.2.3.2 Scope of the violated norm

First, the scope of the norm concerns the circle of its addressees. For example, a provision of disciplinary law generally addresses persons belonging to the disciplinary system.[137] The scope of the Consolidated List is specified as individuals and entities found to be associated with or belonging to Al-Qaida or the Taliban. The ECtHR has submitted that norms governing the conduct of a certain group of people (for example a specific profession), would indicate that one has to do with a disciplinary and not a criminal norm. However, if the norm potentially affects the whole population, and to which it attaches a punitive sanction, it is consider criminal.[138] The Consolidated List has a global scope and the norm set out in Resolution 1617 may potentially affect individuals and entities from all parts of the world not restricted to a certain profession, class, gender or race.

5.2.3.3 The purpose of the penalty

Second, the ECtHR has added to its argumentation the criterion on the "purpose of the penalty".[139] This alternative criterion seeks to distinguish between criminal and administrative sanctions. Jurisprudence shows that ECtHR has treated the loss of remission or of a driving licence as a criminal charge.[140] In comparison, individuals on the Consolidated List are imposed sanctions on the basis of their association with Al-Qaida or the Taliban. One could argue that this is a greater measure compared to loss of remission.

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[136] Engel v. The Netherlands, paras 81-82.

[137] *Theory and Practice of the European Convention on Human Rights* (2006), p. 544.

[138] Weber v. Switzerland, para. 33 and Demicoli v. Malta, para.33.

[139] Introduced in the Özturk case, 21 February 1984.

[140] Cf. Campbell and Fell v. The U.K and Malige v. France.

It is also argued that the purpose of the sanctions appears to be punitive.[141] The effects of the sanctions are arguably similar to criminal sanctions or at least quasi-criminal.[142] Furthermore, the listing criterion and the language in Resolution 1617 paragraphs 2 and 3 are very similar to criminal offences (criminal connotation).[143]

5.2.3.4 The nature and severity of the penalty

Finally, if the purpose of the penalty does not make Article 6 applicable, the Court will then have to look at the second alternative criterion; "nature and severity". Should however, the Court conclude that the first alternative criterion (purpose of penalty) is met; then the nature and severity of the penalty are no longer relevant.

Imprisonment is considered to be the criminal penalty *par excellence*. It is self-evident that the Al-Qaida/Taliban sanctions regime does not prescribe any deprivation of liberty. It is also difficult to contend that listing in itself is a penalty in the meaning of the ECHR or the ICCPR. A relevant question however, is whether listing pursuant to freezing assets are of a nature comparable to criminal sanctions.

In the case Phillips v. UK, the ECtHR ruled that proceedings for the confiscation of the assets of a convicted criminal (presumed earnings from drug trafficking) was not the "determination of a criminal charge".[144] One can thus contend that the freezing of assets with a view to interrupt economic relations with terrorist organisations is a lesser measure than confiscation, and thereby not covered by the Convention. On the other hand, the ECtHR has in its jurisprudence held that the criminal nature of the offence does not require a certain degree of seriousness.[145] In the Öztürk case, the Court reiterated that an offence of

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[141] UN doc. A/HRC/4/88 (2007), para. 25, cf. statement made by UN High Commissioner for Human Rights.

[142] Watson Institute (2006), p. 13. Note that Watson Institute argue that sanctions are most *likely* not criminal.

[143] Cf. provisions in UN International Convention for the Suppression of the Financing of Terrorism (1999).

[144] Cf. Judgement of 5 July 2001. Unanimous vote on applicability of ECHR Article 6(1) but no violation.

[145] Öztürk v. Germany, para.. 53 and Ezeh and Connors v. The U.K, para. 104.

a minor nature is of no relevance under this criterion.[146] Thus, to freeze or confiscate a person's assets based on the allegation of terrorist financing may be considered severe in nature.

De Wet contends that the severity of the punishment (freezing of assets) serves to qualify as *de facto* criminal charges.[147] Her assessment seems to be based on an examination of the possible impact the Committee's sanctions has on the targeted individual. This observation is supported by the applicant (Yassin Abdullah Kadi, hereafter *Kadi)* in a case before the European Court of First Instance of the European Communities (hereafter CFI).[148] *Kadi* observed that, "by being listed, he had been accused of the most serious form of criminal wrongdoing, namely, involvement in a terrorist organisation".[149]

5.2.3.5 Background in the Kadi case

On 18 December 2001, *Kadi*, a Saudi Arabian businessman filed a case before the CFI challenging the financial sanctions imposed against him. The applicant alleged that his fundamental right to a fair trial, effective judicial review and respect for property had been breached. The CFI ruled against the applicant and dismissed all three claims. *Kadi* was included on the Consolidated List (Al-Qaida section) on 17 October 2001.[150]

Listings do not include an "end date".[151] Information provided on the List shows that there are sanctioned individuals who have been listed for more than five years, making the asset freeze, travel ban and embargo seem punitive and deterrent. One can therefore supplement to the discussion the argument that, the longer a person is on the list and the longer his or

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[146] Öztürk v. Germany, para. 53.

[147] *Review of the Security Council by Member States* (2003) p. 15.

[148] Case T-315/01 Kadi , judgement of 21 September 2005.

[149] Case T-315/01 Kadi, para. 149. Sanctions implemented by EC Regulation 2062/2001 and Regulation. 881/2002. This case is currently under appeal, Lodged on 17 November 2005 under Case C-402/05P.

[150] Listed as of 13 November 2007, cf. Consolidated List reference QI.Q.22.01 (different spelling).

[151] UN doc. A/HRC//4/88 (2007), p.10, para. 25.

her assets are frozen, the closer becomes the reality of a criminal charge.[152] Thus, these sanctions can no longer be exclusively defined as emergency measures.

The Special Rapporteur on Human Rights while Countering Terrorism is of the opinion that, permanent sanctions linked to inclusion on terrorist lists may fall within the scope of criminal sanctions for the purposes of international human rights law.[153]

As demonstrated, there is room for discussion as to whether the Al-Qaida/Taliban sanctions regime fall within the realm of criminal sanctions or administrative measures. If one concludes that the imposition of sanctions on listed persons is a criminal charge, then this would subsequently trigger the extensive procedural rights guaranteed in Articles 14 of the ICCPR and 6 of the ECHR. The latter will become the point of departure for the following examination.

5.2.4 The right to be informed

One of the minimum guarantees prescribed by ECHR Article 6(3a) and Article 14 3(a) of the ICCPR, concerns the right to be informed promptly of the charge or accusation against him. As examined above, the Committee acknowledges listed parties' need for information. Affected individuals or entities are as primary rule informed of inclusion on the List, the procedures for de-listing and procedures for humanitarian exemptions. The Human Rights Committee has noted that the legal requirements may be met by disseminating the information either orally or in writing.[154] This is done by the Committee on a case-by-case basis.[155]

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[152] Ibid. This argument supported by UN High Commissioner for Human Rights.

[153] Mr. Martin Scheinin, UN doc. A/61/267 (2006) p. 16, para. 35.

[154] General Comment no. 13 of 13 April 1984, para. 8.

[155] Cf. section 3.2.6.

With respect to the content of the notice, the Human Rights Committee submits that the notice should also indicate the alleged facts on which it is based.[156] As has been emphasized, the grounds for inclusion on the list are generally not provided. However, in the recently adopted Resolution 1735 (2006) paragraph 10, the Security Council now obliges Member States to include with the notification a copy of the publicly releasable portion of the statement. Such an obligation undeniably improves the listed individual or entity's understanding of the grounds for inclusion on the List. However, uncertainty arises with respect to how much of the content of statements (evidence) are required disseminated. The language in Resolution 1735 does not provide a uniform standard with regards to the meaning of "publicly releasable". As the reasons for inclusion on the List initially stems from information provided by the designating State(s), it must be deduced that it is within Member States discretion to assess what should be considered as public information.

To release confidential State intelligence material is generally a sensitive issue and when left upon State discretion, variations from country to country may apply. In the *Kadi* case the CFI held that:

> ..."facts and evidence, once classified as confidential or secret by the State which made the Sanctions Committee aware of them, are not, obviously, communicated to him, any more than they are to the Member States of the United Nations…"[157]

The Court further considered that: …

> ..."observance of the fundamental rights of the person concerned does not require the facts and evidence adduced against him to be communicated to him, once the

[156] Cf. Wording in ECHR Article 6(3a) "nature and cause of the accusation".

[157] Case T-315/01 Kadi, para. 273.

Security Council or its Sanctions Committee is of the view that there are grounds concerning the international community's security that militate against it".[158]

5.2.5 The presumption of innocence

Article 14(2) of the ICCPR and Article 6(2) of the ECHR provides that everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law. The same principle is recorded in Article 11(1) of the UDHR. The presumption of innocence is fundamental to the protection of human rights and the rule of law.

It was in the foregoing noted that the principle of presumption of innocence seems absent in the de-listing procedures.[159] This Comment relates to two questions: First, whether the Committee when reviewing a listing is able to make an assessment without the preconceived idea that the person has committed the acts in paragraph 2 of Resolution 1617. Second, whether the transfer of burden of proof on the petitioner (in de-listing cases) is in line with the legal requirements under the Conventions.

As noted in paragraph 3.2.5.1, the Committee does not require that the individual or group has been faced with a criminal charge or conviction prior to listing. When listed, the individual is faced with the presumption of involvement in international terrorism. Furthermore, the norms outlining the formal criterion for listing presumes guilt with respect to certain acts linking him or her to Al-Qaida, Taliban and their associates. As stated in the *Engel* case, the wording in ECHR Article 6(2) deals specifically with the proof of guilt.[160] Currently, there exists no requirement of proof of guilt or intent under the Guidelines. Furthermore, judicial proceedings by Member States are not required after the inclusion on the list. I will return to this argument under the discussion on access to court (section 5.2.6).

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[158] Case T-315/01 Kadi, para. 274.

[159] Cf. section 3.4.2.

[160] Engel v. The Netherlands, para. 90.

A petitioner (individual, group, undertaking or entity on the Consolidated List) must actively approach the Committee to seek their removal from the List. The petitioner may do so either through the "diplomatic remedy" or through the focal point within the UN. It was in the foregoing observed that it is the petitioner that must provide evidence in support of the de-listing request.[161] Thus the burden of proof is placed on the accused and not on the Committee. It follows however from the ECtHR's jurisprudence, that Article 6(2) does not prohibit rules which transfer the burden of proof to the accused, as long as the overall burden of establishing guilt remains with the "prosecutor".[162] In addition, any rule which shifts the burden of proof or which applies a presumption operating against the accused, must be confined within "reasonable limits which take into account the importance of what is at stake and maintaining the rights of the defence".[163] The question thereby arises if the Committee's procedures are confined with "reasonable limits". In the *Pham Hoang* case the ECtHR considered the presumption not to be violated were the defendant has the opportunity to rebut a presumption of guilt.[164] With respect to listing, a petitioner may establish a defence but may not have the opportunity to rebut possible guilt, as it is not a requirement under Resolution 1735.

The lack of transparency related to the statements of cases and limited information on the criterion for de-listing, imposes serious challenges on the petitioners ability to present relevant documentation to the Committee. Access to evidence used must be seen as a prerequisite to establish a case in support of de-listing. It must also be seen as a precondition to be able to prove that conditions for listing are no longer met.

Even if Committee measures must be regarded as administrative; one should still offer listed individuals the opportunity to demonstrate change of behaviour or factual mistakes.

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[161] Required for the focal point procedure and the diplomatic approach.

[162] See Salabiaku v. France, and the Courts assessment of the French Customs Code, Article 392(1).

[163] Salabiaku v. France, para. 28.

[164] Pham Hoang v. France, para. 34.

Resolution 1735 paragraph does in some way recognize this problem but possibilities for contradiction (equality of arms) are limited.

If sanctions against listed individuals were characterized as criminal charges, then the required evidence for listing would have to meet the standard of "beyond reasonable doubt". But if one supports the conclusion that the Security Council and the Committees' measures are administrative, then one also accepts that evidentiary standard for listing may be lower and not uniform. Given that the Committee defines its own measures as administrative and because there are currently no procedural rules on evidentiary standards, it is possible that not all listings meets the requirements provided for in the Convention. *The Watson Institute* has voiced the need for an increase of the evidentiary standards when the individual has been listed for five years or more.[165]

5.2.6 Access to court – the right to be heard

The right of access to court is implicit in the right to a fair trial under ECHR Article 6(1).[166] Access to court implies that the person who is "charged" has the right to institute proceedings and be heard by a competent court.[167] It also implies a right to challenge the evidence against him, as recorded in the principle of presumption of innocence. Paragraph 3 of Article 14 in the ICCPR elaborates on the requirements of a "fair hearing" in regard to the determination of a criminal charge.

None of the Security Council Resolutions (1267, 1390, 1617, 1730 or 1735) at issue provides the right to be heard by the Sanctions Committee **before** they are included on the List. This means that persons or groups concerned cannot make known their views on the correctness of the facts which justify inclusion. In the *Yusuf* case the CFI ruled that such a

[165] Watson Institute (2006), p. 14. Statement refers to continued listing.

[166] Golder v. United Kingdom, para. 35.

[167] Cf. ICCPR, Article 14(3c).

"restriction" on the right to be heard is not improper in light of the mandatory prescription of international law.[168]

5.2.6.1 Background in the Yusuf case

Ahmed Ali Yusuf (hereafter *Yusuf*), a resident of Sweden of Somali origin Yusuf was placed on the List 9 November 2001.[169] *Yusuf* and Al Barakaat International Foundation (established in Sweden), filed a case before the CFI challenging the financial sanctions imposed against them. The applicants alleged breach of their rights to a fair trial, effective judicial review and respect for property. All three claims were dismissed.

In the *Yusuf* case the CFI stated that:

> "it is unarguable that to have heard the applicants before they were included in that list would have been liable to jeopardise the effectiveness of the sanctions…"[170]

The CFI also held that:

> "a measure freezing funds must, by its very nature, be able to take advantage of a surprise effect and to be applied with immediate effect".[171]

The CFI's assessment is based on the possibilities of re-examination given by the Committee (the diplomatic remedy). It is interesting to note that the Court found the diplomatic remedy to be a sufficient procedure to rebut any claims about violations of the right to be heard.

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[168] Case T-306/01 Yusuf and Al Barakaat v. Council and Commission of the European Communities, para. 315 [hereafter Yusuf].

[169] Together with Aden (reference QI.A.40.01) and Ali (reference QI.A.39.01), both de-listed on 26 August 2002. Yusuf (reference QI.Y.47.01) was de-listed on 24 August 2006. Al Barakaat (QE.B.39.01) remains listed.

[170] Case T-306/01 Yusuf, para. 308.

[171] Ibid.

At present there exists no independent body at UN-level with the mandate to review the accuracy behind listings. At UN-level, the focal point as described under section 3.4.1 plays an important part in the review process. However, individuals, entities or their counsel have no presence before the Committee. Only states have standing in the United Nations. Thus, one could argue that neither an administrative focal point nor the Committee provides for a mechanism where individuals can *de facto* present their cases and be heard. Advocates against this argument would however contend that, current procedures clearly prescribe a right to be heard via submission in writing to the focal point or through their State of residence. Yet, the UN High Commissioner for Human Rights is of the opinion that present measures are far from being a comprehensive solution to the problem.[172]

5.3 Limitations to the right to a fair trial

At this point it must be noted that the Security Council may derogate from the rights protected by Article 14 of the ICCPR and Article 6 of the ECHR. The Council may do so in situations determined as emergency situations classified as an international threat to the peace.[173] Such a situation would for example allow the Council to reverse the presumption of innocence on those allegedly involved in international terrorism, or apply limitations to the right of access to court. However, derogation is subjected to a strict principle of proportionality. According to the Human Rights Committee, derogation should be strictly required by the exigencies of the actual situation.[174]

It must be noted that Article 14 of the ICCPR and Article 6 of the ECHR, as primary rule, applies to courts and tribunals. The Security Council is a political organ mandated to take action within the scope of the Charter. Therefore, one must examine whether these procedural rights are part of international peremptory law which should also be observed by the Security Council.

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[172] UN doc. A/HRC/4/88 (2007), p. 12, para. 28.

[173] Cf. ICCPR, Article 4(1).

[174] General Comment no. 13 of 13 April 1984, para. 4.

5.4 The principles of due process as norms of jus cogens

The peremptory character of some human rights norms is affirmed in judicial practice. According to the International Criminal Tribunal for the former Yugoslavia, the prohibition of torture has generated a particular high status in the international normative system.[175] Principles such as the prohibition of genocide, slavery and racial discrimination are also considered to be peremptory.[176] In judicial practice it is held that not all human rights are part of peremptory law.[177] It falls therefore to be assessed if the principle of fair trial as provided for in Article 6 of the ECHR and Article 14 of the ICCPR can be regarded as peremptory norms which the Council may not derogate from.

Fassbender has held that customary international law does not provide for sufficiently clear rules which would oblige international organisations to observe standards of due process with respect to individuals.[178] He supplements to his argument the notion that a trend can be perceived widening the scope of customary law in regard to due process to include the actions of international organisations.[179] It is debated whether a formally derogable right under the human rights treaties can form part of *jus cogens*. Categorization of rights into derogable and non-derogable is not the same as dividing human rights norms into *jus cogens* and *jus dispositivum*.[180] It is however clear that derogable rights under treaty instruments can become part of *jus cogens*. *Orakhelashvili* has held that existing judicial

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[175] Prosecutor v. Furundzija, paras 147-155.

[176] Cassese (2005) p. 394.

[177] Cf. Cassese (2005) pp. 201-203. Assessment on the establishment and scope of *jus cogens.*

[178] Fassbender (2006) p. 19.

[179] Ibid.

[180] Orakhelashvili (2006), p. 59.

Jus dispositivum may be defined as a norm created by the consent of participating nations, by international agreement which is binding only to States that agree to be bound by it. Cf. *Black's Law Dictionary* (2004) p. 877.

practice proves the peremptory status of due process guarantees.[181] There is reason to underline that no general agreement on this question exists.

5.5 Substantive rights

5.5.1 Introduction

I shall now turn to the examination of selected substantive rights which are possibly affected by the Sanctions Committee's measures. The point to be made in this section is that if listing and subsequent sanctions are not the determination of a criminal charge, then one must examine if these measures fit into the scope of "civil rights".

5.5.2 Scope of civil rights and obligations

The term "civil rights" has an autonomous meaning under the ECHR.[182] Article 6(1) of the ECHR applies to civil rights. Whether or not a right is to be regarded as civil must be determined by reference to the substantive contents and effects of the right.[183] Within the meaning of Article 6(1), property is one area where the ECtHR has consistently held Article 6(1) to be applicable.[184] Furthermore, proceedings concerning damages caused to one's reputation may also be determined.[185]

5.5.3 The right to property

Article 17(1) of the UDHR provides that "everyone has the right to own property alone as well as in association with others." Article 17(2) further prescribes that "no one shall be arbitrarily deprived of his property". The equivalent right is recorded in Article 1 of

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[181] Ibid, p. 60. Referring to The Special Court for Sierra Leone Case SCSL-2003—08-PT, para. 19 which held that ICCPR, Article 14(5) is part of jus cogens. Cf. also Case T-315/01 Kadi and Case T-306/01 Yusuf were the CFI ruled that the principles of fair trial and effective remedies are not part of *jus cogens*.

[182] *Theory and Practice of the European Convention on Human Rights* (2006), p. 524.

[183] König v. Germany, para. 89.

[184] Cf. Ruiz-Mateos v. Spain.

[185] Cf. Werner v. Poland, para. 33.

Protocol I of the ECHR.[186] There are inherent legal limitations to the right to property under the ECHR.

Freezing of funds by Member States pursuant to Security Council resolutions may be seen as confiscatory in nature comparable to expropriation (without the compensation). In the *Kadi* and *Yusuf* cases the applicants claimed infringement upon their rights to make use of their properties. In both cases the CFI answered the question in the negative and based its *ratio decidendi* on the assessment that only property rights as far as it qualifies as a norm of *jus cogens* should be protected. According to the CFI, only the arbitrary deprivation of the right to property might be regarded as contrary to *jus cogens*.[187] In the Courts view the existence of humanitarian exemptions (derogation from freezing measures) weakens the argument that restrictions to the right to property are contrary to human rights.[188] The CFI added to its argument that the freezing of funds are temporary measures not "decisive" for a civil right.[189] But is listing really a temporary measure? As has been noted, listing does not include an "end date". Freezing of assets may effectively run for as long as terrorism poses a threat to international peace and security under Chapter VII of the Charter.

5.5.4 The right to reputation

The point of departure is Article 17 of the ICCPR and Article 12 of the UDHR. As laid down in the provisions, no one shall be subjected to arbitrary or unlawful interference with his "privacy, family, home or correspondence, nor to the unlawful attacks on his honour or reputation. The relevant question in this context is whether inclusion on the List may qualify as an unlawful attack on a person's honour or reputation.

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[186] The ICCPR does not provide for a provision on the right to property.

[187]Case T-306/01 Yusuf, para. 293 and Case T-315/01 Kadi, para 242

[188] Yusuf, para. 290 and Kadi, para 262. Cf. also S/Res/1452 (2002).

[189] Yusuf, para. 320 and Kadi, para 248.

Eckes has put forward the argument that listing harms someone's reputation to the point of destroying it and leads in itself to an impairment of the target's rights.[190] Furthermore listing, in her view, threatens for example the economic existence of any business person.[191] Her arguments presumably refer to those listed by mistake or on false grounds. According to *Cameron*, the Council's definition of "association" identifies a named individual as a terrorist suspect or as assisting terrorists.[192]

Another interesting aspect is the possible infringement of the right to reputation with respect to innocent third parties whose names appear on the List. This problem may be illustrated through the following example:

A quick search of the List shows that some entries include the names of mothers, fathers or even spouses of targeted individuals.[193] In this way, actions of the targeted individual are implicitly linked to possibly innocent third parties. Not only is it a burden for the third party to have its name connected to the List. It is also problematic from a legal point of view because these innocent third parties are not granted a right to be heard. For example, if an individual is listed and the name of his/her spouse is added to its identifying information, effectively only the actual listed individual has the right to petition for removal.

As a consequence of making this information public, innocent third parties may experience problems for example when travelling or when opening a bank account. One might argue that retaining this information is unproblematic since it is only listed parties (with a reference number) who are subjected to sanctions. Some might even say that the format of the List cannot be misunderstood. However, for the untrained eye or with respect to public officials, banks, or controllers at various border points – this practice might cause

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[190] Eckes (2006), p. 150.

[191] Ibid.

[192] Cameron (2006), p. 11.

[193] Cf. reference QI.A.61.02 and QI.A.231.07 in Annex I attached to this paper.

confusion. One must acknowledge that a list with almost 500 entries create the need to conduct quick searches. In this process, mistakes can be made.

Another issue linked to the current format of the List and the right to reputation, has to do with the final section of the List. The final section highlights names and identifiers of de-listed individuals or entities. It is relevant to examine the legal concerns and explain the Committee's rationale for retaining this information.

Retention of names of de-listed parties may continue to stigmatize individuals and entities no longer subjected to sanctions. It is hard to see any benefit from keeping this information. Does it really prevent terrorism? This argumentation is supported by the Monitoring Team for the Committee. In its fifth report, the Team noted that: Comparable lists of terrorists (European Union and the United States) do not include persons and groups after their formal de-listing.[194] As a result, the Team recommended the Committee to discontinue publishing this part of the List.

The rationale behind retaining information on de-listed parties is that it may provide the general public and Member States with important information on the activities of the Committee. Furthermore, information on de-listings illustrates significant developments within the sanctions regime as such. More importantly, it generates transparency. However, one could advocate for a different approach. Perhaps the Committee should look into ways of compiling a separate List (made public on the Committee's website). Consequently, the general public would still be able to retain the information. Such an approach would more clearly distinguish between current targets and the targets that are no longer subjected to sanctions.

[194] UN doc. S/2006/750 (2006), p. 12, para. 28.

6 Remedies available for targeted individuals and entities

6.1 Introduction

In previous sections affected substantial and procedural rights have been examined. Now, the question is: who has the legal competence to check that 1267 Committee procedures and relevant resolutions are in accordance with the rule of law? The point of departure for the following examination is the argument that: "There is a lack of consideration to remedies available to individuals whose human rights have been violated in the sanctions process".[195] This argument touches upon the right to effective remedies.

There is a degree of overleap between ECHR Articles 6(1) and 13.[196] However, effective remedies will be discussed separately as this section will have a more theoretical approach.

6.2 The right to effective remedies

Article 8 of the UDHR prescribes that: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or by law". Under Article 13 of the ECHR, the right to a remedy can only be invoked in conjunction with violation of another right under the Convention.[197] The main rights at issue are those of ECHR Article 6. ECHR Article 13 further prescribes effective remedies for possible breaches of the Convention before a national authority. In accordance with the ECHR a review body must have the legal power to deal with the cases before them in an effective manner.[198]

6.2.1 Remedies available at the national level

Assume that a person has been listed on the basis of a Committee decision. This decision effectively obliges Member States to impose all three sanctions on individual X. Assume also that individual X files a civil or criminal case before the domestic courts claiming

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[195] Statement by UN High Commissioner for Human Rights, UN doc. A/HRC//4/88 (2007), p. 10, para. 25.

[196] Kadi and Yusuf, CFI makes no distinction between the provisions.

[197] *Theory and Practice of the European Convention on Human Rights* (2006), p. 998.

[198] Cruz Varas v. Sweden, para. 94.

breaches of its due process rights in connection with Security Council sanctions under the Charter. What should a national court do?

As explained above, decisions under Chapter VII of the Charter are legally binding on all Member States. Thus States are obliged to impose these sanctions under Articles 25 and 48 of the Charter. Therefore, whenever domestic courts review Security Council measures the issue of compliance with its treaty obligations arises. A claim that the Security Council or the Committee has breached due process rights, challenges national courts to indirectly or directly assess possible limitations to the Council's Chapter VII powers. Should a national court find that international human rights law has been violated, then this may lead to direct confrontation with the Security Council. Is it likely that a domestic court would conduct such a controversial review?

After the Committee listed the Netherlands branch of the Al-Haramain Foundation and its chairman Aqeel Al-Aqil, the Dutch Public Prosecution Service attempted to ban and dissolve the organisation (Stichting Al-Haramain Humanitarian Aid).[199] In January 2006, an appeals court upheld a district court decision against the Government because of insufficient proof of support of terrorism. The appeal court found that dissolving the organisation went further than asset freeze required by the UN.[200] The assets remain frozen.

It is generally accepted law that international organisations, hence the United Nations enjoys immunity from suit before national courts.[201] One can therefore argue that domestic courts will be moderate with respect to review of Council decisions. Nevertheless, national courts will always have legal competence to review the question against applicable domestic legislation such as in the case referred to from the Netherlands. In Norway, the

[199] Listed on 6 July 2004.

[200] Cf. UN doc. S/2006/750 (2006) p. 47.

[201] Cf. Waite and Kennedy v. Germany concerning immunity of the European Space Agency (ESA) and Cameron (2006) p. 11.

Directive on "Sanctions against Usama bin Laden, Al-Qaida and the Taliban" which implements Resolution 1267 into Norwegian legislation would be applicable.[202]

It is also possible that domestic courts could decide to implement sanctions only after a trial at domestic level – in line with criminal standards and due process. Such a review is also controversial because, even though the domestic court might not find evidence that a crime has been committed, this does not mean that the Sanctions Committee will remove the individual from the list. As has previously been pointed out, a criminal proceeding is not required prior or post listing.[203]

Scheinin has opted for the view that if evidence of association or membership with Al-Qaida or the Taliban exists, then the affected State should have an obligation to prosecute natural and legal persons in order to clarify their status. He further contends that placement on the List should not be considered evidence for the legal procedure in question.[204] In essence the Special Rapporteur recommends that domestic courts should have legal obligation to verify that no errors of assessment have been made by the Committee. One could argue that this is a controversial recommendation. Subsequently, it seems procedurally challenging to require that a domestic court should disregard placement on the List as evidence.

6.2.2 Legal proceedings before regional courts

European Courts have so far been reluctant to provide judicial review against UN sanctions and listing. In the *Yusuf* case the European Court of First Instance speaks of "trespassing upon prerogatives of the UN Security Council".[205] In its judgement the CFI observed that it lacked jurisdiction to directly review claims as regards the UN sanctions regime and human rights. In the press release made public after the *Kadi* and *Yusuf* judgements, the CFI stated

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[202] Forskrift av 22.12.199 nr. 1374 om sanksjoner mot Osama bin Laden, al-Qaida og Taliban.

[203] Cf. sections 3.2.5.1 and 3.4.2.

[204] UN doc. A/61/267 (2006) p. 16, para. 36.

[205] Case T-306/01 Yusuf, para. 339.

that it was not for the Court to verify that there had been no error of assessment of the facts and evidence relied upon by the Security Council.[206] Nor would it check the appropriateness and proportionality of Council measures.[207] Thus the CFI has taken a careful approach.

However, in the *Yusuf* and *Kadi* cases the CFI considered it self competent to review, indirectly, the lawfulness of Security Council resolutions. By indirectly, the Court meant review from a *jus cogens* perspective. Consequently the Court recognized that the UN and the Council are bound by peremptory norms when acting under the Charter's Chapter VII.[208] In both judgements the CFI rejected the applicants' claims alleging breach of their right to an effective remedy, because it did not consider the right as absolute or part of the higher hierarchy of peremptory norms.[209]

The CFI has acknowledged that at present there is a lacuna in the judicial protection available to individuals and entities on the Consolidated List. However, this was also not found to be contrary to *jus cogens*. The Courts assessment is based on a correct legal interpretation of international law because the right to an effective remedy is not absolute.[210] Consequently, the right to effective remedies may be derogated from in public emergencies or by analogy when declaring a threat to international peace and security under Chapter VII of the Charter.

Bulterman contends that judicial review of Council measures (conducted from a jus cogens perspective) by a regional court is problematic because it may undermine the role of the Security Council when it comes to international peace and security.[211] One might contend

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[206] CFI, Press release No 79/05, 21 September 2005, pp. 3- 4.

[207] Ibid.

[208] Cf. discussion in section 4.2.5.

[209] Case T-306/01 Yusuf, paras 342-346 and Case T-315/01Kadi, paras 285-286.

[210] *Theory and Practice of the European Convention on Human Rights* (2006), p. 999.

[211] Bulterman (2006) p. 768.

that the Security Council has the power to prevent possible scrutiny of its own powers. The Council could for example establish an independent review body at UN-level. In the meaning of ECHR Article 13, a judicial authority is not required in order to conduct an effective review.[212] However, the authority should have the legal competence to independently review the factual and the judicial grounds of the case.[213] The Committee could for instance expand the mandate and competences of the focal point. Former Chairman of the Committee, Ambassador *Mayoral* has also stressed the need for greater progress as regards an independent revision mechanism.[214]

At the time of writing, no case on the Consolidated List is filed or pending before the ECtHR. Filing a case before the European Court of Human Rights requires exhaustion of domestic remedies, thus it may take several years before such a case might have recourse to Strasbourg supervision.[215]

[212] *Theory and Practice of the European Convention on Human Rights* (2006), p. 1006.

[213] *Theory and Practice of the European Convention on Human Rights* (2006), pp. 1006-1010.

[214] Representing the Permanent Mission of Argentina to the UN, cf. UN doc. S/PV.5601 (2006), p. 5.

[215] ECHR, Article 35(1).

7 Concluding remarks

Through a descriptive and normative approach, the aim of this thesis has been to give the reader a better understanding of the United Nations working methods and procedures when preventing and countering terrorism pursuant to Al-Qaida, the Taliban and their associates. Much has been written on counter-terrorism policy post September 11th, but as examined, the United Nations counter-terrorism framework has had a solid legal and political basis before the year 2001.[216]

The importance of combating all forms of terrorism must not be underestimated. Terrorism is a threat to all states and to all peoples. It also constitutes a direct attack on the rule of law and peaceful resolution of conflicts. By the same token, the United Nations and the Security Council must not compromise on the core values of human rights and rule of law in its fight against terrorism.

Targeting individuals and entities with sanctions and including their names on a list, has resulted in effects that go beyond the UN's intentions. As has been examined in the foregoing, the Sanctions Committee's procedures raise many concerns with respect to due process and the rule of law.

As is evident from the arguments provided for in the paper, the Security Council and the Committee enjoys wide discretional powers. Their decisions are outcome of political consideration, not legal reasoning.[217] However, current working methods arguably have legal implications with respect to human rights norms.

Furthermore, there is a lack of clarity with respect to the language laid down in the procedures for listing and in the requirements for de-listing. This problem is in many ways

[216] Refers to the terrorist attacks on the USA on 11 September 2001.

[217] *United Nations Sanctions and International Law* (2001) p. 8.

reinforced by the lack of transparency and the need for public information on authoritative interpretations conducted by the Committee.

More can be done about the existing lacuna with regard to judicial review and effective remedies. To increase accountability, one should examine ways of reviewing the facts and evidence presented before the Committee. As has been addressed, an independent and impartial form of review at UN-level would perhaps strengthen the legitimacy of the sanctions regime.

It must be noted that some of these concerns have already generated several discussions within the Committee and amongst Member States. Positive developments such as Resolution 1735 (2006) marks important steps towards achieving fairer procedures. However, lack of consensus often slows down the Committee and little can be done without political will.

Norway has given its support to the work of the 1267 Sanctions Committee and supports efforts aimed at identifying how the Consolidated List can be expanded to cover other organisations.[218] Such a strategy should possibly be accompanied by an equally high priority to bilateral talks aimed at fostering fair procedures.

As the former Chairman of the Committee has so rightly acknowledged; "In the fight against terrorism we often get the sense that we are walking on a razor's edge to strike the right balance between preventive and swift action against terrorists and adequate safeguards for the individual, not least for those unjustly targeted".[219] I believe that getting this balance right will strengthen the legitimacy of the sanctions regime and the achievements of the United Nations. We must expect that the sanctions regime will continue to improve in the future.[220]

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[218] *Utenrikspolitisk strategi for bekjempelse av internasjonal terrorisme* (2006), p. 7 and 11.

[219] UN doc. S/PV/.5446 (2006), p. 8, César Mayoral (Argentina).

[220] S/PV.5601 (2006), p. 6.

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2006) **Other information:** The Belgian address is a PO Box. Belgian Authorities state that this person never resided in Belgium. Reportedly living in Dublin, Ireland. His father's name is Mohamed, mother's name is Medina Abid.

QI.A.93.03. Name: 1: CHIHEB 2: BEN MOHAMED 3: BEN MOKHTAR 4: AL-AYARI
Name (original script): شهاب بن محمد بن مختار العياري
Title: na **Designation:** na **DOB:** 19 Dec. 1965 **POB:** Tunis, Tunisia **Good quality a.k.a.:** Hichem Abu Hchem **Low quality a.k.a.:** na **Nationality:** Tunisian **Passport no.:** Tunisian passport number L246084, issued on 10 June 1996, expired on 9 June 2001 **National identification no.:** na **Address:** Via di Saliceto n.51/9, Bologna, Italy **Listed on:** 25 Jun. 2003 (amended on 20 Dec. 2005, 17 Oct. 2007) **Other information:** In January 2003 sentenced in Italy to 2 years 1 month imprisonment.

QI.A.94.03. Name: 1: MONDHER 2: BEN MOHSEN 3: BEN ALI 4: AL-BAAZAOUI
Name (original script): المنذر بن محسن بن علي البعزاوي
Title: na **Designation:** na **DOB:** 18 Mar. 1967 **POB:** Kairouan, Tunisia **Good quality a.k.a.:** na **Low quality a.k.a.:** Hamza **Nationality:** Tunisian **Passport no.:** Tunisian passport number K602878, issued on 5 Nov. 1993, expired on 9 June 2001 **National identification no.:** na **Address:** Via di Saliceto n.51/9, Bologna, Italy **Listed on:** 25 Jun. 2003 (amended on 20 Dec. 2005, 17 Oct. 2007) **Other information:** In January 2003 sentenced in Italy to 2 years 6 months imprisonment.

QI.A.179.04. Name: 1: SULIMAN 2: HAMD 3: SULEIMAN 4: AL-BUTHE
Name (original script): سليمان حمد سليمان البطحي
Title: na **Designation:** na **DOB:** 8 Dec. 1961 **POB:** Cairo, Egypt **Good quality a.k.a.:** Soliman H.S. Al Buthi **Low quality a.k.a.:** na **Nationality:** Saudi Arabian **Passport no.:** a) Passport number B049614 b) Passport number C 536660, issued on 5 May 2001 , expired on 11 Mar. 2006 **National identification no.:** na **Address:** na **Listed on:** 28 Sep. 2004 (amended on 23 Apr. 2007) **Other information:** na

QI.A.61.02. Name: 1: TAREK 2: BEN AL-BECHIR 3: BEN AMARA 4: AL-CHARAABI
Name (original script): طارق بن البشير بن عمارة الشرعبي
Title: na **Designation:** na **DOB:** 31 Mar. 1970 **POB:** Tunis, Tunisia **Good quality a.k.a.:** Sharaabi, Tarek **Low quality a.k.a.:** a) Haroun b) Frank **Nationality:** Tunisian **Passport no.:** Tunisian passport number L 579603 issued in Milan on 19 Nov. 1997, expired on 18 Nov. 2002 **National identification no.:** 007-99090 **Address:** Viale Bligny n.42, Milan, Italy **Listed on:** 24 Apr. 2002 (amended on 20 Dec. 2005, 31 Jul. 2006) **Other information:** Codice Fiscale: CHRTRK70C31Z352U. His mother's name is Charaabi Hedia.

QI.A.138.03. Name: 1: SAID 2: BEN ABDELHAKIM 3: BEN OMAR 4: AL-CHERIF
Name (original script): سعيد بن عبد الحكيم بن عمر الشريف
Title: na **Designation:** na **DOB:** 25 Jan. 1970 **POB:** Menzel Temime, Tunisia **Good quality a.k.a.:** na **Low quality a.k.a.:** a) Djallal b) Youcef c) Abou Salman **Nationality:** Tunisian **Passport no.:** Tunisian passport number M307968, issued on 8 Sep. 2001 , expires on 7 Sep. 2006 **National identification no.:** na **Address:** Corso Lodi 59, Milan, Italy **Listed on:** 12 Nov. 2003 (amended on 20 Dec. 2005) **Other information:** na

QI.A.231.07. Name: 1: SALEM 2: NOR ELDIN 3: AMOHAMED 4: AL-DABSKI
Title: na **Designation:** na **DOB:** 1963 **POB:** Tripoli **Good quality a.k.a.:** a) Abu Al-Ward b) Abdullah Ragab **Low quality a.k.a.:** Abu Naim **Nationality:** Libyan **Passport no.:** Libyan passport 1990/345751 **National identification no.:** na **Address:** Bab Ben Ghasheer, Tripoli **Listed on:** 8 Jun. 2007 **Other information:** Mother's name is Kalthoum Abdul Salam Al-Shaftari.

QI.A.132.03. Name: 1: ASCHRAF 2: AL-DAGMA 3: na 4: na
Name (original script): اشرف الدغمة
Title: na **Designation:** na **DOB:** 28 Apr. 1969 **POB:** Absan, Gaza Strip, Palestinian Territories **Good quality a.k.a.:** a) Aschraf Al-Dagma, born 28 Apr. 1969 in Kannyouiz, Palestinian Territories b) Aschraf Al Dagma, born 28 Apr. 1969 in the Gaza Strip, Palestinian Territories c) Aschraf Al Dagma, born 28 Apr. 1969 in Palestinian Territories d) Aschraf Al Dagma, born 28 Apr. 1969 in Abasan, Gaza Strip **Low quality a.k.a.:** na **Nationality:** Unresolved/Palestinian origin **Passport no.:** Refugee travel document issued by Landratsamt Altenburger Land (Altenburg County Administration Office),Germany, dated 30 Apr. 2000 **National identification no.:** na **Address:**

ANNEX II

Annex I — Coversheet

CONSOLIDATED LIST: COVER SHEET FOR MEMBER STATE SUBMISSIONS TO THE COMMITTEE
Please complete as many of the following fields as possible:

I. IDENTIFIER INFORMATION — for Individuals							
Where possible, note the nationality or cultural or ethnic sources of names/aliases. Provide all available spellings.		**Surname/ Family Name/ Last Name**	**First Name**	**Additional name (e.g. father's name or middle name), where applicable**	**Additional name (e.g. grandfather's name), where applicable**	**Additional name, where applicable**	**Additional name, where applicable**
Full Name: (in original and Latin script)							
Aliases/"Also Known As" (A.K.A.s): Note whether it is a strong or weak alias.	Current						
	Former						
Other nom de guerre, pseudonym:				**Title:** Honorary, professional, or religious title			
Employment/Occupation: Official title/position				**Nationality/ Citizenship:**			
Date of Birth: (DD/MM/YYYY)				**Passport Details:** (Number, issuing date & country, expiry date)			
Alternative Dates of Birth (if any): (DD/MM/YYYY)				**National Identification Number(s), Type(s):** (e.g. Identity card, Social Security)			
Place of Birth: (provide all known details including city, region, province/state, country)				**Address(es):** (provide all known details, including street address, city, province/state, country)			
Alternative Place(s) of Birth (if any): (city, region, province/state, country)				**Previous Address(es):** (provide all known details, including street address, city, province/state, country)			
Gender:				**Languages spoken:**			
Father's full name:				**Mother's full name:**			
Current location:				**Previous location(s):**			

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B

Undertakings and entities owned or controlled, directly or indirectly by the individual (see UNSCR 1617 (2005), para. 3):	
Website Addresses:	
Other relevant detail: (such as physical description, distinguishing marks and characteristics)	

IDENTIFIER INFORMATION — For Groups, Undertakings, or Entities	
Name:	
Also Known As (A.K.A.s): Where possible, note whether it is a strong or weak A.K.A.	**Now Known As (N.K.A.s)**
	Formerly Known As (F.K.A.s)
Address(es): Headquarters and/or branches. Provide all known details, including street address, city, province/state, country	
Tax Identification Number: (or local equivalent, type)	
Other Identification Number and type:	
Website Addresses:	
Other Information	

II. BASIS FOR LISTING

May the Committee publicly release the following information? *Yes* *No*

May the Committee release the following information to Member States? *Yes* *No*

Complete one or more of the following:

	(a) participating in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of Al-Qaida (AQ), Usama bin Laden (UBL), or the Taliban, or any cell, affiliate, splinter group or derivative thereof.[1] • Name(s) of cell, affiliate, splinter group or derivate thereof:
	(b) supplying, selling or transferring arms and related materiel to AQ, UBL or the Taliban, or any cell, affiliate, splinter group or derivative thereof.[1] • Name(s) of cell, affiliate, splinter group or derivate thereof:

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C

	(c) recruiting for AQ, UBL or the Taliban, or any cell, affiliate, splinter group or derivative thereof.[1] • Name(s) of cell, affiliate, splinter group or derivate thereof:
	(d) otherwise supporting acts or activities of AQ, UBL or the Taliban, or any cell, affiliate, splinter group or derivative thereof.[1] • Name(s) of cell, affiliate, splinter group or derivate thereof:
	(e) Other association with AQ, UBL or the Taliban, or any cell, affiliate, splinter group or derivative thereof. • Briefly explain nature of association and provide name of cell, affiliate, splinter group or derivate thereof:
	(f) Entity owned or controlled, directly or indirectly, by, or otherwise supporting, an individual or entity on the Consolidated List.[2] • Name(s) of individual or entity on the Consolidated List:
Please attach a Statement of the Case which should provide as much detail as possible on the basis(es) for listing indicated above, including: (1) specific information supporting the association or activities alleged; (2) the nature of the information (e.g., intelligence, law enforcement, judicial, media, admissions by subject, etc.) and (3) supporting information or documents that can be provided. Include details of any connection with a currently listed individual or entity. Indicate what portion(s) of the Statement of Case the Committee may publicly release or release to Member States.	

[1] S/RES/1617 (2005), para. 2.
[2] S/RES/1617 (2005), para. 3.

III. POINT OF CONTACT *The individual(s) below may serve as a point-of-contact for further questions on this case:* (THIS INFORMATION SHALL REMAIN CONFIDENTIAL)	
Name:	*Position/Title:*

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D