United Nations

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The UN Security Council Fails to Significantly Improve its Blacklisting Regime

New Reform Contradicts International Standards

On Friday, June 17, 2011, the Security Council passed Resolution 1989 renewing the mandate of the Ombudsperson for the Al Qaeda and Taliban Sanctions Committee, the so-called 1267 Committee, as well as the mandate of the Monitoring Team that supports the work of the Committee. The expiration of the mandates was the Security Council's chance to improve a much-decried regime leading to de facto punitive, permanent, and life-altering sanctions imposed without any due process right on individuals and private entities. Instead, the Council decided to not significantly reform the sanctions regime, and only pass minor improvements. It ignored some of the core recommendations made by many, including by the Ombudsperson herself, as well as by a group of 11 like-minded countries that included Germany, whose ambassador chairs the Committee.

The 1267 Committee had been responsible for managing a consolidated list of close to 500 individuals and entities suspected by a state of being "associated with" Al Qaeda or the Taliban. It applies sanctions including assets freeze, travel bans, and arms embargoes. Through Resolution 1988, it was decided to draw a distinction between Al Qaeda and Taliban. The list has been divided and Resolution 1989 only governs Al Qaeda individuals or entities. The list is now referred to as the "Al Qaeda Sanctions List."

The lack of due process and transparency associated with this blacklisting regime has been sanctioned as a violation of basic fundamental rights by various UN bodies and independent experts, as well as by several courts of law, including the European Court of Justice in the Kadi case in 2008. Some aspects illustrating the lack of fairness that were not amended through this latest reform, include the facts that: the listing and delisting are ultimately of the sole authority of the Security Council; it is still not mandatory for the Committee to reveal who the Designating State is, and the reasons for putting someone on the list or for refusing to delist; there is no access to an independent decision-making authority to ensure the sanction is necessary and proportional; there is no time-limit - or "sunset clause" - imposed on sanctions; and there are no effective remedies available for those who were wrongly sanctioned.

While the Security Council in late 2009 through Resolution 1904 created an Office of the Ombudsperson in charge of receiving and analyzing delisting requests, it failed to mandate the Ombudsperson with a truly effective role. The Ombudsperson - Judge Kimberley Prost, appointed by the UN Secretary General in June 2010 - has no access to confidential information on a specific case should a state choose not to share it with her, including the reasons why someone has been placed on the list. While the latest resolution "strongly urges" states to share such information with the Ombudsperson, and overall to collaborate more effectively with her, it fails to make it mandatory. An improvement, however, rests in the ability of the Ombudsperson to now formally formulate a recommendation to the Committee on a delisting request she received. However, the Committee is not bound to follow that recommendation.

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Also, the Security Council refused to renew the Ombudsperson's mandate for 3 years, limiting it to 18 months instead.

FIDH finds this exceptional regime to really stand in stark contrast with the applauded commitments of the Security Council made last year, where it recalled, at least in two occasions, that conditions conducive to terrorism include the failure to respect and enforce human rights and the rule of law, which failures instead further alienates and marginalizes groups and peoples. In Resolution 1963 of December 2010, the Council stated that "effective counter-terrorism measures and respect for human rights are complementary and mutually reinforcing" and "essential" in achieving success in the fight against terrorism. In September of last year, it adopted a Presidential Statement during the high-level segment week where the Security Council "reaffirm[ed] that Member States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, in particular international human rights."

"There is a quasi-absolute confusion of power that is deeply undermining the legitimacy of this regime, whereby the Security Council establishes the rules, decides who to sanction, and has ultimate authority to review its own decisions. The Council, through Resolution 1989 has failed to genuinely improve this regime" said FIDH President Souhayr Belhassen. She added: "For the Security Council to adopt a double standard and disregard international law obligations - the foundation on which the United Nations organization stand - when it comes to its own counter-terrorism efforts is not only bound to damage the legitimacy of the sanctions, but it is also wholly unacceptable from a legal perspective"

On Thursday June 16, a delegation representing blacklisted Canadian citizen Abousfian Abdelrazik, visited New York to meet with a 1267 Committee representative to request his delisting. In 2009, Federal Court Judge Russel Zinn found no evidence verifying the allegations of links between Abdelrazik and Al Qaeda, and wrote: "The 1267 Committee regime is ... a situation for a listed person not unlike that of Josef K. in Kafka's The Trial, who awakens one morning and, for reasons never revealed to him or the reader, is arrested and prosecuted for an unspecified crime." The Judge characterized the Sanctions regime "as a denial of basic legal remedies and as untenable under the principles of international human rights", where "the accuser is also the judge." Today's reform has failed to remedy to this situation.

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