

Targeted Sanctions and Due Process Initiative

DISCUSSION PAPER
ON SUPPLEMENTARY GUIDELINES FOR THE REVIEW OF
SANCTIONS COMMITTEES' LISTING DECISIONS

Background

The goal of the Initiative is to strengthen the efficiency of United Nations Security Council sanctions by addressing human rights and due process concerns and thus further enhancing the credibility of the Security Council. The discussion paper furthermore aims at fulfilling the mandate of the Heads of State and Government contained in the 2005 World Summit Outcome Document, i.e. to establish a de-listing procedure that would ensure that fair and clear procedures exist for removing individuals and entities from United Nations sanctions lists.

In recent years the effective implementation of sanctions by UN Member States, in particular the one against Al-Qaida and the Taliban, has become a matter of recurrent concern. This mainly due to the lack of an effective review system guaranteeing due process rights. More and more Member States are faced with a situation where domestic courts or courts of international organizations to which they are members and whose legal standards they are obliged to respect may declare this lack of a fair and an effective review system as not in conformity with existing human rights obligations. Several countries are thus hesitating to submit names for listing. Recent legal challenges before European Courts and elsewhere have underlined the risk at stake for the integrity and legitimacy of the U.N. Security Council's targeted sanctions system.

Building on an earlier study of the Watson Institute for International Studies of Brown University entitled "Strengthening targeted sanctions through fair and clear procedures" (distributed as U.N. Doc. A/60/887-S/2006/331) which outlined possible options in general terms, the sponsors of the initiative have entrusted Professor Michael Bothe to draft a concrete de-listing procedure.

The present discussion paper on Supplementary Guidelines for the Review of Sanctions Committees' Listing Decisions (see annex) is based on Prof. Bothe's work. It addresses the lack of due process in the current de-listing procedures of United Nations Sanctions Committees which infringes upon the credibility and therefore the efficiency of United Nations sanctions.

ANNEX

DISCUSSION PAPER ON SUPPLEMENTARY GUIDELINES FOR THE REVIEW OF SANCTIONS COMMITTEES' LISTING DECISIONS

Article 1 – Scope of application

(1) The following Supplementary Guidelines shall apply to decisions of the Security Council or any Committee established by the Security Council (Sanctions Committee, hereinafter the Committee) which make individuals, groups, undertakings or entities (the addressees) the object of restrictions (targeted sanctions) concerning their economic assets, economic transactions or freedom of movement (listing decision). A list of Security Council resolutions to which these Rules apply, to be amended every time this is rendered necessary by the adoption or amendment of a relevant resolution, is contained in the Annex to these Rules.¹

(2) These Guidelines are without prejudice to the right of any State to request a delisting as provided by the relevant rules or guidelines applicable for the Committee in question.

Article 2 – Periodic Review

The Committee shall *ex officio* keep the listing decisions under constant review, re-evaluating them on a regular basis, the intervals to be decided by the Committee, in particular in the light of new information submitted by Member States.

Article 3 – The Review Panel

(1) There shall be established a panel of three independent, impartial and judicially qualified persons for the purpose of reviewing listing decisions.

(2) The members of the panel will be proposed by the Secretary General out of a list of candidates submitted by the Member States of the United Nations. They shall be appointed by the Security Council for a non-renewable term of five years.

Article 4 – Request for delisting

Any addressee (the petitioner) may request a de-listing decision through the Focal Point. The petition shall be made in writing in one of the official languages of the United Nations and shall state the factual and/or legal grounds which in the view of the petitioner require delisting.

(2) Individuals, groups, undertakings or entities other than those listed may request a review of that decision if they are personally and directly affected by it.

¹ Resolutions 1132 of 8 October 1997, 1171 of 5 June 1998, 1267 of 15 October 1999, 1333 of 19 December 2000, 1390 of 16 January 2002, 1455 of 17 January 2003, 1483 of 22 May 2003, 1493 of 28 July 2003, 1521 of 22 December 2003, 1526 of 30 January 2004, 1532 of 12 March 2004, 1533 of 12 March 2004, 1584 of 1 February 2005, 1591 of 29 March 2005, 1596 of 18 April 2005, 1617 of 29 July 2005, 1636 of 31 October 2005, 1643 of 15 December 2005, 1649 of 21 December 2005, 1698 of 31 July 2006, 1718 of 14 October 2006, 1727 of 15 December 2006, 1735 of 22 December 2006, 1737 of 23 December 2006, 1747 of 24 March 2007.

Article 5 – Review by the Panel

(1) The Focal Point forwards the petition to the Review Panel and informs the Committee about it.

(2) The Committee may at any time decide a delisting. In this case, the procedure before the Review Panel is discontinued.

(3) The Review Panel examines the petition in a preliminary way. It rejects a petition without further examination where it finds that

- the petition is made by an individual, group, undertaking or entity which is not listed or not entitled to request a delisting according to article 4 para. 2,
- the petition is a repetition of an earlier petition and does not put forward any new evidence or circumstances justifying a delisting;
- the petition is manifestly ill-founded.

(4) If the petition is admitted, the Review Panel shall, within two weeks after admitting the petition, request all UN Member States to submit, within one month, any relevant additional evidence or information.

Article 6 – Co-operation with the Review Panel

All Member States of the United Nations and all relevant international organisations shall cooperate with the Panel to the fullest extent possible, in particular by providing any relevant information or evidence.

Article 7 – Procedure before the Review Panel

The procedure before the Review Panel shall be governed by general principles of international law concerning fair procedure. The Panel shall decide freely to use all evidence it deems appropriate.

Article 8 – Reports and recommendations of the Review Panel

(1) Within three months after receiving the petition, the Review Panel reports its findings to the Committee. It recommends delisting where the evidence available to the Review Panel does not justify the listing. Else it recommends the rejection of the petition.

(2) The report including the recommendations of the Panel shall be published as soon as it is submitted to the Committee.