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Enhancing the Legitimacy of UN Security Council Sanctions by Strengthening Fair and Clear Procedures

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Abstract

The UN Security Council addressed the issue of due process protection for individuals designated for counter-terrorism sanctions when it created the Office of the Ombudsperson in 2009. However, fundamental rights to due process continued to be denied for those designated for individual UN sanctions for other (non-terrorism) activities, which account for the majority of the individuals and entities currently designated for sanctions by the Security Council. This has created ongoing challenges to the legitimacy of the Council due to its inattention to the rights of individuals designated for sanctions. A significant enhancement of the Focal Point Mechanism first created within the Secretariat in 2006 was made possible with the passage of UN Security Council Resolution 2744 in July 2024. This article charts the course of incremental, procedural reform at the Security Council on this issue, identifies core elements of due process, describes recent litigation trends challenging UN designations worldwide, summarizes the core elements of UNSCR 2744, and suggests specific proposals for addressing the remaining legitimacy deficit related to UN sanctions on individuals.

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1 Introduction

Strengthening 'fair and clear procedures' for individuals designated for United Nations (UN) sanctions has been a recurring theme for the Security Council ever since litigation in domestic courts around the world, as well as regional courts such as the European Court of Justice, began to challenge the implementation of UN Security Council resolutions in the early 2000s.[1] Article 25 of the UN Charter specifies the legal obligation of all Member States to implement decisions of the UN Security Council, while Article 103 gives priority to the UN Charter over state obligations from other international agreements. Thus, when courts in Europe began to challenge states over their implementation of legally binding UN Security Council decisions due to their violation of core elements of the European Convention on Human Rights, it created a challenge to the legitimacy of Security Council sanctions. Max Weber identified 'bureaucratic proceduralism' as a system in which legitimacy is bestowed to institutions by virtue of the fact that they follow certain rules, norms, and standardized procedures.[2] If the UN Security Council disregards core elements of international law, such as due process for individuals designated for sanctions, the legitimacy of its decisions can be, have been, and are called into question.

The call for fair and clear procedures for individuals designated for UN sanctions was articulated by former UN Secretary-General Kofi Annan in 2004 and included in the 2005 General Assembly World Summit outcome document.[3] The issue has also been a recurrent topic in rule of law open thematic debates in the Security Council. Since 2005, the Group of Like-Minded States on Targeted Sanctions,[4] has been at the forefront promoting fair and clear procedures in UN sanctions. The creation of the Focal Point Mechanism in 2006 and the

1 Although there are some technical differences between the two concepts, we are using the terms 'due process' and 'fair and clear procedures' interchangeably throughout this article.

2 Weber 1947.

3 UN General Assembly Resolution 60.1 2005.

4 The Like-minded group comprises today the following States: Austria, Belgium, Chile, Costa Rica, Denmark, Finland, Germany, Ireland, Liechtenstein, The Netherlands, Norway, Sweden and Switzerland.

Office of the Ombudsperson in 2009 were important institutional developments specific to strengthening due process for individuals subject to UN sanctions. UN Security Council Resolution 1730 (19 December 2006) established a focal point within the Secretariat (Security Council Subsidiary Organs Branch) to receive de-listing requests and directed relevant sanctions committees to revise their guidelines to accommodate them. The Office of the Ombudsperson was created by UN Security Council Resolution 1904 (17 December 2009) to gather information and to interact with the petitioner, relevant States and organizations with regard to delisting requests. The Ombudsperson presents a comprehensive report to the Security Council's ISIL (Da'esh) and Al-Qaida (or 1267) Sanctions Committee, analyzing all available information, and makes a recommendation to the Committee on the delisting request. The mandate of the Ombudsperson was limited to designations made by the 1267 committee established to counter terrorism in 1999, however, individuals designated by all the other sanctions committees of the Security Council must rely on the Focal Point Mechanism.[5] In July 2024, the Council adopted resolution 2744 (19 July 2024), significantly enhancing the role of the Focal Point and establishing an informal working group to examine general issues related to the subject of UN sanctions.

The crux of the matter is that while the UN Security Council has the responsibility and authority to apply sanctions on individuals in the pursuit of international peace and security, it cannot do so legitimately without consideration of the broad framework of norms and principles inherent in the international rule of law. This is essential to sustain the legitimacy of targeted, individual sanctions. The rule of law presupposes that the exercise of governmental authority over individuals is accompanied by respect for basic and generally accepted rights and principles, including due process rights. Fundamental rights associated with due process include: notification, access, a fair hearing, independent and impartial review, effective remedy, and periodic assessment. Institutional procedures should adhere to these core principles. As acknowledged by former Secretary-General Kofi Annan, '[t]hose who seek to bestow legitimacy must themselves embody it; and those who invoke international law must themselves submit to it'.[6] This strengthens the credibility and legitimacy of the UN's individual targeted sanctions, and hence their effectiveness, since these are

5 Limiting the mandate to designations by the 1267 Committee was intended to address the vast majority of the litigation challenges, cover the largest number of total UN individual designations, and limit the jurisdiction of the Ombudsperson to avoid potential conflicts between delistings and complications arising from ongoing negotiations in different conflict arenas.

6 Annan 2004.

mutually reinforcing conditions and effectiveness is dependent on national implementation across the globe. In addition, periodic assessment and some form of review of the designations ensure that the sanctions regimes remain relevant and 'fit for purpose' given the changing dynamics of the conflicts in which they are applied. If sanctions lists are not periodically updated or reviewed, they lose their relevance, likely impact, and legitimacy amongst their intended audiences.

2 Historical Background

Individual targeting of sanctions is a relatively recent policy tool for the UN Security Council. Most sanctions in the 1960s and 1970s were broad (or comprehensive) regimes, such as the US sanctions on Cuba and North Korea, or relatively non-discriminating sanctions regimes, affecting an entire population, when applied to oil imports and financial sector restrictions. UN sanctions on Southern Rhodesia were comprehensive, although its sanctions on South Africa were sectoral (first on arms and later extended to nuclear material).

UN sanctions in the 1990s, sometimes called 'the sanctions decade',[7] were relatively non-discriminating. There were three comprehensive UN sanctions regimes (Iraq, former Yugoslavia, and Haiti) and three oil sector embargoes (Angola, Sierra Leone, and Libya). There were no UN individual designations in the 1990s. The first individual designation was made in April 2000 in a Security Council Press release summarizing a Note Verbale designating Mullah Muhammad Omar of the Taliban for the refusal to extradite Osama bin Laden to the US following the US Embassy bombings in East Africa in 1998.[8] Later that year, Osama bin Laden and Al-Qaida were directly added to the list through the passage of UNSCR 1333 (December 2000).

The idea of individual targeting was introduced in the aftermath of the comprehensive sanctions imposed on Iraq in the 1990s, and the general recognition of the unacceptably high humanitarian costs associated with those sanctions. There was a strong political and normative push to develop the instrument of targeted sanctions—the 'move to targeted sanctions'—including individual targeting.[9] Targeted sanctions were explored in three transnational processes involving senior UN officials, selected Member States, the private financial and

7 Cortright and Lopez 2000.
8 UN Press Release 2000.
9 Hawkins and Lloyd 2003.

legal sectors, and scholars. Switzerland pioneered the effort with the two Interlaken meetings on targeting financial sanctions in 1998 and 1999. Germany followed with the Bonn-Berlin Process meetings in 2000 and 2001, focusing on targeted arms embargoes, travel bans, and aviation sector sanctions. Sweden concluded the effort with four meetings in 2002 devoted to the challenges of implementing targeted sanctions. There was no formal discussion of individual due process issues at Interlaken, but following the targeting of the so-called 'Somali Swedes', the issue was taken up indirectly in the Stockholm Process.

As a senior UN official commented about the early years of individual targeting, 'no one thought about individual rights to due process at the outset'. It was assumed that the targets for individual sanctions would be politically exposed persons (PEPs) with different standards of individual rights protection. Following the significant increase of counter-terrorism listings made by the UN's 1267 Committee in late 2001, 2002, and 2003, however, legal challenges to 1267 designations emerged in national courts globally, and in particular, at the European Court of Justice (ECJ). Legal scholars began to write about the issue, especially on the case of Saudi Arabian businessman, Yassin Abdullah Kadi, and the litigation associated with his appeals at the ECJ.[10] Kadi was originally listed in October 2001. His challenge to the legality of the EU's implementation of a UN Security Council decision was initially dismissed by the European Court of Justice in 2005 (with reference to Articles 25 and 103 of the UN Charter), but after Kadi appealed the decision, the Advocate-General argued that due process had the status of *jus cogens* in international law. Kadi's appeal was successful in 2008, and the ECJ gave the European Commission a three- month time frame to correct the infringements before the regulation would be annulled. The EU attempted to redress the procedural deficiencies by providing additional information about the basis for Kadi's designation and relisted him in October 2008.[11] Kadi appealed again and the ECJ upheld its previous decision, dismissing the appeals against that decision brought by the European Commission. Kadi was formally delisted by the UN's 1267 Sanctions Committee in 2012, following a recommendation of the Ombudsperson.[12]

Kadi's appeal, and legal challenges by others at the time, created a legitimacy crisis for UN sanctions during the second half of the 2000s, due to growing con-

10 See van den Herik 2014; de Wet 2013; and de Búrca 2010.

11 Heupel 2009.

12 Carter-Ruck 2012.

cerns that European states might stop implementing mandatory Chapter VII UNSCRs if ordered to do so by the highest court of the European Union, the ECJ. It was believed at the time that if Europe set a precedent in this domain, that it would weaken the obligation for the mandatory implementation of legally binding UNSCRs by the rest of the world.

The United Nations Security Council has incrementally adapted its procedures with regard to individual designations over time in an effort to address many due process concerns.[13]

While there was no mechanism to address requests for a delisting when the first designations were made in 2000, a bilateral process was introduced in 2002 to enable individuals to go to their state of citizenship or residence, asking them to take up the issue of their designation with the state that originally proposed the designation.[14] If the two states agreed to delist the individual, they could ask that the case be reviewed by the relevant sanctions committee or by the Security Council. This procedure did not accommodate the situation of individuals whose state of citizenship or residence was reluctant to take up their case, however, and in the midst of the first Kadi judgements in the ECJ, the Focal Point Mechanism was created with the passage of UNSCR 1730 (19 December 2006).

The Focal Point Mechanism provided direct access to the Security Council for individuals unable to make use of the bilateral mechanism. They could contact the Subsidiary Organs Branch of the Security Council Affairs Division of the UN Secretariat directly, which would forward their request to the relevant Sanctions Committee for consideration. The Focal Point did not make any judgment of the merits of the case, but only made a determination as to whether a repeat request contained new information. The Focal Point Mechanism did not meet the standards of due process as being called for by European courts, however, particularly with regard to a fair hearing and effective remedy, and in 2009, the Office of the Ombudsperson was established through UNSCR 1904 (December 2009). The mandate of the Office was limited to the 1267 counterterrorism sanctions regime, the source of the largest number of individual designations at the time (and to this day). Unlike the Focal Point Mechanism, the Ombudsperson was authorized to meet with petitioners, gather information for a fair hearing, and make a recommendation in each case reviewed. Prior to the renewal of the Office in 2011, the then Ombudsperson, Kimberly Prost, proposed operational adjustments to the regime that resulted in the creation of a reverse consensus procedure, meaning that a recommendation of

13 See the timeline of incremental adjustments listed in Appendix 2.

14 Biersteker and Eckert 2006.

the Ombudsperson to delist an individual would be accepted, unless all fifteen members of the Security Council agreed to reject the recommendation.[15] Such a rejection has never taken place.

In the mid-2010s, legal challenges from individuals targeted for UN sanctions by other, non-1267, sanction regimes began to emerge. In 2018, the Centre for Policy Research of the UN University published a report, *Fairly Clear Risks*,[16] that identified increased levels of litigation between 2010 and 2017 challenging UN sanctions designations from individuals unable to access the Office of the Ombudsperson. They recommended the creation of what they termed 'context-sensitive' review mechanisms for Armed Conflict and Non-Proliferation regimes, that is, review mechanisms attuned to the specificities of each type of sanction regime, due to the fact that there are important differences depending on whether the regime deals with non-proliferation of weapons of mass destruction (WMD), armed conflicts, or terrorism. The Geneva Graduate Institute published a sequel report in 2021, *Enhancing Due Process in UNSC Targeted Sanctions Regimes*,[17] exploring how an alternative (context-sensitive) review mechanism might work in practice, and suggesting how it might play out in a particular sanction regime (like the DRC and similar armed conflict regimes without a counter-terrorism dimension). The report was discussed at an informal meeting amongst a number of UN Security Council members in April 2022, but there were concerns raised about the dangers of creating a two-tiered review mechanism and there was a broad, but not universal, consensus that the mandate of the Office of the Ombudsperson should be expanded to all UN sanctions committees.

The idea of expanding the Ombudsperson's mandate was incorporated into one of the preambular paragraphs of the Haiti sanctions resolution, UNSCR 2653 (October 2022), suggesting 'the intent to consider' authorizing the Ombudsperson to receive delisting requests from individuals designated by the new regime. When the Haiti regime was renewed in October 2023, the Security Council referenced the issue in one of the operative paragraphs of UNSCR 2700 expressing its intention 'to support the further development of fair and clear procedures for individuals and entities designated pursuant to resolution 2653 (2022), including through the Focal Point for Delisting established by resolution 1730 (2006)'. Following extensive discussions in New York and capitals, the Focal Point Mechanism was significantly enhanced i n UNSCR 2744 (July 2024), discussed in more detail in Section Five below.

15 Prost 2017.

16 Cockayne, Brubaker and Jayakody, 2018.

17 Biersteker, van den Herik, and Brubaker, 2021.

3 Core Elements of Fair and Clear Procedures

While the focus of most discussions of due process has concentrated on challenges against listings, also termed the 'delisting process', it is important to underline that a delisting mechanism operates in tandem with the listing process. Fair and clear procedures should not be limited to the delisting process on its own. Core elements of fair and clear procedures involve both the listing as well as the delisting and the two processes interact.[18] The key elements of both are:

3.1 *Listing Process*

- Clear and precise designation criteria
- Sufficiently developed narrative summaries / detailed statement of case of reasons for listing
- Clear evidentiary or documentary standards
- Notification
- Access to entity responsible for listing
- Periodic assessment by the listing entity

3.2 *Delisting Process*

- Access to a separate, reviewing entity, independent of the listing entity
- Fair hearing
- Impartial review of factual basis for maintaining the designation
- Independent review
- Binding decision
- Periodic review of the full list by the independent reviewer

The due process elements regarding the listing process, particularly the articulation of clear and precise designation criteria, are important for the entity engaged in making the listing, the UN Security Council.[19] While some designations are made in the texts of UN Security Council resolutions, the vast majority are made by its different sanction committees. It is important that the designating body provide detailed statements of case or narrative summaries

18 van den Herik 2014.

19 The Security Council is reluctant to identify clear and precise criteria for delisting, since this could interfere with ongoing mediation efforts. It prefers, instead, to request that the Office of the Secretary-General provide periodic reports to the Council, some of which contain benchmarking criteria that sometimes spell-out criteria for delisting, such as in the case of the Taliban prior to their overthrow of the Ghani government in Afghanistan in 2021.

articulating the reasons for listing. The UN issues a press release whenever new designations are made, and the names, along with narrative statements of case, are posted on the UN website.

Some legal scholars have argued that periodic assessment by the listing entity of individual designations should also be considered an element of due process.[20] Periodic assessment serves the purpose of making the lists more transparent, facilitating scrutiny, and it is a crucial vehicle for the giving-of-reasons, a key element of the rule of law. Consequently, it also contributes to the improvement of sanction regimes over time. It has the additional benefit that it can ensure that existing UN sanctions regimes are adapted to the changing conditions of the conflict situations in which they are applied, making these more efficient while reinforcing their legitimacy.

The due process elements regarding the delisting process, in contrast, regard a separate entity of the designating body (the UN Security Council), in conformity with core due process elements regarding independent review. The core elements for the delisting process are deduced from the right to an effective remedy. This right has various components that can be fulfilled differently in different settings.[21]

One core component is access to an independent body. It is important that sanctioned persons have access both to the entity that designated them, as well as to a separate reviewing entity independent of the listing entity. Individuals have no legal standing before the UN Security Council or their subsidiary bodies such as sanctions committees. As a result, they do not have direct access to those responsible for making their designations for restrictive measures, be they travel bans, asset freezes, or in some instances, individual arms embargoes. If there is a case of mistaken identity or a designation made on the basis of false information in the initial statement of case, the individuals involved have to go through their states of citizenship or residence or make an appeal through the Focal Point process. Prior to the enhancement of the Focal Point Mechanism in 2024, the Focal Point forwarded the information to the relevant sanctions committee for its consideration (as long as the request contained new information that had not been previously considered by the committee). There was no access to challenge the listing beyond this point, however.

A second core element of due process is a fair hearing. A fair hearing implies the right of an individual to be heard and to present views and arguments.

20 Rodiles Breton and van den Herik 2025.

21 The argument that a due process framework for UN sanctions needs to be tailored to the uniquely political and crisis-based context in which the Security Council operates was made most eloquently by Hovell 2016.

This may include the possibility to provide additional information, to challenge elements of statements of case, to express disagreement about fulfillment of the listing criteria, or to express an intention to change behavior with regard to some proscribed activity. A fair hearing presupposes clear and precise listing requirements, sufficiently developed narrative summaries and/or statement of reasons, clear evidentiary standards, and access to legal assistance.

In principle, the right to an effective remedy entails the existence of an authority able to make a final determination about the appeal of a designation that is different from the entity that makes the initial decision to apply individual sanctions (i.e., the Security Council or one of its sanctions committees). The Office of the Ombudsperson has the authority to make a recommendation about delisting requests to the 1267 sanction committee, but even with the adoption of the procedure of reverse consensus on its recommendations when the office was first renewed in 2011, it does not have the power to make binding decisions and does therefore not *de jure* comply with the requirements of an effective remedy. The final authority to make a delisting remains with the UN Security Council, which can overturn the Ombudsperson's recommendations, if all fifteen members of the Security Council agree to do so. To date, however, as already mentioned above, the UN Security Council has never overturned a recommendation, granting the recommendations of the Ombudsperson the status of *de facto* effective remedy.

4 Litigation Challenging UN Individual Designations

Litigation challenging individual designations made by the UN Security Council has played an important role in raising the profile of the due process issue since the early 2000s, its implications for the legitimacy of UN sanctions, and the need for fair and clear procedures with regard to listing and delisting.

There were fifty legal challenges to UNSC individual sanctions designations concluded between 2000 and 2023.[22] From the time of the first UN individual designations in 2000 and when the Office of the Ombudsperson became operational in 2010, there were nineteen formal legal challenges to UN designations concluded by the courts. Of that total, all but one (or ninety-five percent) were challenges to designations made by the 1267 counter-terrorism sanction regime.

22 The source for the statistics quoted in this section can be found in Appendix 1.

Since 2010, there have been thirty-one formal legal challenges to UN individual sanctions concluded. Of this number, fourteen (or forty-five percent) were counter-terrorism related, while seventeen legal challenges (or fifty=five percent) came from individuals or entities designated in other UN sanctions regimes (Iraq, Libya, CAR, DRC, DPRK, and Iran). Significantly, *all* of the thirteen legal challenges to UN sanctions concluded since 2017 have come from non-counter-terrorism sanction regimes, where individuals do not have access to the Office of the Ombudsperson. This includes the highly visible case of Aisha Qadhafi of Libya. The European Court of Justice annulled the EU implementation of UN travel restrictions on her in April 2021, a decision that was appealed and lost by the European Union.[23] With the support of the Government of Libya, she used the Focal Point process (in its original 2006 form) and her travel ban was lifted by the Libyan Sanctions Committee in October 2023. The freeze on her assets remains in place.

It is also noteworthy that there have been no legal challenges to 1267 designations since 2017, suggesting both the effectiveness of the operations of the Office of the Ombudsperson and its increased recognition as a legitimate location for redress by courts worldwide, some of which have declined to take on cases before an individual goes through the Ombudsperson process. Appendix 1 contains a comprehensive list of concluded litigation cases challenging UN Security Council individual designations beginning in 2003 and continuing through 2023. This serves as the basis for the statistics described above.

With regard to the potential scope of the issue going forward, nearly two-thirds (or sixty-one percent) of the total designations for individual sanctions by the UN (536 of 879 designations) in 2025 were non-counter terrorism listings and therefore covered by the Focal Point Mechanism, rather than the procedures of the Office of the Ombudsperson.[24]

5 UNSCR 2744: Enhancement of the Focal Point Mechanism

Resolution 2744 (19 July 2024) significantly enhanced the mandate and tasks of the Focal Point Mechanism. The Focal Point, originally established in 2006, handled all delisting requests for individuals designated for UN sanctions,

23 European Court of Justice 2023.

24 Source: data calculated by the authors, taken from the consolidated list of UN individual and entity designations 2025.

except for designations made by the 1267 sanctions regime which, as described above, are covered by the mandate of the Ombudsperson after it was created in 2009.

Resolution 1730 (2006) had established the Focal Point with the main task of receiving delisting requests and transmitting them to the relevant sanctions committees. Resolution 2744 (2024) enhances the tasks of the Focal Point with a view to providing better access to targeted individuals, as well as opportunities to engage—via the Focal Point—with the relevant actors involved in the listing process and in the implementation of sanctions, including members of the sanctions committee, designating states and states of nationality or residence, panels of experts and monitoring teams, and relevant UN special envoys. The enhanced engagement with the petitioner and relevant actors facilitates important elements of providing for a fair hearing for the petitioner.

Upon submission of a delisting request, the enhanced Focal Point Mechanism will engage in an information gathering period of a maximum of four months with the relevant actors, as well as a dialogue process of two months between the petitioner on the one hand and relevant states and entities on the other—via the Focal Point.[25] This is modelled closely after the process employed by the Office of the Ombudsperson. This information gathering process will culminate in the drafting of a confidential and comprehensive report that will be shared with the sanctions committee and relevant states. This report will include the principal arguments in respect of the delisting petition, based on the information gathered. It should also describe the Focal Point's activities regarding the delisting request. Notably, in contrast to the Office of the Ombudsperson, the report may *not* include an explicit recommendation on the case from the Focal Point.

The enhanced Focal Point can be considered as one more step towards the further strengthening of the institutional procedures within the specific setting of the UN Security Council, while not yet meeting all the core elements of due process as described above in section three. Indeed, significant shortcomings remain. While it offers some form of access and a possibility for a listed person to be heard and to present views, the Focal Point does not formally offer redress in relation to the most important elements of core due process rights. In particular, it does not provide the right to access to a fully *separate and independent reviewer*, the right to an impartial review of the factual basis for maintaining

25 The future tense is employed here, because at the time this text was written, the new Focal Point had not been appointed by the Secretary-General due largely to disagreements among permanent members of the Security Council.

TABLE 1 Summary comparison of different institutional mechanisms to address due process and ensure fair and clear procedures for individuals subject to UN sanction designations

	No process (2000)	Bilateral process (2002)	Focal Point Mechanism (2006)	Enhanced Focal Point Mechanism (2024)	Office of the Ombudsperson (2009, 2011)	Judicial review (no date)
Notification	No	No	No	Yes	Yes	Yes
Access to UNSC	No	Yes, if states initiate	Yes	Yes	Yes	Yes
Periodic Review	No	No	No	No	No	No
Access for delisting	No	Only if states agree	No	No	Yes	Yes
Fair hearing	No	No	No	Yes	Yes	Yes
Effective remedy	No	No	No	No	Yes, *de facto*	Yes

the listing (due to the fact that the Focal Point is not able to make a formal recommendation), or the right to an independent review which implies that the impartial and independent reviewer has the possibility to take a binding decision, or at the very least to present a public recommendation that is subjected to a reverse consensus procedure similar to the Ombudsperson process.

Over the course of the past twenty-five years, the Security Council has moved incrementally, but progressively, to address fair and clear procedures for individuals designated for sanctions, culminating most recently in the enhancement of the Focal Point Mechanism. The table above, summarizes the extent to which different institutional mechanisms introduced over time have addressed core elements of due process. As suggested in this article, while there is progress, there is still work to be done. It should be noted that three of the elements included in the rows of the table—notification, access, and periodic review—address the responsibility of the body making the listing, as discussed in section three above. The other elements—access for delisting, fair hearing, and effective remedy—are the responsibility of an independent and impartial review mechanism associated with the delisting process.

It should also be noted that the mandate, tasks, and powers of the Ombudsperson differ from those of the Focal Point, without a clear rationale for the differentiation. In fact, Resolution 2744 (2024) has in effect created a two-tiered system for delisting, with the Ombudsperson for one specific sanctions regime, and the Focal Point for all the other sanctions regimes. The differentiation does not only have an institutional dimension, but is also substantive in nature, since the nature of the process differs significantly for the individuals involved.

A separate issue that has been created with the introduction of a two-tiered system concerns the interrelationship between the Ombudsperson and the Focal Point. In particular, this concerns issues and potential for collaboration as well as the exchange of best practices. The exchange of practices is particularly important with a view to the continuous strengthening and improvement of procedures and to prevent potential backsliding. Dialogue and cooperation between the two organs would also provide a strong signal to the UN system as a whole and to the outside world that fair and clear procedures remain a consistent and coherent effort with regards to the legitimacy of the whole range of UN sanctions.

It is important to note however, that there is a certain risk that the benchmark set by the institution of the Ombudsperson will be eroded by the introduction of the enhanced Focal Point Mechanism. This risk is particularly present given that the Ombudsperson only has a mandate in relation to one sanction regime, whereas the Focal Point has a mandate in relation to all the other sanction regimes (fourteen at present). This might, over time, evolve into an understanding that the Focal Point presents the standard procedure, and the Ombudsperson is regarded as the exception with a mandate in relation to one sanctions regime only. This is highly problematic as, in fact, the Focal Point remains sub-standard from a rule of law, legitimacy, and procedural integrity perspective. In addition, if ever the 1267 regime was terminated, then the model and higher legal standard of the Ombudsperson would fade away instantly. And even if not, there is a risk that the Ombudsperson is downgraded overtime to mirror the Focal Point rather than the other way around.

There is also a risk that the efforts to strengthen the Ombudsperson, as for instance described in the letter of the Group of Like-Minded States on UN Targeted Sanctions of 28 May 2024,[26] are sidelined by a focus on the enhanced Focal Point. It is thus of vital importance that the processes of the Ombudsperson and the Enhanced Focal Point are streamlined and made more parallel right from the start, and that the Focal Point operates in such a way that it meets, or comes closer to, the procedures developed by the Ombudsperson.

6 Future Steps

There are a number of opportunities for future steps and further development and elaboration that would strengthen fair and clear procedures in the wake of the adoption of UNSCR 2744.

26 United Nations Security Council, 28 May 2024.

In light of the core elements of due process, it is imperative that there are guarantees for the independent functioning of the Focal Point. Such guarantees should also concern the stature and appointment, rank and legal status within the UN system that is needed to fulfill the assigned tasks effectively. The periodic reports of the Ombudsperson provide many lessons learned in this regard. In addition, the Focal Point, like the Ombudsperson, should be given the necessary financial and staff resources to carry out its mandate effectively.

Another pertinent issue that remains outstanding concerns the legal assistance that should be given to delisted persons to move beyond their past listing. This is particularly important since the implementation of UN sanctions is also referenced and further developed by powerful global organizations outside the UN (like the Financial Action Task Force) which sometimes works closely together with Sanction Committees' expert panels and monitoring bodies. UN lists are implemented also by private actors. The latter may continue to take prior designations into account in their risk assessments and due diligence policies, thus prolonging the actual effects of a designation even after a formal delisting by the UN has occurred. Some states have also notably exceeded the mandate of the restrictive measures through their implementation of the measures, as observed in the case of Guinea-Bissau, where designees were prevented from running for office domestically because of their status as listed persons.

Another area of attention concerns the delisting of entities. The Ombudsperson procedure allows for the submission of petitions by entities[27] and entities have been delisted.[28] Still the procedure does seem to be more tailored to individuals and questions remain regarding authorization and representation and what the criteria for this are. There may of course also be very intense political sensitivities involved in such processes, but that then underlines the need for clear procedures and criteria.

The strengthening of information-sharing mechanisms between the Focal Point and Sanction Committees' expert teams and monitoring bodies should be promoted, taking into account relevant privacy and data protection requirements. A technical amendment, authorized by paragraph 15(c), could be introduced to assist petitioners with access to *pro bono* legal counsel, by cooperating with the list maintained by the Office of the Ombudsperson.

As a matter of practice, the Focal Point could structure its comprehensive report in such a way that an impartial reviewer would see the logic of an

27 Office of the Ombudsperson 2024.

28 Status of cases published on the UN website 2025.

implicit recommendation, assuming the information gathered merits such an outcome. This will also prove helpful to Sanctions Committee members and their capitals responsible for reviewing the reports and making a decision on the matter of delisting. As an additional matter of practice, invitations to the Focal Point to present the comprehensive report in person should become routine.

As a further matter of practice, members of the Security Council should individually or collectively ensure as a standard practice that every petition reviewed by the Focal Point is taken up for consideration and a decision by the relevant sanctions committee. This is imperative both to approach the goal of effective remedy and to ensure that existing lists remain relevant.

In order to promote the cooperation between the Focal Point and the Ombudsperson, while favoring coherence in the efforts towards fair and clear procedures for the whole range of UN sanctions, joint briefings of these two organs to the Security Council (such as those delivered by monitoring bodies) should be encouraged. More broadly and beyond the Focal Point / Ombudsperson, an area of improvement of sanctions regimes also concerns the issue of institutionalized periodic assessment of all UN designations in order to maintain the effectiveness of sanctions regimes in the midst of rapidly changing conflict dynamics.

Finally, the Informal Working Group of the Security Council on General United Nations Security Council Sanctions Issue should include in its mandate as a new general issue efforts to strengthen due process and to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them, as well as granting exemptions.

To take effect, many of the preceding recommendations do not necessarily require the passage of a new UN Security Council resolution. They can be achieved through institutional practice,[29] once an individual of appropriate stature, with a strong legal background and possibly with judicial experience, is appointed the new Focal Point, with the enhanced mandate provided by UNSCR 2744. This can be supplemented by the practical actions taken by individual members of the Security Council who can insist that the Focal Point be invited to present and discuss their reports, that the Council take formal decisions on each case, and that resources are provided to ensure the activities of the Focal Point are Ombudsperson are complementary.

29 Adler-Nissen and Pouliot 2014.

7 Conclusion

While the UN Security Council has the responsibility and authority to apply individual sanctions in the pursuit of international peace and security, it cannot do so legitimately without consideration of the broad framework of norms and principles of the international rule of law.

The move from comprehensive embargoes to targeted sanctions was a welcome one in many respects, but it created serious new challenges by affecting individual rights. It became soon clear that the Security Council cannot simply remain 'the master of its own decisions', if those decisions affect fundamental rights and liberties. The long and ongoing struggle for fair and clear procedures in relation to UN sanctions is about the promotion of the rule of law inside the Council and the UN, as well as about the rule of international law understood as a modern legal system capable of creating balances between core values, such as international security and human rights.

Resolution 2744 and the significant enhancement of the Focal Point Mechanism shows that sometimes the incremental improvements of hard diplomatic work are duly rewarded. Thus, there is momentum for the ongoing pursuit of fair and clear procedures in UN sanctions. This is in the interest both of affected individuals and entities as well as of the UN and the Security Council in particular. In order to ensure a coherent application of sanctions on a universal level, delisting requests should be handled with the appropriate and necessary due process guarantees before an independent and effective reviewing entity at the level of the UN. If regional and national courts have to secure international due process standards, the risk of fragmentation of sanctions implementation will continue. Promoting the international rule of law through fair and clear procedures is not only desirable, but arguably existential for the collective security system and universal and legitimate governance today.

To the extent possible, individuals should have recourse to institutional procedures that grant them fundamental rights associated with due process: notification, access to an independent body, a fair hearing, and impartial and independent effective remedy.

Adherence to these principles strengthens the legitimacy of the UN's individual targeted sanctions at a time when sanctions in general are under increased scrutiny and challenge.[30] Periodic assessment of the designations can also ensure that the sanctions regimes remain relevant and 'fit for purpose' for the changing dynamics of the conflicts in which they are applied. There has

30 Belloni, Biersteker, and Giumelli 2026.

been incremental progress toward the achievement of fundamental due process goals over the past quarter century, but more work needs to be done. It is important that scholars and practitioners keep focused on the longer-term goal of achieving genuine due process in practice.

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Appendix

Appendix 1: Overview of Relevant Cases Challenging UN Listings

Year concluded	Proceedings	Jurisdiction	UN sanctions regime
2023	Case C-413/21 P, *Council of the European Union v. Aisha Muammer Mohamed El-Qaddafi* (20 April 2023) (Court of Justice, Sixth Chamber)	EU	Libya
2022	Case T-627/20, Libyan African Investment Company (LAICO) v. Council of the European Union (28 September 2022) (General Court of the EU, Fifth Chamber)	EU	Libya

(*cont.*)

Year concluded	Proceedings	Jurisdiction	UN sanctions regime
2021	Case T-322/19, *Aisha Muammer Mohamed El-Qaddafi v. Council of the European Union* (21 April 2021) (General Court of the EU, Fifth Chamber)	EU	Libya
2020	Case C-134/19 P, *Bank Refah Kargaran v. Council of the European Union* (6 October 2020) (CJEU, Grand Chamber)	EU	Iran
2020	Case T-490/18, *Neda Industrial Group v. Council of the European Union* (8 July 2020) (General Court of the EU, Fourth Chamber)	EU	Iran
2020	Case T-332/15, *Ocean Capital Administration v. Council of the European Union* (8 July 2020) (General Court of the EU, First Chamber)	EU	Iran
2020	Case T-172/18, *Muhindo Akili Mundos v. Council* (12 February 2020) (CJEU, Ninth Chamber)	EU	DRC
2019	Case brought by François Bozizé before the Bangui's Administrative Court of the Central African Republic (11 December 2019)	Central African Republic	Central African Republic
2019	Case C-225/17 P, *Islamic Republic of Iran Shipping Lines and Others v. Council of the European Union* (31 January 2019) (CJEU, Fourth Chamber)	EU	Iran
2018	Case C-600/16 P, *National Iranian Tanker Company v. Council of the European Union* (29 November 2018) (CJEU, Fourth Chamber)	EU	Iran
2018	Case C-248/17 P, *Bank Tejarat v. Council of the European Union* (29 November 2018) (CJEU, Fourth Chamber)	EU	Iran
2018	Case C-430/16 P, *Bank Mellat v. Council of the European Union* (6 September 2018) (CJEU, Second Chamber)	EU	Iran
2018	Joined Cases T-533/15 and T-264/16, *Il-Su Kim and Korea National Insurance Corporation v. Council of the European Union and European Commission* (14 March 2018) (General Court of the EU, Third Chamber)	EU	North Korea

(*cont.*)

Year concluded	Proceedings	Jurisdiction	UN sanctions regime
2017	Joined Cases T-107/15 and T-347/15, *Uganda Commercial Impex Ltd v. Council of the European Union* (18 September 2017) (General Court of the EU, Sixth Chamber)	EU	DRC
2017	Case T-619/15, *Central African Republic Diamond Purchasing Office* (*Bardica*) *and Kardiam v. Council* (20 July 2017) (General Court of the EU, Ninth Chamber)	EU	CAR
2017	Case C-19/16 P, *Al-Bashir Mohammed Al-Faqih and Others v. European Commission* (15 June 2017) (CJEU, Eighth Chamber)	EU	ISIL (Da'esh) and Al-Qaida
2017	Case T 681/14, *El-Qaddafi v. Council of the European Union* (28 March 2017) (General Court of the EU, Third Chamber)	EU	Libya
2016	Case T-248/13, *Mohammed Al-Ghabra v. European Commission* (13 December 2016) (General Court of the EU, Third Chamber)	EU	ISIL (Da'esh) and Al-Qaida
2016	*Youssef v. Secretary of State for Foreign and Commonwealth Affairs* [2016] UKSC 3	United Kingdom	ISIL (Da'esh) and Al-Qaida
2016	*Al Dulimi and Montana Management Inc. v. Switzerland* (2016) (ECtHR, Grand Chamber)	ECtHR	Iraq
2015	Case T-134/11, *Al-Faqih and Others v. European Commission* (15 June 2017) (General Court of the EU, Seventh Chamber)	EU	ISIL (Da'esh) and Al-Qaida
2015	Case T-527/09 RENV, *Chafiq Ayadi v. European Commission* (14 January 2015) (General Court of the EU, Third Chamber)	EU	ISIL (Da'esh) and Al-Qaida
2014	Case T-306/10, *Hani El Sayyed Elsebai Yusef v. European Commission* (21 March 2014) (General Court of the EU, Second Chamber)	EU	ISIL (Da'esh) and Al-Qaida
2013	Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, *European Commission and Others v. Yassin Abdullah Kadi* (*Kadi II*) (18 July 2013) (CJEU, Grand Chamber)	EU	ISIL (Da'esh) and Al-Qaida

(*cont.*)

Year concluded	Proceedings	Jurisdiction	UN sanctions regime
2013	Case C-183/12 P, *Chafiq Ayadi v. European Commission* (6 June 2013) (CJEU, Tenth Chamber)	EU	ISIL (Da'esh) and Al-Qaida
2013	Case C-239/12 P, *Abdulbasit Abdulrahim v. Council of the European Union and European Commission* (28 May 2013) (CJEU, Grand Chamber)	EU	ISIL (Da'esh) and Al-Qaida
2012	*Nada v. Switzerland* (2012) (ECtHR, Grand Chamber)	ECtHR	ISIL (Da'esh) and Al-Qaida
2012	*Yassin Abdullah Kadi v. Geithner, Civil Action No. 09–0108* (JDB) (D.D.C. Mar. 19, 2012)	USA	ISIL (Da'esh) and Al-Qaida
2012	*Al-Haramain Islamic Foundation Inc. v. Obama*, 690 F. 3d 1089—Court of Appeals, 9th Circuit (2012)	USA	ISIL (Da'esh) and Al-Qaida
2011	*Case T-102/09, Abdulrazag Elosta v. Council and Commission* (1 September 2011) (General Court of the EU)	EU	ISIL (Da'esh) and Al-Qaida
2011	*Case T-101/09, Elmabruk Maftah v. Council and Commission* (1 September 2011) (General Court of the EU)	EU	ISIL (Da'esh) and Al-Qaida
2010	Joined Cases T-135/06, *Al-Faqih v. Council; T-136/06, Sanabel Relief Agency Ltd v. Council*; T-137/06, *Abdrabbah v. Council*; T-138/06, *Nasuf v.Council* (29 September 2010) (General Court of the EU)	EU	ISIL (Da'esh) and Al-Qaida
2010	Case UKSC 2009/0016, *Her Majesty's Treasury* (*Respondent*) *v. Mohammed Jabar Ahmed and others* (*FC*) (*Appellants*) *Her Majesty's Treasury* (*Respondent*) *v. Mohammed al-Ghabra* (*FC*) (*Appellant*) *R* (*on the application of Hani El Sayed Sabaei Youssef*) (*Respondent*) *v. Her Majesty's Treasury* (*Appellant*) (27 January 2010) (Supreme Court of the United Kingdom)	United Kingdom	ISIL (Da'esh) and Al-Qaida

(*cont.*)

Year concluded	Proceedings	Jurisdiction	UN sanctions regime
2009	Joined Cases C-399/06 P and C-403/06 P, *Faraj Hassan v. Council of the European Union and European Commission*; and *Chafiq Ayadi v. Council of the European Union* (3 December 2009) (CJEU, Second Chamber)	EU	ISIL (Da'esh) and Al-Qaida
2009	Case No: CO/1200/2009, *Hay v. HM Treasury* (10 July 2009) (England and Wales High Court of Justice—EWHC)	United Kingdom	ISIL (Da'esh) and Al-Qaida
2009	Case T-318/01, *Othman v. Council and Commission* (11 June 2009) (General Court of the EU)	EU	ISIL (Da'esh) and Al-Qaida
2009	Case T-727–708, *Abousfian Abdelrazik v. Canada* (*Minister of Foreign Affairs*) *et al.* (4 June 2009)	Canada	ISIL (Da'esh) and Al-Qaida
2008	*Nabil Sayadi and Patricia Vinck v. Belgium* (22 October 2008) (Communication No. 1472/2006, issued under Optional Protocol to the International Covenant on Civil and Political Rights) (UN Human Rights Committee)	UN Human Rights Committee	ISIL (Da'esh) and Al-Qaida
2008	Joined Cases C-402/05 P and C-415/05 P, *Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities* (*Kadi I*) (3 September 2008) (CJEU, Grand Chamber)	EU	ISIL (Da'esh) and Al-Qaida
2008	Case 1A.48/2007, *Ali Ghaleb Himmat v. Switzerland* (22 April 2008) (Federal Tribunal in Lausanne)	Switzerland	ISIL (Da'esh) and Al-Qaida
2008	*Al Dulimi and Montana Management Inc* (23 January 2008) (Swiss Federal Court)	Switzerland	Iraq
2008	*A, K, M, Q and G v. HM Treasury* [2008] EWCA Civ 1187	United Kingdom	ISIL (Da'esh) and Al-Qaida
2008	*Al-Aqeel v. Paulson*, 568 F. Supp. 2d 64 (D.D.C. 2008)	USA	ISIL (Da'esh) and Al-Qaida
2007	Case No 1A 45/2007, *Youssef Moustafa Nada v. State Secretariat for Economic Affairs and Federal Department of Economic Affairs* (14 November 2007) (Swiss Federal Court)	Switzerland	ISIL (Da'esh) and Al-Qaida

(*cont.*)

Year concluded	Proceedings	Jurisdiction	UN sanctions regime
2007	*Al-Qadi v. the State* (TK 2007) ILDC 311 (Administrative Appeals Board of the Turkish Council of State)	Turkey	ISIL (Da'esh) and Al-Qaida
2006	*Stichting Al Haramain Humanitarian Aid* (2006)	Netherlands	ISIL (Da'esh) and Al-Qaida
2005	*Nabil Sayadi and Patricia Vinck v. Belgium* (11 February 2005) (Tribunal de Première Instance de Bruxelles)	Belgium	ISIL (Da'esh) and Al-Qaida
2003	*Global Relief Foundation v. O'Neill* 207 F. Supp. 2d 779 (N.D. Ill. 2002), aff'd, 315 F.3d 748 (7th Cir.), cert. denied, 540 U.S. 1003 (2003) (United States)	USA	ISIL (Da'esh) and Al-Qaida
2003	*Nasco Business Residence Center SAS v. Italian Ministry of the Economy and Finance* (2003) (Tribunal of Milan)	Italy	ISIL (Da'esh) and Al-Qaida
2003	*R* (*on the application of Othman*) *v. Secretary of State for Work and Pensions* [2001] EWCH Admin 1022	United Kingdom	ISIL (Da'esh) and Al-Qaida

Appendix 2: Timeline of Incremental Procedural Adjustments (or Reforms) of Due Process Procedures for Individuals Sanctioned by the UN

2000 No procedure for delisting
2002 Bilateral state process introduced
2006 Focal Point mechanism created
2009 Office of the Ombudsperson established
2011 Mandate of the Ombudsperson expanded (reverse consensus)
2024 Focal Point Mechanism enhanced