Targeted Sanctions and Accountability of the United Nations Security Council

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I. Introduction

A. Recent Developments and the Changing Role of the Security Council

It is generally considered amongst states and scholars that the activities of the Security Council in recent years, especially after 11 September 2001, have broken new ground. Recent developments, namely the increasing role of the Security Council in confronting the dangers created by terrorism, have marked a milestone for an organization which for decades was faced with a constitutional stalemate as a result of the East-West conflict. It seems that the Security Council does not only execute the primary responsibility for the maintenance of international peace and security, but has recently acted as a sort of supranational administration or legislator in the fight against terrorism. The Security Council’s current sanctions structure is not directed solely towards member states but also against individuals and private entities, resulting in serious consequences for the parties involved. This development marks a stark difference from the Security Council’s earlier practice.¹

This new development has been subjected to criticism in relation to human rights from various entities in international fora, including institutions within the United Nations system. The most prominent example was a call from the UN General Assembly in its World Summit Outcome Document of 2005. It stated the following:

We also call upon the Security Council [...] to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and removing them, as well as for granting humanitarian exceptions.² (emphasis added)

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There are currently ten sanctions regimes in place which have been established by the Security Council acting under Chapter VII of the UN Charter. Eight of the 10 sanctions regimes have been established with the purpose, inter alia, of designating individuals and entities as targets of sanctions. Usually these sanctions encompass travel bans, asset freezes and arms embargoes. One sanctions regime in particular has gained importance because of the relatively high number of individuals and entities listed. That sanctions regime concerns Al-Qaida, Usama bin Laden and the Taliban.

B. The Subject and Purpose of This Study

The sanctions regime targeting individuals and entities associated with Al-Qaida and Usama bin Laden and its ramifications are the subject of this study. Furthermore, the purpose is to analyze and explore the concept of targeted sanctions, its relation to economic sanctions according to Article 41 of the UN Charter, the current United Nations sanctions regime and the implications of that regime. The last issue is of particular importance and cannot be fully described unless court rulings in individual jurisdictions be taken into account. Therefore, court rulings, which are currently known and accessible, will be described. This analysis will not be limited to whether a consistent practice can be found, but also to see how domestic courts deal with cases arising out of the targeted sanctions regime. The fact that these cases are being argued before national courts is of particular interest. The juridical issues argued in these court cases are different in nature as they are discussed in the context of legal safeguards guaranteed in a constitution and thus having a higher status than the general acts of law or other instruments used to implement individual measures. Moreover, although these constitutional rights are often stipulated in general terms in a constitution, there is substantial practice in individual states, which further describes their substantive dimension. Court cases in the international (or even regional) fora seem to have a limited ability to judge whether human rights violations have taken place because of their reliance on rights characterized as having the status of ius cogens. As will be discussed, although human rights are generally recognized among states as being

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4 As of 30 September 2007, the committee responsible for the maintenance of a sanctions list, the so-called 1267 Committee, had a list of 489 individuals and entities subject to sanctions. The list included 142 individuals associated with the Taliban and 223 individuals and 124 entities involved with the Al-Qaida network. See further Letter dated 15 November 2007 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, UN Doc. S/2007/677, at 11.