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doi:10.1093/hrlr/ngp009

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# The UN Anti-terror Sanctions Regime under Pressure

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## 1. Introduction

The plague of international terrorism has not only resulted in a ripple effect on national legislative activity, particularly in the wake of the 11 September 2001 attacks, but it has also led to wide consensus within the international community to adopt a prompt and effective response to counter the financing of terrorism. In its fight against terrorism, the United Nations Security Council (SC) has resorted to the same strategy inaugurated in 1997 (and supplemented in 1998) with the introduction of travel and financial restrictions against members of the UNITA<sup>1</sup>.

Targeting individuals, rather than a specific State, marked a qualitative change in the SC's sanctions policy. These so-called 'targeted sanctions', also known as 'smart sanctions', have been introduced in a number of SC resolutions directed against individuals and entities allegedly associated with the Taliban and Al-Qaida. By means of Resolution 1267,<sup>2</sup> the SC, *inter alia*, required States to freeze funds and financial assets controlled directly or indirectly by the Taliban; likewise, Resolution 1333<sup>3</sup> ordered as much with regard to Osama bin Laden and his associates. To these resolutions, blacklists were attached for listing the targeted individuals and corporate entities. Resolution 1390<sup>4</sup> renewed the Taliban/Al-Qaida blacklists and expanded the reach of the sanctions to any person associated with the Taliban, Osama bin Laden or

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1 Portuguese acronym for União Nacional para a Independência Total de Angola (National Union for the Total Independence of Angola).

2 SC Res. 1267, 15 October 1999, S/RES/1267 (1999).

3 SC Res. 1333, 19 December 2000, S/RES/1333 (2000).

4 SC Res. 1390, 16 January 2002, S/RES/1390 (2002).

Al-Qaida, imposing on the latter a travel ban and arms embargo. It was the first resolution which dispensed with any link to a specific territory or State.<sup>5</sup> The Resolutions setting out the targeted sanctions regime are binding on all United Nations (UN) Member States because they were adopted under Chapter VII of the UN Charter.

Under the three Resolutions, a Sanctions Committee was established with a mandate to maintain a list of individuals and corporate entities that are to be subjected to the sanctions as well as monitoring the implementation of the sanctions by the States. Listings are done upon a corresponding request by a State. Targeted individuals and entities may submit a request for de-listing through the State of their residence or citizenship or through a 'focal point' in the UN Secretariat. The Sanctions Committee operates on the basis of consensus.

In view of the grave consequences of these sanctions for the targeted individuals, from a rule of law perspective, it is imperative that legal avenues are available for individuals to claim some form of review of the measures imposed on them. However, the lack of legal safeguards countervailing a possible arbitrary exercise of political power of the SC (through its Sanctions Committee) has been a major problem with the SC targeted sanctions.

While initially, under Resolution 1267, sanctions were imposed without any specific procedural standards, the procedural flaws have been addressed in subsequent resolutions setting up listing criteria<sup>6</sup> and providing for a 'statement of case' to be submitted by the nominating State and obligatory notification of inclusion on the list to the relevant individuals and entities.<sup>7</sup> Furthermore, the establishment of a 'focal point' within the UN Secretariat<sup>8</sup> to which individuals can directly lodge their de-listing requests is certainly an improvement, as the individual is no longer dependent on his State of nationality or residence to initiate a de-listing procedure on his behalf. A further welcome development has been the adoption of SC Resolution 1822, which provides that the Sanctions Committee shall conduct a review of all names on the UN sanctions list at the date of adoption of that resolution by 30 June 2010 and thenceforth to undertake 'an annual review of all names on the Consolidated List that have not been reviewed in three or more years . . .'<sup>9</sup>

5 See Cameron, 'UN Targeted Sanctions, Legal Safeguards and the European Convention on Human Rights', (2003) 72 *Nordic Journal of International Law* 159 at 164.

6 SC Res. 1526, 30 January 2004, S/RES/1526 (2004) called upon States to include in their listing requests identifying and background information 'to the greatest extent possible' and SC Res. 1617, 29 July 2005, S/RES/1617 (2005) clarified the meaning of the term 'associated with'.

7 SC Res. 1617 mandated that proposing States submit a 'statement of case describing the basis of the proposal'. SC Res. 1735, 22 December 2006, S/RES/1735 (2006) specified the content of the statement of case and provided for the obligatory notification of listed individuals and entities, though this does not necessarily include the reasons for listing.

8 SC Res. 1730, 19 December 2006, S/RES/1730 (2006).

9 SC Res. 1822, 30 June 2008, S/RES/1822 (2008) at paras 25 and 26.

Yet, these improvements are clearly insufficient. With respect to the listing procedure, individuals have no right to be heard, let alone in the context of judicial proceedings where a decision is rendered by an impartial judicial or quasi-judicial body. Fair trial standards as enshrined in the relevant human rights instruments are only engaged if the sanctions are considered to be 'criminal' in nature, and not merely of a preventative, administrative nature as characterised by the UN organs.<sup>10</sup> Whilst views by scholars and (quasi-)judicial bodies<sup>11</sup> diverge on whether targeted sanctions are to be regarded as civil, criminal, or administrative in character,<sup>12</sup> the fact remains that the sanctions which give rise to severe consequences for the targeted individuals are imposed on them without there being any international legal mechanism for reviewing the accuracy of the information forming the basis of a State's listing request or the proportionality of the measures adopted.<sup>13</sup> Thus, '[t]here is still the prospect that individuals might be listed based on mistaken identity.'<sup>14</sup> To quote Council of Europe Parliamentary Assembly investigator Dick Marty (Switzerland): 'A country proposes that a person be added, often without giving any detailed reasons, even to the other members of the Sanctions Committee, and the Committee agrees without hearing or even notifying the person concerned.'<sup>15</sup> Furthermore, the consensus nature of the Sanctions

- 10 The targeted sanctions are characterised by SC Res. 1735, supra n. 7, as being 'preventative in nature and not reliant upon criminal standards set out under national law'. See also the Guidelines of the Committee for the Conduct of its Work, adopted on 7 November 2002 and last amended on 9 December 2008, at para. 6: 'A criminal charge or conviction is not necessary for inclusion on the Consolidated List as the sanctions are intended to be preventive in nature.' The revised Guidelines are available at: <http://www.un.org/sc/committees/1267.Guidelines.pdf> [last accessed 18 May 2009].
- 11 While not expressly pronouncing itself on the legal nature of the sanctions, the European Court of Justice (ECJ) in *Joined Cases C-402P and C-415/05P, Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities* [2008] ECR I-(nyr) held the fair trial guarantees and the right to an effective remedy applicable. See Ziegler, 'Strengthening the Rule of Law, but Fragmenting International Law: The *Kadi* Decision of the ECJ from the Perspective of Human Rights', (2009) 9 *Human Rights Law Review* [in press]. In contrast, the Sanctions Committee in the present case concluded that the sanctions were in effect administrative, see below.
- 12 For a discussion on the proper characterisation see, for example, Bianchi, 'Assessing the Effectiveness of the UN Security Council's Anti-terrorism Measures: The Quest for Legitimacy and Cohesion', (2006) 17 *European Journal of International Law* 881 at 905; and van den Herik, 'The Security Council's Targeted Sanctions Regimes: In Need of Better Protection of the Individual', (2007) 20 *Leiden Journal of International Law* 797 at 806.
- 13 Cameron, supra n. 5 at 159. See also van den Herik, *ibid* at 798: '[S]till there is no possibility whatsoever of some independent substantive review at UN level. Here again it becomes clear that, more than anything else, the real stumbling block is the substantive review of intelligence information by an independent and impartial organ.'
- 14 Marty, 'United Nations Security Council and European Union blacklists', Report of the Committee on Legal Affairs and Human Rights, Parliamentary Assembly, 16 November 2007, Doc. 11454 at Point C. II. ii. A., available at: <http://www.assembly.coe.int/Mainf.asp?link=/Documents/WorkingDocs/Doc07/eDOC11454.htm> [last accessed 12 April 2009].
- 15 Marty, 'UN Security Council black lists: Introductory memorandum', Committee on Legal Affairs and Human Rights, Parliamentary Assembly, AS/Jur 9 (2007) 14, 19 March 2007, ajdoc14 2007, available at: <http://assembly.coe.int/CommitteeDocs/2007/20070319.ajdoc14.pdf> [last accessed 12 April 2009].

Committee's decision-making means that, once a name is on a list, any SC Member can block its removal, even in the face of a national court decision affirming the innocence of a listed individual, and despite the fact that the State which originally submitted an individual's name for listing itself requests the removal of that individual from the sanctions list. The procedure at the 'focal point' is also political and based on consensus, lacking any proper legal safeguards.

Over the past years, targeted sanctions have been the focus of criticism by scholars, reports commissioned by international organisations<sup>16</sup> and governments,<sup>17</sup> and were not least challenged in legal proceedings. The most recent case exposing the problems of wrong listings and the glaring deficiency of the de-listing procedure concerns a Belgium couple—Nabil Sayadi, who is of Lebanese descent, and his wife Patricia Vinck. Sayadi and Vinck were, respectively, the director and secretary of *Fondation Secours Mondial* (FSM), the Belgium office of the Global Relief Foundation (GRF), an Islamic charitable organisation based in the United States. The United States suspected the GRF of having provided financial and other assistance to, and receiving funding from, individuals associated with Al-Qaida. On the basis of a request from the United States, the GRF was placed on the Sanctions Committee list in October 2002. Subsequently, upon a proposal for listing by Belgium, the names of Sayadi and his wife were added to the UN sanctions list on 22 January 2003, which was subsequently appended to a European Community regulation<sup>18</sup> and a ministerial order issued in the State party.<sup>19</sup>

The consequences for the Sayadi couple and their four children were harsh. As a result of their listing, all of the couple's financial assets were frozen and, because of the travel ban, they could no longer travel within or leave Belgium, and Mr Sayadi was unable to take up an offer of employment in another country. Mr Sayadi and his wife have neither been prosecuted nor convicted, and they boast a clean criminal record.

Sayadi and Vinck submitted several requests in 2003 to the Belgian Government, European Union (EU) Commission and to diverse organs of

16 See Cameron, *The European Convention on Human Rights, Due Process and United Nations Security Council Counter-terrorism Sanctions* (commissioned by Council of Europe, 2006), available at: <http://www.coe.int/T/E/LegalAffairs/Legal-co-operation/PublicInternationalLaw> [last accessed 10 April 2009]; and Fassbender, *Targeted Sanctions and Due Process* (commissioned by the UN Office of Legal Affairs, 2006), available at: <http://www.un.org/law/counsel/Fassbender.study.pdf> [last accessed 10 April 2009].

17 See White Paper prepared by the Watson Institute, *Strengthening Targeted Sanctions through Fair and Clear Procedures*, A/60/887-/2006/331 (2006), available at: <http://www.watsoninstitute.org/pub/StrengtheningTargetedSanctions.pdf> [last accessed 12 April 2009].

18 Commission Regulation (EC) No. 145/2003 of 27 January 2003 amending Regulation (EC) No. 881/2002 for the ninth time.

19 Ministerial order of 31 January 2003 amending ministerial order of 15 June 2000 implementing the Royal Decree of 17 February 2000 concerning the restrictive measures directed against the Taliban in Afghanistan.

the UN in an attempt to have their names struck off the sanctions list. On 11 February 2005, after two and half years of investigation without an indictment, the Brussels Court of First Instance ordered the Belgian State to file a de-listing request with the Sanctions Committee. The Judge's Chambers of the Brussels Court of First Instance exonerated the plaintiffs of any suspected criminal activities, dismissing the case on 25 February 2005. Although Belgium promptly complied with the Court of First Instance's ruling, and repeated its de-listing request a year later, the de-listing procedures were blocked each time by members of the Sanctions Committee. Thus, despite these clear judicial decisions in favour of the plaintiffs, Sayadi and Vinck continue to be subjected to the sanctions.

## 2. Disputed Competence

Whilst roaming the institutional landscape, Sayadi and Vinck also filed an individual complaint with the Human Rights Committee (HRC). Belgium disputed the HRC's competence to consider the complaint on the basis of Article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights 1966 (the Covenant)<sup>20</sup> which stipulates that for a complaint to be admissible, the individual in question must be subject to the jurisdiction of a State party.<sup>21</sup> Since its measures taken to implement the UN anti-terror sanctions were dictated by its international obligations to comply with SC decisions adopted under Chapter VII, Belgium alleged that the actions against Sayadi and his wife fell beyond the scope of its domestic jurisdiction. Thus, Sayadi and Vinck were not subject to Belgium's jurisdiction within the meaning of Article 1 of the Optional Protocol, and could not challenge Belgium's measures taken to implement its UN Charter obligations.<sup>22</sup> In the same vein, in her dissenting opinion, Ruth Wedgwood held that the complaint was 'inadmissible because it [pleaded] no cognizable violation by the State party'.<sup>23</sup> In conclusion, she stated that '[t]he only actions taken by Belgium were in accordance with the binding mandate of the Security Council'.<sup>24</sup>

Belgium's argument weighed heavily. Indeed, pursuant to Article 25 of the UN Charter, States must accept and carry out the decisions of the SC, and Article 103 of the UN Charter sets out the primacy of the States' Charter obligations *vis-à-vis* their other international obligations. It is generally argued that because of the pre-eminent role of the SC and the importance of the interests

20 99 UNTS 171.

21 *Sayadi and Vinck v Belgium* (1472/2006), CCPR/C/94/D/1472/2006 (2008); 16 IHRR 427 (2009) at para. 6.1.

22 *Ibid.*

23 *Ibid.* at Dissenting Opinion of Ruth Wedgwood.

24 *Ibid.*

at stake, the SC enjoys a wide measure of discretion under Chapter VII both to determine the existence of one of the situations that could trigger its powers and in respect of the choice of measures contemplated under the Charter to be employed. By signing the UN Charter, UN Member States have implicitly accepted the supremacy of the SC, which is not checked by any body with explicit powers to monitor and control it.<sup>25</sup> Article 24 of the UN Charter provides that the SC shall act in accordance with the purposes and principles of the Charter, including the maintenance of international peace and security in accordance with the principles of justice and international law, and the protection and promotion of human rights. However, in the absence of a judicial body at the UN level which could check the actions of the SC, the latter, it is claimed, has the *kompetenz-kompetenz* in deciding to what extent it is bound by human rights.<sup>26</sup> However, to accept such an argument would be to accept the irrelevance of international law to international politics. The debate about the limits to the SC's exercise of its powers has been a well-rehearsed topic. Here, it should suffice to state that the view of the SC being unfettered by law is untenable.<sup>27</sup>

Conceptually distinct from the previous issue is the question of whether States are bound by the rule of law when implementing SC Resolutions. This issue was addressed in SC Resolution 1456, according to which 'States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, in particular human rights, refugee and humanitarian law . . .'.<sup>28</sup> Hence, regardless of whether the SC sanctions are consistent *per se* with international law, States are obliged to ensure that their implementation does not violate international law.

25 Cameron, *supra* n. 5 at 174. Compare Belgium's contentions in *Sayadi*, *supra* n. 21 at para. 6.3: 'In ratifying the Charter, the State party transferred powers to the Security Council, and it has subsequently ratified the Covenant. At the time when the State party ratified the Covenant, the powers it had transferred to the Security Council were no longer within its competence, and so the State party cannot be held responsible under the Covenant for how those powers are exercised.'

26 *Ibid.* at 173.

27 Angelet, 'International Law Limits to the Security Council', in Gowlland-Debbas (ed.), *United Nations Sanctions and International Law* (The Hague: Kluwer Law International, 2001) 71; De Wet, *The Chapter VII Powers of the United Nations Security Council* (Oxford: Hart, 2004) at 133–216; Dugard, 'Judicial Review of Sanctions', in Gowlland-Debbas, *ibid.* at 83; Gill, 'Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter', (1995) 26 *Netherlands Yearbook of International Law* 33; Lamb, 'Legal Limits to United Nations Security Council Powers', in Goodwin-Gill and Talmon (eds), *The Reality of International Law: Essays in Honour of Ian Brownlie* (Oxford: Clarendon Press, 1999) 361; Nolte, 'The Limits of the Security Council's Powers and its Functions in the International Legal System: Some Reflections', in Byers (ed.), *The Role of Law in International Politics* (Oxford: Oxford University Press, 2000) 315; and Schweigman, *The Authority of the Security Council under Chapter VII of the UN Charter: Legal Limits and the Role of the International Court of Justice* (The Hague: Kluwer Law International, 2001).

28 SC Res. 1456, 20 January 2003, S/Res/1456 (2003) at para. 6.

The consistency of State conduct in the context of implementing SC sanctions with legally binding rules is thus susceptible to judicial or quasi-judicial review. As for the latter, the HRC concluded that while it could not pass judgment on the legality of SC measures taken under the UN Charter, it was competent to consider whether 'a State party had violated rights set forth in the Covenant, regardless of the source of the obligations implemented by the State party'.<sup>29</sup>

### 3. Dilemma in International Law

As a matter of fact, the Belgian State found itself in a dilemma: if it chose to lift the financial ban, it would breach its obligations under the UN sanctions regime. If it left the sanctions in place against Sayadi and Vinck, without any incriminating evidence found against them, it would violate their human rights.

Concerning the merits, the Belgian Government maintained that, because of the primacy accorded to UN Charter obligations by Article 103 of the Charter, it had no option but to comply with the SC Resolutions.<sup>30</sup> If Belgium was held to be in violation of the Covenant, taken in isolation, Articles 25 and 103 of the UN Charter would nonetheless absolve the Belgian State of responsibility for failure to fulfil its lower ranking obligations under the Covenant.<sup>31</sup> Furthermore, the Belgian Government asserted that it had taken all appropriate measures within its powers to have the authors' names de-listed.<sup>32</sup>

The HRC accepted Belgium's argument that the SC sanctions, though involving serious consequences for the complainants, are of a preventive rather than a punitive nature and thus cannot be characterised as 'criminal' for the purposes of Article 14(1) of the Covenant.<sup>33</sup> Consequently, fair trial guarantees (Article 14) and the principle of legality of penalties (Article 15) were not engaged. Nonetheless, the HRC held Belgium in breach of its obligations under the Covenant. Concerning the liberty of movement as protected under Article 12 of the Covenant, the HRC observed that because of the travel restrictions imposed on Sayadi and Vinck, the latter were unable to travel freely within Belgium or to leave it. Measuring these restrictions against the yardstick of Article 12(3), it found that in view of the dismissal of the criminal investigation against Sayadi and his wife in 2005 and Belgium's requests for the removal of their names from the UN sanctions list, these restrictions were 'not necessary to protect national security or public order' and thus amounted

29 *Sayadi*, supra n. 21 at para. 7.2.

30 *Ibid.* at paras 4.1.2, 6.3 and 8.1–8.2.

31 *Ibid.* at para. 8.1.

32 *Ibid.* at para. 8.3.

33 *Ibid.* at para. 10.11.

to a violation of Article 12.<sup>34</sup> Furthermore, the HRC considered that the stigmatisation involved in the inclusion of the complainants' names together with their full contact details on the SC anti-terror list, and in view of the many press articles tarnishing their reputation, amounted to an unlawful attack on the honour and reputation of Sayadi and Vinck (Article 17).<sup>35</sup> In its reasoning, the HRC refuted Belgium's argument that it was obliged to transmit the names of Sayadi and his wife to the Sanctions Committee, in view of the fact that Belgium was the only State to have transmitted names associated with GRF to the Sanctions Committee, and because it did so without awaiting the outcome of the national criminal investigation.<sup>36</sup> Thus, the HRC found that 'even though the State party is not competent to remove the author's names from the United Nations and European lists, it is responsible for the presence of the . . . names [of Sayadi and his wife] on those lists.'<sup>37</sup> With respect to Belgium's obligation to provide the complainants with an effective remedy (Article 2), the HRC held that Belgium had to undertake all that was in its power to have the complainant's names removed from the list as soon as possible and to prevent similar violations from occurring in the future.<sup>38</sup>

In its reasoning, the HRC performed a balancing act. On the one hand, well aware of the legitimacy problems involved in any pronouncement on the compatibility of the SC sanctions regime with the UN Charter, the HRC steered around this delicate issue. On the other hand, it made it unambiguously clear that State measures taken to give effect to SC resolutions must respect human rights. Regardless of whether or not SC resolutions *per se* are consistent with human rights, in implementing them the Member States do not have a *carte blanche*; they are constrained by the rule of law. While the HRC's decision is merely directed against the Belgian State, it ultimately sends an indirect signal to the UN, namely the SC.

#### 4. Urgent Need for Reform

The HRC's criticism is the most recent of a range of authoritative judicial and quasi-judicial comments on the inadequacy of the extant system of SC anti-terror sanctions. The procedural flaws involved in the process of adopting and implementing SC targeted sanctions have been exposed in various judgments by the judiciary of the EU, such as in the *Mojahedin*<sup>39</sup> and the

34 Ibid. at para. 10.8.

35 Ibid. at para. 10.13.

36 Ibid. at paras 10.7 and 10.13.

37 Ibid. at para. 10.13.

38 Ibid. at para. 12.

39 Court of First Instance, Case T-228/02, *Organisation de Modjahedines du peuple d'Iran v Council of the European Union*, Judgment, 12 December 2006 (insufficient statement of reasons,



*Sison*<sup>40</sup> cases. In contrast to the *Sayadi* case, the listing in the *Mojahedin* and *Sison* cases was not done on the basis of Resolution 1267, but pursuant to Resolution 1373.<sup>41</sup> Whereas under the former, listing was undertaken by the Sanctions Committee, the latter Resolution left the listing task up to each State. In the context of the EU, the lists were established and maintained by the Council of the EU. In the *Mojahedin* and *Sison* cases, the European Court of First Instance annulled the decision to place the complainants on the EU anti-terror blacklist on the grounds that the Council of Europe had not provided sufficient reasons for listing the organisation and because the listing procedure did not respect the right to a fair hearing. As for listings under SC Resolution 1267, a landmark ruling was issued by the ECJ in September 2008. In *Kadi and Al Barakaat v Council of the EU and Commission of the EC*,<sup>42</sup> the ECJ was the first among regional and international tribunals to hold that the sanctions imposed by the SC anti-terror resolutions infringed certain fundamental rights under European Community (Community) law, namely the right to be heard, the right to an effective legal remedy and the right to property. It also marked the first time that a court confirmed its jurisdiction to review the lawfulness of a measure giving effect to a SC resolution. Despite ruling that the implementing measure—Council Regulation (EC) 881/2002 of 27 May 2002—violated fundamental rights under Community law, the ECJ, like the HRC, was anxious to stress that its judicial review did not extend to the SC resolution as such. It held that ‘any judgement by the Community judiciary deciding that a Community measure intended to give effect to . . . a [UN SC] resolution is contrary to a higher rule of law in the Community legal order would not entail any challenge to the primacy of that resolution in international law.’<sup>43</sup> An application against Switzerland concerning the implementation of SC sanctions measures has also been lodged with the European Court of Human Rights.<sup>44</sup>

While improvements have been made with regard to the listing and de-listing procedures, these still fall short of full respect for the rule of law principle. Importantly, the *modus operandi* of the listing process in the

violation of the applicant’s right to a fair hearing); Case T-256/07, *People’s Mojahedin Organization of Iran v Council of the European Union*, Judgment, 23 October 2008 (insufficient statement of reasons); and Case T-284/08, *People’s Mojahedin Organization of Iran v Council of the European Union*, Judgment, 4 December 2008 (violation of the applicant’s rights of defence and right to effective judicial protection).

40 Court of First Instance, Case T-47/03, *Jose Maria Sison v Council of the European Union*, Judgment, 11 July 2007.

41 SC Res. 1373, 28 September 2001, S/RES/1373 (2001).

42 *Supra* n. 11. See also Ziegler, *supra* n. 11.

43 *Ibid.* at para. 288.

44 Identical letters dated 23 June 2008 from the Permanent Representative of Switzerland to the United Nations addressed to the President of the General Assembly and the President of the Security Council, Enclosure: ‘Improving the implementation of sanctions regimes through “fair and clear procedures”’, A/62/891-S/2008/428, at 4, available at: <http://www.securitycouncilreport.org> [last accessed 12 April 2009].

Sanctions Committee and at 'focal point' are political. In this regard, a group of countries<sup>45</sup> have advanced the idea of establishing an independent, impartial expert panel to assist the Sanctions Committee in the consideration of de-listing requests. This would be a step in striking 'a careful balance between the competence and authority of the Security Council and its Sanctions Committee(s) in the area of international peace and security on the one hand, and the substantive requirements of "fair and clear procedures" on the other'.<sup>46</sup>

It is to be hoped that the increasing criticism on the part of various international (non-governmental) organisations will garner the necessary political support to buttress the efforts to bring the anti-terror fight under the banner of justice and the rule of law. Otherwise, the chances are that the UN counter-terrorism efforts may backfire. States may become increasingly reluctant<sup>47</sup> to comply with the SC sanctions regime and submit new names for listing, or may begin to lift the freezing of bank accounts and travel bans on their own account. Such undercutting of the UN sanctions system would herald its end. To be sure, fair listing and de-listing procedures, in enhancing the States' perceived legitimacy of the SC targeted sanctions, would improve the sanctions' 'compliance pull'<sup>48</sup> and thus also their overall effectiveness. One should be mindful of the words of former Secretary-General Kofi Annan: '[The Security] Council has a very heavy responsibility to promote justice and the rule of law in its efforts to maintain international peace and security'.<sup>49</sup>

45 The States concerned include: Denmark, Germany, Liechtenstein, the Netherlands, Sweden and Switzerland.

46 'Improving the implementation of sanctions regimes through "fair and clear procedures"', supra n. 44 at 4.

47 Compare *ibid.*: 'These deficiencies have caused countries to hesitate with the submission of names for listing. They also underline existing concerns about the integrity and legitimacy of targeted sanctions in general.'

48 See Franck, *The Power of Legitimacy Among Nations* (New York: Oxford University Press, 1990) at 24; and Hurd, 'Legitimacy and Authority in International Politics' (1999) 53 *International Organization* 379 at 387ff.

49 Former UN Secretary-General Kofi Annan at the Security Council's meeting on justice and the rule of law, 24 September 2003.