

# Assessing the Utility of the UN's Terrorism Sanctions Regime 20 Years after 9/11

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## KEY FINDINGS

- ▶ More than 20 years after the creation of the UN Security Council's (UNSC) counterterrorism sanctions architecture, the 1267 (ISIS/al-Qaeda) sanctions regime remains a key pillar in the UN's fight against terrorism, despite limited understanding of its practical impact.
- ▶ The UNSC maintains broad consensus to deploy sanctions against ISIS and al-Qaeda despite a lack of an agreed definition of terrorism among UN member states and growing geopolitical tension among its five permanent members (the P-5) that has otherwise inhibited the Council's ability to address a range of threats to international peace and security.
- ▶ Although 1267 sanctions are more nimble, more targeted, more transparent, and fairer than at any point in time since their creation, the UNSC's understanding of the actual impact of these sanctions has only marginally increased during this period. The Council should ask the Secretary-General to commission an independent assessment to determine the sanctions regime's ongoing utility, strategic objectives, and fitness for purpose, in light of a terrorism, counterterrorism, and geopolitical landscape that has evolved considerably since September 11, 2001.
- ▶ The Council should improve its collection, analysis, and dissemination of listing data and implementation metrics. This will allow the 1267 Committee to promote more narrowly tailored, dynamic listing strategies. If the Committee can identify which measures, among the asset freeze, travel ban, and arms embargo, are most and least effective, it can promote tailored capacity building assistance accordingly. Tethering assistance to concrete implementation goals against sanctioned individuals and entities may lead to more concrete deliverables.

- By modernizing and updating its approach to terrorism sanctions, and more clearly defining how the sanctions fit into the UN’s overall approach to countering terrorism, the UNSC will ensure the relevance of the sanctions tool and be better able to address terrorists’ pursuit of new and innovative methods of resource mobilization, transferring money and evading sanctions.

## Introduction

Among the United Nations’ (UN) intricate web of counterterrorism mandates and bodies is a UN Security Council targeted sanctions program against al-Qaeda and the so-called Islamic State known as ISIS.<sup>1</sup> Colloquially referred to as the “1267” regime, its roots date back to 1999 when the Council adopted resolution 1267, targeting the Taliban for providing safe haven to Usama bin Laden and allowing him to operate a network of terrorist training camps.<sup>2</sup> After two decades, even as the number of terrorist attacks, the geographic scope of these attacks, and the nature of the threat have all changed significantly, the 1267 regime continues to be the favored option of members of the Security Council who wish to take

collective action—in the form of an asset freeze, travel ban, and arms embargo—against ISIS and al-Qaeda’s leadership, members, and affiliates.<sup>3</sup>

The Council has maintained its broad consensus on the use of counterterrorism sanctions against al-Qaeda and ISIS despite the geopolitical battles among its five permanent members (the P-5) that have otherwise inhibited the Council’s ability to address crises around the globe, from Syria to Myanmar to Ukraine.

Despite this consensus, the 1267 regime, which was most active in the years after the September 11, 2001, attacks against the United States, has started to languish.

1 This targeted sanctions program is known officially as the Security Council’s “ISIL (Da’esh) and Al-Qaida Sanctions” Committee. This paper refers to the regime as either the “ISIS/al-Qaeda sanctions regime” or the “1267 Committee” (i.e., the name of the United Nations Security Council sanctions committee charged with overseeing the UN’s ISIS/al-Qaeda sanctions).

2 In UN Security Council Resolution 1267 (adopted in 1999), the Council deplores “the fact that the Taliban continues to provide safe haven to Usama bin Laden and to allow him and others associated with him to operate a network of terrorist training camps from Taliban-controlled territory and to use Afghanistan as a base from which to sponsor international terrorist operations.” S/RES/1267 (1999), October 15, 1999, <http://unscr.com/en/resolutions/doc/1267>.

3 There are, of course, numerous books, articles, and other sources describing the history, linkages, and tension between al-Qaeda and ISIS. The following blurb from a December 2021 article in the is a useful starting point:

The history of the Islamic State shows how difficult it can be to shut down and contain terrorist networks. The group began after the American invasion of Iraq in 2003 as a branch of Al Qaeda, but later broke away, establishing a so-called caliphate, an Islamic theocracy, in large parts of Iraq and Syria that at its peak was the size of Britain. The group’s extremist vision for global expansion, extensive use of social media and cinematic violence drew in fighters from around the world, inspiring deadly attacks in Arab, European and American cities, and spurring the United States to form an international coalition to combat it. As the United States and its partners bombed the group’s main territories, the Islamic State branched out in other countries. Many of these affiliates have remained active since the group lost its last patch of territory in Syria in March 2019, including in West and Central Africa, the Sinai and South Asia. Al Qaeda has changed substantially as well since Osama bin Laden oversaw the organization and spread his views via videotaped statements delivered to television stations. It, too, established affiliates, in Yemen, Iraq, Syria and parts of Africa and Asia, some of which modified, or even discarded, the group’s ideology in pursuit of local goals....In general, Al Qaeda did not maintain the same operational control over its affiliates as the Islamic State did....The two groups remain bitter foes, compete for recruits and financing and have fought directly against each other, in Afghanistan, Syria and elsewhere.

Ben Hubbard, Eric Schmitt, and Matthew Rosenberg, “After Decades of War, ISIS and Al Qaeda Can Still Wreak Havoc,” *New York Times*, November 3, 2021, <https://www.nytimes.com/2021/08/26/world/asia/Afghanistan-isis-qaeda.html>.

Following the Security Council’s condemnation of Usama bin Laden’s actions in Security Council Resolution 1267, the scope of the 1267 sanctions list was expanded to include al-Qaeda in 2000, al-Qaeda in Iraq (the forerunner of ISIS) in 2011, and the Islamic State in Iraq and the Levant (also known as ISIL, Daesh, or ISIS) in 2015.

Due process concerns emanating mostly from European countries threatened to derail the regime more than a decade ago. And as the nature of the terrorist threat has changed, the impact and value of the sanctions regime has come into question. Terrorism is no longer the priority concern for the P-5 that it once was, particularly in the absence of large-scale attacks.

And yet, the Council has never taken comprehensive steps to assess the effectiveness of the sanctions; instead, it has more or less taken for granted the impact and appropriateness of the listings, even as the answers to these questions are far from obvious. The regime thus finds itself at a critical juncture and merits an independent assessment. What is the current utility of the regime? What steps should be taken to ensure it is fit for purpose? And how should the Council reformulate its strategic objectives in light of a terrorism, counterterrorism, and geopolitical landscape that looks much different than it did 20 years ago?<sup>4</sup>

## The Immediate Aftermath of 9/11: The “All of the Above” Approach

Conceived in the aftermath of the al-Qaeda bombings of the U.S. embassies in Kenya and Tanzania in 1998, the original purpose of the 1267 regime was for the Security Council to take concrete steps, beyond words of condemnation, against those deemed responsible for the attacks and those supporting and financing them. The regime was then given added purpose after the attack against the U.S.S. Cole in Yemen in 2000 and the tragic events of September 11, 2001.

In 1999, the introduction of UN targeted sanctions against terrorists was a novel addition to the Security

Council’s toolkit. Prior to 1999, the Security Council spent decades trying to address conflicts between states, periodically deciding to enact sanctions against the governments seen to be driving these conflicts. But the Council neither had experience addressing conflicts sparked by non-state actors, nor had it ever crafted sanctions against specific individuals (rather than governments), to prevent such conflicts. Yet, in matter of a few short years, following a number of failed attempts at “comprehensive” sanctions and a series of large-scale terrorist attacks, including against the United States, the Council began in earnest to cultivate the use of targeted sanctions to address threats to international peace and security caused by terrorist acts.

Throughout the 1990s and early 2000s, the UN’s use of comprehensive sanctions in hot spots like the Balkans and Iraq proved to be a failed experiment. The international community began to recognize the unintended consequences of these sanctions, namely the suffering of civilians.<sup>5</sup> It became a given that non-democratic leaders like Saddam Hussein would elude the long arm of comprehensive sanctions by hoarding wealth and essential items for themselves and their cronies while depriving the rest of their people of basic goods and services and medical items. It also became apparent that these sanctions produced very real second order effects on the day-to-day lives of innocent civilians. Governments advocating these sanctions faced two problems: how to address the optics of an approach that led to so much human suffering, and how to address criticisms that these sanctions were not serving their intended effect (i.e., they were not causing authoritarian leaders to change behavior and comply with international norms). The Security Council’s response was to gravitate toward the use of *targeted* sanctions: to focus more directly on the bad behaviors of individuals and try to

4 Since its inception in 1999, the scope and mandate of the 1267 regime have evolved considerably. During its first decade, the regime targeted those associated with al-Qaeda or the Taliban. But in 2011, the Security Council decided to separate the regime into two parts: one for al-Qaeda (and, eventually, ISIS) and the other for the Taliban. This was done for mainly political reasons (i.e., to distinguish between al-Qaeda and the Taliban as a way to promote Afghan-led peace and reconciliation). In 2021, the Afghanistan/Taliban sanctions regime (known in UN circles as the “1988 Committee”) came under the spotlight after the Taliban emerged as *de facto* rulers of Afghanistan. While the Council’s response to this recent challenge has given rise to a whole new range of questions, the problems of the 1988 Committee are now distinct from those of the 1267 Committee. Aside from the fact that both regimes share the same UN expert body—the Monitoring Team—they are treated separately. This paper focuses exclusively on the 1267 regime, that is, the Council’s history of imposing targeted sanctions against ISIS and al-Qaeda, rather than its post-2011 history of shaping Afghanistan/Taliban sanctions.

5 See, e.g., Lutz Oette, “A Decade of Sanctions Against Iraq: Never Again! The End of Unlimited Sanctions in the Recent Practice of the UN Security Council,” *European Journal of International Law* 13, No. 1, (2002): 93–103, <http://ejil.org/pdfs/13/1/476.pdf>; Joy Gordon, “The Enduring Lessons of the Iraq Sanctions,” Middle East Research and Information Project (Spring 2020), <https://merip.org/2020/06/the-enduring-lessons-of-the-iraq-sanctions/>; “Iraq Sanctions: Humanitarian Implications and Options for the Future,” Global Policy Forum (August 6, 2002), <https://archive.globalpolicy.org/security/sanction/iraq1/2002/paper.htm>.

alter their decision-making calculus while diminishing the likelihood of unintended consequences against civilians.<sup>6</sup> The key architect of this tool was the United States, which modeled the UN's targeted sanctions under resolution 1267 (1999) against the Taliban and Usama bin Laden after a U.S. Executive Order that had done the same in July 1999.<sup>7</sup> Not even a decade removed from the end of the Cold War, the United States was in the early stages of its unipolar moment, and terrorist attacks on the scale of those perpetrated in 1998, 2000, and 2001 provided Washington with a diplomatic "blank check" at the Security Council. In the period following September 11, 2001—with U.S.-led wars in Afghanistan and Iraq gaining steam—the United States spearheaded an "all of the above" approach to countering terrorism, including in the Security Council. From kinetic strikes and sanctions to diplomacy and the use of "enhanced interrogation" techniques, the United States aimed to exhaust every instrument in its arsenal—whether unilateral, bilateral or multilateral—to kill or capture Usama bin Laden while dismantling al-Qaeda and its offshoots. Targeted sanctions—primarily the use of asset freezes to cut off al-Qaeda's funding streams—which had been embraced by

the U.S. Treasury Department's Office of Foreign Assets Control,<sup>8</sup> became one of the most frequently used tools in the United States' counterterrorism toolbox.

At the Security Council, even as the United States struggled and ultimately failed to obtain support among the P-5 to use force in Iraq, it succeeded in crafting and gaining approval for targeted sanctions against hundreds of suspected terrorists. These sanctions created binding legal requirements under Chapter VII of the UN Charter for all UN member states to freeze assets and impose a travel ban and arms embargo against individuals and entities associated with al-Qaeda or the Taliban.<sup>9</sup> They were viewed as a necessary component of what would eventually become a sprawling counterterrorism apparatus at the United Nations, and a rapidly growing number of mandates under both the Security Council and the General Assembly.

Between 2001 and 2008, the Council added hundreds of individuals and entities to the 1267 sanctions list.<sup>10</sup> Although the sanctions were announced in an increasing number of UN Security Council press releases each

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- 6 The driving force behind many of the proposals to enhance the fairness and transparency of UN sanctions stemmed from the so-called "Group of Like-Minded States on Targeted Sanctions" led by Germany, Sweden, Switzerland, and other European states. The Group engaged Council members repeatedly and submitted documents with recommendations for enhancing due process. The Group's most prominent effort, in June 2011, occurred during the months leading up to the Council's adoption of what would become resolution 1989. The Group offered its recommendations in "Improving Fair and Clear Procedures for a More Effective UN Sanctions System," submitted to the UN Security Council by Switzerland and the Group of Like-Minded States, April 2011, <http://www.news.admin.ch/NSBSubscriber/message/attachments/22759.pdf>. The Group has continued to offer additional recommendations in the decade following the establishment of the 1267 Office of the Ombudsperson. See, e.g., Letter to the President of the Security Council, S/2015/867, November 12, 2015, <https://undocs.org/S/2015/867>; and Letter to the President of the Security Council, S/2018/1094, December 11, 2018, [https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2018\\_1094.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2018_1094.pdf).
- 7 U.S. Executive Order 13129, July 4, 1999, "Blocking Property and Prohibiting Transactions with the Taliban," <https://www.govinfo.gov/content/pkg/FR-1999-07-07/pdf/99-17444.pdf>.
- 8 Executive Order 13224 of September 23, 2001, signed by President George W. Bush pursuant to the International Emergency Economic Powers Act (IEEPA) and other authorities, provided the U.S. government with a legal framework, which still exists today, to issue targeted sanctions against terrorists. For an overview of this authority, see the U.S. Department of State's background note at <https://www.state.gov/executive-order-13224/>.
- 9 In the early days of the 1267 regime, the Security Council adopted targeted sanctions against both the Taliban and Usama bin Laden because the Taliban was believed to be harboring and offering safe haven to Usama bin Laden. When in 1999 the Security Council first decided to impose targeted sanctions against the Taliban and Usama bin Laden, it also demanded that the Taliban "turn over Usama bin Laden without further delay to appropriate authorities...where he will be arrested and effectively brought to justice." UN Security Council Resolution 1267, S/RES/1267 (1999), October 15, 1999, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/300/44/PDF/N9930044.pdf>. The Council expanded these sanctions to include al-Qaeda in 2000 (S/RES/1333 (2000), December 19, 2000, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/806/62/PDF/N0080662.pdf>), and the Islamic State of Iraq and the Levant (ISIL, or ISIS) in 2015 (S/RES/2253 (2015), December 17, 2015, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/437/45/PDF/N1543745.pdf>).
- 10 It remains frustratingly difficult to compile the names and numbers of individuals and entities added to the 1267 list during specific date ranges. Although the 1267 Committee maintains a current list of sanctioned names and summaries of the reasons for their inclusion on the list ([https://www.un.org/securitycouncil/sanctions/1267/aq\\_sanctions\\_list/summaries](https://www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list/summaries)), the Committee does not disseminate easily-accessible statistics on yearly listings and delistings. Since 2003, the Chair of the Committee has shared fragments of such information in the form of an "annual report" to the Security Council, but it still does not make public user-friendly statistics on listings and delistings.

month, their effectiveness was never subject to any real scrutiny. Rather than carefully matching lists of al-Qaeda financiers with the sanctions and determining which measures were most effective, the Security Council took for granted that the names were appropriate and that the sanctions were impactful. In hindsight, we now understand that the United States itself probably contributed the biggest impact when it froze terrorist funds in the immediate aftermath of September 11, 2001.<sup>11</sup> Council members accorded a great degree of deference to those countries—typically the United States and Russia, but also France and the United Kingdom, among others—that proposed the names of individuals and entities to be added to the 1267 list (i.e., the “authors” or “designating states” of these early listing requests). There appeared little regard for the varied legal thresholds in different UN member states that shaped the kinds of proposals for designation they could put forward.

To the Council’s credit, it seemed to recognize as far back as 2003<sup>12</sup> the importance of assessing the effectiveness of the sanctions. But any efforts to gauge effectiveness were flawed from the start, particularly in the absence of clearly articulated strategic objectives. Smaller countries, especially in the early years of the regime, lacked the financial intelligence and legal and operational frameworks necessary to implement the sanctions. Others rejected the basis for these sanctions entirely. And even large Western states with sophisticated institutions could only offer anecdotal or general comments on the effectiveness of the sanctions, either because intelligence constraints restricted their ability to provide such details to the Council, or because they never actually needed to freeze assets in their banking systems or prohibit travel to their countries.

## Two Persistent Challenges: Implementation and Due Process

### *Implementation*

Although the Security Council has regularly used its authority under Chapter VII of the UN Charter to impose sanctions against individuals and entities associated with al-Qaeda, the Taliban, and more recently ISIS, the impact of these sanctions has ultimately depended on the extent to which UN member states have *implemented* the sanctions domestically. In fact, their effectiveness has been consistently undermined by uneven implementation. The shortfalls are typically the result of a lack of capacity and/or a lack of political will, despite the legal obligation to implement the sanctions without delay.

The Security Council has seemingly always understood that the success of UN sanctions is inextricably linked to member states’ ability and willingness to implement them. In 2004, to address these implementation gaps, the Council expanded the mandate of the 1267 Committee’s team of experts—the “Analytical Support and Sanctions Monitoring Team” (hereafter the “1267 Monitoring Team”)—a group of experts charged with overseeing the work of the 1267 Committee<sup>13</sup> and advising governments on the steps they should take to boost implementation. To support its Counter-Terrorism Committee, the Council also established the Counter-Terrorism Executive Directorate (CTED),<sup>14</sup> which was tasked, among other responsibilities, with providing country assessments and facilitating technical assistance to help states implement the Council’s wider counterterrorism framework.

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- 11 See, e.g., the 9/11 Commission Report, Chapter 1 of the National Commission on Terrorist Attacks upon the United States, [https://9-11commission.gov/staff\\_statements/911\\_TerrFin\\_Ch1.pdf](https://9-11commission.gov/staff_statements/911_TerrFin_Ch1.pdf): “The United States engaged in a highly visible series of freezes of suspected terrorist assets after 9/11. Although few funds have been frozen since the first few months after 9/11, asset freezes are useful diplomatic tools in engaging other countries in the war on terror and have symbolic and deterrence value.”
  - 12 S/2004/281, April 8, 2004, Letter dated 2 April 2004 from the Chairman 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, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/303/71/PDF/N0430371.pdf>.
  - 13 The Monitoring Team, composed of 10 experts in New York, derives its authority from Security Council Resolutions 1526 (2004) and 2253 (2015) concerning ISIL (Da’esh), Al-Qaida and the Taliban and associated individuals and entities. Its mandate was most recently clarified and renewed (until June 2024) in paragraphs 98–105 and Annex I of Security Council Resolution 2610 (2021), S/RES/2610 (2021), December 17, 2021, [https://www.undocs.org/S/RES/2610\(2021\)](https://www.undocs.org/S/RES/2610(2021)).
  - 14 The Counter-Terrorism Committee (CTC) was established pursuant to a decision in UNSCR 1373 (2001). A small cadre of counterterrorism experts was hired to support the CTC’s work, until 2004 when UNSCR 1535 called for the creation of CTED with a staff of 40 as part of a Special Political Mission to “revitalize” the work of the CTC.

## The Struggles of Developing States

Although the Monitoring Team, in consultation with CTED and the UN Office on Drugs and Crime (UNODC), has made strides over the last decade in boosting member states' capacity to implement the sanctions, particularly the asset freeze and travel ban, there is more work to be done.<sup>15</sup> A persistent challenge of these capacity-building efforts has been that the technical assistance provided to UN member states has never properly taken into consideration the unique challenges faced by developing countries.<sup>16</sup>

The obligations laid out in the ISIS/al-Qaeda sanctions regime and related resolutions are not self-executing. For many states, this is a significant burden. Without the legal and operational machinery in place to freeze assets or prevent travel, these states rely on information and support from UN expert panels, more advanced states, and international organizations to help develop the architecture they need to comply with the measures. Many member states, especially in Africa and other parts of the developing world, still require technical assistance, training, and the sharing of best practices to improve compliance with the full range of obligations in the UN's counterterrorism resolutions. They also require assistance in integrating financial intelligence into their counterterrorism efforts

and support for designing legal frameworks to keep pace with rapidly evolving methods of financing terrorism.<sup>17</sup>

For example, following the adoption of UN Security Council Resolutions 2309 (2016) (which directed UN counterterrorism bodies and member states to collaborate with the International Civil Aviation Organization) and 2396 (2017) (which called upon UN member states to strengthen border security and information sharing in response to the threat posed by foreign terrorist fighters), the Monitoring Team and CTED worked closely with member states to boost their capacity to implement the travel ban and, more generally, incorporate modern technologies to enhance border security. For developing states, these were no easy tasks. Many states lack the operational capacity to implement advance passenger information (API) and passenger name record (PNR) systems, both of which are crucial methods of screening against the travel of foreign terrorist fighters and whose implementation was made obligatory by the Council Resolutions. In its 2018 report to the Security Council,<sup>18</sup> the Monitoring Team noted that although there has been "progress" in how member states collect, process, and disseminate passenger data, "challenges exist in several Member States, where work is needed to improve border screening, enhance effectiveness in the checking of passenger data against watchlists, collect biometric

15 S/2020/493, June 3, 2020, Joint report of the Counter-Terrorism Committee Executive Directorate and the Analytical Support and Sanctions Monitoring Team pursuant to resolutions 1526 (2004) and 2253 (2015) concerning Islamic State in Iraq and the Levant (ISIL) (Da'esh), Al-Qaida, and the Taliban and associated individuals and entities on actions taken by Member States to disrupt terrorist financing, prepared pursuant to paragraph 37 of Security Council Resolution 2462 (2019), (hereinafter "Monitoring Team and CTED Joint Report"), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/138/54/PDF/N2013854.pdf>. This Monitoring Team and CTED Joint Report includes substantial information on actions taken by UN member states to prevent and disrupt terrorism financing. The Monitoring Team and CTED received good participation, as 112 UN member states submitted responses to a questionnaire on their approach to implementing UNSC terror finance obligations. Among the findings in the Joint Report is that almost 90 percent of respondents noted that they "communicate changes electronically to financial institutions and non-financial businesses and professions via the websites of the authority for overseeing sanctions implementation." This may seem like a mundane statistic, but it is a vast improvement over the manual system that many states previously used.

16 The obligation in paragraph 15 of UN Security Council Resolution 2396 (2017) for member states to collect biometric data for the purpose of identifying terrorists is one such example. S/RES/2396 (2017), December 17, 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/460/25/PDF/N1746025.pdf>. As CTED points out in a December 2021 brief on the use of biometrics to counter terrorism: "Biometrics are widely used in nearly half of European Member States but only marginally introduced across the Middle East. More than half of African Member States have yet to introduce biometrics at all." This underscores not only the technological limitations among developing countries, but also the need for more robust administrative and legal frameworks, without which these and other modern technologies will be difficult to safeguard.

17 Ibid.

18 See S/2018/705, July 27, 2018, Twenty-second report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2368 (2017) concerning ISIL (Da'esh), Al-Qaida and associated individuals and entities, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/201/01/PDF/N1820101.pdf>.

information and enhance the timeliness and effectiveness of information sharing.”<sup>19</sup>

### **Gaining Support from the Victims of Terrorism**

Another challenge has been the lack of buy-in from countries that are often the victims of terrorism. Most 1267 listing requests are submitted by the United States, the UK, and Russia, three of the permanent members of the Council. Member states that have long been subject to terrorist attacks, in places like Indonesia, Iraq, the Philippines, Tunisia, and the Sahel, have been reluctant to submit listing requests, either because they do not want their government officials themselves to become targets of ISIS and al-Qaeda, or because they view the sanctions as a Western-dominated measure designed by a UN organ that is politically motivated and unevenly represented (even as some of these countries have served as Chair of the 1267 and 1373 Committees).

As a result, these sanctions—which are already viewed by certain member states as unfair and illegitimate—are further undermined by the fact that states that are victims of terrorist acts do not come forward with their own listing proposals. Although there is no simple way to address this recurring challenge, a few basic steps exist that can be emphasized to spur these states to become more involved in the listing process: (1) the Chair of the 1267 Committee and the 1267 Monitoring Team can engage more closely with such countries, both to provide information and lift the veil of secrecy that is often associated with the Committee’s closed-door consultations; (2) designating states, especially the United States, can work in tandem with such countries, well in advance of submitting listing requests, to share intelligence and boost the likelihood that they will support such listing requests; and (3) the 1267 Monitoring Team, in partnership with CTED and UNODC, can prioritize the facilitation and delivery of technical assistance to these states.

For states that are victims of terrorist acts that simply lack the capacity to formulate listing requests, these basic steps may be helpful; but for states that oppose the 1267 regime

for broader political reasons, this outreach is unlikely to make a difference.

### **Working Closer with Regional Blocs**

To boost implementation of the sanctions more broadly, the Monitoring Team and CTED should engage more directly with *regional blocs*, rather than only member states. These regional blocs—including the African Union, the Association of Southeast Asian Nations (ASEAN), the Organization of American States (OAS), and the Economic Community of West African States (ECOWAS)—are increasingly on the front lines of sanctions policymaking. Where the Security Council cannot muster political consensus to decide on measures against terrorists or other bad actors, these regional blocs have filled the void and charted their own responses to threats to international peace and security. Even when the Council *does* adopt its own measures to address a conflict, these regional blocs often coordinate or augment the sanctions, or provide capacity-building assistance to countries in their blocs.

Given the elevated role that these regional blocs play, the Monitoring Team and CTED should work more closely with these blocs and increase their outreach by, for example, providing informational materials and technical briefings at a regional level on the best ways to implement the sanctions, and discussing the rationale and purpose behind them, or by educating the secretariats of these regional blocs about the sanctions policymaking process and, in turn, prompt them to boost the capacity of countries in their regions.

### **Where Is the Data, and What Do They Mean?**

A fundamental challenge in addressing implementation gaps has been the Security Council’s struggles to obtain data and use metrics to gauge the effectiveness of the measures (e.g., the asset freeze, travel ban, and arms embargo). To be fair, the Security Council now recognizes this issue and deserves credit, recently, for tasking the 1267 Monitoring Team with producing a report on the effectiveness of the asset freezing measures (although it remains unclear how “effectiveness” is to be determined in the absence

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19 Ibid. In the same report, the Monitoring Team noted that “Member States use the International Criminal Police Organization (INTERPOL) databases and have provided information on foreign terrorist fighters .... [but that], in some Member States, border agencies and airlines lack access to such information: about two thirds of INTERPOL members do not have connectivity to the databases at their air, land and sea ports of entry.” This is but one example of how operational challenges limit member states’ ability to use modern tools and technologies to implement the travel ban and boost border security.

of clear strategic objectives). This report—released on February 3, 2022—is a useful first step.<sup>20</sup> So too is the Monitoring Team’s joint report with CTED on the steps member states have taken to implement the 1267 asset freezing requirements and address terrorism finance, more broadly.<sup>21</sup> In summarizing its report, the Monitoring Team noted that most member states seem to understand “the legal framework necessary for effective counter financing of terrorism measures, as well as the asset-freezing and sanctions designation measures set forth in Council resolutions 1267 (1999) and 1373 (2001) and successor resolutions,” but that certain measures called for in UN Security Council Resolution 2462 (2019) “have not yet been tested or fully operationalized.”<sup>22</sup>

In the same report, the Monitoring Team also noted that most member states seem to agree that more effective efforts at countering the finance of terrorism will require some combination of better coordination mechanisms at both the national and international levels, more integration of financial intelligence into counterterrorism efforts, more enhanced and specialized investigative and enforcement capabilities, and better legal frameworks “to keep pace with the rapid evolution in financial tools and terrorism financing methods.”<sup>23</sup>

As noted earlier, the June 2020 report was the result of voluntary responses to questions by 112 member states, and the Monitoring Team encouraged these states to provide updates on their implementation efforts annually. But as long as member states are not *required* to provide this information going forward, the Monitoring Team’s assessments will remain incomplete.

Notably, in a separate report, the Monitoring Team determined, not surprisingly, that the total number

of frozen assets is relatively small.<sup>24</sup> This is the sort of information that is essential if the Security Council wants to undertake an honest review of these sanctions and maximize their impact. The Council should therefore make more of these data available to the public; as it stands, most data, including the names of designees currently availing themselves of asset freeze exemptions, remain confidential to the 1267 Committee. The Council should ensure that data are collected, that they are disseminated to the public, and that any conclusions are shared widely. These are necessary preconditions for the Council and UN member states to glean lessons and modify their habits accordingly.

### *Lack of Political Will*

Aside from the lack of technical know-how, the other big challenge undermining implementation of the 1267 measures has been a lack of political will, principally by countries that question the legitimacy of the Security Council or reject the use of sanctions as overly punitive tools of predominantly Western countries. To address this issue, the United States and others have occasionally sought to focus the 1267 Committee’s attention on countries that have a poor track record of implementing terrorism sanctions. But efforts to request the Monitoring Team or Chair of the Committee to “name and shame” these countries have often foundered as a result of the Committee’s consensus decision-making process (which can frequently present a very high bar) and the Monitoring Team’s unwillingness to single out UN member states (because they may need to collaborate with these states in the future).

When failing to make progress at the UN, the United States and others have often looked *outside* the UN

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20 See S/2022/83, February 3, 2022, Letter dated 3 February 2022 from the Chair of the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da’esh), Al-Qaida and associated individuals, groups, undertakings and entities addressed to the President of the Security Council, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/416/14/PDF/N2141614.pdf>.

21 Monitoring Team and CTED Joint Report, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/138/54/PDF/N2013854.pdf>.

22 Ibid. In addition, the Monitoring Team noted that “[w]ith regard to the implementation of asset-freezing requirements in relation to domestically designated parties pursuant to resolution 1373 (2001), most States reported that they had neither designated individuals or entities nor frozen their assets.”

23 Ibid.

24 The Monitoring Team based this assessment on the fact that between 2011 and 2021, the 1267 Committee received an average of only four exemption requests per year. See S/2021/1115, December 31, 2021, Letter dated 30 December 2021 from the Chair of the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da’esh), Al-Qaida and associated individuals, groups, undertakings and entities addressed to the President of the Security Council, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/223/76/PDF/N2222376.pdf>.

system—to the Financial Action Task Force (FATF), in particular—to single out individual countries like Pakistan and the United Arab Emirates and push them to address strategic deficiencies in their efforts to combat terrorist financing and money laundering.<sup>25</sup> Established by the G-7 in 1989 with an originally narrower focus on anti-money laundering, FATF’s history of mutual evaluations, engagement with the private sector, and a series of recommendations on terrorist financing and money laundering, have incentivized and compelled countries to develop the legal and operational frameworks necessary to freeze assets and prevent the flow of funds used to support terrorism and proliferate weapons of mass destruction. The lack of any consensus requirement or “veto” by its members has simplified FATF’s ability to develop “grey lists” of countries with deficient anti-money laundering/combating the financing of terrorism (AML/CFT) regimes. Moreover, FATF’s partnership with financial institutions has led to a more effective system of stigmatizing countries with poor terror finance track records, as these institutions will often cut ties with countries that have high risk profiles. As a result, the threat of a FATF grey listing has served as a more successful stick than any obligations stemming from UN counterterrorism resolutions.<sup>26</sup>

Although the sum total of these efforts through FATF and the UN system have likely generated *more* implementation, it remains difficult to gauge exactly how *much* implementation has improved, as most of the Council’s success stories are either anecdotal or not shared outside the 15-member body.<sup>27</sup>

### ***Twenty Years Later...What Are the Results?***

More than 20 years after the September 11, 2001, attacks, the challenge of implementation persists. Notwithstanding multiple efforts to boost countries’ legal, operational, and other relevant counterterrorism capacities, and more modest efforts to call out countries for refusing to meet their obligations, the impact of these sanctions on the terrorist threat remains decidedly obscure.

Despite the lack of concrete data on implementation and impact, the Security Council’s 1267 Committee continues to muddle through: it assumes the sanctions are impactful, gives itself credit for “doing something” against al-Qaeda and ISIS, and hopes that even if the sanctions are not effective deterrents or levers for suppressing terror finance or travel in every case, perhaps they have some

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25 For more information, see the Financial Action Task Force’s List of Jurisdictions under Increased Monitoring, <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-march-2022.html>.

Since June 2018, when Pakistan made a high-level political commitment to work with the FATF.... to strengthen its AML/CFT regime and to address its strategic counter-terrorist financing-related deficiencies, Pakistan’s continued political commitment has led to significant progress across a comprehensive CFT action plan....The FATF encourages Pakistan to....demonstrate that TF investigations and prosecutions target senior leaders and commanders of UN designated terrorist groups....Since June 2021, Pakistan has taken swift steps towards improving its AML/CFT regime....including by demonstrating that it is enhancing the impact of sanctions by nominating individuals and entities for UN designation and restraining and confiscating proceeds of crime in line with Pakistan’s risk profile.

26 Although FATF has a more demonstrable track record of boosting implementation, it is worth noting that since around 2012 the FATF recommendations and related UN Security Council obligations have become mutually reinforcing. See, e.g., the number of references to 1267 included in FATF’s most recent recommendations (updated in March 2022), <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>. Similarly, the most recent ISIS/al-Qaeda UN Security Council Resolution in December 2021 includes 17 references to FATF, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/407/97/PDF/N2140797.pdf>.

27 It is challenging to find language in a Monitoring Team or CTED report indicating, with data, whether member state implementation of the asset freeze, travel ban, and arms embargo has improved. Some information exists on member state implementation of the asset freeze, but far less on implementation of the travel ban and arms embargo. Member states are still not required by the Security Council to provide information on their national implementation of these measures; any such reports to the UN’s counterterrorism expert bodies are purely voluntary and often include statistics on implementation of obligations stemming from far broader national or regional laws on counterterrorism (making it even more difficult to determine the extent to which these countries are taking action in response to UN obligations or national requirements).

symbolic or stigmatizing effect.<sup>28</sup> Whether or not these conclusions have merit remains a mystery as long as the Security Council does not perform a rigorous review of its targets, its tools, and their relative impact on curtailing or deterring the spread of terrorism. The Monitoring Team's and CTED's recent focus on data is a good start, but there is far more work to be done.

## Due Process

The roots of the debate over “fairness” stem from the Security Council's decision to take action against *individuals*, rather than states. Between 1945 and 1999, whenever the Security Council used its Chapter VII authority under the UN Charter to restore international peace and security, it typically did so against *states* and *state actors*. Since 1999, however, with the advent of targeted sanctions, the Council has taken on a role that the UNSC was arguably not designed to implement: it has deployed Chapter VII measures—particularly the asset freeze and travel ban—against *non-state actors* (e.g., terrorists and their supporters). The use of these measures against non-state actors, while never hotly debated in UN circles, has been somewhat extraordinary, and the Council has not always understood the effects of targeting individuals instead of governments or states.

By the middle of the 2000s, as the 1267 sanctions list swelled to more than 500 names, a problem for the Security Council began to take shape: greater scrutiny from human rights groups, member states, and judicial bodies, especially those in Europe. Rather than applauding the Council's transition from comprehensive

sanctions—an overly blunt tool with a track record of unintended consequences—to targeted sanctions, these groups started to question both the fairness and transparency of the measures.

Most Council members became aware of these concerns when an individual on the 1267 sanctions list, Yassin Abdullah Qadi, a Saudi national accused of providing support to al-Qaeda in 2001, brought a range of legal challenges, the most prominent of which made its way to the European Court of Justice (ECJ) in 2008.<sup>29</sup> Qadi's case quickly emerged as one of the more prominent cases before the ECJ, and it placed a spotlight on the Security Council's process for adopting targeted sanctions against non-state actors. Qadi's lawyers asserted, among other things, that European member states' implementation of the asset freeze deprived Qadi of his property without any due process guardrails, an argument that met with success in the appellate chamber. They noted that the individuals subject to these sanctions were never provided with a notice of reasons for their designations, a right to be heard, or a right to independent review of the decision to list.

As a result of this case, European members of the Security Council, especially France and the UK, became increasingly concerned that an adverse court ruling could undermine their ability to implement the sanctions. Rather than confront the possibility of a conflict between their obligation to respect the rulings of European courts and their obligation to implement decisions of the Security Council under the UN Charter,<sup>30</sup> France and the UK echoed many of the same arguments of the Group of Like-Minded States (referenced earlier) and led an effort to

28 For the last decade, the Monitoring Team has periodically referenced the stigmatizing effect of sanctions, even when the asset freeze, travel ban, and arms embargo are collectively deemed to have no practical impact. The most prominent example concerns the Taliban. In its September 2012 report to the Security Council, the Monitoring Team noted that the sanctions “are not easily applied in a country where less than 7 per cent of the population has a bank account, where borders with six countries totalling over 5,000 km are criss-crossed by hundreds of un-policed roads and tracks, and where the tradition of gun ownership is deeply embedded.” Yet, despite the “prospects for implementation...appear[ing] dim,” the Team said that the Taliban remained troubled by the “international stigma” of the sanctions and continued to request their removal from the sanctions list as a condition for peace. See S/2012/683, September 5, 2012, Letter dated 4 September 2012 from the Chair of the Security Council Committee pursuant to resolution 1988 (2011) addressed to the President of the Security Council, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/499/17/PDF/N1249917.pdf>.

29 Judgment of the European Court of Justice, September 3, 2008, <https://curia.europa.eu/juris/document/document.jsf?docid=67611&doclang=en>.

30 UN Member States have obligations to carry out decisions of the UN Security Council under Article 25 of the UN Charter (“The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”) They also have obligations under Article 103 to respect such decisions even in the event of a conflict between the Charter and any other obligations (“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”).

bolster the fairness of the process in New York (as a way to moot the very issues being reviewed by the ECJ).<sup>31</sup>

Between 2004 and 2009, the Security Council made several incremental improvements to the sanctions process, such as bolstering the “reasons” why individuals were added to the list and making this information available to the public. In 2008, the Council conducted a comprehensive review of all names on the 1267 list to determine whether the sanctions were still appropriate.<sup>32</sup> The Council’s most visible action, however, occurred in 2009 when it created an “Ombudsperson” position to enhance sanctioned individuals’ ability to be heard and ability to receive an independent review of the listing decision.

The Ombudsperson’s mandate and authority—which were expanded in UN Security Council Resolution 1989 in 2011<sup>33</sup>—were perceived by most European member states as a long overdue improvement to the sanctions “appeals” process and the most effective way to communicate to courts that the Security Council was taking due process seriously. To other member states, including Russia,

China, and even some officials in the United States,<sup>34</sup> these changes were viewed as a radical departure from the normal decision-making process of the Security Council. Some questioned the utility of attaching a quasi-judicial mechanism to an inherently political organ. Others wondered why it was the Security Council’s responsibility to soften the impact of what was essentially a European conflict of law issue.

Since 2011, the result of these efforts has been that no one is truly satisfied. For those who favor an actual judicial process for UN sanctioned individuals, the Security Council’s Ombudsperson-centered process is insufficient because the Ombudsperson’s recommendations to delist sanctioned individuals can still be overturned by a P-5 member’s veto.<sup>35</sup> Conversely, for those who view 1267 sanctions as a politically driven administrative process, even the most incremental addition of so-called “fairness” enhancements has been a step too far. These frustrations became more pronounced after the European Court of Justice, in its judgment in the Qadi case in 2013,<sup>36</sup>

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31 As noted previously, the Group of Like-Minded States put forward a series of recommendations to the Security Council. See “Improving Fair and Clear Procedures for a More Effective UN Sanctions System,” April 2011, <http://www.news.admin.ch/NSBSubscriber/message/attachments/22759.pdf>.

32 The 1267 Committee reviewed a total of 488 names and determined that 443 listings continued to remain appropriate. It removed 45 names from the list and received delisting requests for an additional 58 names (which remained pending with the Committee for various periods of time). See Briefing by H.E. Mr. Thomas Mayr-Harting, Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and Associated Individuals and Entities, to the Security Council on 15 November 2010, [https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/briefing\\_15nov10.pdf](https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/briefing_15nov10.pdf).

33 With the adoption of UN Security Council Resolution 1989, the Council greatly expanded the Ombudsperson’s powers to make recommendations to delist binding. Per paragraph 23 of the resolution, an Ombudsperson recommendation to delist could only be overturned if the 1267 Committee reaches consensus to reject the Ombudsperson’s recommendations, or if the Council otherwise decides against removing names from the list (thus preserving the P-5 prerogative to veto any controversial removals). See S/RES/1989 (2011), June 17, 2011, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/380/14/PDF/N1138014.pdf>.

34 Although the United States was generally open to supporting efforts to bolster the fairness and transparency of the UNSC’s process for adding and removing names from the 1267 sanctions list, it feared that a more robust appeals process or so-called “sunset” clauses (provisions allowing for the expiration of sanctions after a certain period of time) would create a precedent that might expand into other UN sanctions regimes, including more politically sensitive ones involving Iran and North Korea. Unlike Europe, the United States had not encountered any looming conflict of law challenges in its domestic courts; so while it was open to making certain due process enhancements, especially those that would also boost implementation, it shied away from agreeing to more fundamental changes because of the precedential effect, the impact on P-5 Security Council prerogatives, and the fact that, ultimately, this was Europe’s problem to solve.

35 As of March 2022, no P-5 member has used its veto to overturn an Ombudsperson’s recommendation to delist. To use the veto on such a technical issue would not only be politically challenging, it would risk undermining further the credibility of the ISIS/al-Qaida sanctions regime. Nevertheless, the mere possibility that a veto *might* be used remains a source of concern for those in favor of a process more grounded in the rule of law.

36 Judgment of the European Court of Justice (Grand Chamber) in the matter concerning Yassin Abdullah Kadi, July 18, 2013, <https://curia.europa.eu/juris/document/document.jsf?jsessionid=84111FB35D26004540CC41E3460A3DF8?text=&docid=139745&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=134899>.

barely even acknowledged the Security Council's fairness enhancements.<sup>37</sup>

As a result, since 2011 the Security Council has been reluctant to incorporate additional elements of fairness to the 1267 regime and has shunned efforts to do the same in *other* UN targeted sanctions regimes.<sup>38</sup> Today, the Ombudsperson position still only exists in the 1267 regime and there has never been a serious effort to extend the Ombudsperson's remit to other UN sanctions programs. The 1267 regime therefore continues to include the *most* due process for sanctioned individuals, meaning, ironically, that it is likely *easier* for members of ISIS and al-Qaeda to be removed from a UN sanctions list than it is for individuals subject to Libya or South Sudan or Mali sanctions to do the same. This leaves the Council in the awkward position of providing more fairness to terrorists than to others.

It also calls into question what happens when individuals are included on more than one UN sanctions list. For example, although al-Shabaab is not itself listed as a terrorist group under 1267,<sup>39</sup> some of its financiers are included on both the 1267 list and the UN's Somalia/Eritrea sanctions list; in these instances, which form of process prevails? Neither the Security Council nor national or regional courts have yet to entertain this question.<sup>40</sup>

### *Two Birds, One Stone*

The Security Council's incremental response to implementation and due process deficiencies tends to be most successful when these challenges are addressed in tandem. For example, when the Security Council required that 1267 listing requests must include greater identifying information and narrative summaries of the reasons why individuals were listed, it became easier for UN member

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37 Ibid. The Council had hoped that European courts would view its steady stream of fairness enhancements, especially the empowered Ombudsperson position, as a serious response to the perceived lack of process. Instead, the Court concluded that the expansion of the Ombudsperson's mandate did not go far enough. ("Those shortcomings were not rectified by Resolution 1989 (2011). The recommendations of the Office of the Ombudsperson still do not have binding force. The determination of the criteria for delisting from the Sanctions Committee Consolidated List and the power to decide to delist remain within the discretion of the Sanctions Committee. Where a delisting recommendation is made by the Office of the Ombudsperson, any member of the Sanctions Committee may refer the matter to the Security Council, the five permanent members of which may exercise their veto according to their discretion. The Office of the Ombudsperson depends, moreover, on the willingness of States to cooperate in gathering information.").

38 To be fair, there have often been other (more prominent) geopolitical considerations in play here as well, most notably that the United States and other Council members did not want to extend the Ombudsperson's role to the Iran and North Korea sanctions regimes.

39 Harakat al Shabaab al Mujahideen, more commonly known as al-Shabaab, is a Somalia-based Islamist insurgent group that has controlled significant portions of territory in Somalia for many of the last 15 years. See Jake Harrington and Jared Thompson, "Examining Extremism: Harakat al Shabaab al Mujahideen (al Shabaab)" Center for Strategic & International Studies, <https://www.csis.org/blogs/examining-extremism/examining-extremism-harakat-al-shabaab-al-mujahideen-al-shabaab>. Despite al-Shabaab's formal merger with al-Qaeda in 2012 and longstanding ties to other al-Qaeda-linked individuals and entities, it has not itself been included on the 1267 sanctions list. The main reason for its exclusion is that governments and non-governmental organizations fear that a 1267 listing would prevent the flow of much-needed humanitarian assistance to the Somali population. Al-Shabaab, which earns substantial revenues from collecting taxes from outside groups doing business in Somalia, has been subject to sanctions since December 2010 through a broader UN sanctions regime against targets in Somalia and Eritrea. Unlike those included on the 1267 sanctions list, the individuals and entities on the UN's Somalia/Eritrea sanctions list receive the benefit of an exemption to the asset freeze, which permits aid organizations to provide humanitarian assistance even if doing so would result in the payment of taxes to al-Shabaab. Many UN member states and aid organizations fear that lifting this exemption (or adding al-Shabaab to the 1267 sanctions list without the benefit of a similar exemption in that regime) would produce a chilling effect on the provision of humanitarian assistance, as aid organizations deem that the regulatory risk is too high. For this reason, despite Kenya's request as recently as 2019 to add al-Shabaab to the 1267 list, there has never been enough support in the Security Council, as most Council members consider the impact to be at best symbolic (al-Shabaab rarely uses the formal financial system, so the asset freeze would be ineffectual) and at worst antithetical to wide-scale efforts to provide humanitarian relief to the Somali population. See, e.g., "Aid Groups Warn Against Kenya's UN Bid to Sanction Al-Shabaab," France 24, August 27, 2019, <https://www.france24.com/en/20190827-aid-groups-warn-against-kenya-s-un-bid-to-sanction-al-shabaab>; Sara Jerving, "Humanitarians Warn against Adding Al Shabab to UN Sanctions List," Devex, August 16, 2019, <https://www.devex.com/news/humanitarians-warn-against-adding-al-shabab-to-un-sanctions-list-95465>. Several studies exist on the impact of the so-called humanitarian carve-out, or standing exemption, to the UN's Somalia and Eritrea sanctions regime. For a recent paper on the history of these humanitarian carve-outs, the addition of such a carve-out to the UN's Taliban sanctions regime, and how similar steps could be taken with respect to certain entities subject to 1267 sanctions, see Agathe Sarfati, "An Unfinished Agenda: Carving Out Space for Humanitarian Action in the UN Security Council's Counterterrorism Resolutions and Related Sanctions," International Peace Institute, March 2022.

40 To be fair, each UN sanctions regime has its own unique set of designation criteria. It is conceivable, therefore, that an individual could be removed from, say, the UN's Mali sanctions list while remaining on the 1267 list. Were such an individual seek to be removed from both lists at the same time, however, they would receive two different forms of process and two different timelines for review.

states to implement the sanctions (e.g., it eliminated some of the false positives against individuals who were wrongly targeted for having similar names) and afforded a measure of notice and transparency to listed individuals (i.e., with more identifying information, it became easier to contact these individuals; and with more clearly articulated reasons, it offered a clearer notice of the Council's rationale for the listings). Similarly, by directing the Monitoring Team to produce a report on the effectiveness of the asset freeze, travel ban, and arms embargo, the Security Council will receive a more concrete look at the impact of these sanctions, which should lead to more discriminating and impactful listing requests (and thus, fewer legal challenges) going forward.

## Right-Sizing the 1267 Regime for the Post-“Age of Terror” World

Although 1267 sanctions are more nimble, more targeted, more transparent, and fairer than at any point in time since their creation, the Security Council is only marginally better at understanding the actual impact of the sanctions on a threat that has evolved considerably since the sanctions tool was first deployed more than 20 years ago.

In 2001, the international community prioritized the asset freeze as a way to address the threat posed by a limited number of al-Qaeda financiers who were funding acts of terror. Today, the threat is more diffuse, and would-be terrorists shy away from the use of traditional financial channels. Similarly, in 2001 the international community prioritized the travel ban as a way to prevent members of al-Qaeda and the Taliban from traveling to Western

countries to plot and carry out attacks. Today, the threats involve more online coordination and planning, with more localized attacks. Acts of terror have also become more diffuse: geographically, there has been somewhat of a shift from the Middle East to the Sahel;<sup>41</sup> and structurally, a once-centralized leadership (led by al-Qaeda) has given way to splinter groups and offshoots of ISIS and al-Qaeda. Far less coordination and funding are needed for modern-day attacks, as lone wolf acts continue to persist.<sup>42</sup>

As the threat of terrorism has evolved in the last two decades, it has also become less relevant to contemporary threats. Most policymakers now place it lower on their priority lists, as other global threats and challenges—such as pandemic preparedness and response, nuclear proliferation, corruption, and climate change—have become more acute concerns. Nevertheless, even as the Security Council shifts its attention to a wider range of topics, it should continue to take stock of the evolving terrorist landscape. It can do so more efficiently, provided it addresses the right issues.

More than twenty years after 9/11 is therefore a good opportunity for the Council to reassess the impact of the 1267 regime and discuss a few foundational questions. For example, should the Council reconsider the objectives of its premier terror finance body? How might the scope and methodologies change? Are the expert bodies and tools used to counter terror finance still fit for purpose? How should the Council's objectives be communicated more effectively to member states, regional organizations, civil society, and the terrorists themselves? And finally, how do

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41 Institute for Economics & Peace, *Global Terrorism Index 2022: Measuring the Impact of Terrorism*, Sydney, March 2022, [https://www.visionofhumanity.org/wp-content/uploads/2022/03/GTI-2022-web\\_110522-1.pdf](https://www.visionofhumanity.org/wp-content/uploads/2022/03/GTI-2022-web_110522-1.pdf); see, e.g., S/2002/83, February 3, 2002, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/416/14/PDF/N2141614.pdf> (29<sup>th</sup> Report of the Analytical Support and Sanctions Monitoring Team):

The success of ISIL and Al-Qaida affiliates in Africa...remains deeply concerning to Member States. ISIL affiliates in Mozambique and the Sahel have both suffered setbacks, but are assessed to pose significant ongoing threats. The ISIL affiliate in the Lake Chad basin has grown in strength...confirming its status as, numerically, the strongest ISIL province outside the core region and looking poised to expand its area of operations. Meanwhile, the key Al-Qaida affiliates in both Somalia and the Sahel have continued to grow in strength and ambition.

42 According to Vladimir Voronkov, the current head of the UN Office of Counter-Terrorism (UNOCT), “The threat has become even more difficult to prevent, with low-cost, low-tech attacks against soft targets by so called *lone wolves*” (emphasis added). “UN Counter-Terrorism Chief Urges Continued Vigilance Against ‘Real’ Ongoing Threat,” UN News, January 12, 2021, <https://news.un.org/en/story/2021/01/1081902>. Similarly, a 2021 Council on Foreign Relations “Issue Brief” on global terrorism notes: “The decentralized, diffuse, and increasingly transnational nature of terrorism poses a series of new challenges to the global counterterrorism regime. Heightened security measures in the United States and Europe have decreased the likelihood of large-scale terrorist attacks reminiscent of 9/11, but so-called ‘lone wolves’—individuals inspired by, but operating independently from, foreign terrorist organizations—remain a constant, largely undetectable threat.” Council on Foreign Relations, “Options for Strengthening the Global Counterterrorism Regime,” Issue Brief, <https://www.cfr.org/global-governance-monitor/#/terrorism?printId=4351>.

the UN's terrorism sanctions fit into its broader approach to countering terrorism?

For reasons explained forthwith, while the 1267 Committee's objectives remain both relevant and sound, its methodologies—specifically the process of adding and removing the names of sanctioned individuals and entities, and the collection and analysis of data—should be reevaluated.

### *Similar Objectives...*

The Security Council's purported objectives for maintaining the 1267 regime include constraining the flow of funds to ISIS and al-Qaeda, stigmatizing individuals who associate with these groups, deterring would-be terrorists from joining or supporting these groups, and signaling to the international community that despite rising geopolitical differences among its members, the Security Council remains united in its willingness to condemn these groups and the acts of terror they promulgate. Despite the fact that the threat landscape is more diffuse, both geographically and structurally, the Council's objectives remain as relevant and valid as ever. Even if one were to assume that terror finance should no longer be among the Council's top priorities, it is still prudent to keep the 1267 architecture in place as a way to monitor the threat and have a readymade tool at hand if the threat worsens.

There is, however, a definitional challenge. The UN is still no closer to defining "terrorism" than it was 25 years ago. Member states remain incapable, for example, of finalizing the Comprehensive Convention on International Terrorism. Divisive debates in the UN General Assembly over the definition of terrorism, largely centered on the

age-old adage "one man's terrorist is another man's freedom fighter" and differences in the application of international humanitarian law (IHL), have bogged down the Sixth (Legal) Committee's work since the mid-1990s. As a result, the sprawling UN counterterrorism framework that exists today offers UN member states latitude in identifying which "terrorists" should be considered within the scope of their measures. The exception has been ISIS, al-Qaeda, and the Taliban<sup>43</sup>—three groups that have been deemed terrorists—by virtue of unanimous votes in the UN Security Council on resolution 1267 (and on every subsequent sanctions resolution against these groups since 1999).<sup>44</sup>

### *...Changing Methodologies*

The 1267 regime's procedures and methodologies have both progressed over the last two decades, but certain areas are ripe for further improvement. The 1267 Committee's listing and delisting processes, while significantly better than they were in 2006, can still be simplified and modernized. In December 2021, the Council acknowledged as much when it adopted UN Security Council Resolution 2160, its latest pronouncement on the 1267 Committee's mandate.<sup>45</sup> One of the 1267 Monitoring Team's recent recommendations, for instance, was for the UN Secretariat to provide a more user-friendly, accessible log of changes to the sanctions list. These changes are currently communicated by press release, which is an inefficient means of conveying information that is vital for maintaining accurate screening capabilities.

The Council should also consider modernizing its collection, analysis, and dissemination of listing data and implementation metrics. Doing so will offer the 1267 Committee the ability to promote more narrowly tailored,

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43 It remains to be seen whether the Taliban's takeover of Afghanistan in summer 2021 will impact how the Security Council, and UN member states more broadly, will perceive the Taliban.

44 As noted earlier, the Security Council added al-Qaeda to the 1267 list in 2000 and later added the Islamic State of Iraq and the Levant (ISIL or ISIS) in 2015. In 2004, the Council attempted to expand the list of groups against which these sanctions could be applied. In UN Security Council Resolution 1566 (2004), S/RES/1566 (2004), October 8, 2004, <https://www.un.org/ruleoflaw/files/n0454282.pdf>, the Council decided to create a "working group consisting of all members of the Security Council to consider and submit recommendations to the Council on practical measures to be imposed upon individuals, groups or entities involved in or associated with terrorist activities, other than those designated by the Al-Qaida/Taliban Sanctions Committee." These efforts, however, never came to fruition, as the Council remained unable to agree on a way to expand the definitional scope of terrorism beyond these groups.

45 Among other things, the Council directed the UN Secretariat, with the assistance of the 1267 Monitoring Team, to take concrete steps to use resources to implement, disseminate, and maintain the "data model" approved by the 1267 Committee. The Secretariat has already received funding for this data model but has not yet produced results. In theory, this data model should be used as a sanctions listing tool that can be integrated seamlessly into sanctions screening systems used around the world by governments and the private sector to identify and disposition potential matches. Sadly, this is not yet the case.

dynamic listing strategies. If the Committee can identify which measures, among the asset freeze, travel ban, and arms embargo, are most and least effective, it can then tailor capacity building assistance accordingly. And if UN expert panels have a sense of which countries are most responsible for failing to implement, say, asset freezes or travel bans, they can provide targeted assistance to those countries immediately after designations are announced, rather than merely providing capacity building assistance more generally. Tethering assistance to concrete implementation goals against sanctioned individuals may lead to more concrete deliverables.

### **Thinking Outside the Box**

Where the Committee identifies cases in which all three targeted measures (i.e., the asset freeze, travel ban, and arms embargo) are deemed ineffective, perhaps the Council can decide to pursue an even more innovative approach by developing a “name and shame” list. Such a list would allow the Council to maintain the symbolic, stigmatizing, and signaling effect of the sanctions without some of the attendant problems that arise from implementing and enforcing the sanctions.<sup>46</sup> This “sanctions-lite” option could reduce the prospect of litigation, for two reasons: listed individuals are less likely to have a legal claim if their property rights or ability to travel freely are not infringed, and defenders of the Security Council’s process can assert that the sanctions tool is less blunt and more narrowly responsive to the threat.

Significant downsides exist to this approach, however. If member states and financial institutions treat individuals on the “sanctions-lite” list the same way they treat designated individuals (i.e., they include them on their own internal asset freeze lists), it could spark a flurry of new legal challenges by individuals on these lists. And if sanctions skeptics on the Council begin to favor the “sanctions-lite” option over traditional sanctions in *every* negotiation, it will lead to more difficult negotiations and erode the Council’s ability to adopt more meaningful responses to threats to international peace and security.

Still, this sort of “outside the box” thinking should be encouraged as the Council diversifies its toolkit in the face of a dynamic threat picture.

The Security Council should also consider rethinking its stove-piped approach to both counterterrorism and sanctions. The problem with treating terrorism as a distinct “threat to international peace and security” means that conversations about terrorism in the Council typically occur outside of any particular country-specific or region-specific context. The Council continues to have separate conversations about, for instance, security challenges in the Sahel and counterterrorism *writ large*. It also continues to discuss country-specific sanctions regimes apart from those same countries’ peacekeeping missions and political situations.

This bifurcation not only generates a proliferation of meetings; it also results in less coordinated policy outcomes. Sanctions and counterterrorism tools are only as effective as the policies they are intended to further, which means that disjointed conversations lead to disjointed outcomes, with increasingly complex directives that have become more difficult to implement at the country level.<sup>47</sup> The Security Council should do more to integrate its terrorism and terror finance mandates more fully into the mandates of UN peacekeeping and political missions. This will improve both process and policy.

Finally, and perhaps most significantly, the Council should consider reshaping the structure of the UN’s famously unwieldy counterterrorism architecture. The Monitoring Team and CTED should collaborate more often and, ideally, be consolidated into one body, both to avoid redundant mandates and present a united voice to member states. This would facilitate messaging—to member states, regional organizations, civil society, and the targets themselves—and streamline the delivery of more targeted and effective capacity building assistance. Calls to consolidate the work of the 1267 Monitoring Team with that of the Counter-Terrorism Committee

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46 It is worth noting here that the 1267 Monitoring Team already includes the names of non-sanctioned individuals and entities in its reports to the UN Security Council. Lauren Fredericks and Matthew Levitt describe this practice, as well as the possible motivations of the Monitoring Team for doing so, in a June 12, 2022 essay in *Lawfare*: <https://www.lawfareblog.com/united-nations-list-not-listed-terrorist-entities>.

47 This is not a problem unique to the Security Council; indeed, the U.S. decision-making apparatus has faced similar scrutiny when its bifurcated process has led to outcomes that skewed in favor of terrorism objectives over political or country-specific considerations. See Robert Malley and Jon Finer, “The Long Shadow of 9/11: How Counterterrorism Warps U.S. Foreign Policy,” *Foreign Affairs*, July/August 2018, <https://www.foreignaffairs.com/articles/2018-06-14/long-shadow-911>.

have existed as far back as 2004,<sup>48</sup> but these proposals have never gained any traction. But now, in light of the two decades that have elapsed since the creation of these bodies, an increasingly fraught global economic landscape, and the UN Secretary-General's oft-cited budgetary concerns,<sup>49</sup> the time may be right to reimagine these overlapping counterterrorism mandates.

## Conclusion

More than two decades since the creation of the Security Council's first targeted sanctions regime, the Council continues to muddle through with a scattershot collection of tools and lists to call out those associated with ISIS and al-Qaeda and deter would-be terrorists and their supporters from using the international financial system to fund acts of terror. Through the slow accretion of language, in the form of 1267 Security Council resolutions every 18 months or so, the Council has incrementally strengthened its ability to monitor and improve implementation and enhance due process.

The 1267 regime has made remarkable progress in the last two decades. In the early 2000s, the regime was a central component of the international community's efforts to curtail terror finance and castigate those associated with al-Qaeda. With the rise of ISIS in 2014, the Council breathed new life into the regime, as it embarked on another "all of the above" approach, this time against ISIS. Since then, the Council has embedded its terrorism sanctions within a broader UN framework that has included, for example, new obligations to stem the rise of foreign terrorist fighters, greater efforts to prevent and counter violent extremism, and an ever more clunky UN counterterrorism bureaucracy.<sup>50</sup> But despite explicit signals in the text of its resolutions, the Council's efforts to include counterterrorism sanctions as merely one aspect of a broader framework have proven to be more aspirational than pragmatic.

More recently, in the last few years, despite the depletion of ISIS' resources and fewer high-profile terrorist attacks, the Security Council has continued to update its terrorism sanctions list and take stock of emerging terror finance trends, even as the Council has begun to prioritize other global threats and challenges. But the Council has performed these tasks almost reflexively, without taking time to review the overall impact of these changes or the efficacy of its approach. Unlike the UN's country-based sanctions regimes, for which the Security Council has frequently updated its objectives, and discussed the circumstances in which the sanctions can be lifted, the 1267 regime has no end in sight. The Council has neither articulated any off-ramps, nor communicated the conditions necessary for winding down the regime as a whole. Should 1267 sanctions continue endlessly, or will there be a point at which the terrorist threat no longer justifies the indefinite extension of this regime? Moreover, should the Council's weapons of choice—the asset freeze, travel ban, and arms embargo—remain the same? Or should the Council consider other tools?

Nevertheless, even if the 1267 regime's importance has begun to wane in recent years, it remains an important pillar in the UN's fight against terrorism. To stay relevant, though, it needs to modernize its approach. The Council—and more importantly, its 1267 Committee, the Secretariat, and the Monitoring Team—should make use of new tools to transform the regime, become more efficient at collecting and analyzing key metrics, and use these data to inform UN member states about the most impactful ways to cultivate and use counterterrorism sanctions.

The Monitoring Team and CTED Joint Report, published in 2020 pursuant to UN Security Council Resolution 2462, is a good start.<sup>51</sup> The data collected from UN member states on their implementation of terrorism finance obligations can facilitate more targeted and

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48 See, e.g., Eric Rosand, "The Security Council's Efforts to Monitor the Implementation of Al Qaeda/Taliban Sanctions," 98 ASIL 745 (2004) (concluding that "since the work of the two Security Council bodies devoted to combating terrorism overlap considerably and the differences between them may in fact not be as great as they appear, the Council may soon want to consider consolidating them into a single counterterrorism committee").

49 See, e.g., Radmilla Suleymanova, "United Nations: Challenges Grow but Not the Budget to Meet Them," Al-Jazeera, September 21, 2001.

50 See, e.g., UN Security Council Resolution 2178 (2014), S/RES/2178 (2014), September 24, 2014 (on foreign terrorist fighters), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/547/98/PDF/N1454798.pdf>; UN Security Council Resolution 2354 (2017), S/RES/2354 (2017), May 24, 2017 (on countering terrorist narratives), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/149/22/PDF/N1714922.pdf>; and UN General Assembly Resolution 71/291 (2017), A/RES/71/291, June 19, 2017 (establishing the UN Office of Counter-Terrorism), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/172/58/PDF/N1717258.pdf>.

51 Monitoring Team and CTED Joint Report, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/138/54/PDF/N2013854.pdf>.

effective assistance by UN expert bodies to these states. Linking the data more directly to capacity building is a logical, and necessary, next step.

By modernizing and updating its approach, the Council will ensure the relevance of the sanctions tool and position itself well, especially as terrorists pursue new and innovative methods of moving money and evading sanctions. The Security Council should engage in these difficult discussions—on strategy, methodology, and objectives—even if the threat of terrorism itself is not the priority it once was. It is better to take stock now, and adjust accordingly, instead of scrambling in the immediate aftermath of the next major terrorist attack.

## Recommendations

- Assemble more relevant metrics on the frequency of listings and delistings and make these statistics available to all UN member states and the general public. The names of designees receiving exemptions to the asset freeze should no longer remain confidential to the 1267 Committee.
- Direct the UN Secretariat, in consultation with the 1267 Monitoring Team, to keep and share statistics on (1) listing requests that are rejected by the 1267 Committee, (2) the frequency and number of delisting requests, and (3) the names of individuals and entities removed from the list. This information should be made public and available on the Committee’s website.
- Direct the UN Secretariat to compile records of listing and delisting trends, which can be gathered from the Committee’s annual reports. These trends will be helpful in monitoring the Committee’s progress.
- Direct the UN Secretariat, with the assistance of the 1267 Monitoring Team, to implement, disseminate, and maintain the data model approved by the 1267 Committee, consistent with the Security Council’s direction in UNSCR 2610 (2021). The Secretariat should also continue to simplify the process of reviewing and updating the sanctions list, per the Council’s direction in several resolutions.
- Direct the UN Secretariat to produce a report on the extent to which the mandates of the 1267 Monitoring Team and CTED overlap, and then consider consolidating these expert bodies into a single and more transparent structure. This may be the best way to ensure that the UN’s terrorism sanctions program is embedded within the Council’s overall approach to tackling terrorism.
- Direct the Monitoring Team to coordinate more closely with CTED and UNODC to boost the capacity of regional blocs, most notably the African Union, ASEAN, and ECOWAS, to implement financial sanctions. Capacity-building assistance should be tailored to the unique needs of developing countries. Countries that are most impacted by terrorism (i.e., those with a disproportionately high number of victims of terrorism) should be encouraged to submit sanctions designations.
- Integrate counterterrorism, including counterterror finance mandates, more fully into UN peacekeeping and political mandates.
- Direct the 1267 Committee to produce an annual report on implementation of the asset freeze, travel ban, and arms embargo. UN Security Council Resolution 2610 (2021) includes a “request” that member states indicate whether they have frozen assets. This non-binding language (i.e., “request”) should be upgraded to a requirement. It should also be expanded to include statistics on the travel ban and arms embargo.
- Task the 1267 Monitoring Team with conducting and disseminating a study into other forms of targeted sanctions beyond the traditional three (i.e., asset freeze, travel ban, arms embargo). The Council can then consider whether alternative measures might be more responsive to evolving terrorist threats.
- Develop clear guidance on the steps needed to boost member state capacity to implement the asset freeze, travel ban, and arms embargo,<sup>52</sup> and then create a road map for relevant UN counterterrorism bodies (e.g., the UN’s Office of Counter-Terrorism (UNOCT), UNODC, and CTED to follow, while avoiding redundancies).

52 A useful model is the Madrid Guiding Principles on foreign terrorist fighters, which were adopted by the Security Council in December 2015 (S/2015/939, December 23, 2015, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/448/85/pdf/N1544885.pdf>) and then expanded in December 2018 (S/2018/1177, December 28, 2018, [https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/2018-addendum-to-the-2015-madrid-guiding-principles\\_as\\_adopted.pdf](https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/2018-addendum-to-the-2015-madrid-guiding-principles_as_adopted.pdf)).

- To boost participation from member states that are victims of terrorism: (1) encourage the Chair of the 1267 Committee and the 1267 Monitoring Team to engage more closely with such countries, both to provide information and lift the veil of secrecy that is often associated with the Committee's closed-door consultations; (2) encourage designating states to work in tandem with such countries, well in advance of submitting listing requests, to share intelligence and boost the likelihood that they will support such listing requests; and (3) direct the 1267 Monitoring Team, in partnership with CTED, to prioritize the delivery of technical assistance to these states.
- Direct the 1267 Monitoring Team, in consultation with CTED, to study the extent to which groups and individuals rely on blockchain, cryptocurrency, digital assets, and other novel forms of money exchanges to finance terrorism and/or evade sanctions. The Monitoring Team and CTED should prepare a list of recommendations as to how member states should address this threat (in areas such as coordination, capacity building, augmenting legislative frameworks, etc.).

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