

THE SOUFAN CENTER

ISSUE BRIEF

The UN Al-Qaida and ISIL (Da'esh) Sanctions Regime
Impacts and Implications

Edmund Fitton-Brown
January 2023



KEY FINDINGS

- The UN al-Qaida and Da'esh/ISIL sanctions regime established by UN Security Council Resolution 1267 (known as the '1267 sanctions regime') is an important, if flawed, tool. There are widespread concerns about the regime's unintended consequences negatively impacting human rights and humanitarian delivery, as well as the effectiveness of implementation; yet sanctions still are an important tool that is targeted, has a practical impact on designated terrorists, and serves both a symbolic and normative function.
- As the terrorist threat landscape continues to evolve, with Da'esh/ISIL and al-Qaida both diminished, it is important to understand how the 1267 sanctions regime might evolve, and ask whether other sanctions regimes should be created to address emerging threats, such as right-wing terrorism (known at the UN as terrorism on the basis of xenophobia, racism and other forms of intolerance, or in the name of religion or belief, 'XRIRB').
- The Taliban takeover in Afghanistan, proliferation of Da'esh/ISIL and al-Qaida affiliates and attacks in Africa, and chronic instability in Syria, among other examples, will present no shortage of opportunities for 1267 sanctioned groups to embed in safe havens and continue to pose a significant threat; the sanctions regime will, therefore, continue to serve as an important tool in countering the threat.
- **Recommendations include:** allocate more resources to the Office of the Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee; simplify and streamline the Committee process and improve the quality of designations; understand lessons learned from the 1267 regime and how those can potentially be applied to XRIRB¹ terrorist groups; and for the Security Council to avoid adopting new counterterrorism resolutions that are not essential for the enhancement of international counterterrorism.

Edmund Fitton-Brown is a Senior Visiting Fellow at The Soufan Center. He was previously Coordinator of the Analytical Support and Sanctions Monitoring Team, which works for the 1267 and 1988 United Nations Security Council Committees responsible for sanctions on ISIL (Da'esh), Al-Qaida and the Taliban. The opinions in this Brief reflect the author's views and experiences, and not necessarily those of The Soufan Center or its Board.

¹ Terrorist acts on the basis of xenophobia, racism, or other forms of intolerance, or in the name of religion or belief, or XRIRB, is the terminology used at the United Nations to describe what is also known as right-wing terrorism, or racially and ethnically motivated violent extremism, or 'REMVE'.

INTRODUCTION

To reflect on the future of the UN al-Qaida and Da'esh/ISIL sanctions regime established by UN Security Council Resolution 1267 (1999) and its subsequent iterations (henceforth, the '1267 sanctions regime'), it is worth briefly recalling its history. Al-Qaida attacked the U.S. Embassies in Dar Es Salaam, Tanzania and Nairobi, Kenya in 1998. In the aftermath, the United Nations adopted Security Council Resolution 1267 in 1999, imposing sanctions on al-Qaida and the Taliban. Much happened over the following five years, including of course the 9/11 terrorist attacks in New York and the establishment of new UN Security Council subsidiary bodies like the Counter Terrorism Committee (CTC).² In that climate of greater seriousness about counterterrorism, it was deemed necessary to create a group of experts to support the 1267 Committee, and the monitoring Team (MT) of independent experts was established in 2004 to support the member states in the sanctions committee; the Monitoring Team has supported the development of sanctions case files, worked with member states and regional partners to produce regular threat assessments, and provide the 1267 Committee with such information and analysis as required.³

The sanctions regime and the MT have evolved since then as the Security Council has responded to international developments. In 2011, in recognition of the inevitable

need at some stage to involve the Taliban in Afghanistan's peace process, UN Security Council Resolutions 1988 and 1989 created separate sanctions regimes for members of the Taliban (as threats to peace and security in Afghanistan) and al-Qaida (as terrorists). Then in 2015, Resolution 2253 added Da'esh/ ISIL to the remit of the 1267 Committee and increased the size of the MT from eight to ten experts to be able to cover the expanded set of designations.

Subsequent resolutions have made only minor adjustments to the 1267 (al-Qaida/ ISIL) and 1988 (Taliban) Committees and the work of the MT, which remains largely focused on preparing casefiles and producing threat analyses. The defeat of Da'esh/ISIL's so-called "caliphate" in 2019 has not led to significant changes. Moreover, Taliban takeover of Afghanistan in 2021 has also largely been met with a "business as usual" approach in that it has not affected any changes to the UN sanctions regime, even though the MT can no longer visit Afghanistan or consult Afghan interlocutors, and some measures of the behavior of sanctioned Talibs – such as reconciliation with the former government – are no longer relevant as a metric of reform.

A detailed analysis of issues stemming from the 1988 sanctions regime relating to the Taliban are beyond the scope of this brief, though there are several points that reflect on the utility and impact of the sanctions regime. However, it is worth noting that the

² To learn more about the Counter-Terrorism Committee (CTC) see: <https://www.un.org/securitycouncil/ctc/>

³ "Security Council Committee pursuant to resolutions 1267 (1999) 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities," United Nations Security Council, <https://www.un.org/securitycouncil/sanctions/1267>

adoption of Security Council Resolution 2615 in December 2021 reflected an ambitious effort of the Council to ensure sanctions did not impede the delivery of principled humanitarian action; this was superseded by the adoption of a momentous humanitarian “carveout” in all UN sanctions regimes, including 1267, in December 2022.⁴ The 1988 sanctions regime will require a more thorough review in due course: the absence of any new listings or de-listings, or of determination to insist on complete Member State compliance with the Travel Ban, throughout this author’s time with the MT, shows that it is not working fully. But the Security Council will find it difficult to agree on deeper, farther-reaching changes to it in present international circumstances, and indeed until there is widespread agreement about how Member States should interact with the Taliban in their new de facto role.

THE ‘1267’ SANCTIONS REGIME

The 1267 sanctions regime, however, may be considered a flawed but important instrument of international counterterrorism. Why flawed? First, there are widespread concerns about its unintended consequences in the spheres of human rights and humanitarian

delivery, some of which have been addressed through the new humanitarian carveout.⁵ Secondly, there are rather different concerns about how widely the sanctions are implemented and how effective they are in practice. With less than 400 individuals, groups and entities listed, it is obvious that there are many potentially listable terrorists who have not been designated, either because no state has proposed their designation or because any such proposal was not accepted by the 1267 Committee members (representing all Security Council members).⁶ Meanwhile, there are far fewer Member State notifications or requests relating to Assets Freeze or Travel Ban exemptions than should be the case with designated individuals who subsist and function under sanctions.

So why is the 1267 sanctions regime still an important instrument? First, it nevertheless represents a measure short of kinetic action that addresses ISIL/Da’esh and al-Qaida terrorists, a means that is both targeted and offers some means of redress. The 1267 sanctions regime has an Ombudsperson who supplies important due process assurance, where designated individuals use that channel to request delisting or otherwise communicate with the Committee,

⁴ Fink, Naureen Chowdhury and Agathe Sarfati. “Milestone Carveout in the Security Council: What the New Humanitarian ‘Carve-out’ Means for UN Sanctions Regimes,” *Global Observatory*, International Peace Institute, 16 December 2022, <https://theglobalobservatory.org/2022/12/new-humanitarian-carve-out-un-sanctions-regimes/>

⁵ Sarfati, Agathe. “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, <https://www.ipinst.org/wp-content/uploads/2022/03/Humanitarian-Action-in-UN-Sanctions-Regimes-PDF.pdf> and Naureen Chowdhury Fink and Agathe Sarfati. “Milestone Carveout in the Security Council: What the New Humanitarian ‘Carve-out’ Means for UN Sanctions Regimes,” *Global Observatory*, International Peace Institute, 16 December 2022, <https://theglobalobservatory.org/2022/12/new-humanitarian-carve-out-un-sanctions-regimes/>

⁶ “Sanctions List Materials: ISIL (Da’esh) & Al-Qaida Sanctions List,” United Nations Security Council, https://www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list

though this remains under-utilized. Sanctions have important practical impact in drawing Member State investigative resources onto individuals of concern, making it more likely that their travel will be detected. With wealthy individuals and entities, and especially those who sit at the nexus of terrorists and their sources of funding, sanctions make it more likely that terror finance flows will be detected and disrupted. And 1988 sanctions represent one of the few remaining pieces of leverage that the international community has at its disposal to influence the behavior of the Taliban; this stems in large part from the Taliban's own desire to have its personnel removed from the 1988 list and to be freed of sanctions altogether.

Sanctions also have symbolic and normative value in defining behavior unacceptable to the international community and highlighting egregious offenders, be they groups or individuals: considering the kind of abuses perpetrated by ISIL/Da'esh, al-Qaida, and the Taliban, it would seem wrong for them not to be designated or sanctioned in any way. This helps to explain Kenyan angst at the handling of al-Shabaab under the Somalia sanctions regime rather than 1267; for many states, in particular the U.S. and European members, there have been concerns that listing al-Shabab on the 1267 regime would imperil the delivery of humanitarian assistance. Consequently, the group is not designated under the 1267 as a terrorist group, through the adoption of the recent humanitarian carveout may open new opportunities to do so. Many terrorist leaders, and perpetrators of the worst

terrorist crimes may evade capture or prosecution over a prolonged period but deserve to be "named and shamed" in this way. Failing to "name and shame" could give the impression that nobody is watching, which could further a sense of impunity among terrorist groups. Moreover, Member States who are tempted to use such groups or individuals as instruments in creating difficulties for rival Member States may hesitate to do so if it violates Chapter VII UN sanctions.

The 1267 sanctions regime has certainly helped reinforce the international norm against terrorism, with most Member States keen to be viewed as compliant. Thus, the Committee and Monitoring Team experts receive extensive briefing on national mechanisms for compliance, and reassurance as to the speed and automaticity with which updates are implemented. There are also many instances of intra-Member State counterterrorism discussions about groups and individuals, based on their 1267 designation, and of new resource being devoted to investigating and disrupting the activities of such groups and individuals.

Accordingly, the sanctions regime stands at an interesting juncture in international affairs and in the evolution of the terrorist threat more broadly. ISIL/Da'esh is much diminished since the height of its powers in the middle of the last decade. Al-Qaida has just lost its long-standing leader, Ayman al-Zawahiri, and has not been able to project anything like the global threat it did in the decade following the 9/11 attacks.⁷ Some Western Member States are increasingly

⁷ "U.S. Kills Al-Qaeda Leader Ayman al-Zawahiri with Drone Strike in Afghanistan," IntelBrief, The Soufan Center, 2 August 2022, <https://thesoufancenter.org/intelbrief-2022-august-2/>

preoccupied with other strains of terrorism, particularly those broadly described by the UN acronym 'XRIRB' (terrorism on the basis of xenophobia, racism and other forms of intolerance, or in the name of religion or belief), or what others have called far-right terrorism, or "racially and ethnically motivated violent extremism," or 'REMVE'.⁸ The question arises as to how 1267 sanctions might evolve, or if other sanctions regimes should be created to address the emerging threat picture.

Before offering some recommendations, it is important to warn against being too quick to jump to policy conclusions based on some of the tentative analyses contained in the immediately preceding paragraph. First, regarding XRIRB, although there are indications of growing international connections and evidence of phenomena like foreign terrorist fighters (FTFs), it is not yet clear that this will expand to the dimensions (an attack like 9/11 or a geostrategic development like the so-called ISIL "caliphate") that will oblige the international community to enact the kind of measures taken in response to Salafi-Jihadi terrorism in the early years of this century, including the deployment of ground troops and a commitment of significant numbers of military forces. It was the threat posed by Al-Qaida and later, ISIL/Da'esh, to *international peace and security* which elevated it to the

purview of the Security Council. Nor is it clear that the Security Council would be able to reach an agreement on a response: even rational and proportionate measures might be stymied by political differences among states and their assessments of the threat. Moreover, a 1267-like regime may not be feasible without a centralized identifiable group or set of affiliates.⁹

Second, reports of the demise of ISIL/Da'esh and al-Qaida are overwrought.¹⁰ The underlying conditions which gave rise to them persist and the groups continue to incubate in unresolved conflict zones worldwide. Their threat has been suppressed by extensive, determined counterterrorism actions by Member States, multiplied by enhanced international cooperation, and briefly reinforced by the Covid-19 pandemic's disruption of terrorists' normal pattern of travel, recruitment, and targeting. But it appears their intention mount attacks remains. The Taliban takeover in Afghanistan, the proliferation of ISIS and Al-Qaida affiliates and attacks in Africa, and chronic instability in Syria, among other arenas, will present no shortage of opportunities for both ISIL/Da'esh and al-Qaida to embed in safe havens and regenerate the capability to pose an increasing threat.

⁸ "UN Secretary-General Issues First Report Highlighting Threat of International Far-Right Terrorism," IntelBrief, The Soufan Center, 13 December 2022, <https://thesoufancenter.org/intelbrief-2022-december-13/>

⁹ Clarke, Colin P., et al. "Deterrence and Denial: The Impact of Sanctions and Designations on Violent Far-Right Groups," The Soufan Center, July 2022, <https://thesoufancenter.org/wp-content/uploads/2022/07/TSC-IssueBriefSeries-DeterrenceAndDenial-July2022.pdf>

¹⁰ "Diminished, but not Defeated: The Evolution of al-Qaeda Since September 11, 2001," The Soufan Center, September 2021, https://thesoufancenter.org/wp-content/uploads/2021/09/TSC-Report_Diminished-but-Not-Defeated-The-Evolution-of-al-Qaeda-Since-Sept-11-2001_Sept-2021.pdf

THE WAY FORWARD

First, it is worth just setting out the timetable for renewal of the Monitoring Team mandate on 1267 and 1988. The sanctions themselves do not require renewal, and do not contain a sunset clause, but each mandate renewal presents an opportunity to review and adjust aspects of the regimes, including the scope of work, working methods, and other elements Member States may identify. Both mandates were last renewed in December 2021, by Resolutions 2610 and 2611 respectively. The former was for 30 months, the latter for 12: so, the Security Council will have to address the 1988 regime again in December 2022; the 1267 regime not until June 2024. These timelines reflect the greater international confidence in the long-term requirement for 1267 sanctions in something resembling their present form; and that the evolving situation in Afghanistan is not adequately addressed by 1988 and requires frequent review.

Concerning the future of 1988 sanctions, there is less to say except that they and the MT's mandate to support them probably should be renewed until such time as the Security Council is in a position to adopt a more comprehensive approach to the changed situation in Afghanistan. The Security Council and the 1988 Committee should consider providing guidance to the Monitoring Team as to whether it should be speaking to Afghan interlocutors, including the Taliban. In the longer term, there is a debate to be had about whether to fold the 1988 sanctions regime back into 1267, from which it was separated in 2011. Individuals designated under 1988 who are judged to

be involved with al-Qaida could be sanctioned under 1267, others delisted altogether. But there may be some Taliban who are egregious threats to peace and security, for example because of their involvement in narcotics, who deserve to remain under sanctions without being natural fits for 1267 listing; consequently, there is no neat or obvious answer. Too much depends upon the evolving situation on the ground, and international political dynamics, for further speculation to be useful here.

On the matter of unintended consequences of 1267 sanctions, it appears that the human rights aspect will remain under active debate but that the most immediate practical prospect of addressing it lies in the Office of the Ombudsperson. This has, for example, had a positive impact on the view taken by courts in Europe of the availability of due process to listed individuals. This author recommends giving the Ombudsperson more resources (especially language capability for the processing of open-source material relevant to cases under review) and greater independence from the member states or even the UN Secretariat, where many states retain influence. On the separate issue of whether to extend the Ombudsperson system to cover other sanctions regimes, it may be feasible but could only occur with a major allocation of new resources to support what would be the expanded workload of the office.

Regarding the impact of sanctions on humanitarian delivery, this author is unpersuaded that this is as significant an issue as some have argued (except in Afghanistan, where the Taliban takeover had the obvious implications that I mentioned earlier). The MT

has not yet been able to establish a clear causal link between UN sanctions and aid being prevented from reaching its intended recipients. There is talk of a “chilling effect”, particularly on the financial arrangements of humanitarian actors, and there is a sound intellectual basis for this concern. Hence the decision in December (Resolution 2664) to enact humanitarian exemptions to the full range of Security Council sanctions regimes. However, discussions around this resolution identified the major task that is now required to monitor the risk of diversion of aid and associated resources to sanctioned individuals and entities for purposes other than the original humanitarian intent. In the case of a global sanctions regime like 1267, this task will be monumental. Partly for this reason, the exemptions only apply to the 1267 regime initially for a two-year period and will be reviewed and renewed or abolished once conclusions can be drawn on their impact and the success of monitoring it.

In this context it is worth narrowing focus onto Somalia and the continuing debate about how al-Shabaab should be sanctioned. At present it is under a separate Somalia sanctions regime, which has long-since had a humanitarian carve-out, the success of which is often trumpeted, but should perhaps be further scrutinized and debated. Why is it that al-Shabaab is al-Qaida’s most successful, resilient, and threatening affiliate worldwide? Why does al-Shabaab have the most robust finances of any al-Qaida affiliate, to the point where it is able to divert some of its revenues to subsidize al-Qaida’s global leadership?

On the matter of how comprehensive the 1267 sanctions list is, how widely and fully it is observed and how ambitious we should be in expanding it, an incremental approach may be recommended. If a Member State came forward with a thousand new names for designation, that would immediately strain the capacity of the Monitoring Team and the Committee. It would be better instead to simplify and streamline Committee process to make it easier and less resource-intensive for more Member States – particularly those not on the Council, who are less familiar with the working methods and opportunities to engage with the regime. It is also important to strive for an ever-improving quality of designations, rather than a precipitous increase in quantity. New listings that have significant symbolic and/or practical impact, underpinned by extensive data and compelling argumentation, will enrich the designations list and increase its value, as will the continuing Committee and MT efforts to review and refine or remove existing entries.

Some states and experts have raised the possibility of addressing XRIRB or right-wing terrorism under 1267 but it appears the idea has morphed into a more achievable objective. Clearly, with 1267 working despite current international tensions and Security Council disagreements, it makes no sense to complicate the regime with unrelated groups on which consensus will be elusive. That said, it makes sense for the UN-led consultative process to continue whereby valuable lessons learned over more than twenty years of evolving 1267 sanctions are incorporated into thinking and preparations for the day when a

major XRIRB event forces the Security Council to take action in that sphere.¹¹

A little-heralded but important benefit of the 1267 regime is that it remains a source of agreement in the Security Council. At a time of deep international crisis, when Council consensus is harder to achieve than it has been for more than thirty years, the habit of engagement, debate, compromise, and agreement that exists on these terrorist groups holds inherent value. Whilst terrorism has sometimes been exaggerated as a strategic threat, relative to other, more complex concerns (especially environmental/ecological ones), international consensus on counterterrorism is important. Whatever difficulties the Security Council and the UN in general face, they are constantly needed to address international emergencies and other challenges. Successful cooperation on counterterrorism action helps build relationships and habits that are needed in other negotiations; the adoption of the recent humanitarian carveout may be seen as one iteration of this dynamic.

All of which suggests a final conclusion, that what is needed in the 1267 context is careful curating and evolution that preserves consensus and makes incremental improvements. This also requires some Security Council self-restraint in avoiding adopting new CT resolutions that are not essential for the enhancement of international counterterrorism.¹² Some resolutions over the past five years have been driven by Council members seeking a citable legacy, without regard to the burden of implementation – implementation which also arouses concerns over the wisdom of compelling Member State domestic legislation via such action, however carefully framed, in New York. The terrorist threat evolves over time, but there are not sufficient grounds to believe that ISIL/Da'esh or al-Qaida have ceased to menace the world or are about to do so in a wholly new manner. The 1267 sanctions regime is needed as part of the international response to that threat and the Security Council should continue to reinforce and adapt it whenever that is necessary, as they have at intervals over the past 20 years.

¹¹ For more on this issue see Clarke, Colin P. “Lessons Learned from the 1267 Sanctions Regime against Al-Qaeda and Islamic State in Iraq and Syria (ISIS),” The Soufan Center, July 2022, <https://thesoufancenter.org/research/lessons-learned-from-the-1267-sanctions-regime-against-al-qaeda-and-islamic-state-in-iraq-and-syria-isis/>

¹² Similar conclusions were reached in the Securing the Future Initiative, co-led by The Soufan Center and the Fourth Freedom Forum. To read the report, see: Rosand, Eric, Alistair Millar, and Naureen Chowdhury Fink. “Counterterrorism and the United Nations Security Council Since 9/11: Moving Beyond the 2001 Paradigm,” Securing the Future Initiative, September 2022, https://sfi-ct.org/wp-content/uploads/2022/09/SFI-Report_Full.pdf

POLICY RECOMMENDATIONS

- **Allocate more resources for the Office of the Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee, including financial and language resources.** Increased language capacity is necessary for the processing of open-source material relevant for cases under review. Further, to extend the Ombudspersons system to cover other sanctions regimes and extend the benefits of the Office to other regimes, a major allocation of new resources would be necessitated.
- **Simplify and streamline the Committee processes and improve the overall quality of designations, rather than increase the quantity.** Implementing these actions would be both easier and less resource-intensive for Member States – particularly for those not on the Council. New listings should have significant symbolic and/or practical impact, underpinned by extensive data, as well as the continuation of reviews and refinement of designations by the Committee and Monitoring Team.
- **Deepen the understanding of the lessons learned from the 1267 sanctions regime and how that can be applied to XRIRB terrorist groups and individuals.** As the terrorist threat landscape continues to evolve, particularly with the rise of the XRIRB threat, it will be imperative to understand not only the lessons learned from the 1267 sanctions regime, but also how to apply those lessons learned to the XRIRB threat.
- **The Security Council should avoid adopting new counterterrorism resolutions that are not essential for the enhancement of international counterterrorism efforts.** In order to preserve international consensus and make incremental improvements to the sanctions regime, increased restraint by Council members, rather than trying to push forward a citable legacy piece, can increase effectiveness and the implementation of legislation



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