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Letter dated 13 April 2011 from the Chair of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities addressed to the President of the Security Council

I have the honour to transmit herewith the eleventh report of the Analytical Support and Sanctions Monitoring Team established pursuant to Security Council resolution 1526 (2004) and extended by resolution 1904 (2009).

The report was submitted to the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and Associated Individuals and Entities on 22 February 2011 in accordance with Security Council resolution 1904 (2009), and is currently being considered by the Committee.

I should be grateful if the attached report could be brought to the attention of the members of the Security Council and issued as a document of the Council.

(*Signed*) Peter **Wittig**
Chair
Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and Associated Individuals and Entities

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Letter dated 22 February 2011 from the Coordinator of the Analytical Support and Sanctions Monitoring Team addressed to the Chair of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

The Analytical Support and Sanctions Monitoring Team, established pursuant to Security Council resolution 1526 (2004) and extended by Security Council resolution 1904 (2009) concerning Al-Qaida and the Taliban and associated individuals and entities, has the honour to transmit its eleventh report, in accordance with resolution 1904 (2009).

(*Signed*) Richard **Barrett**
Coordinator

Eleventh report of the Analytical Support and Sanctions Implementation Monitoring Team established pursuant to Security Council resolution 1526 (2004) and extended by resolution 1904 (2009) concerning Al-Qaida and the Taliban and associated individuals and entities

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Summary

The present report attempts to further discussion on two key issues currently facing the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and Associated Individuals and Entities. The first is how the Committee can best ensure that the sanctions measures promote peace and stability in Afghanistan, and the second concerns continued court challenges to Member States' implementation of the measures.

There is almost universal acceptance that the problems of Afghanistan cannot be resolved by military means alone. As a reflection of this, President Karzai has invited the Taliban to talk about the future of the country and appointed the members of the High Peace Council, drawn from all sectors of Afghan society to lead national reconciliation efforts. On the other side, despite very public statements to the contrary, the Taliban appear cautiously interested in seeing where talks could lead, though there is still a long way to go before any real discussion could take place. A key issue that both sides acknowledge concerns the removal of Taliban names from the Consolidated List established pursuant to resolutions 1267 (1999) and 1333 (2000), an issue that is solely within the control of the Committee. This report looks at how the Committee could use the List to promote Afghan stability and, without compromising the authority of the Committee, find ways to increase the involvement of the Afghan Government in listing and de-listing decisions. It also considers new procedures that could allow the Committee greater flexibility in responding to requests from the Afghan Government for de-listing.

The implementation of Security Council resolutions 1822 (2008) and 1904 (2009) has led to significant advances in the fairness and credibility of the regime. The comprehensive review of the List pursuant to paragraph 25 of resolution 1822 (2008), completed in July 2010, led to a much-needed paring down and updating of the Consolidated List, including the de-listing of 24 individuals and 21 entities. In addition, the creation of the Office of the Ombudsperson has provided an independent, judicially qualified body to review de-listing petitions. Already the Office has begun work on at least seven cases. The regime nevertheless continues to suffer setbacks in the courts, albeit before the Committee could demonstrate the efficacy of the Ombudsperson process.

In the area of due process, institutionalizing and enhancing the reforms introduced by resolution 1904 (2009), particularly the Committee practice in relation to the Office of the Ombudsperson, should be a top priority. The Analytical Support and Sanctions Monitoring Team believes that the Committee should pursue transparency where practicable, including the publication of the Ombudsperson's observations and its reasons for disagreement where that is the case. A requirement for the Committee to reaffirm by consensus listings that have been subject to the Ombudsperson's scrutiny could also increase confidence in the Committee procedures.

The Team has not sought to offer detailed recommendations on improving the three measures as it has done in the past. The Security Council and the Committee have already done a great deal in this respect and the challenge now lies far more with Member State implementation than with refinements of the Committee procedures. The aim of the Security Council must now be to reassure the courts that the sanctions regime established pursuant to Security Council resolution 1267 (1999) (the 1267 sanctions regime) is fair and, with the increased support of Member States, reassert its original purpose of ridding the world of the threat of terrorism from Al-Qaida, the Taliban and their listed associates.

I. Overview

A. The Taliban

1. As the Taliban insurgency continues to spread in Afghanistan, it is appropriate to ask whether the Al-Qaida and Taliban sanctions regime has had much impact. The answer is yes and no. In some respects the measures have had no material effect on listed Taliban: they have money and their assets are not frozen; they are reported to travel between Afghanistan and Pakistan; and they have no shortage of weapons or other military-style equipment.[1] On the other hand, the removal of their names from the Consolidated List[2] is one of the key demands of the Taliban, along with the release of prisoners and the withdrawal of foreign troops.

2. Although the situation in Afghanistan shows no improvement in terms of violent incidents and casualties, there are indications that the Taliban leadership, loosely known as the Quetta Shura, is becoming more interested in negotiating a settlement. Several factors may have led to this. First, while the Taliban have created parallel political structures for all areas of Afghanistan, and in some of them exercise complete control, they have no foreseeable prospect of ruling the country. Second, the Afghan army and police force are slowly becoming more effective. Third, the Taliban have suffered the death or arrest of many mid-level and some senior leaders, and while there are many who can take their place, the new commanders are younger and have fewer links with the Quetta Shura, which therefore has less control over their actions and a harder job in asserting its authority over the movement as a whole. Fourth, the senior Taliban have been out of power for almost 10 years, and in a country where life expectancy is less than 45 years, and the median age is around 18, they may fear that their broader influence is already on the decline. Fifth, the Taliban are aware from their close attention to opinion in other countries that both regional and world powers are becoming impatient for a political solution, and that this could still exclude them unless they show a willingness to be involved. Sixth, they realize that if they were included in an Afghan administration while still subject to sanctions, they would find it near to impossible to operate effectively.

B. The Taliban and Al-Qaida

3. A firm precondition for peace set by the Afghan Government and its allies is that the Taliban should sever all ties with Al-Qaida. Although the Taliban have many reasons to dislike Al-Qaida for causing their downfall and abusing their hospitality, the links between them are well established. In some cases members of the two groups have fought together for over 20 years. Jalaluddin Haqqani (TI.H.40.01),[3] for example, first got to know Usama bin Laden in 1984. Codes of honour and deep

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[1] See section VI.A of the present report on the arms embargo.

[2] The Consolidated List established pursuant to resolutions 1267 (1999) and 1333 (2000), and maintained by the Committee, with respect to Al-Qaida, Usama bin Laden and the Taliban, and other individuals, groups, undertakings and entities associated with them (available at www.un.org/sc/committees/1267/consolist.shtml).

[3] Mention of a listed individual or entity includes the relevant permanent reference number on the List. Other names mentioned are not listed. As Al-Qaida, Usama bin Laden and the Taliban are named in the Security Council resolutions, they are mentioned without reference.

friendships will impede any clear break between the two movements. However, the newer Taliban commanders will be more interested in consolidating their power than in maintaining links with Al-Qaida, whose impact in Afghanistan in any case has more to do with individual than institutional involvement. Also, the Taliban is a nationalist movement, while the whole essence of Al-Qaida is to act on a global stage. Some in the Taliban leadership may now be ready to renounce Al-Qaida as part of the end state of negotiations.

4. Whether the Taliban would be able to enforce any agreement to keep Al-Qaida out of Afghanistan is another matter, and Al-Qaida will do what it can both to impede an agreement and to sabotage its execution. Inevitably, it will have Afghan allies among those who disagree with or otherwise feel disadvantaged by any settlement.

C. Al-Qaida

5. Just as Al-Qaida will remain a residual threat for some time in Afghanistan, so too will it continue to have some impact on the rest of the world. But Al-Qaida is weaker than at any time since its resurgence in 2005. The mass demonstrations for political change as seen in 2011 in North Africa and the Middle East underscore the fundamental irrelevance of Al-Qaida's violent zealotry to the great mass of the population that it aims to attract. Real change looks more likely to come from popular protest than from covert acts of violence. However, terrorism will continue to have its supporters, especially where more overt political protest has been seen to fail, and although Al-Qaida will never enjoy a broad appeal, attacks will continue.

6. The decline of Al-Qaida is in part a result of the unflagging international campaign to restrict its influence and in part a result of its own making. Al-Qaida's senior leadership remains penned in on the Afghanistan-Pakistan border and faces a slow attrition from air strikes and betrayal. It has little opportunity to devote effort to rebuilding networks and coordinating major attacks. Its instruction to its followers is to attack where they can, when they can. This has not been without effect, and there have been many horrific attacks since the Team's last report in July 2009 (see S/2009/502), as well as several that did not work. But the influence of the senior leadership is nonetheless constrained and, as a result, Al-Qaida has tended to break down into its constituent parts, with the result that it has lost momentum as a global movement.

7. Al-Qaida also suffers from an inability to identify and promote senior leaders who can give it fresh momentum. It is highly dependent on Usama bin Laden, who is now next to invisible, apart from the occasional audio tape, and Aiman al-Zawahiri (QI.A.6.01), who may be revered but is unappealing and out of touch with potential supporters who may watch his finger-wagging videos through the Internet. These too are becoming more rare. However, some Al-Qaida affiliates do better. Al-Qaida in the Arabian Peninsula (QE.A.129.10) has attracted a following and considerable attention from the media with its attempted attacks on international air flights. It has been boosted by the populist preacher Anwar al-Aulaqi (QI.A.283.10) who, unlike the senior leadership, has managed to connect with a young audience and achieve a wide following. Also Lashkar-e-Tayyiba (QE.L.118.05) continues to thrive in its various forms, despite the efforts of the Pakistan authorities, as do other groups associated with Hakimullah Mehsud

(QI.M.286.10) or Sirajuddin Haqqani (TI.H.144.07), both of whom are close to Al-Qaida.

8. Other affiliates have maintained capacity but not increased their influence. Although the Organization of Al-Qaida in the Islamic Maghreb (QE.T.14.01) has collected a considerable war chest as a result of ransom payments, it is under pressure in northern Algeria and, while active in the Sahel, has yet to prove its capacity to launch attacks elsewhere. It remains to be seen whether it can link up with extremists in Nigeria in an effective alliance. Meanwhile, Al-Qaida in Iraq (QE.J.115.04) remains a sectarian group of disaffected Iraqis with few foreign supporters. Its attacks are significant, but its influence is small. In South-East Asia, Jemaah Islamiyah (QE.J.92.02) and the Abu Sayyaf Group (QE.A.1.01) have been hit hard by the authorities, though they still retain the capacity and intention to mount attacks.

9. Again, it is reasonable to consider what impact the 1267 sanctions regime has had on Al-Qaida and its listed affiliates. As an expression of the international community's determination to restrict the activities of Al-Qaida, the 1267 regime has played a prominent role in keeping a focus on the need to prevent money flowing to terrorist groups and to restrict the movement of their members. However, in practical terms, there have been few results to point to in the way of new assets frozen or listed individuals stopped at borders. But it would be wrong to judge the impact of the sanctions regime by these criteria. The key impact of the sanctions is likely to be as a deterrent, particularly on potential financiers of Al-Qaida or the Taliban, for whom the consequences of sanctions can be acute.

II. Consolidated List

10. As at 22 February 2011, there were 485 entries on the Consolidated List: 137 individuals associated with the Taliban, and 256 individuals and 92 entities associated with Al-Qaida. Since the Team last reported, the Committee has removed 56 entries: 28 individuals and 28 entities. The Committee removed 45 of those entries in the course of its review of the List as mandated by paragraph 25 of resolution 1822 (2008) (see S/2010/497). Four other de-listings occurred as a result of the Committee review of pending issues as directed by paragraphs 41 and 42 of resolution 1904 (2009). Over the same period the Committee added 23 new names to the List: 6 Taliban individuals, 15 Al-Qaida individuals and 2 Al-Qaida entities. With the active participation of Member States, the Committee has continued to improve the List, and during the review it collected information that should lead to updates to close to 400 entries and to many of the corresponding narrative summaries of reasons for listing.

A. Taliban section of the List

11. The addition of six Taliban names since July 2009 is significant in that the Committee has otherwise added only one name to this section of the List since 2001.[4] The newly listed individuals are all involved in raising money for the Taliban, including through the drug trade; and as they travel and, in some cases, run

[4] Sirajuddin Jallaloudine Haqqani (TI.H.144.07), listed in September 2007.

businesses, they are more vulnerable to sanctions than many other listed Taliban whose current whereabouts and activities are largely unknown. The addition of these names further demonstrates the continued concern of the Committee at the threat to international peace and security posed by the Taliban.

12. These additions to the List have shown the Taliban and the rest of the international community that the Security Council is determined to play a role in the restoration of peace and stability in Afghanistan in whatever way it can. The Security Council has two main levers of influence in Afghanistan: one is exercised through the United Nations Assistance Mission in Afghanistan (UNAMA), which has a mandate to foster national dialogue, and the other is through the 1267 Committee, which, to a large extent, can determine which Taliban members may play a role in any future government.

13. The impact of listing on a public figure is considerable. While subject to the sanctions measures, no senior government official can exercise effective authority, manage development aid, dispense patronage, or travel outside the country without specific Security Council agreement.[5] Furthermore, the Taliban believe the List is a "kill or capture" list, which makes it harder for those who appear on it to take part in any political activity.

14. It is not easy to get off the List. Judging by its past decisions, the Committee will take a cautious approach to removing any Taliban name without clear indications, over a sustained period, that the individual concerned is fully committed to the democratic principles enshrined in the Afghan Constitution, has renounced violence, and has severed connection with Al-Qaida and its associates. However, the pace of de-listing Taliban has quickened as the Afghan Government has provided the Committee with more information to show that some Taliban have demonstrated over time that they are committed to a peaceful resolution of the country's problems, and the Committee has come to accept that judgement. In 2010, the Committee agreed to remove the names of 11 Taliban.

15. Some members of the Afghan Government believe that hardcore Taliban have no place in the future of Afghanistan and therefore do not favour de-listing. Others, including President Karzai, see no end to the fighting unless the Taliban have some share of power. This latter group does not exclude the possibility of any listed Taliban playing a part, even Mullah Omar (TI.O.4.01). These differences have caused the Afghan Government to vary its approach to de-listing between calling for the removal of all Taliban names, and prioritizing those who have the strongest case. While it may be easier to persuade the Committee to de-list people who are no longer involved either in the leadership of the Taliban movement or in any other anti-government activity, by definition, these individuals are the least relevant when it comes to negotiating peace.

B. 1267 sanctions regime and the Afghan peace process

16. While the nature of the Taliban threat may differ from that presented by Al-Qaida, and is certainly different from the combined threat that both groups presented in 2001 when the majority of the Taliban listings occurred, the Committee

[5] Considerable problems arose when Abdul Hakim Monib was appointed Governor of Uruzgan in 2006 while still on the List.

has, since November 2001,[6] treated all listed persons in the same way. The Guidelines of the Committee for the Conduct of its Work[7] make no distinction between the Taliban and Al-Qaida sections of the List. Some have argued that it is now time to treat listed Taliban and listed members of Al-Qaida and its affiliates differently. They suggest that if the Committee dealt with the two parts of the List in isolation from one another, and under different guidelines, there would be greater scope to use the List more creatively in promoting peace and stability in Afghanistan. They argue that the criteria for the removal of Taliban names cannot be identical to those for Al-Qaida insofar as the Taliban represent a sector of Afghan society that should be taken into account in the urgent need to deal with the country's internal divisions. They suggest that there is scope to emphasize the differences between the Taliban and Al-Qaida rather than their similarities.

17. It is true, at least according to their public pronouncements, that the Taliban have rejected an important part of the Al-Qaida philosophy. They claim to be a national movement without ambitions beyond their borders and that, if in power, they would prevent anyone from using Afghan territory as a base from which to upset the security of any other State. However, the Committee has been cautious about de-listing Taliban, even when they are in close cooperation with the Government; e.g., three members of the High Peace Council appointed by President Karzai to lead reconciliation efforts remain on the Consolidated List. The Afghan Government has urged a more flexible response from the Committee to its proposals for de-listing, fearing that its inability to achieve de-listings robs it of an essential reward system for Taliban who reconcile, and so risks their return to the fighting.

18. Given the opacity of Afghan politics, the caution of the Committee is understandable. Furthermore, there is no reason why Taliban may not be involved in reconciliation talks while still on the List. The Committee is likely to look favourably on such activity, and it will continue to regard all de-listing proposals on a case-by-case basis, searching for clear evidence that any listed Taliban who engages with the Afghan Government is not simply an opportunist who has little long-term intention of observing the three red lines set by the Afghan Government and endorsed by the international community concerning laying down arms, severing links with Al-Qaida and observing the Afghan Constitution.

19. Nonetheless, the Team believes that the Consolidated List will grow in importance if and when peace talks with the Taliban gain strength. De-listing will mark an important barrier for listed Taliban to cross and will represent a key endorsement of their acceptability outside Afghanistan. As the international community reaches a common understanding that peace will not come to Afghanistan through military means alone, and as the 2014 target date for the Afghan authorities to take control of their own security approaches, it is only right that there should be some discussion of how best to use the various mechanisms that exist to bring the insurgency to an end.

20. The Committee is currently considering de-listing proposals for over a third of all listed Taliban. This signals a success for the sanctions regime indicating that a significant number of Taliban have apparently changed their behaviour. However, the Afghan Government is concerned that if it cannot offer the prospect of de-listing

[6] The Consolidated List announced on 26 November 2001 in a press release (AFG/169-SC/7222).

[7] Available at www.un.org/sc/committees/1267/pdf/1267_guidelines.pdf.

as a result, it will be regarded by the Taliban as an insignificant player in the affairs of its own State. The Afghan Government complains that the process of de-listing is too uncertain, too slow and too complicated; it is unsure what it has to do to persuade the Committee to agree to a de-listing.

21. This is often a matter of collecting and assessing the relevant information from a diverse group of Afghan agencies that may not always agree, and the Team has already proposed that members of the Committee with representation in Kabul could meet regularly with the Afghan authorities to discuss individual cases for de-listing and offer advice on how they could be presented to the Committee. The Team continues to recommend this, as it would allow the Afghan Government to play a greater role in the deliberations of the Committee and help prioritize its decisions on listing and de-listing, noting the strategic objectives of national reconciliation and the attitudes and behaviour of specific individuals. It might also help to establish basic criteria that would have to be met before the Committee would even consider a de-listing request. This practice of close consultation between the Committee and the Afghan Government could also meet another concern of the Afghan Government, which is that it appears sidelined when the Committee announces new listings or de-listings of which it has had no warning.

22. Insofar as is necessary, the Team could provide a link between discussions in Kabul and discussions in New York, ensuring that the work in Kabul remained in step with the deliberations and concerns of the Committee.

23. The Team also recommends that the Committee seek other ways to speed up its consideration of de-listing requests proposed by the Afghan Government. These could include the preparation of a checklist of specific questions that the Afghan Government would need to consider before submitting a de-listing request. Although inclusion on the Consolidated List is not contingent on broader criteria than is stated in the relevant resolutions, in the case of the Taliban, any proposal for de-listing could include assurances that reflect the three conditions for reconciliation set by the Afghan authorities and endorsed by the international community.

24. Furthermore, the Team proposes that the Committee examine the merits of conditional or provisional de-listing, whereby the Committee could either introduce an extended period of exemption for certain listed Taliban individuals, or even suspend sanctions altogether, under certain preconditions, for so long as it received regular assurances over a fixed period that their listing was no longer appropriate. If at the end of that period the Committee had received no adverse reports, and no Committee member objected, the de-listing could become definitive. This would allow the Committee to signal that it accepted that progress had been made and was considering de-listing, without going the whole way. The Team, together with UNAMA, the Afghan Government and the authorities of other relevant States, depending on the case, could prepare joint reports for the consideration of the Committee.

C. New format of the List

25. The Team continues to work on improving the format of the List in order to promote the efficient implementation of the sanctions measures. The immediate objective is to ensure that List entries contain and present key information in an easily accessible way, both visually and technically. Beyond that, the Team believes

that all United Nations sanctions lists should share the same underlying structure, and that this should be compatible with the structure of other lists with international impact. To this end, the Team is working closely with list providers[8] and the private financial sector.[9] It is important to get this work right, as it will represent a major change that will last for many years to come.

III. Implementation of the sanctions

A. Challenges to the sanctions regime

26. While continuing to emphasize that the measures are preventative, temporary and intended to meet a particular threat to international peace and security, the Security Council fully recognizes that listed individuals have rights. The Security Council has no interest in subjecting people to sanctions who do not meet the criteria for listing; to do so would not only be unfair, but would waste resources and undermine the credibility of the regime. However, although not all the significant reforms introduced by resolutions 1822 (2008) and 1904 (2009), including the Ombudsperson mechanism, have yet come into effect, court challenges continue to jeopardize Member State implementation of the measures.

27. Recent cases in the European Union and the United Kingdom of Great Britain and Northern Ireland have shown what two courts believe are the limits of State authority to implement decisions taken by the Security Council under powers granted by the Charter of the United Nations. Acting before the Ombudsperson had concluded any proceedings, these courts found that reforms to the regime had fallen short of providing adequate protection to the rights of individual litigants at the Security Council level, and that Member States had not addressed these shortcomings through their implementation procedures; accordingly, they annulled the local application of sanctions against the petitioners.

28. The General Court of the European Union, in a September 2010 ruling,[10] ordered the annulment of the sanctions against Yasin Abdullah Ezzedine Qadi (QI.Q.22.01) after adopting a "full and rigorous" standard of judicial review. The Court found that the European Union authorities had not provided Qadi access to the evidence against him or addressed the "exculpatory evidence" he had provided. It criticized the wholesale adoption by the European Union of the 1267 Committee summary of reasons for listing, which it found contained "general, unsubstantiated, vague and unparticularised allegations", preventing Qadi from "launch[ing] an effective challenge to the allegations against him".[11] The Court concluded that Qadi's fundamental rights, namely his right to defend himself, his right to an effective judicial review and his right to property, had been infringed. The European Union authorities and one Member State have appealed the decision.

29. Commenting on the role and mandate of the Ombudsperson, the General Court argued that "the Security Council has still not deemed it appropriate to establish an

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[8] In particular the European Union, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

[9] In particular the Wolfsberg Group.

[10] Judgement of the General Court of the European Union (Seventh Chamber), Case T-85/09, *Kadi v. Commission*, 30 September 2010 (available at http://curia.europa.eu).

[11] Ibid., para. 174.

independent and impartial body responsible for hearing and determining, as regards matters of law and fact, actions against individual decisions taken by the [1267] Sanctions Committee".[12] The Court also questioned the precautionary, temporary and preventative nature of the measures, noting that "the principle of a full and rigorous judicial review of such measures is all the more justified given that such measures have a marked and long-lasting effect on the fundamental rights of the persons concerned".[13]

30. The General Court maintained the position taken by the European Court of Justice in *Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities* (joined cases C-402/05 P and C-415/05 P) that European Union law is distinct and equal in authority to Chapter VII resolutions adopted by the Security Council.[14] This challenges the legal authority of the Security Council in all matters, not just in the imposition of sanctions. In the words of one prominent expert, it suggests a "significant paradox at the heart of the [European Union's] relationship with the international legal order, the implications of which have not begun to be addressed".[15]

31. The Supreme Court of the United Kingdom also ruled in favour of two listed individuals, Mohammed al-Ghabra (QI.A.228.06) and Hani al-Sayyid al-Sebai (QI.A.198.05), when it found by a majority opinion that the order implementing the sanctions against them was *ultra vires* as it did not provide for a judicial remedy. The Court welcomed the creation of the Office of the Ombudsperson and other improvements, but judged them insufficient.[16] By this measure the United Kingdom Supreme Court would uphold a similar challenge brought by any listed individual.

B. Office of the Ombudsperson

32. The creation of the Office of the Ombudsperson has been almost universally praised by Member States[17] and the human rights community,[18] even if some continue to argue for a judicial tribunal with binding authority over the Committee.[19] Significantly, the Secretary-General, with the agreement of the Security Council, has appointed a judge to act as Ombudsperson, and it is already clear that her approach is principally informed by her judicial experience. As the

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[12] Ibid., para. 128.

[13] Ibid., para. 151.

[14] Ibid., para. 119; see also Grainne de Burca, "The European Court of Justice and the International Legal Order After Kadi", *Harvard International Law Journal*, vol. 51, No. 1 (2010).

[15] See Grainne de Burca, "The European Court of Justice and the International Legal Order After Kadi", *Harvard International Law Journal*, vol. 51, No. 1 (2010).

[16] Judgement of the Supreme Court of the United Kingdom, Her Majesty's Treasury (Respondent) v. Mohammed Jabar Ahmed and others (FC) (Appellants) Her Majesty's Treasury (Respondent) v. Mohammed al-Ghabra (FC) (Appellant) R (on the application of Hani El Sayed Sabaei Youssef) (Respondent) v. Her Majesty's Treasury (Appellant), 27 January 2010 (2010) UKSC 2, para. 78, (available at www.supremecourt.gov.uk).

[17] See, for example, the statement of the Representative of Costa Rica after the adoption of resolution 1904 (2009) (S/PV.6247).

[18] See A/65/258, para. 55.

[19] See Jared Genser and Kate Barth, *When Due Process Concerns Become Dangerous: The Security Council's 1267 Regime and the Need for Reform*, *Boston College International and Comparative Law Review*, vol. 33, No. 1 (2010).

Team proposed in its tenth report (see S/2009/502, para. 46), the Ombudsperson is taking active steps to form a complete view of each case before her. This has included visits to petitioners and numerous contacts with Governments that have or may have information pertaining to the case.

33. Criticism of the Office of the Ombudsperson centres on two alleged deficits. The first is that the Ombudsperson lacks an explicit mandate to make recommendations regarding de-listing, and the second is that even if the "observations" of the Ombudsperson could be characterized as a recommendation or decision, they are not binding on the Committee. The Team notes, however, that as the observations of the Ombudsperson will make clear where she believes the weight of available evidence to lie, and as the reaction of the Committee will become public in her reports to the Security Council, there will be considerable political pressure on the Committee either to follow her lead or to explain why it should not.

34. The first report on the Ombudsperson to the Security Council indicates that she received at least seven petitions for de-listing within the first six months of her tenure (see S/2011/29, para. 20). As compared to the Focal Point for De-listing, which provided the previous route for individuals to approach the Committee, the Office is generating the interest of listed persons and their counsel, which is a positive sign. Also, the report of the Ombudsperson shows that Member States are cooperating with her office. The report further indicates that the Ombudsperson has developed procedures for listed persons to follow in presenting their challenges and standards for analysis.

35. It is still too early to assess the impact that the Ombudsperson will have on the sanctions regime and on perceptions of its fairness. As cases come forward, the Team expects that Member States and public observers will recognize a significant improvement in due process, especially if the Committee, in its practice, accepts the observations of the Office of the Ombudsperson. Even so, courts may still complain that while the Ombudsperson mechanism may constitute a judicial review, it does not provide an effective remedy.

C. Moving beyond resolution 1904 (2009)

36. New procedures have largely dealt with the issue of notification, and the narrative summaries of reasons for listing tell listed individuals why they are subject to the measures. However, the perception that listed persons continue to lack an effective remedy may yet require the Security Council to take further action. The Team believes that if that is so, there is room to develop the Ombudsperson process, but this will also require acceptance from the courts and Member States that an acceptable and equivalent level of review can be achieved through a system unique to the Security Council that does not precisely emulate a national judicial system.[20]

37. With respect to the ability of the Ombudsperson to make a recommendation on a de-listing, the Team sees little distinction between the current mandate of the Ombudsperson and a formal authority to say whether she supports the petition or not.

[20] See, for example, statement supporting a "quasi-judicial" process, made by Martin Scheinin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to the General Assembly on 22 October 2008 (available at www2.ohchr.org).

However, given that outside observers may focus on this distinction, the Committee could consider making explicit that the Ombudsperson is mandated to recommend de-listing or to support continued listing according to her assessment of the case.

38. The Team also recommends that the Committee do what it can to increase the transparency of its dealings with the Office of the Ombudsperson. The Committee could publish the case reports of the Ombudsperson, or at least the observations section within them. This would allow the public, Member States and judicial bodies to see the detailed examination of fact and law undertaken at the United Nations level, increasing confidence in the Committee process. Until they have a clearer idea of the way in which the Ombudsperson functions, even the most sympathetic courts and critics will find it difficult to give due credit to the system that the Security Council and the Committee have created.

39. In the interests of building confidence in the process, the Team also proposes that, in the event that the Committee disagrees with the observations of the Ombudsperson, it provide in due course as full as possible a public rationale of its decision.

40. A required renewal of consensus in connection with the Ombudsperson process could add further protections in cases where an individual or entity has petitioned for de-listing. One possibility would be for the Committee to have to reaffirm a listing within the time specified by resolution 1904 (2009), following the presentation by the Ombudsperson of her observations, regardless of what she had said. Otherwise the listing would automatically expire. Alternatively, the Committee might be obliged to reaffirm the listing within the set period only if the Ombudsperson's observations suggested de-listing and the Committee disagreed. Thus the Committee would be required to demonstrate by consensus that it remained convinced of the need to preserve the listing.

41. As the Team has suggested in the past (see S/2009/502, para. 53), there are a number of reasons why listings should require reaffirmation after a set period, or, in other words, have a time limit. The Team argued, among other things, that time limits would lead to de-listings where the Committee members had no strong arguments and no unified view, as opposed to the current situation whereby listings can remain through inertia. The General Court of the European Union also argued in its September 2010 ruling on the Yasin Qadi case that it becomes hard to describe as preventative and temporary sanctions that have been in effect against an individual for over 10 years, especially in the absence of any legal proceedings.[21] The Team recommends that when the Committee reviews a listing in accordance with paragraph 26 of resolution 1822 (2008), reiterated in paragraph 32 of resolution 1904 (2009), if any relevant State has proposed de-listing, the Committee should remove the name unless there is consensus to retain it.

42. Another suggestion has been to change the way that the Committee reaches decisions on listing and de-listing by consensus and adopt the voting system employed by the Security Council.[22] This would be a serious challenge to the way

[21] See judgement of the General Court of the European Union (Seventh Chamber), Case T-85/09, *Kadi v. Commission*, 30 September 2010, para. 150 (available at http://curia.europa.eu).

[22] Article 27, para. 3, of the Charter of the United Nations states that "(d)ecisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members".

that all Security Council committees conduct their work, and the Committee can already refer any decision to the Security Council if it believes the matter should be put to a vote. However, as with time limitations, a change to majority voting would provide more balance to the existing Committee procedures that require a unanimous decision to remove a name, so that a listing may remain even though it would not be acceptable to the full Committee if proposed under current circumstances.

43. As opposed to regional or national courts, the Committee will always be the most appropriate forum for the evaluation of de-listing requests. The Team considers that, in order to cement this role, the Committee may wish to encourage Member States to require a listed party to exhaust the process available at the United Nations before seeking relief in their national and regional systems. Because this may not always be possible, the Committee should also consider obliging the Office of the Ombudsperson to invite any listed party who files a legal challenge in a Member State or regional court to initiate a proceeding through the Office of the Ombudsperson at the same time. This would give the Security Council an opportunity for a thorough examination of the case in parallel with the courts and would offer the appellant an additional recourse.

D. Role of Member States

44. The Team has previously recommended that States that support a listing or de-listing play a greater role in the decisions of the Committee by appearing before it to discuss the case (see S/2010/497, para. 72). Although Committee members routinely consult with other concerned States outside the Committee before reaching a decision, a discussion before all Committee members would make the decisions of the Committee better informed, more consensual and more robust. This would also provide the Committee an opportunity to discuss listing and de-listing proposals before they were circulated under the current “no objection procedure”. In the case of a de-listing proposal, the Committee could invite to its hearings designating States and States of nationality and of residence.[23]

45. Some States, including Committee members, test the appropriateness of sanctions at the national level before designation by seeking a legal opinion of the merits of the case. While the Team does not suggest that the Committee make this a requirement for designating States, it is a practice that has advantages. Although the Security Council has made clear in its resolutions that the imposition of sanctions does not require standards of criminal evidence, some case will almost always exist against the persons concerned. The Security Council could reasonably ask designating States on its standard form for listing whether a national court or other legal authority has examined the case and whether a criminal or civil investigation is under way.

46. As a further way of ensuring due process, the Committee could recommend that designating States reaffirm the case for listing at the time of the periodic review

[23] In paras. 25 and 36 of resolution 1904 (2009), the Security Council has already encouraged the Committee to give due consideration to the opinions of designating State(s), and State(s) of residence, nationality or incorporation when considering de-listing requests, and Member States and relevant international organizations to send representatives to meet the Committee for more in-depth discussion of relevant issues.

reiterated in resolution 1904 (2009) after having consulted a national judicial body, or submit a de-listing request. Although the Committee would retain the right to maintain or remove the listing, regardless of the opinion of the designating States, this would offer Committee members reassurance that the original statement of case remained valid, particularly where procedures existed to allow the domestic courts access to classified information.

IV. Assets freeze

A. Overview

47. Listed groups affiliated with Al-Qaida and the Taliban continue to raise money through legal means, such as donations and legitimate business enterprises, and illegally, such as through kidnapping for ransom, extortion, drug trafficking and illegal taxation. Individual groups and cells raise money for their own operations and expenses, and there is no centralized disbursement of funds, except in some cases where the Taliban either collects or distributes money. The scale of financing varies from area to area and group to group, with the multimillion dollar business of the Taliban dwarfing groups like Al-Qaida in the Arabian Peninsula (QE.A.129.10), which boasted that it had spent just $4,200 to mount a (failed) attack on two airplanes with explosives concealed in printers in October 2010.[24]

48. The Taliban collect a significant amount from the narcotics trade, despite a decline in reported drug trafficking cases in 2008.[25] They also raise money through taxation and extortion in areas under their control, and receive pay-offs from contractors working for the international community. Al-Qaida's sources of income are less certain, and, although it still receives donations, these appear to be smaller and harder to collect as the international community bears down on the problem. Furthermore, as levels of popular support for Al-Qaida continue to fall, donors are harder to find. In West Africa, the Organization of Al-Qaida in the Islamic Maghreb has raised a considerable amount from kidnappings for ransom, and also benefits from the growing use of smuggling routes in the Sahel by drug producers in South America.[25]

49. Many of these financing methods have a low risk of detection, and an even lower risk that the authorities will be able to prevent them. While customer due diligence measures have yielded some positive results in dissuading Al-Qaida and Taliban financiers from abusing the financial systems, other sectors are less well protected. This is especially true in areas where the Taliban and Al-Qaida and its associates are most active, and implementing an assets freeze in regions that lack a developed financial system requires some creativity from relevant authorities. The Financial Action Task Force (FATF) nine special recommendations on terrorist financing[26] provide useful guidelines and have increased the impact of the assets

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[24] See *Inspire* (November 2010), online magazine of Al-Qaida in the Arabian Peninsula (QE.A.129.10).

[25] See United Nations Office on Drugs and Crime, World Drug Report 2010 (available at www.unodc.org/documents/wdr/WDR_2010/World_Drug_Report_2010_lo-res.pdf).

[26] In particular, FATF special recommendations VI on alternative remittances, VIII on non-profit organizations and IX on cash couriers (available at www.fatf-gafi.org/document/9/0,3343,en_32250379_32236920_34032073_1_1_1_1,00.html).

freeze, but they assume a level of control that is often lacking on the ground. The Team welcomes the way that FATF-style regional bodies have tried to assist States in interpreting the FATF nine special recommendations on terrorist financing according to local realities. Implementation of the 1267 regime is now a common feature in country assessments conducted through FATF, the FATF-style regional bodies, the International Monetary Fund and the World Bank.

50. Although the Team knows of virtually no cases where suspicious transaction reports have led to prosecutions or even investigations of Al-Qaida or Taliban-related criminality, suspicious transaction reports remain important and should extend beyond the financial sector. Cooperation between key agencies, both domestically and internationally, is crucial in detecting and disrupting Al-Qaida and Taliban financing, especially in jurisdictions with unsophisticated financial sectors. The sharing of information, whether nationally or internationally, remains a problem, but it is more easily resolved when the concerned agencies have done enough preliminary analysis to understand both the relevance to other parties of the information they have, and the actual importance of filling gaps in their knowledge and who might be able to help.

B. Alternative remittances, non-profit organizations and cash couriers

51. In its ninth report, the Monitoring Team recommended that more States follow the example of the United Arab Emirates by regulating hawala businesses and registering hawalas (see S/2009/245, para. 63). One area of success has been the regulation of money service providers in Afghanistan by the Financial Transactions and Reports Analysis Centre (FinTRACA) housed within the Central Bank. While money service providers were at first resistant to regulation, they were even more uncomfortable with the thought that their competitors might operate outside the rules, and so they helped FinTRACA to identify those slow to register. The monthly reports provided by money service providers have helped the Afghan authorities to keep a closer eye on the flows of money into and out of the country. While regulation of alternative remittance systems may not lead immediately to more transparency, the Team continues to believe that States increase their chances of preventing the flow of funds to the Taliban, Al-Qaida and its associates by introducing systems of regulation that require registration, oblige *hawaladars* and other money service providers to exercise the same “know your customer” rules as formal banks, and ensure that they submit suspicious transaction reports as appropriate.

52. Non-profit organizations provide essential services in many States, sometimes enhancing basic needs such as health care, social welfare and education. Over the years, non-profit organizations have developed expertise in raising and moving funds; and in delivering aid in both peaceful and conflict zones; in the latter case, non-profit organizations often have to cooperate with violent groups in order to reach the needy. This often makes non-profit organizations soft targets for Al-Qaida and its affiliates that wish to exploit them to finance their activities. Non-profit organizations manage large budgets and move sums of money across jurisdictions legally and with great ease; thus they can provide a relatively safe global platform from which to move funds with minimum risk of detection. The sheer number of beneficiaries of large non-profit organizations also allows the diversion of funds with little risk, especially where non-profit organizations enjoy a semi-autonomous

status that takes their activities outside the scope of regulators and law enforcement authorities.

53. States can reduce the risk that Al-Qaida and Taliban financiers may use non-profit organizations operating within their jurisdiction by understanding the sector, identifying the beneficial owner(s) and beneficiaries of the non-profit organizations, ensuring good governance, enforcing registration or at least regulation of their work, and monitoring their activities. These are all actions covered by the requirements of FATF special recommendation VIII.[27] The Team recommends that the Committee encourage Member States to conduct research on the size and scope of their non-profit organization sector, to conduct risk assessments of the sector; and to offer national guidance on safeguards.

54. Anecdotal evidence suggests that funds derived from ransom payments and drug trafficking are moved across borders through cash couriers. The Counter-Terrorism Implementation Task Force Working Group on Tackling the Financing of Terrorism[28] has identified cash couriers as a subject for attention and has initiated projects aimed at raising official awareness of the problem and providing technical assistance in the form of training programmes and relevant tools to officials responsible for detecting and disrupting illegal movements of cash by cross-border couriers. The Team notes that the Security Council, in paragraph 5 of resolution 1526 (2004), urged all States to establish internal reporting requirements and procedures on the trans-border movement of currency on the basis of applicable thresholds. Clearly, States that introduce such systems have a better chance of dealing with couriers moving cash on behalf of listed parties than those that do not. The guidance offered by FATF in its February 2010 international best practices paper on detecting and preventing the illicit cross-border transportation of cash and bearer negotiable instruments[29] is also relevant, as is FATF special recommendation IX.[30] The Team will continue to participate in the work of the Counter-Terrorism Implementation Task Force on cash couriers.

C. New payment methods

55. New payment methods are becoming increasingly widespread and can present a challenge in terms of terrorist financing. This may best be met by raising awareness of the opportunities new payment methods offer to move money undetected and beyond government controls. Mobile phone banking has penetrated a number of markets and offers a solution to millions of people who do not have access to financial services; but, with the right legal framework, this novel form of banking can also provide regulators and law enforcement agencies an opportunity to trace transactions that does not exist in the traditional hawala system. States may

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[27] FATF special recommendation VIII on non-profit organizations (available at www.fatf-gafi.org/document/22/0,3746,en_32250379_32236920_43757718_1_1_1_1,00.html).

[28] Counter-Terrorism Implementation Task Force Working Group Report: Tackling the Financing of Terrorism, October 2009 (available at www.un.org/terrorism/pdfs/CTITF_financing_ENG_final.pdf).

[29] FATF international best practices on detecting and preventing the illicit cross-border transportation of cash and bearer negotiable instruments, 19 February 2010 (available at www.fatf-gafi.org/dataoecd/50/63/34424128.pdf).

[30] FATF special recommendation IX on cash couriers (available at www.fatf-gafi.org/document/19/0,3746,en_32250379_32236920_43775315_1_1_1_1,00.html).

encourage this new payment method, as it will likely be of assistance to many people who have no access to banks and, at the same time, allow documentation of a medium to high percentage of transactions. The Committee should encourage Member States, while embracing financial inclusion, to consider ways to regulate new payment methods within the risk-based approach as envisaged by the FATF standards to ensure the effective implementation of the assets freeze.

D. Improving the List entries

56. Financial institutions continue to express frustration with List entries that lack identifiers and thereby yield false positive matches in screening processes. Financial intelligence units are continuously fielding queries from financial institutions trying to ascertain if the individual who seeks to conduct a transaction in a bank is the same as the one on the Consolidated List. The Committee is well aware of these problems and has undertaken several initiatives to remedy them, including by improving the format of the List in close consultation with the private financial sector. The Team will continue to gather information on how States have found ways of searching the List in such a way that few false matches are generated and, with the agreement of the Committee, will share this information with Member States through the 1267 Committee website.[31]

E. Reform of resolution 1452 (2002)

57. The Committee has received few applications for relief under resolution 1452 (2002) since the Team's last report, and the Team remains concerned that States are taking the matter of granting exemptions to the assets freeze into their own hands. The Team continues to recommend that in due course the Security Council review resolution 1452 (2002) in order to lighten its procedures and give more authority to Member States.[32] The Team is ready to provide a detailed study of this issue.

V. Travel ban

58. Although the travel ban does not impact many people on the List and the Team has received no recent reports of listed individuals being stopped at borders, it remains a powerful tool. The travel ban has also increased in impact, as States have taken further measures to improve their border security by enhancing the sophistication of their national identity documents, introducing biometric passports, tightening requirements for visas, improving the technical equipment installed at borders and providing better staff training. Member States have also increased their international cooperation and their use of such tools as the International Criminal Police Organization (INTERPOL) database of lost and stolen travel documents.

59. The travel ban has particular potential against financiers of Al-Qaida and the Taliban, who may find it complicated to use a false identity or otherwise evade the

[31] In particular, by updating the paper on the experiences of Member States in the implementation of the sanctions measures (available at www.un.org/sc/committees/1267/usefulpapers.shtml).

[32] By resolution 1904 (2009), para. 7, the Security Council directed the Committee to review the procedures for exemptions as set out in the guidelines of the Committee.

restrictions on their movements. The Committee has now listed several active Taliban supporters who have either been financing the movement themselves or collecting money on its behalf. Travel has appeared to be an essential part of their activities, and it is now up to Member States to ensure that they are prevented from moving across international borders.

60. There will always be parts of the world where border controls are difficult to impose and all sorts of illegal groups, not just terrorists, will continue to take advantage of the situation. But these areas will become less widespread as capacity to enforce the travel ban measure grows and the room for manoeuvre for listed parties continues to shrink. The imposition of all the sanctions measures in the Afghanistan-Pakistan border area or the Sahel presents a challenge for States that goes beyond the travel ban. The Committee, along with the rest of the international community, should continue to encourage States and relevant international organizations to provide all possible assistance to those States that need it.

A. Travel ban exemption procedure

61. In December 2009, the Committee revised its guidelines to explain the procedure whereby listed individuals could request a temporary exemption from the travel ban. Since then the Committee has granted only one exemption, which suggests that this exemption, like that afforded to the assets freeze by resolution 1452 (2002), may be more honoured in the breach than the observance. The Team recommends that, with the agreement of the Committee, it consult Member States on this issue with a view to determining the likely amount of cross-border travel by listed parties, and how it could be controlled more efficiently.

B. Application of the travel ban

62. A Canadian federal court ruled in June 2009 that Abu Sufian Abd al-Razziq (QI.A.220.06), a Sudanese national with Canadian citizenship who was then camping out in the Canadian Embassy in Khartoum, had a right to return to Canada. This followed a Canadian Government decision to deny him entry on account of the travel ban. Every Member State has a right to forbid entry to its territory, but the travel ban, as most recently reiterated in paragraph 1 (b) of resolution 1904 (2009), does not oblige “any State to deny entry or require the departure from its territories of its own nationals”.

63. The Team recommends that the Committee encourage Member States to make early contact with its secretariat on any issue concerning the application of the travel ban or any other sanctions measure in specific cases. This will ensure uniform application of the measures and help develop better public understanding and support for the sanctions regime, as well as more efficient procedures in Member States. The Team is also available for consultation.

VI. Arms embargo

A. Implementation of the arms embargo

64. The arms embargo has achieved partial success in that it has helped to ensure that listed parties operate below their full military potential. Although the Taliban and some listed groups are involved in widespread activity that tests the ability of governments to respond, Al-Qaida and its associates generally lack the necessary logistical, recruitment and training networks to mount a sustained challenge to State authority. However, as the Team has said previously, the arms embargo could have greater effect if Member States created specific instruments that target Al-Qaida, the Taliban and their associates rather than apply general arms control measures that affect the listed and unlisted alike.[33]

1. Afghanistan-Pakistan border area

65. The Committee has recognized that the continuation of Taliban activity in Afghanistan suggests insufficient implementation of the arms embargo and has decided to follow up by identifying possible cases of non-compliance (see S/2009/427, para. 27). According to Afghan officials, in 2010 the number of annual deaths caused by insurgent activities was over 50 per cent higher than in the previous year and civilian casualties rose by a third. Improvised explosive attacks have been the main cause of this increase and changes in their manufacture and use suggest external technical assistance. Furthermore, the Taliban have maintained their ability to import arms, materiel and manpower, and the key to military success lies in neutralizing their supply lines and in denying them safe areas where their fighters can recuperate between operations and train new recruits. However, strict implementation of the arms embargo by Member States in the region is not the only answer; the responsibility for broader implementation of the arms embargo regarding manpower falls also on other States where fighters originate or through which they transit.

2. Somalia

66. The Transitional Federal Government in Somalia remains totally dependent on the support it receives from the African Union Mission in Somalia (AMISOM) even to defend a small area of Mogadishu. Although not formally embracing Al-Shabaab as part of Al-Qaida, Usama bin Laden and Aiman al-Zawahiri (QI.A.6.01) have expressed keen interest in developments in Somalia, making it one of the rallying points for recruits from around the world to gather for paramilitary training and indoctrination. Officials from the region have requested an increase in security assistance to the Transitional Federal Government and called for an effective arms embargo through a naval blockade and a no-fly zone to prevent illicit trafficking of arms by foreign aircraft.

[33] The Committee agreed in principle on this approach and has detailed submeasures it supports in its position documents, most recently in S/2010/653 (see www.un.org/sc/committees/1267/exptgrouprec.shtml); explanation of terms is available at www.un.org/sc/committees/1267/usefulpapers.shtml.

B. Terrorist use of the Internet for explosives instruction

67. Over the past decade, Al-Qaida has sought to enhance its operational capacity through Internet-based instruction and training material. The quality of such material ranges from amateurish commentaries to advice from seasoned Al-Qaida-affiliated operatives but has improved over the years, in particular through instructional videos that complement theoretical materials by offering visual aids and practical examples.[34] Interactive video chats have the potential to provide even more tailored guidance, though they present operational security risks for their users.

68. Officials are divided on the effectiveness of online terrorist training material because even extremely thorough and accurate theoretical guidance requires some practical training or experimentation to help overcome operational snags.[35] The Team knows of no successful attack by perpetrators trained only online and is aware of few unsuccessful attempts that also did not involve some face-to-face instruction.[36] But, although the Team does not assess that paramilitary technical advice available on the Internet presents a threat on a par with real-life training, the potential will increase as the quality of advice improves.

69. Much of the material on Al-Qaida-affiliated forums is derived from open sources such as armed services field manuals or well-known publications such as *The Anarchist Cookbook*; other contributions come from experienced fighters. Often, sympathizers will compile a massive compendium of different Internet sources on a vast range of topics and organize them into larger collections and encyclopaedias that are appended, repackaged and re-released over time. The best known online example is The Encyclopaedia of Preparation, which contains thousands of pages of training material in Arabic and dozens of English-language books and media files, as well as web links to further training material. Other sources, such as Inspire, the online magazine of Al-Qaida in the Arabian Peninsula (QE.A.129.10), provide more simple technical advice. Al-Qaida-related forums also serve as places for discussion, collaborative training and problem-solving where online explosives specialists, or other users in their absence, answer the questions of aspiring terrorists. In certain forums, nearly half the training threads are related to explosives training.

70. Online training allows Al-Qaida affiliates to do more than circumvent the arms embargo by offering advice on explosives. Al-Qaida associates have also used the

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[34] For example, Al-Furqan Foundation of the Islamic State of Iraq (ISI), listed as Al-Qaida in Iraq (QE.J.115.04), reportedly distributed online an improvised explosives instruction video, entitled “Devices are the Most Effective”; purportedly intended for sympathizers in the Arabian Peninsula, it surfaced on forums in January 2011.

[35] The probability of success will also depend on other factors, including the quality and clarity of the instruction provided, access to a suitable and safe working environment and the availability of proper components for implementation.

[36] In 2008, a chemistry student in the United Kingdom sought to manufacture hexamethylene triperoxide diamine (HMTD) using his college training and following instructions available online. He sustained injuries experimenting with the substance and eventually attracted the attention of the authorities. In another case, a non-Al-Qaida-affiliated youth carried out a non-terrorist suicide bombing in a shopping mall, but even though he reportedly had not been trained, his act was preceded by a period of explosives experimentation and interactive online chats.

Internet for paramilitary command, control and planning purposes in connection with terrorist attacks. On a wider scale, the Internet has allowed Al-Qaida and its affiliates to disseminate propaganda to a global audience, and so bring potential recruits within reach of its indoctrination, in part by attracting them to Al-Qaida-related websites. The Internet has helped Al-Qaida to achieve greater public impact from the relatively few operations that it has been able to execute, and in doing so has negated some aspects of the embargo's intended effect.

71. International and national law enforcement efforts to tackle this problem are limited by the technical nature of the Internet and its use, as well as by the lack of adequate legislative measures. However, the Team recommends that the Security Council point out to Member States that they are obligated by the sanctions regime to prevent the use of the Internet for direct or indirect supply, sale, or transfer of technical advice, assistance, or training related to military activities to listed individuals and entities from their territories or by their nationals outside their territories.

VII. Monitoring team activities

A. Visits

72. The Team visited 22 Member States in the 19-month period between August 2009 and February 2011, four of them for the first time. Four visits were made jointly with the Counter-Terrorism Committee Executive Directorate (CTED). A member of the Team also accompanied the Chair to two Member States, in October 2009 and in June 2010. The Team also participated in sanctions workshops organized by the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime (UNODC) in three Member States. To date, the Team has visited 90 Member States, some several times;[37] it believes that its direct engagement with the national authorities of a wide range of States is one of the most effective ways of encouraging effective implementation of the measures and providing feedback to the Committee on their impact.

B. International, regional and subregional organizations

73. The Team maintained its close cooperation with international and regional organizations and increased its work with FATF and three FATF-style regional bodies: the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA), the Eastern and Southern Africa Anti-Money-Laundering Group (ESAAMLG) and the Caribbean Financial Action Task Force (CFATF). Cooperation with INTERPOL has remained an important priority.

[37] Including Afghanistan and Pakistan, in 2010, the Team made three visits to Kabul to assist the Afghan authorities with the review called for in paragraph 25 of Security Council resolution 1822 (2008) and to follow up with the 47 de-listing requests made by Afghanistan in July 2010.

C. Regional meetings

74. The Team held its eighth meeting of intelligence and security services from Algeria, the Libyan Arab Jamahiriya, Morocco, Pakistan, Saudi Arabia, Tunisia, the United Arab Emirates and Yemen. It convened a similar meeting on Somalia, co-chaired by the Coordinator of the Monitoring Group on Somalia and Eritrea,[38] for services from Burundi, the Democratic Republic of the Congo, Djibouti, Kenya, Rwanda, Somalia, the Sudan, the United Republic of Tanzania, Uganda and Yemen.

D. Cooperation with the Counter-Terrorism Committee and the Committee established pursuant to resolution 1540 (2004)

75. The three expert groups have increased their coordinated participation in international and regional workshops and meetings. To date, the Team has made 17 joint country visits with CTED experts and 2 trips jointly with the 1540 Committee expert group.[39] The Team continues to coordinate its travel plans with CTED and with the 1540 experts and to exchange information prior to and after their respective trips. While joint participation allows a proper explanation of the distinctions between the work and mandates of the three Committees, the expert groups agree that as they are now far more familiar with each other's work, it makes more sense in resource terms to have one expert group speak for all three groups. The Team will strive to make this the default position.

76. The Team has, together with the experts of CTED and the 1540 Committee expert group, finalized a common strategy to engage with international, regional and subregional organizations. The three Committees have taken note of the strategy, and the three expert groups will submit a modalities paper on how to move ahead.

VIII. Member State reporting

A. Resolution 1455 (2003) reports

77. The latest reports submitted pursuant to resolution 1455 (2003) were received from two Caribbean States, on 25 August 2009 (Antigua and Barbuda) and 3 December 2009 (Saint Lucia), and two African States, on 19 October 2009 (Togo) and on 4 December 2009 (Nigeria), leaving 32 States that have not yet reported after more than seven years.

78. The Team continues to work with CTED and the 1540 experts to engage with the 32[40] remaining non-reporting States,[40] and has found that contact with national authorities through the technical assistance missions organized by UNODC has also led to a better understanding of the need of the Committee for reporting.

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[38] The Monitoring Group established pursuant to resolution 1519 (2003) and extended by resolution 1916 (2010).

[39] To attend two workshops held by the Office for Disarmament Affairs of the Secretariat: one in Latin America and the other in South-East Asia.

[40] The 32 non-reporting States are from the following regions: 7 from Asia, 19 from Africa and 6 from the Caribbean or Latin America.

IX. Other issues

A. Committee website

79. The 1267 Committee website now provides many new documents to assist Member States, including revised standard forms for listing and de-listing and a link to the Office of the Ombudsperson. The Annual Statement of Information reminds Member States of all changes to the Consolidated List in the preceding year.[41]

B. Counter-Terrorism Implementation Task Force

80. The Team continued to chair the Counter-Terrorism Implementation Task Force Working Group on Countering the Use of the Internet for Terrorist Purposes and convened three meetings focusing on different aspects of the problem. Workshops on the legal and technical aspects of preventing terrorist use of the Internet were followed by one in Riyadh, Saudi Arabia, on using the Internet to counter the appeal of extremist violence. The conference discussed the role that the United Nations can play in crafting and delivering messages to counter the narrative of Al-Qaida and its affiliates.

81. The Team is also in charge of a task force project to produce documentaries that illustrate the true nature of terrorism as seen through the eyes of perpetrators and victims. The first documentary, produced in partnership with the Department of Public Information of the United Nations Secretariat and the Government of Algeria, was launched at a screening in January 2011 and has stirred interest from Member States and others in the broader audience. The second documentary, focusing on a former terrorist from Saudi Arabia, will be released in the first half of 2011.

82. The Team also continues to be closely involved in the work of the Task Force on tackling the financing of terrorism, protecting human rights in countering terrorism, and border management.

83. The Team has also facilitated a project funded by the Government of Norway to analyse rehabilitation programmes in Algeria, Bangladesh, Egypt, Jordan, Malaysia, Morocco, Saudi Arabia and Yemen. The project aims to inform States that are contemplating introducing such programmes or helping others to do so. A second stage of the project will aim to look at a further set of countries.

[41] Available at www.un.org/sc/committees/1267/annualstat.shtml.

Annex

Litigation relating to individuals and entities on the Consolidated List

1. The legal challenges involving individuals and entities on the Consolidated List known to the Monitoring Team to be pending or recently concluded are described below.

Canada

2. On 7 June 2010, Abu Sufian Abd al-Razziq (QI.A.220.06) filed a suit in the Federal Court in Ottawa, Canada, to challenge the implementation of the sanctions against him by Canada. Specifically, Abd al-Razziq challenges the application of the implementing regulations against him adopted by Canada, known as the "United Nations Al-Qaida and Taliban Regulations", and requests that the Court find these to be *ultra vires*: in violation of the rights of association under section 2(d) and of liberty and security under section 7 of the Canadian Charter of Rights and Freedoms; in violation of sections 1(a) and 2(e) of the Canadian Bill of Rights; and in violation of international law.[a]

European Union

3. The General Court of the European Union, in a September 2010 ruling,[b] ordered the annulment of the sanctions against Yasin Abdullah Ezzedine Qadi (QI.Q.22.01) after adopting a "full and rigorous" standard of judicial review. The Court found that the European Union authorities had not provided Qadi access to the evidence against him or addressed the "exculpatory evidence" he had provided. It criticized the wholesale adoption by the European Union of the 1267 Committee summary of reasons for listing that it found contained "general, unsubstantiated, vague and unparticularized allegations", preventing Qadi from "launch[ing] an effective challenge to the allegations against him". The Court concluded that Qadi's fundamental rights, namely his right to defend himself, his right to an effective judicial review and his right to property, had been infringed. The European Union authorities and one Member State have appealed the decision.

4. The General Court of the European Union decided in September 2010 on the matter of the challenges brought in 2006 by Abd al-Rahman al-Faqih (QI.A.212.06), Sanabel Relief Agency Limited (QE.S.124.06), Ghuma Abd'Rabbah (QI.A.211.06) and Tahir Nasuf (QI.N.215.06).[c] Following the argument of the decision in the joint cases *Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of*

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[a] *Abdelrazik et al v. Attorney-General of Canada* (T-889-10); information provided by the Government of Canada.

[b] Judgement of the General Court of the European Union, case T-85/09, *Kadi v. Commission*, 30 September 2010 (available at http://curia.europa.eu).

[c] Judgement of the General Court of the European Union in Joined Cases T-135/06, *Al-Faqih v. Council*; T-136/06, *Sanabel Relief Agency Ltd v. Council*; T-137/06, *Abdrabbah v. Council*; T-138/06, *Nasuf v. Council*, 29 September 2010 (available at http://curia.europa.eu).

the European Union and Commission of the European Communities,[d] the General Court annulled the sanctions regulations with respect to these parties.

5. Cases brought by Shafiq ben Mohamed ben Mohamed al-Ayadi (QI.A.25.01),[e] Faraj Faraj Hussein al-Sa'idi (now de-listed),[f] Saad Rashed Mohammad al-Faqih (QI.A.181.04) and Movement for Islamic Reform in Arabia (QE.M.120.05)[g] challenging the application of the sanctions against them remain pending before the General Court.

6. Abdelrazag Elsharif Elosta, Abdulbasit Abdulrahim and Maftah Mohamed Elmabruk had filed cases challenging the sanctions measures in the European Union courts. However, the Committee removed their names from the List on 22 December 2010.

European Court of Human Rights

7. The case brought by Youssef Mustapha Nada Ebada (now de-listed) in the European Court of Human Rights is pending before the Grand Chamber.[h] Ebada claims violations, inter alia, of article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (pertaining to the right to a fair trial).

Pakistan

8. The action brought by the Al Rashid Trust (QE.A.5.01) remains pending in the Supreme Court of Pakistan on the Government's appeal from a 2003 adverse decision. The challenge brought by Al-Akhtar Trust International (QE.A.121.05) remains pending before a lower court. In a case brought by Hafiz Saeed (QI.S.263.08), the Supreme Court quashed the Punjab government's restrictive measures taken under the maintenance of public order act owing to "insufficient evidence".[i]

United Kingdom of Great Britain and Northern Ireland

9. The Supreme Court of the United Kingdom decided on 27 January 2010 the consolidated cases of Hani al-Sayyid al-Sebai (QI.A.198.05) and Mohammed al-Ghabra (QI.A.228.06).[j] The decision found against the Government on the grounds that the implementing order was *ultra vires* because it did not provide for a judicial remedy. According to the opinion, while the creation of the Office of the

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[d] Judgement of the Court of Justice (Grand Chamber) of the European Union, Joined Cases C-402/05 P and C-415/05 P, *Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities* (available at http://curia.europa.eu).

[e] Case T-527/09, *Ayadi v. Commission* (available at http://curia.europa.eu).

[f] Case T-4/10, *Al Saadi v. Commission* (available at http://curia.europa.eu).

[g] Case T-322/09, *Al-Faqih and MIRA v. Council and Commission* (available at http://curia.europa.eu).

[h] *Nada v. Switzerland* (no. 10593/08) (available at www.echr.coe.int).

[i] Information in this paragraph was provided by the authorities of Pakistan.

[j] Judgement of the Supreme Court of the United Kingdom, *Her Majesty's Treasury (Respondent) v. Mohammed Jabar Ahmed and others (FC) (Appellants) Her Majesty's Treasury (Respondent) v. Mohammed al-Ghabra (FC) (Appellant) R (on the application of Hani El Sayed Sabaei Youssef) (Respondent) v. Her Majesty's Treasury (Appellant)*, 27 January 2010 (2010) UKSC 2 (available at www.supremecourt.gov.uk).

Ombudsperson and other improvements "are to be welcomed", they fail to provide an "effective judicial remedy".[k]

United States of America

10. Al-Haramain Foundation (United States of America) (QE.A.117.04) has appealed the decision against it in the United States District Court for the District of Oregon of 6 November 2008,[l] in which the District Court upheld the designation of Al-Haramain Foundation as "rational and supported by the administrative record". The appeal is currently pending before the United States Court of Appeals for the Ninth Circuit.

11. On 16 January 2009, Yasin Abdullah Ezzedine Qadi (QI.Q.22.01) filed a lawsuit challenging his designation in the United States District Court for the District of Columbia.[m] The complaint alleges, among other things, that his designation and the freezing of his assets is a violation of the Administrative Procedure Act and of his First, Fourth, and Fifth Amendment rights under the United States Constitution.[n] The case is fully briefed but had not been decided at the time of writing.

[k] Ibid., para. 78.

[l] United States District Court for the District of Oregon, Civil Case No. 07-1155-KI, *Al Haramain Islamic Foundation, Inc. and Multicultural Association of Southern Oregon vs. United States Department of the Treasury, Henry M. Paulson, Office of Foreign Assets Control, Adam J. Szubin, United States Department of Justice, and Alberto R. Gonzales*.

[m] United States District Court for the District of Columbia, Case 1:09-cv-00108, *Yassin Abdullah Kadi v. Henry M. Paulson, Adam J. Szubin, United States Department of the Treasury, Office of Foreign Assets Control*.

[n] First Amendment rights to freedom of speech and freedom of association; Fourth Amendment right to be secure against unreasonable search and seizure; Fifth Amendment rights to due process and to just compensation for the taking of property.