

The United Nations Sanctions Regime
against
Al-Qaida, the Taliban and their Associates

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Little is known, outside of diplomatic and government circles, of the part being played by the United Nations in the fight against terrorism, in general, and more specifically, al-Qaida. As al-Qaida network poses a significant threat to global peace and security it is appropriate that the Security Council directs the United Nations involvement in this field. The eradication of this global terrorist network, defined for the purposes of United Nations Security Council documents as “al-Qaida, the Taliban and their associates and associated individuals”, requires a concerted collective effort on the part of all members of the international community – no one nation is going to achieve this on its own. The aim of this paper is to focus on the work of the Monitoring Group, established to monitor the implementation of the targeted sanctions and the United Nations Security Council Sanctions Committee established to oversee the all-Qaida sanctions regime.

In order to understand the current role of the Monitoring Group it is important to start with a short history lesson, because the work that the Group has undertaken began long before 11th September 2001 or “9/11” as it is usually known. The story really begins in 1998. At that time Usama bin Laden (UBL) was being given sanctuary in Eastern Afghanistan by the Taliban regime, the latter being engaged in a bloody and destructive civil war against the Northern Alliance. Usama bin Laden was recruiting non-Afghans, later to be dubbed “Afghan-Arabs”, to come and fight their “jihad” alongside the Taliban – hence references to the “055 Brigade” in the Taliban’s order of battle. These recruits were in turn being trained in camps in Afghanistan with the assistance and support of the Taliban. In addition there were indications of links being established between UBL and Islamic extremist Groups from other regions of the world.

The United Nations had, in a series of resolutions, requested that the Taliban regime handover Usama bin Laden, to be tried in connection with the attacks on the United States embassies in Nairobi and Dar-e-Salaam in 1998, that it close all the terrorist training camps and cease providing sanctuary for terrorists in Afghanistan¹.

¹ UN Security Council documents: S/RES/1189, 13 August 1998; S/RES/1193, 28 August 1998; S/RES/1214, 8 December 1998

The Taliban ignored these requests. Consequently, in October 1999 the Security Council unanimously approved resolution 1267, which reinforced the requests that it had already demanded². By resolution 1267 (1999) the Security Council called upon all states to impose a flight ban into and out-of the Taliban held areas of Afghanistan and to freeze all funds and other financial and economic resources belonging to the Taliban or from which they might benefit. The resolution also established a Security Council Committee (the Committee), which by definition mirrors the Council, to manage and monitor the implementation of all aspects of the targeted sanctions imposed by the resolution.

The origin and continued existence of this particular Committee, known until recently as the “1267 Committee”, is particularly important for the work of the Group and the part played by the United Nations in the fight against the al-Qaida network. Since 2nd September 2003 it is officially titled “The Al-Qaida and Taliban Sanctions Committee”³. This Committee is the thread of continuity which runs from the beginning of this story right through to the present day. As the story unfolds, we shall see how its role has changed to meet the evolving circumstances of a very serious subject, that has a very strong individual dynamic.

After twelve months the Taliban had still failed to respond to the demands of the Security Council, resulting in a yet another resolution – resolution 1333 (2000)⁴. This resolution went further; imposing an arms embargo, reinforcing the aviation or flight ban; demanding the withdrawal of persons training the Taliban; demanding diplomatic isolation of the Taliban; and the immediate freezing of funds and financial resources belong to the Taliban, or from which they might benefit.

Resolution 1333 (2000) also requested the Secretary-General to appoint a panel of experts, tasked with recommending a mechanism to monitor the sanctions imposed against the Taliban under both resolutions 1267 and 1333. This panel was duly appointed, given 60 days in which to report and, in its recommendations to the Security Council on 5th June 2001, proposed a monitoring mechanism⁵.

The proposed mechanism was accepted by the Security Council and approved under resolution 1363 on 30 July 2001.⁶ It is this resolution which the Monitoring Group has always referred to as its “birth certificate” and which pre-dates “9/11” – a point often overlooked with the passage and thrust of recent events.

The original structure of the approved mechanism was to be in two parts. There was to be a “monitoring group” in New York, comprised of five experts, which would provide the direction, coordination and support for a “sanctions enforcement support team or SEST”. The SEST was to have been comprised of up to 15 members, with hands-on experience and expertise in the fields of customs, border security and counter-terrorism. It was intended that they would work alongside the senior government officials, responsible for these particular services, in the

² UN Security Council document S/RES/1267 (1999), 15 October 1999

³ UN Security Council document SC/7865, 4 September 2003

⁴ UN Security Council document S/RES/1333 (2000), 19 December 2000

⁵ UN Security Council document S/2001/511, 22 May 2001

⁶ UN security Council document S/RES/1363, 30 July 2001

peripheral states: Iran, Pakistan, Tajikistan, Turkmenistan and Uzbekistan. However, there were one or two administrative delays in getting the right people together for the Group, such that it was not until just after the tragic events of “9/11” that the Group was actually came together as a team in New York. Currently, the five members of the Group come from France, Jordan, Nepal, the UK and the USA. Their combined expertise includes Arab and Islamic affairs, arms control measures, border controls, counter terrorism, the freezing of financial and economic assets and the practical implementation of sanctions measures.

The SEST however was never established. As a result of the Coalition activity, which commenced in Afghanistan in October 2001, it was considered prudent in the circumstances not to deploy the members of the SEST to their intended locations. This left just the Monitoring Group, operating from New York, to start the monitoring process. It commenced its work with a series of visits to specific capitals to establish its credentials and for in-depth briefings on the situation. In addition the Group had meetings with the, then, UN Office for Drugs Control and Crime Prevention in Vienna (UNODCCP), EUROPOL (in the Hague), Interpol (in Lyons), the World Customs Organisation (in Brussels) and the *Wassenaar* Arrangement (in Vienna)⁷. On the basis of these meetings, briefings in some capitals and other research, the Monitoring Group presented its first report to the Council, through the Committee, in January 2002.⁸

In essence this report concluded that the Taliban and remnants of al-Qaida were likely to remain a potential threat to the peace process in Afghanistan and in the region for some considerable time. Regrettably this has proved to true. The Group also raised concerns about the proceeds to be derived from the opium harvests in Afghanistan and the resulting trade in opiates, providing substantial funding for al-Qaida and its associates.

In January 2002 resolutions 1267 and 1333 came up for review. By then, as a result of Coalition activities in Afghanistan, the Taliban regime had been over thrown and the Council decided that the emphasis had to change to deal with a much greater threat, namely UBL and the al-Qaida network as a whole. On 19th January 2002 resolution 1390 (2002) was approved, which calls upon member states to implement three specific measures⁹. These are a freezing of financial assets and economic resources, the imposition of a travel ban and an arms embargo. The measures are directed against UBL, al-Qaida, the Taliban, their associates and associated entities, as designated in what is now known as the United Nations Consolidated List¹⁰. This list is maintained by the Committee, listings and de-listings being managed through a no-objection procedure requiring a consensus of all 15 members. In addition the resolution called upon member states to submit a report after 90 days informing the Committee of the steps taken to implement the three measures.

Resolution 1390 also requested that the Secretary-General assign the Monitoring Group, previously established under resolution 1363, to monitor the implementation by member states of the called-for measures and to report its findings and recommendations in writing to the Committee three times during 2002.

⁷ Or details see <http://www.wassenaar.org>

⁸ UN Security Council document S/2002/65, 15 January 2002

⁹ UN Security Council document S/RES/1390 (2002), 16 January 2002

¹⁰ <http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm>

The Group tackled this demanding new task by undertaking visits to member states, where discussions were held with the government departments responsible for the implementation process. Initially the Group focused on countries which, as a result of “post 9/11” investigations, could help build up the picture of the al-Qaida network and also had a good basis for developing steps to implement the measures. As the Group got into the rhythm and began to realise that each state faced different problems in implementing the measures, it began to look in more detail at certain specific aspects of the process. These included visits to border entry points in Europe and other countries, the aims of which were twofold. First the Group was interested to see how border service officers managed the names from the Consolidated List in their watch/stop lists. Secondly, the Group wanted to be briefed on, and see, the steps taken by border and customs officials to ensure the implementation of the arms embargo. Besides visits to a number of international airports, the Group visited the German/Polish border and also undertook lengthy trips with the Iranian Border Guards to see the various measures in place to impede the movement of drugs, people and weapon smugglers along their common border with Afghanistan.

What of the Group’s findings then during the year 2002?

One of the first things the Group had done was to learn as much as possible about al-Qaida. The Group considers that it is extremely important to “know the enemy” and for those people dealing with the subject, to constantly be trying to get inside the al-Qaida “decision making circle”. It is also key, as a back-drop, to understanding of the environment in which each individual member state has to implement the sanctions. As time went on and more information became available, the flexibility and spread of the network became more apparent. The countries in which associated groups were operating, their apparent alliances and the names of some of the key al-Qaida operatives provided the Group with a new image of the network. The international community was clearly faced with a form of terrorism not seen before. The previous experiences of those countries, which had been faced with a terrorist threat, had always had some form of geographical visibility: With al-Qaida this was not the case. Collectively we, the international community, were, and continue to be, faced with a loose coalition of likeminded groups across the globe. Some experts have referred to it as a sort of “franchising” – to the Monitoring Group it is “*Terrorisme sans Frontiers*”.

Next the Group looked at the United Nations Consolidated List. This is the key instrument in the sanctions process. If an individual or entity is not designated on the List, then there is no way of applying the travel ban, the arms embargo, or of freezing financial or economic assets. Almost every country the Group visited complained that there were insufficient identifiers. This led the Group to the first major set of recommendations in its 2002 reports, namely a list of the minimum identifiers required for effectively listing individuals and entities. These still stand. In addition the Committee was asked to write to all member states requesting additional information for all those names on the list in order to improve the quality of the document. This is an on-going task.

The freezing of financial and economic assets are considered by many to be the single most important measure that requires to be taken against the al-Qaida network. Although it is

now fairly common knowledge, that most of the attacks involving some form of explosive device, carried out by al-Qaida or their associates since “9/11”, have cost only US\$ 30,000 to 75,000 the terrorists still need money. They need funds for recruiting, indoctrination and for furthering the cause of the “movement”.

After the initial freezing of money in bank accounts, which took place in the aftermath of “9/11” not much in the way of extra monies have reportedly been found or frozen. What did appear to have happened was that the al-Qaida network had diversified its sources of funding and turned to transfer mechanisms, which were difficult to track or identify. At some stage during 2002 it was thought that al-Qaida may have invested some of their assets in illicit, and possibly even “legal”, diamonds. Certainly they appeared to have moved away from the formal banking system and were using informal transfer means or alternative remittance systems, such as *hawala*, a well-established way of transferring value, particularly between the Gulf region and countries in Central, South and South-east Asia. The abuse of charities or other humanitarian foundations was also becoming more and more apparent.

Moving onto the travel ban, one of the key problems that the Group initially identified was that many names on the List were not being included in member states watch/stop list. The main reason given to the Group was that already described above, i.e., the lack of minimum identifiers. The Group also found instances of quite strict judicial requirements in individual states, which had to be fulfilled before a person could be entered on that particular state’s watch or stop list. Ideally most states would prefer that each designation be accompanied by a “hard and fast” case against the individual. However the Group also found states failing to follow the requirements of the resolution, quoting ‘humanitarian’ reasons for not-listing certain individuals. This was one of the reasons why the Committee drafted a resolution, which was subsequently approved by the Security Council, towards the end of 2002 – resolution 1452 – specifically to enable states to request the release of funds on humanitarian grounds belonging to designated individuals¹¹.

The arms embargo is, without doubt, the single most difficult measure to be monitored for implementation. Clearly, with many parts of the world awash in small arms, the al-Qaida terrorists have no problem obtaining all the weapons they need. Secondly, with their operational requirements reduced to various forms of guerrilla warfare, all they need, except maybe in Afghanistan, is small arms and the ingredients for improvised explosive devices - or IEDs as they are known – some of the latter being available on the commercial/agricultural market. Initially the Group restricted its recommendations to tighter arms control measures, the licensing and registration of arms brokers and a call for all arms manufacturing countries to become parties to the *Wassenaar Arrangement*.

In the Group’s last report to the Committee for the year 2002 and in subsequent discussions with members of the Committee, the need for a stronger resolution was emphasised. The net result, when resolution 1390 came up for review in January 2003 was resolution 1455¹².

¹¹ UN Security Council document S/RES/1452 (2002), 20 December 2002

¹² UN Security Council document S/RES/1455 (2003), 17 January 2003

Resolution 1455 sets-out to improve 1390, emphasising once again to member states the measures they are called upon to take. The Secretary-General was requested to re-appoint the “1363” Monitoring Group. In addition to being tasked with monitoring the implementation by member states of the three (1390) measures, the Group was also tasked to “...follow up on relevant leads relating to incomplete implementation of the measures...” Although this does not provide the Group with full investigative powers, it does nonetheless empower it with asking detailed questions to which it should receive detailed answers, to assist it with fulfilling its mandate.

States were, again, called upon to submit a report to the Committee, 90-days after the resolution was approved, detailing the steps being taken to implement the resolution. As the response to a similar requirement under resolution 1390 had been less than expected, the Committee issued a detailed set of guidelines, with no less than 26 points to be addressed, to assist states with their reports.

However, the expectations of the Committee, with regard to reporting by states were not fully realised. It had been hoped that in view of the importance of the subject – namely the fight against the al-Qaida network – the number of states submitting reports and the content of those reports would be significant. By the time the Group submitted its first (of two) reports to the Committee in June 2003, only 26% of the member states had submitted a “90-day” report¹³.

Some of these were of a high standard and contained a considerable amount of information, especially in those cases where the guidelines had been followed. Others lacked sufficient detail, making the work of the Group extremely difficult, in providing a realistic and objective analysis, based on the reports. The Committee’s disappointment was emphasised by the Chairman of the “1267 Committee” when he briefed the Security Council on 29 July 2003. By the time that the Monitoring Group submitted its second report on 3rd November 2003 the total number of reports had only increased to 83 - still less than 50% of the United Nations membership.¹⁴

Fortunately, actual events on the ground in combating the al-Qaida network are not reflected in the “90-day” reports. There have been significant successes against al-Qaida, with the apprehension or deaths of a number of key operatives. This has had a significant impact in reducing the effectiveness of the command and control structure or “management” of the al-Qaida network and on its operations. One of the more recent arrests (in September 2003) was of Hambali and it is hoped that his arrest will both reduce the immediate risks in the Southeast Asia region as well as yielding further valuable information about the network in general and *Jemaah Islamiah (JI)* in particular. The death on Sunday, 12 October 2003 of Fathur al-Ghozi, following a shoot-out with Filipino Security Forces has dealt another blow to JI and to the aims of the network, particularly in that region. However, it is important not to become complacent, especially when considering the extent of sympathy for the network and its ideology in many, many parts of the world.

¹³ Member states reports can be found on the Al-Qaida and Taliban Sanctions Committee’s web-site at <http://www.un.org/Docs/sc/committees/1267> Template.htm

¹⁴ UN Security Council document S/2003/1070,

Nonetheless, as has, regrettably, been borne out by events during 2003, the al-Qaida network continues to pose a significant threat to international peace and security and is still able to strike at targets of its choosing, albeit in countries where and when it is less expected.

The network still appears to have access to sufficient funds to allow it to continue to recruit, to spread its extremist ideology and to support operations in many parts of the world. Funding continues to be available from a variety of sources – the drug trade emanating from Afghanistan; from credit card fraud and other common crimes; from the abuse of charitable foundations. Nowadays, the movement of funds is often done as cash, in both large and small quantities, making it even more difficult to trace.

From what the Group has noted of the resurgence of the Taliban in Afghanistan and the weapons seized in a series of raids in Saudi Arabia, the network has easy access to all the small arms it needs, and in Afghanistan adequate light support weapons and even the odd mortars and rockets.

To date, two years into this particular sanctions regime, not one individual who is designated on the List has been detained, just because they are on the List. Some who are on the List have been detained, but for other reasons. The Group is therefore looking hard at how the whole process can be improved and appropriate recommendations will, hopefully, feature in future resolutions.

The Group's findings in 2003

The Committee has requested that the Group look at, and report on, certain specific aspects of the implementation process. In this regard the Group concentrated during the second reporting period of 2003 on three themes; the freezing of economic assets, the abuse of charities and the effect of known al-Qaida terrorists (i.e., those known to have been trained in specialist techniques in Afghanistan or elsewhere) not being listed. Detailed aspects of these case studies, along with an in-depth analysis of those states reports that have been submitted provided the basis of the Group's second report called for under resolution 1455 (2003).

On 3 November 2003 this report was presented to the Committee¹⁵. This is a much more specific and hard-hitting report, which describes some of the critical systemic weaknesses and shortcomings with regard to the implementation of the sanctions measures. These include:

A number of states have a variety of problems when it comes to freezing (or seizing) economic assets, other than money in bank accounts. Although this matter is being addressed in a number of capitals, within the European Commission and the membership of the Financial Action Task Force, it does require urgent and energetic attention. All the time the necessary measures are not in place, designated individuals and entities, sympathetic to al-Qaida or its intentions, have the opportunity to circumvent the sanctions.

Greater regulation and transparency of how charitable organisations receive and disburse donations and other benefits is required, particularly in the case of some of those with Islamic

¹⁵ United Nations document: S/2003/1070, dated 2 December 2003

connections. The Group is conscious of ethnic, religious and national sensitivities that are involved in bringing the require controls into effect, but concludes that these should not stand in the way of means to ensure the terrorist organisations do not benefit from what should otherwise been donations towards genuine charitable causes.

The effective implementation of the Travel Ban continues to be a major area of concern. The Group is concerned that the whereabouts of most of the individuals designated on the List remain unknown and has recommended that in a new resolution contain wording to not only prevent entry or transit, but prevention of departure. Additionally all states should be obligated to inform their nationals who are designated of the implications concerning travel and the freezing of assets.

The arms embargo continues to be the most difficult measure to implement. The main worries are the on-going possibility of an attempt by an element of the al-Qaida network to set off a CBRN weapon or to launch another attack against civilian aircraft, using a shoulder launched surface to air missile or MANPADS. Strong and effective export controls at every level, national, regional and organisational, of these weapons are crucial to ensure that they do not fall into the hands of elements of the al-Qaida network.

Ultimately, however, the Group concluded that, ***Without a tougher and more comprehensive resolution – a resolution which obligates States to take the mandated measures – the role of the United Nations in this important battle risks becoming marginalized.***

In closing, it is important that mention is made of the other counter terrorism initiative in the United Nations. The UN's Counter Terrorism Committee (CTC) was established, shortly after "9/11", by resolution 1373 (2001)¹⁶. The CTC is not a sanctions committee and it does not maintain a list of designated individuals or entities¹⁷. However it has made considerable progress, not only raising the awareness of member states as to the measures that need to be taken to combat terrorism in general, but in encouraging them to enact the necessary legislation and put-in place the appropriate administrative measures to enable them to fight terrorism.

This has been a brief insight into the work that the United Nations has for some time been undertaking in the fight against the brand of terrorism espoused, initially by the Taliban regime and now by the whole al-Qaida network. Needless to say the work goes on, and at the time of going to print, a new resolution is awaited, hopefully building on the work to date, but also taking due regard of the Monitoring Group's recommendations and its closing statement in its last report.

THE END

¹⁶ UN Security Council document: S/RES/1373 (2001), dated 28 September 2001

¹⁷ UN press release SC/7827, 28 July 2003