

**Security Council**

Distr.: General
13 May 2009

Original: English

Letter dated 11 May 2009 from the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities addressed to the President of the Security Council

I have the honour to transmit herewith the ninth report of the Analytical Support and Sanctions Monitoring Team established pursuant to Security Council resolution 1526 (2004) and extended by resolution 1822 (2008).

The report was submitted to the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities on 28 February 2009, in accordance with Security Council resolution 1822 (2008), and is currently being considered by the Committee.

I should be grateful if the attached report could be brought to the attention of the members of the Security Council and issued as a document of the Council.

(Signed) Thomas **Mayr-Harting**

Chairman

Security Council Committee established pursuant to
resolution 1267 (1999) concerning Al-Qaida and the
Taliban and associated individuals and entities



Letter dated 28 February 2009 from the Coordinator of the Analytical Support and Sanctions Monitoring Team addressed to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

The Analytical Support and Sanctions Monitoring Team, established pursuant to Security Council resolution 1526 (2004) and extended by Security Council resolution 1822 (2008), concerning Al-Qaida and the Taliban and associated individuals and entities, has the honour to transmit herewith its ninth report, in accordance with resolution 1822 (2008).

(Signed) Richard **Barrett**
Coordinator

Ninth report of the Analytical Support and Sanctions Monitoring Team, submitted pursuant to resolution 1822 (2008) concerning Al-Qaida and the Taliban and associated individuals and entities

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I. Summary

1. There have been important developments in the Security Council sanctions regime directed against Al-Qaida and the Taliban since the Monitoring Team submitted its last report on 31 March 2008.¹ In June that year, the Security Council adopted resolution 1822 (2008) which added significantly to the fairness and transparency of the procedures followed by the Security Council Committee established pursuant to resolution 1267 (1999) to oversee the Al-Qaida/Taliban sanctions regime (hereinafter referred to as “the Committee”). These improvements will not satisfy all critics, nor perhaps national and regional courts that have increasingly asserted their authority in matters of Member State implementation of the sanctions measures; they do, however, indicate the determination of the Security Council to strengthen the regime and to ensure that it retains its position as the pre-eminent expression of international resolve to act against the threat from Al-Qaida and the Taliban.

2. That threat continues, with the focus firmly on South Asia. The authorities on both sides of the Afghanistan/Pakistan border face an increasing challenge that defies a purely military solution; it is, however, the various Taliban groups that will determine the future there, not Al-Qaida. Meanwhile, the Security Council and the Committee will need to ensure that the sanctions regime has as great an impact as possible by inhibiting the capabilities of both the Taliban and Al-Qaida worldwide. This will require further work on the Consolidated List² and effective application of the new procedures introduced by Council resolution 1822 (2008), as well as more committed implementation and greater engagement by Member States. These issues are all interrelated.

3. In the present report, the Team attempts to point to action that is necessary on all four fronts. It believes that the widespread attention paid to the regime over the last two years and the changes that have resulted offer a real opportunity for a fairer, more dynamic and better directed regime with real impact and increased support.

II. The threat

A. Overview

4. When the Team last reported, in March 2008,³ the critical importance of the border area between Afghanistan and Pakistan in terms of the threat from the Taliban, Al-Qaida⁴ and other associated groups that feature on the Consolidated List was already apparent. Since then it has become even more so. Although there are threats elsewhere, there is no other area of the world where the success of counter-

¹ The Team’s eighth report (S/2008/324): see www.un.org/sc/committees/1267/monitoringteam.shtml.

² The List established pursuant to resolutions 1267 (1999) and 1333 (2000) with respect to Al-Qaida, Usama bin Laden and the Taliban, and other individuals, groups, undertakings and entities associated with them; available at www.un.org/sc/committees/1267/consolist.shtml.

³ S/2008/324.

⁴ The first mention of a listed or previously listed individual or entity includes the relevant permanent reference number on the List; thereafter listed parties are indicated by *. Other names mentioned are not listed. As Al-Qaida, Usama bin Laden and the Taliban are named in the Security Council resolutions, they are mentioned without reference.

terrorism measures will mean more, and their failure have greater consequences, than in South Asia.

B. Al-Qaida leadership

5. Pressure inside and outside South Asia, including several direct attacks on the Al-Qaida leadership, may have led to a sombre celebration in August 2008 of the twentieth anniversary of the movement's foundation, but survival is itself a form of victory. Although geographically restricted to the Afghanistan/Pakistan border area and weakened by its failure to mount the attacks that it has threatened, Al-Qaida has continued to attract worldwide attention and new recruits.⁵

6. Propaganda has remained the most visible expression of Al-Qaida's global activity, though the loss of key Internet-based outlets on 10 September 2008, when Al-Hesbah, Al-Ekhlaas, Al-Firdaws, and Al-Boraq all went offline, shows some vulnerability to counter-measures.⁶ While the quantity and quality of its own online production have remained high, coverage in the mainstream media has declined as Al-Qaida has found it harder to claim relevance to the main issues of the Muslim world. The Israeli military offensive in Gaza in December 2008 and January 2009 prompted many comments from Al-Qaida leaders,⁷ but without attracting much attention until Usama bin Laden himself issued his first statement since May 2008 calling for attacks against Israeli and United States of America targets wherever accessible.⁸ Al-Qaida has struggled to play a credible role in the Palestinian issue, but popular criticism of the reaction of some Arab States to the Israeli attack may now offer more opportunity. Al-Qaida will also be looking to take advantage of any weakening of Hamas within the Palestinian territories.⁹

7. Al-Qaida continues to suffer from criticism of its arguments in support of terrorism from authoritative voices within the radical milieu. Perhaps as a result, or to reflect a shift in its support base, Al-Qaida leaders have begun to broaden their appeal to include individuals who feel economic or social deprivation rather than just those who may fear that their community is under threat.¹⁰ While a move towards more traditional terrorist mantras is unlikely to lead to greater support for Al-Qaida, as it undermines an essential element of its appeal to an individual's sense of duty towards God rather than towards himself, Al-Qaida messaging is increasingly adept at interweaving local, national and regional issues within its global vision.

⁵ For example, the British Prime Minister on a visit to Pakistan in December 2008 said that "three-quarters of the most serious terrorist plots investigated by the British authorities have links to Al-Qaida in Pakistan", see www.number10.gov.uk/Page17782.

⁶ All but Al-Ekhlaas were functioning again as of 28 February 2009, as were many others.

⁷ Al-Zawahiri (QE.A.6.01) issued statements on 6 January and 13 February 2009; Abdelmalek Droukdel (QI.D.232.07) on 30 December 2008 and 13 January 2009; and Abu Yahia al Libi on 31 January 2009.

⁸ Audiotape issued on 14 January 2009.

⁹ Al-Qaida has often criticized Hamas, which in turn has tried to suppress any Al-Qaida activity in Gaza.

¹⁰ For example, Al-Zawahiri* in April, September, November 2008 and February 2009 statements; Droukdel* in a November 2008 statement.

C. Al-Qaida affiliates

8. The most notable attack since the Team's last report occurred in Mumbai in November 2008, apparently carried out by Lashkar-e-Tayyiba (QE.L.118.05). While Lashkar-e-Tayyiba* is associated with Al-Qaida, its focus is almost exclusively on India, and although the attackers sought out Western targets, it is unlikely that the group will begin to attack non-Indian targets outside the region. Al-Qaida has applauded the Mumbai attack and perhaps hoped that it might lead to some respite from the pressure exerted by the Pakistani Army on Al-Qaida bases in the Federally Administered Tribal Areas, but the Team has seen no evidence to suggest that the atrocity was coordinated between the two groups. Nonetheless, the worldwide coverage and the regional tension that resulted from the assault demonstrated once again the potential for terrorism to cause an impact far beyond the immediate area of attack.

9. Other high profile attacks in South Asia included the June 2008 bombing of the Embassy of Denmark in Islamabad, the July attack on the Embassy of India in Kabul and the September attack on the Marriott Hotel in Islamabad, and there were many more. In addition there have been reports of people from outside the region travelling to South Asia to participate in terrorist operations or to train for them elsewhere.¹¹ Beyond Afghanistan, Pakistan and India, the Team has noted attacks and arrests in 38 other States claimed by or attributed to listed groups associated with Al-Qaida.¹²

10. Al-Qaida in Iraq (QE.J.115.04) has continued to drift towards marginalization as the flow of recruits from outside the country has dried up and its support base in Iraq has eroded. There have been reports of fighters leaving for destinations in South Asia, the Arabian Peninsula, the Levant, North Africa, Somalia and the Sudan, with a few also reported in Europe.¹³ It is likely that these fighters will continue to seek operational opportunities, but they have had limited impact so far. In the Arabian Peninsula, Al-Qaida has been hit hard by counter-terrorist efforts in Saudi Arabia, which have led to the capture or death of some members and have driven others abroad.¹⁴ Some of the latter have gone to neighbouring Yemen, which is of increasing importance as the main area of activity for Al-Qaida supporters in the region.¹⁵ Yemen's proximity to Somalia may also help build an Al-Qaida presence in East Africa as Al-Shabaab, which shares Al-Qaida's ideals, gains further strength. Al-Shabaab, while not formally part of Al-Qaida, uses much of the same rhetoric

¹¹ For example, the Islamic Jihad Union, listed as Islamic Jihad Group (QE.I.119.05), based in Central and South Asia, has made recruits in Europe. Three of them were listed by the Committee during the reporting period.

¹² The Team has recorded open source reports of around 80 attacks affecting 25 States that involved listed entities, excluding the Taliban, and arrests in 16 others. See annex II to the present report.

¹³ Intelligence briefings to the Team in the areas concerned.

¹⁴ On 2 February 2009, the Interior Ministry of Saudi Arabia published a list of 83 Saudi nationals suspected of terrorism who were currently located outside the Kingdom; available at www.moi.gov.sa.

¹⁵ The seventh issue of *Echo of the Epics* (19 January 2009), Al-Qaida in the Arabian Peninsula's electronic magazine, announced that the Saudi Arabian branch would join the Yemeni branch under the overall leadership of Abu Baseer al-Wahayshi in Yemen.

and issues its communiqués through the Global Islamic Media Front, which is used exclusively by Al-Qaida supporters.¹⁶

11. Al-Qaida in the Arabian Peninsula also claims close links with the Organization of Al-Qaida in the Islamic Maghreb (QE.T.14.01),¹⁷ which has continued to mount attacks in Algeria as well as in Mali and Mauritania; but it has been less successful in the northern Maghreb, and in Algeria itself is restricted to the east of the country where it is under severe pressure from the authorities. Reports of new links with associates in Europe are as yet hard to assess and the focus of the group still appears to be local. The Libyan Islamic Fighting Group (QE.L.11.01), which was welcomed as part of Al-Qaida by Aiman al-Zawahiri (QI.A.6.01) in November 2007, has not yet shown any marked capability to mount attacks in the Libyan Arab Jamahiriya or in Western Europe where many of its members reside.

12. In South-East Asia, the execution of Imam Samudra (QI.S.121.03), Amrozi Nurhasyim and Huda bin Abdul Haq (also known as Mukhlas) (QI.B.112.03) on 9 November 2008 for their part in the Bali bombings of October 2002 did not spark the mass protests feared by the authorities, which may suggest that the influence of Jemaah Islamiyah (QE.J.92.02) has declined, at least for the moment. It is unlikely that the decline will be permanent. The Committee added the Rajah Solaiman Movement (QE.R.128.08) and seven of its members to its List in June 2008, but it was the Abu Sayyaf Group (QE.A.1.01) that was responsible for most of the attacks in South-East Asia during this period, including the kidnapping of three representatives of the International Committee of the Red Cross in January 2009.

D. The Taliban

13. The Executive Director of the United Nations Office on Drugs and Crime (UNODC), commenting on his Afghanistan opium survey of November 2008,¹⁸ estimated that the insurgency had received between \$250 million and \$470 million from opium cultivation in 2008. Fuelled by these revenues, the Afghan Taliban has gained ground, helped by the inability of the authorities in Kabul to provide the security and good governance that the great majority of Afghans crave. The attack on Kandahar prison in June 2008, which freed some 900 inmates, almost half of them Taliban fighters, demonstrated an ability to plan and mount a sophisticated operation at a relatively low level of command; and a further major attack in Kabul in February 2009 illustrated the difficulty of defending all possible targets even in the capital. However, although the headline figures for insurgent attacks in Afghanistan show a rise in violence since the Team's last report,¹⁹ not everything has gone the Taliban's way. They have not yet managed to take and hold major population centres; several commanders have been killed, and there are signs of exhaustion among others, as well as personal and tribal rivalries. While Taliban leaders have fiercely denied rumours of peace talks, the fact that they have needed

¹⁶ See also sect. VII.D. below.

¹⁷ *Echo of the Epics* (19 January 2009).

¹⁸ See www.unodc.org/documents/crop-monitoring/Afghanistan_Opium_Survey_2008.pdf.

¹⁹ Overall, security incidents in 2008 were 31 per cent higher than in 2007, with an average of 857 incidents per month in the second half of the year against 625 per month in the first half (source: United Nations Assistance Mission in Afghanistan (UNAMA)). See also www.unama-afg.org/docs/_UN-Docs/_human%20rights/2009/UNAMA_09february-Annual%20Report_PoC%202008_FINAL_11Feb09.pdf.

to do so suggests that some in the movement might be tempted to join such talks, were there a reliable mechanism to do so.

14. Despite these problems, the Afghan Taliban is in no danger of defeat and will likely continue to dominate the countryside while the Government controls the towns, with fighting continuing in both areas. While the overall number of foreign fighters captured, wounded or killed in 2008 is close to the overall figure for 2007,²⁰ there is little firm evidence of a major influx from outside the immediate region. The link between the Afghan Taliban and Al-Qaida continues to weaken, whether because the Taliban see that their association with Al-Qaida has brought them little benefit or because Al-Qaida sees its future on the Pakistani side of the border. Jalaluddin Haqqani (TI.H.40.01) and his son, Sirajuddin (TI.H.144.07), who are based on the border and have links with both the Taliban and Al-Qaida, remain responsible for many of the largest attacks in and around Kabul and are a vital target for the security forces in both Afghanistan and Pakistan.

15. The term “Pakistan Taliban” loosely describes an amalgam of several different groups, none of which is listed. These groups have no structural affiliation with the Afghan Taliban, but the Team notes a close alliance between some leaders of the Pakistan Taliban and individuals on both the Al-Qaida and the Taliban sections of the List. While they have not developed unified plans or objectives, the Taliban groups in Pakistan continue to test the limits of their power. The outcome of their struggle with the authorities in Pakistan, which has now extended well beyond the Federally Administered Tribal Areas, is crucial to the future of Al-Qaida, whose presence in the border area relies on their support. The Team has not been able to verify reports of the Pakistan Taliban planning attacks outside the country, but if the link with Al-Qaida becomes stronger, it is possible that a new energy may infuse the global threat from terrorism.

III. Implementation of the sanctions

A. Overview

16. Despite universal recognition of the importance of the sanctions regime, several factors have undermined its effective implementation: some States lack the capacity to introduce and enforce the measures; some regard its targets as of marginal national relevance; some grant it a low priority because they believe it ineffective, and some have questioned its legitimacy. The Security Council has tried to deal with these issues by encouraging capacity-building, explaining the relevance of the regime to global security, adapting the measures, and encouraging Member States to come forward with ideas for improvement. The Council has also addressed Member State concerns about the fairness of its procedures.

²⁰ 149 captured, 24 wounded, 108 killed for 2007, and 90 captured, 15 wounded and 184 killed for 2008 (source: UNAMA).

17. The significant innovations introduced in this regard by resolution 1822 (2008),²¹ and before it by resolutions 1617 (2005), 1730 (2006) and 1735 (2006), came too late, however, to prevent challenges to the regime in the courts.²² These challenges have not brought into question the authority of the Security Council to impose the sanctions regime, but they have led national and regional courts to play a key role in Member State implementation. The courts have asserted their authority to examine the legality of actions taken by States to put the relevant Security Council resolutions into effect. They have decided that the consequences of listing require that individuals and entities placed on the List must have certain protections of their rights, in particular, their right to know the case against them, the right to be heard and the right to challenge the decision before an independent body.

18. It is conceivable that further decisions by regional and national courts in favour of listed individuals and entities based on a review of the case against them could cause real difficulties for Member State implementation of the sanctions measures, but the Team believes that at this stage, when combined with the focal point process and the review of listings established by resolution 1822 (2008), the involvement of national and regional courts can help the Committee to strengthen the regime as an effective response to the threat from Al-Qaida and the Taliban, without undermining the authority of the Council.

B. Legal challenges to the regime at the regional and Member State levels

19. A long-awaited decision by the Court of Justice of the European Communities in September 2008 in the joined case of Yasin Abdullah Ezzedine Qadi (QI.Q.22.01) and Barakaat International Foundation (QE.B.39.01) is arguably the most significant legal development to affect the regime since its inception.²³ The Court of Justice held that the procedures used by the European Union to implement the sanctions²⁴ had infringed the basic rights of Qadi* and Barakaat,* namely their right to be heard and their right to effective judicial protection, by failing to communicate the evidence justifying the restrictive measures imposed upon them and thus precluding their right to defend themselves against them.

²¹ Resolution 1822 (2008) introduced stronger review mechanisms for listing (paras. 22, 25 and 26), enhanced notification procedures (paras. 15, 17 and 23) and required publicly releasable statements of case and narrative summaries of reasons for listing (paras. 12 and 13). It also directed the Committee to keep its guidelines under active review in support of the objective of ensuring that fair and clear procedures exist for listing and de-listing, as well as for granting humanitarian exemptions (para. 28).

²² See annex I to the present report.

²³ Judgment of the Court (Grand Chamber) of 3 September 2008 in joined cases C-402/05P and C-415/05P, Yassin Abdullah Kadi, Al Barakaat International Foundation v. Council of the European Union, Commission of the European Communities, United Kingdom of Great Britain and Northern Ireland; available at <http://curia.europa.eu>.

²⁴ See regulation (EC) No. 881/2002 of 27 May 2002.

20. The Court of Justice recognized the authority of the Security Council to impose sanctions on individuals and entities associated with Al-Qaida and the Taliban,²⁵ but it ruled that the Council of the European Union could not impose the measures without communicating substantive reasons justifying its implementation of the decision of the Committee to the parties concerned. The Court annulled the European Union regulation implementing the measures insofar as it applied to Qadi* and Barakaat,* but allowed three months for the Council of the European Union to remedy the infringements found.²⁶ The Presidency of the Council then approached the Committee which provided narrative summaries of reasons for listing,²⁷ which the European Union Commission made available to Qadi* and Barakaat.* After having carefully considered comments received from both Qadi* and Barakaat,* the Commission decided to continue the restrictive measures against the two parties.²⁸

21. Should Qadi* and Barakaat* wish to pursue their case further, they may go back to the Court of First Instance of the European Communities to challenge the European Union's decision to maintain the measures against them, arguing their case on the basis of the reasons for listing provided. The Court will then have to decide what standard of review it should apply to the reasons for listing. It may decide that the reasons contained in the narrative summary, along with the fact that the Committee agreed unanimously to add the names to the Consolidated List, are enough to satisfy the legal standard.²⁹

22. However, if the Court decides to examine the evidence behind the reasons for listing provided by the Committee, or if it decides it must conduct a complete review of the listing decisions, it will give rise to new and more difficult issues. The narrative summaries indicate the existence of evidence known to Committee members, not all of which is publicly available. There are limits to the ability of the Committee to reveal the reasons behind its decisions, even to a reviewing body, when these are based on intelligence or law enforcement information which belongs to a particular State. The sensitive nature of information pertaining to persons involved in terrorism and terrorist financing, recognized by the Court of Justice of the European Communities in the Qadi* and Barakaat* case³⁰ often inhibits Member States, whether outside or inside the Committee, from sharing this information with others.

23. When and if this situation arises, the Committee will have to react depending on the circumstances. However, the Team believes that the Committee may benefit

²⁵ *Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities*, para. 363: "With reference to an objective of general interest as fundamental to the international community as the fight by all means, in accordance with the Charter of the United Nations, against the threats to international peace and security posed by acts of terrorism, the freezing of the funds, financial assets and other economic resources of the persons identified by the Security Council or the Sanctions Committee as being associated with Usama bin Laden, members of the Al-Qa[i]da organi[z]ation and the Taliban cannot per se be regarded as inappropriate or disproportionate".

²⁶ *Ibid.*, para. 375 and operative paras. 2 and 3.

²⁷ Resolution 1822 (2008) directs the Committee to provide narrative summaries of reasons for listing on its website for all entries on the List.

²⁸ See European Union Commission regulation (EC) No. 1190/2008 of 28 November 2008.

²⁹ Any listing by the Committee necessarily requires the agreement of at least two and normally more than two members of the European Union.

³⁰ Judgement of the Court (Grand Chamber), 3 September 2008, paras. 342 and 344.

from consideration of listings by the courts, assessing their judgements against the full body of evidence available. The Team also recommends that if a listed person can demonstrate to the satisfaction of a national court that some element of a narrative summary of reasons for listing is wrong, the State defending the action should forward this information to the Committee.

24. Another set of challenges has arisen in the European Court of Human Rights, which has jurisdiction over certain human rights claims where a claimant has exhausted the remedies in his or her national courts.³¹ Currently, Youssef Mustapha Nada Ebada (QI.E.53.01) has a case pending in the Court challenging his designation by the Committee³² following a ruling by the Swiss Federal Tribunal in Lausanne upholding the sanctions measures against him.³³

25. While not all challenges to the regime concern listings made in 2001, as these do, the Team believes that the procedures currently in place make future challenges less likely and less likely to be successful. The demands that the Committee makes of designating States with regard to submissions for listing, the review process in force and the current de-listing procedures have introduced substantive and significant improvements to the regime. However, the Team believes that the Committee could enhance its procedures still further in all three areas.

C. Listing procedures

26. The responsibility for listing belongs to the members of the Committee, not to the designating State(s). With this in mind, the Team recommends that the Committee view any submission for listing as an invitation to its 15 members to add to it if they can, whether with substantive further reasons for listing or with identifying information, rather than to just agree or disagree with the listing according to their view of the merits of the case. By contributing more directly to the submission, the Committee as a whole may be more confident that the List entry and the corresponding narrative summary are as well founded and as persuasive as possible, and will likely be upheld in the courts, including their own, in the event of a challenge.³⁴

D. Review process

27. The Security Council has directed the Committee to review all names on the List as at 30 June 2008 within two years,³⁵ and to review each entry (again) every three years,³⁶ in order to ensure the Consolidated List is as updated and accurate as

³¹ The 47 member States of the Council of Europe have agreed to abide by the decisions of the European Court of Human Rights.

³² Information provided to the Team by the authorities of Switzerland.

³³ Decision of the Federal Tribunal in Lausanne, Case 1A.45/2007, 14 November 2007, available on the website of the Federal Tribunal at www.bger.ch/fr/index/jurisdiction/jurisdiction-inherit-template/jurisdiction-recht/jurisdiction-recht-urteile2000.htm.

³⁴ The United States practice is already to scrutinize a prospective listing to ensure legal sufficiency. See statement by Assistant Secretary Juan Zarate before the Al-Qaida and Taliban Sanctions Committee, available at www.treas.gov/press/releases/js2189.htm.

³⁵ Resolution 1822 (2008), para. 25.

³⁶ *Ibid.*, para. 26.

possible and to confirm that listing remains appropriate. Some critics argue that an independent body should review the listings, but the Team believes that the decision of the Court of Justice of the European Communities in *Qadi** has changed the terms of this debate. Action by the courts has largely pre-empted any initiative that the Security Council might have taken, however unlikely, to create its own independent review mechanism. The fact that European courts have joined American courts in asserting their jurisdiction over national implementation procedures means that in this context they will in effect offer an independent review of listing decisions by the Committee when these are challenged before them. Other national and regional courts may decide to take similar action.

28. Depending on the way in which the courts deal with challenges to listings, the Team believes that the Committee can take advantage of this independent scrutiny of the implementation of its decisions. If national and regional courts provide a forum for listed persons to bring additional information to the fore and to express their grievances, they may allow a better evaluation of the strengths or weaknesses of the cases against them, especially when the challenge is brought in the courts of the designating States, which will likely have the most information against them.

29. The Team recognizes that the mere fact that a national or regional court might take a decision with regard to the national implementation of a listing has no persuasive value in itself for the Committee. For example, a national court that may have evaluated a listing pursuant to a criminal law standard of evidence although resolution 1822 (2008) makes clear, as did its predecessors, that the measures are preventative in nature and are not reliant upon criminal standards set out under national law, or may have disregarded the reasons for listing as stated by the Committee, or failed to accord them significant deference, could not be expected to influence the Committee to any significant degree. On the other hand, the Committee may value the opinion of a national court that has carefully evaluated reasons for listing as stated by the Committee and has accorded appropriate deference to its fact-finding and decision-making prerogatives. In cases where such court decisions exist, the Team recommends that the Committee give them due weight when reviewing the corresponding listing.

30. The Council has introduced another element of independent review by requiring the Committee to seek the opinion of the designating State(s) and the State(s) of residence and/or citizenship when conducting its review of listings under resolution 1822 (2008). Often these States will not be members of the Committee, and the Committee will afford importance to their views. The Team recommends that the Committee consider a further opportunity for independent input by tasking the Team to gather relevant information from all parties concerned when designating States and States of residence and citizenship disagree on the continued appropriateness of a listing, or to seek more detail where the information provided is vague.

E. Procedures for evaluating de-listing requests

31. The more effective the de-listing procedures of the Committee,³⁷ the less likely that listed individuals and entities will choose to launch challenges in national courts. The focal point established by resolution 1730 (2006) has allowed listed individuals and entities to put forward a case for de-listing without having to rely on the support of their State of residence or nationality. In order to provide greater assurance that the Committee considers the substance of each submission through the focal point, the Team recommends that the Committee provide the petitioner a specific response when it decides to reject a claim.

32. The Team also recommends that the Committee consider ways to gather the maximum information possible about the activities of individuals and entities that apply for de-listing. The Committee may like to appoint the Team, or another expert body, on a case-by-case basis, to collect further information from States or clarify aspects of the petition with the individuals or entities that have submitted it, and provide a report, though without any recommendation regarding the merits of the case.

33. The Afghan Government continues to complain to the Team that its efforts to draw moderate Taliban away from the irreconcilable hard core are hampered by the de-listing procedures, which require more proof of a change of behaviour than the Government is so far able to produce. The Team agrees that the threat of listing and the prospect of de-listing are useful tools in undermining the cohesion of the Taliban, but de-listing need not be a precondition for a listed Taliban to join and promote any peace effort. A reconciled Taliban could achieve much in this regard without needing to be free of the sanctions measures, and by doing so would be able more easily to convince the Committee of his change of behaviour. However, the Team also believes that the List should be dynamic and should tend more towards helping any peace process than impeding it. The Team recommends that the Committee, together with the Afghan Government and with the help of the Team, work out some specific criteria with regard to de-listing requests for Taliban individuals that would make the process more predictable and consistent.

F. Broader challenges to the regime

34. Critics are likely to continue to challenge the position of the Council that the regime is preventative and administrative (rather than punitive) in nature. For example, Martin Scheinin, United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, presented his views to the Committee in late 2008, including an argument challenging this position. While the Committee has made efforts to address the argument concerning the legal status of the sanctions regime, the Team suggests that it could do more to make clear that the measures targeting listed persons do not rise to the level of the deprivations of life, liberty and property that can result from

³⁷ See section 7 of the guidelines of the Committee for the conduct of its work, adopted on 7 November 2002, as amended most recently on 9 December 2008, available at www.un.org/sc/committees/1267/pdf/1267_guidelines.pdf.

criminal conviction under national jurisdiction. The Committee could direct more attention towards its exemption policies and procedures.³⁸

IV. Consolidated List

35. Perhaps a greater challenge to the Committee is maintaining the preventative and forward-looking nature of the sanctions regime. The Team sees this as having two essential requirements. First, the Committee should continue to target those individuals and entities associated with Al-Qaida and the Taliban that pose the greatest current threat to international peace and security. Second, the Committee should do its best to clear away listings that are peripheral to the current threat. Such listings not only undermine the credibility of the regime in the eyes of Member States and the public, but present the greatest risk of adverse court decisions that could impact the regime as a whole. The Team sees no obvious advantage in the List becoming longer, but it does see great advantage in it becoming more dynamic.

36. As of 28 February 2009, the Consolidated List of individuals and entities subject to sanctions as a result of their association with Al-Qaida, Usama bin Laden and the Taliban had 508 entries: 142 individuals associated with the Taliban, and 254 individuals and 112 entities associated with Al-Qaida. Since the Team's last report, there has been a significant increase in the rate of new submissions from States,³⁹ with the Committee agreeing to add 29 individuals and one entity to the List, all for their association with Al-Qaida. The Committee also agreed to remove three names as no longer meriting listing. Member States offered several updates for existing names, and taken together with those prepared independently by the Monitoring Team following its new mandate to do so,⁴⁰ the Committee made 92 changes to entries during this period.

37. The List therefore continues to improve; but it still lacks sufficient identifiers to allow accurate application of the measures to some of the names added in 2001, 2002 and, to a lesser extent, in 2003. The review of all listed names that the Security Council has directed the Committee to conduct by the end of June 2010 may resolve these problems,⁴¹ either by adding identifiers or removing the entries altogether. The Team recommends that the Committee regard this as a priority given the adverse effect that the entries with insufficient identifiers have on the overall credibility of the List and, more importantly, on those individuals who find themselves subject to sanctions because they have a name similar to an entry on the List, but given the incompleteness of that entry, cannot demonstrate irrefutably that they are not the intended target. The Team recommends that in the process of conducting its review of all entries on the List, in cases where a name lacks sufficient identifiers, the Committee encourage the designating State either to provide the minimum of full name, date and place of birth and nationality, or to submit a de-listing request.

³⁸ Also noted as important by the Court of Justice of the European Communities, see Judgement of the Court (Grand Chamber) of 3 September 2008 in joined cases C-402/05P and C-415/05P, para. 364.

³⁹ The Committee added 31 Al-Qaida individuals and one entity to the List in 2008, one Taliban and seven Al-Qaida individuals in 2007, and 18 Al-Qaida individuals and six entities in 2006.

⁴⁰ Resolution 1822 (2008), annex I (1).

⁴¹ Resolution 1822 (2008), para. 25.

A. Distribution of the List

38. In many States, it is extremely difficult to locate a copy of the List or any other information about the sanctions regime on national websites. This means that implementation is limited to those official and private sector bodies that receive the List directly from the relevant authorities. It is highly unlikely that this includes all those who have a potential part to play in implementation. In States that do offer a web-based version of the List, most incorporate the names into a more extensive national list of sanctioned parties;⁴² and while in some States, the Ministry of Finance maintains the List on its website,⁴³ in others it is the Ministry of Foreign Affairs or some other department that does so.⁴⁴ There is a wide variety of national practice, both in what elements of the List are included and where it may be found.⁴⁵

39. The Team recommends that all national departments or agencies that have a role to play in the implementation of the measures make clear reference on their websites to the Al-Qaida/Taliban sanctions regime and the Consolidated List, and note where it may be located, adding, wherever possible, a link to the website of the Committee.⁴⁶ It would also help if all Member States were to ensure that the List was available in full, at least through the websites of their ministries of finance and immigration departments. If the List is included as part of a State's national list, the website of the ministry in charge should make this clear, as well as offer a link to the original.

40. Some States are reluctant to rely on the web-based version of the List, preferring to wait for a hard-copy official notification of any changes. The Team continues to recommend that all States make use of the Committee website to access the most up-to-date version of the List and so ensure that sanctions are applied to new listings in a timely manner.⁴⁷ Where States insist on having a hard copy, the Team recommends that as soon as they have received it, they authorize their financial institutions and other relevant bodies to check the electronic version of the List for changes so as to ensure quick and accurate implementation. An alternative is for the State to maintain its own web-based version of the List, but this may lead to mistakes unless the State downloads a copy from the Committee website or employs an automated data migration system.

41. One advantage of a State posting a copy of the List on an official website is that it may also display the contact details of the official responsible for overseeing national implementation of the measures. The need for a contact point to allow speedy clarification concerning entries on the List, or issues to do with sanctions implementation, is expressed frequently in many States in both the private and the public sectors, and the Team suggests that the Committee encourage Member States to appoint a national enquiry point for the Al-Qaida/Taliban sanctions regime that

⁴² For example, the United States; see www.ustreas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf.

⁴³ For example, the United Kingdom; see www.hm-treasury.gov.uk/fin_sanctions_alqaida.htm.

⁴⁴ For example, Australia; see www.dfat.gov.au/icat/regulation8_consolidated.xls.

⁴⁵ For example, the Reserve Bank of India circulates the List in hard copy and refers to it on its website, available at www.rbi.org.in/scripts/BS_ViewBulletin.aspx?Id=9240.

⁴⁶ South Africa publishes amendments in the official gazette and refers to the Committee website, available at www.info.gov.za/view/DownloadFileAction?id=94218. Pakistan publishes the List regularly in the official gazette, but not in electronic format.

⁴⁷ See the Team's eighth report (S/2008/324, para. 35).

should also have easy access to the Committee and the Team.⁴⁸ The enquiry point could also act as the national focal point for all United Nations and other multilateral counter-terrorism initiatives.

B. Format of the List

42. The Committee has endorsed a recommendation by the Team that it enhance the presentation of the List by improving its format,⁴⁹ and based on its belief that the design of an effective sanctions list should focus primarily on the requirements of the end-user, the Team has begun to consult with interested parties in both the public and the private sectors. The Team invites all those interested to contribute to this work and hopes that through wide consultation it may come up with a format that all United Nations Security Council sanctions regimes could follow, and that would provide a model also for regional and national bodies that compile their own sanctions lists. Based on the new format, the Team will also recommend a revised cover sheet⁵⁰ for Member States to use when submitting names for designation so that entries on the List contain the same type of information in a similar form as may be presented, for example, to a border guard in a travel document or to a bank as proof of identity.

C. The Taliban section of the List

43. Despite the huge amounts raised from opium production, the entries for only four individuals in the Taliban section of the List mention involvement in the drug trade. The Security Council continues to urge States to consider this form of financing as sufficient evidence of association with the Taliban to merit submission for listing,⁵¹ and the Team believes that as the international community targets regional drug traffickers it should focus on those who make payments to the Taliban and are vulnerable, by virtue of the visibility of their assets, to action under the sanctions measures. The Team recommends that the Committee direct the Team, in conjunction with relevant States, the United Nations Assistance Mission in Afghanistan (UNAMA) and UNODC to identify key figures that are associated with the Taliban in this way, as well as individuals and businesses established by the Taliban to manage their cash flows, so as to allow the Committee to consider their designation for listing.

D. Dead people on the List

44. In resolution 1822 (2008), the Security Council directs the Committee to consider an annual review of individuals on the List reported to be deceased.⁵² This too is an issue that affects the credibility of the List, and also the lawful heirs of the deceased who find that their assets remain frozen. As of 28 February 2009, there

⁴⁸ See the Team's sixth report (S/2007/132, paras. 61-64), and seventh report (S/2007/677, para. 138).

⁴⁹ S/2008/408, para. 4.

⁵⁰ The cover sheet was first introduced as an annex to resolution 1735 (2006).

⁵¹ Resolutions 1735 (2006), para. 12; 1806 (2008), para. 30; and 1822 (2008), para. 10.

⁵² Resolution 1822 (2008), para. 22.

were 24 individuals on the List recorded as reportedly dead. The Team believes that a further 15 may fall into this category, though it has not been able to get official confirmation of their deaths. Several States have told the Team that although they may believe that a listed person is dead, they have no practical way to confirm this.

45. The Team recommends that when conducting its review of listed individuals reported to be dead, the Committee aim to accede to any pending de-listing request for the individual if nothing has been heard to contradict an official report of the death within 12 months. If no pending de-listing request exists, the Team recommends that the Committee Chairman, acting in his national capacity, submit a de-listing request for the individual concerned. In cases where the death has been widely reported but for which there is no official confirmation, the Team recommends that the Committee consult with relevant States, including the designating State and the State of nationality and the State where the individual was last located, and encourage them to submit a de-listing request if two years have passed without further information.

46. Some States have expressed concern that if the estate of a dead person is no longer subject to the assets freeze, it may be used to fund terrorism. The Team argues that if the beneficiaries of the estate are associated with Al-Qaida or the Taliban, their names should appear on the List, or at least be subject to assets freeze measures at the national level. In this case, the inheritance of those parties will remain frozen. States are also concerned that the estate of a listed person may contain assets that were acquired illegally; the Team believes, however, that this is a matter for law enforcement investigation and should not be a reason to deny rights of inheritance.

E. Narrative summaries

47. Although in earlier resolutions the Security Council called on States to notify sanctioned parties of their listing,⁵³ and asked States when submitting names to say what part of the statement of case could be publicly released,⁵⁴ many States and other bodies have complained that listed parties have no opportunity to learn why they have been added to the List.

48. To ensure proper notification of the listed parties, as well as of the authorities of States outside the Committee, and to allow them to know some of the reasons behind the listings, the Security Council, by resolution 1822 (2008), directed the Committee, with the assistance of the Monitoring Team and in coordination with the relevant designating States, to make accessible on the Committee website a narrative summary of reasons for listing for all entries on the Consolidated List.⁵⁵

49. The Committee has now agreed the process for drafting the narrative summaries and how they should appear on its website. It has also determined the order in which the Team should prepare the narrative summaries, giving priority to listings subsequent to the adoption of resolution 1822 (2008) and to cases which are before the courts so as to assist those States that face legal challenges to their implementation of the sanctions. The Committee has also agreed, in so far as is

⁵³ See resolutions 1735 (2006), para. 11 and 1822 (2008), para. 17.

⁵⁴ See resolutions 1735 (2006), para. 6 and 1822 (2008), para. 12.

⁵⁵ See resolution 1822 (2008), para. 13.

possible, to coordinate the drafting and approval of narrative summaries with its review of the listings, as required by paragraph 25 of resolution 1822 (2008).⁵⁶ As of 28 February 2009, the Committee had approved the posting of 19 narrative summaries linked to the corresponding entries on the Consolidated List, and the Team expects to have presented drafts for the remaining 409 List entries, in conjunction with the designating States, by May 2010 so as to fit with the timetable for the review by the Committee.

50. The drafts are prepared by the Monitoring Team based on a variety of available official information but must be agreed with the designating State before submission to the Committee. The Committee may then amend them before approving their publication. The first paragraph of the summary states the basis for listing according to the latest resolution that applied at the time. The second section provides more detailed information on the reasons for listing. Finally, the narrative summary records other List entries that are linked with the listed party.

51. The narrative summaries do not identify the designating States nor provide information that the designating States regard as classified or privileged. They therefore do not necessarily provide a summary of all the reasons for listing considered by the Committee. The summaries are distinct from the List entries and do not include information concerning the listed party's identity or whereabouts. These details will continue to appear on the List itself.

52. The Team recommends that when the Committee decides to remove an entry from the List and move it to the de-listing section of its website,⁵⁷ it delete altogether the corresponding narrative summary. The Team also recommends that the Committee update the corresponding narrative summary whenever it reviews an entry on the List. This may be at the three-year intervals envisaged in paragraph 26 of resolution 1822 (2008), or when the Committee considers but rejects a de-listing request, or at some other time that the Committee decides to discuss a particular entry, or when the Team provides the Committee with new information.

F. Handling requests for information

53. As the quality of the entries on the List has improved, Member States have found less need to seek further information about them from the Committee. Once the narrative summaries for all listed entries are posted, this need should decline still further. But both the International Criminal Police Organization (INTERPOL) and the private financial sector have continued to argue for a Committee enquiry point that they could consult, if only as a way to get their questions passed to the designating State for reply.⁵⁸ The Team recognizes that neither the Committee nor its secretariat has the capacity to act as a 24/7 enquiry point, even if only as an intermediary between the enquiring and designating States, but it does recommend that a designating State indicate at the time of submission whether the Committee may pass its identity to another State without further reference in the event of a question concerning the identity of the proposed listing. If all States also set up their

⁵⁶ See guidelines of the Committee, sect. 9.

⁵⁷ Available at www.un.org/sc/committees/1267/removed.shtml.

⁵⁸ See the Team's eighth report (S/2008/324, para. 68).

own enquiry points, this would allow issues to be channelled quickly and accurately between them and an answer to be provided in a relatively short time.

V. Assets freeze

A. Overview

54. To be effective, the assets freeze must have an element of surprise; delays in implementation following a listing by the Committee seriously undermine its likely impact, allowing individuals and entities that learn of their listing before the assets freeze is applied to move or conceal assets. Yet in some States the circulation of the Consolidated List and its updates to national authorities and banks can take anywhere from a few days to several weeks. Lack of judicial or regulatory capacity exacerbates the problem. Some States require court orders before action can be taken against new listings, but have no mechanism to obtain these immediately. Other States may be legally able to apply the assets freeze, but lack the administrative capacity to do so. However, the relevant resolutions make clear that States must implement the measures without delay, not as soon as possible.⁵⁹

55. The Monitoring Team will continue to work with the Security Council Counter-Terrorism Committee Executive Directorate to identify capacity gaps and other impediments to immediate implementation and draw up recommendations to address them.

B. Integrating international effort

56. The Team has also engaged with relevant international bodies beyond the United Nations family in an effort to spread awareness of the Al-Qaida/Taliban sanctions regime as a means to combat the risks of terrorist financing. Through participation in Financial Action Task Force (FATF) meetings, the Team has been able to offer suggestions for revised guidelines and interpretive notes relevant to Task Force special recommendation III on freezing and confiscating terrorist assets.⁶⁰ The Team also notes that compliance with the Al-Qaida/Taliban sanctions regime is now an integral part of the mutual evaluation reports compiled by the Task Force, FATF style regional bodies, the World Bank and the International Monetary Fund (IMF). This engagement appears to be having effect; for example, one Member State identified a mutual evaluation by a FATF style regional body as the primary reason for improving its implementation procedures for the sanctions regime.

57. In order to exploit the reach of relevant international bodies more thoroughly, the Team recommends that the Committee agree to encourage the Financial Action Task Force, the FATF style regional bodies, IMF, the World Bank, the Organization for Economic Cooperation and Development (OECD), the Egmont Group of Financial Intelligence Units, and other bodies with which the Team is in touch to

⁵⁹ See resolution 1822 (2008), para. 1 (a).

⁶⁰ See www.fatf-gafi.org/document/9/0,3343,en_32250379_32236920_34032073_1_1_1_1,00.html. The Financial Action Task Force expects to finalize the new versions by the end of June 2009.

introduce hyperlinks from their websites to the Committee website, just as other international and regional organizations already do.⁶¹

C. Helping States to identify and deal with terrorist financing

58. Evidence of terrorist financing, so far as it is available, suggests that Al-Qaida and the Taliban rely on two main sources of income: donations and the proceeds of crime, including from narcotics. The best targets of the assets freeze measure, from an operational point of view, are donors. These are generally people who are sympathetic to what they understand as the aims and objectives of the Taliban and Al-Qaida, but are not members of cells or even of groups. They are individuals with known identities who own businesses or other assets that are visible to the authorities; a freeze of their assets would therefore have immediate consequences.

59. While donors may take care to provide money covertly, they risk their security when they deal with fund-raisers or when they seek a channel through which to make their donations. The increasing worldwide scrutiny of terrorist collection methods should allow security authorities to gain some idea of the sources of donations. The Team has encouraged States to deter donors by submitting for listing any that are known, and by sensitizing potential donors to the possibility of listing and its consequences, should such activity be discovered.

60. The criminal ways in which Al-Qaida and its supporters raise money are generally indistinguishable from the vast amount of common, non-terrorist-related crime, such as credit card and other bank fraud.⁶² It is often hard enough to detect the crime in the first place, let alone identify a terrorist-related motive behind it. The growing variety of ways to transfer money either anonymously or with little risk of attracting attention, such as via stored-value cards, shared ATM cards or through the pretended sale of goods on the Internet, presents a further challenge to States.

61. The effect of the global financial crisis may lead to a reduction in donations and an increase in crime as a means for Al-Qaida and the Taliban to raise money. In any case, the funding of terrorism through crime suggests a need to coordinate law enforcement investigations with counter-terrorism work. Some States are well advanced in promoting a regular exchange between their security agencies, financial intelligence units and police services, but even where this occurs, there is sometimes insufficient dissemination of knowledge, information and training. To address this, and to promote the timely identification of Al-Qaida and Taliban financiers and their activities, the Team recommends that the Committee, through the Team and in coordination with the Counter-Terrorism Committee and its Executive Directorate, and together with the Terrorism Prevention Branch of UNODC, consult other relevant international and regional organizations to survey current practice and offer advice to States on how they might overcome the universal tendency of law enforcement agencies and counter-terrorist units to work separately.

⁶¹ For example, the Asia/Pacific Group on Money Laundering has a link to the List: www.apgml.org.

⁶² See, for example, the report on terrorist financing, available at www.fatf-gafi.org/dataoecd/28/43/40285899.pdf.

D. Unregulated cash transfers

62. In many parts of the world cash transfers, especially via hawala brokers and other alternative remittance systems, are an essential part of the economy. The Team is strongly of the view that States should recognize the inevitability of such informal arrangements, especially where they serve a particular community by facilitating remittances to a particular area. Though one way to suppress this business may be to encourage financial institutions that operate in the formal sector to be more competitive in remitting small amounts, it is highly unlikely that they could ever truly rival the speed, efficiency and cost of established hawala brokers.

63. The Team recommends therefore that States follow the example of the United Arab Emirates, where hawala brokers must register with the Central Bank and submit all transactions for official scrutiny, or otherwise ensure that hawala brokers implement the same due diligence rules that govern the formal sector, check against the List and submit suspicious activity reports. Hawala brokers are better placed than most of their competitors to apply “know your customer” rules, given the intimate nature of their business and its dependence on trust, but they do not generally have the capacity or habit of checking names against lists or otherwise contributing to counter-terrorist financing regimes. From its discussions with hawala brokers, the Team believes that they are ready to join the fight against terrorism financing, so long as it does not unreasonably increase their costs, and recommends that States bring them into the fold rather than allow them to continue without any control or drive them underground.

E. Charities

64. Charities have proved an attractive target for terrorist financiers, but designation can present particular difficulties in States where the charity is based or where its funds are disbursed. The sanctions regime demands a comprehensive freeze of all assets of a listed party, which effectively puts it out of business. In the case of a charity this can mean that many genuine charitable disbursements come to a halt. The Team recommends that when designating a charity, which, for example, operates schools, clinics or refugee centres, the Committee offer relevant States, through the Team, immediate assistance in drafting a plan, for approval by the Committee, which would allow such work to continue under State supervision.

F. Private sector

65. A check against the List by a private sector financial institution in Bahrain in July 2008 resulted in the arrest and deportation of Ruben Pestano Lavilla Jr. (QI.L.247.08).⁶³ However, all too often, banks and other institutions find it hard to be certain that they have a match with an entry on the List and they seek help. In many States they have nowhere to turn to.⁶⁴ In addition, private financial institutions often seek intelligence briefings on terrorist financing to help them

⁶³ Official briefing by the authorities of Bahrain.

⁶⁴ The United States Office of Foreign Assets Control (OFAC) receives about 100,000 calls per year from financial institutions seeking further information on entries on the OFAC list (source: OFAC).

locate and freeze assets and to know what types of transaction to look out for.⁶⁵ However, it is not easy to overcome the reluctance of the owners of the intelligence to share it, whether for security or other reasons, or to devise a way to do so securely and effectively. For example, there are about 18,000 financial institutions in the United States that are obliged to implement the national sanctions regime,⁶⁶ which suggests an overwhelming logistical and security challenge to any information-sharing process. Faced with these difficulties, the best way to share information may be to ensure that the List itself contains as much detail as possible and that the narrative summaries on the Committee website complement the entries with a description of the type of activity that has led to the listing.

66. The Team continues to attend annual meetings with regulators and representatives from the Wolfsberg Group of private banks. This event has shown that there is a great deal of expert knowledge in the private sector that the Committee can harness to improve the effective implementation of the assets freeze. Most issues raised focus on facilitating searches of the List, and the Team has received many useful suggestions for its design of a new Consolidated List format. As a further result of these contacts, the Team has initiated a project within the Counter-Terrorism Implementation Task Force (CTITF) to examine through trial records and other factual documents whether it is possible to draw up an instructive list of indicators of terrorist financing which could be used by banks, especially for training purposes, as well as by Member States.

67. A concern expressed to the Team by many financial institutions is that they may be subject to financial penalties if they hold up a transaction because of a suspicion, later proved unfounded, that it may originate from or aim to benefit a listed party. Banks wish to be held not responsible for loss as a result of their implementation in good faith of the sanctions measures. The Team agrees that the terms of this and other safe harbour provisions should be clear and internationally applicable and recommends that the Security Council direct States to provide adequate legal protections to financial institutions so as to promote effective implementation of the assets freeze.

68. The large number of one-word “also known as” or alias identifiers on the Consolidated List presents a problem for financial institutions that enter all names on the Consolidated List into their electronic search filters, particularly those with global operations. Their search filters are programmed to select for further review any payment instruction message containing any entered name. So, for example, searches against the List entry for Aly Soliman Massoud Abdul Sayed (QI.A.229.07), which contains the alias “Adam”, will throw up for review all payment instruction messages containing the name Adam. Similarly for “Joe”, which is listed as an alias for Yazid Sufaat (QI.S.124.03), and “Henry”, an alias for Amran Mansor (QI.M.116.03). A search against such identifiers is extremely unlikely to yield an actual match to the relevant List entry and the resources spent by financial institutions checking and discarding the resultant false positives takes time and effort away from examination of more solid matches and undermines support for the process.

⁶⁵ The 11 major international banks that comprise the Wolfsberg Group had over 200 million transactions in 2007 with hundreds of thousands of possible hits against sanctions lists (source: Wolfsberg Group, May 2008).

⁶⁶ As related to the Team by the Director of the United States Office of Foreign Assets Control.

69. The authorities in the United Kingdom of Great Britain and Northern Ireland have allowed financial institutions to avoid entering the one-word alias identifiers into their primary filters, thus eliminating hundreds of thousands of false positives. They have done so by moving such identifiers from the “name” field in their national list of targets (which includes the Consolidated List) to the “other information” field. The Team recommends that the Committee encourage Member States similarly to allow their financial institutions to ignore such identifiers as primary search terms. The Team aims to address this problem through its design of a new format for the List, but in the meantime, the Committee may wish to issue guidance that makes clear that the List provides one-word alias identifiers to help resolve possible matches based on other search criteria.

G. Application of resolution 1452 (2002)

70. Previous reports by the Team have questioned the small number of notifications and requests for exemptions from the assets freeze received by the Committee relative to the overall number of listed individuals and entities.⁶⁷ It is still the case that few States appear to abide by resolution 1452 (2002), which sets out the procedures for such exemptions, and those that do so may find the Committee inconsistent in its response.

71. Rather than maintain a system which is consistently ignored or observed only by States that are likely to be among the more scrupulous in terms of overall implementation, the Team suggests that the Council consider reviewing resolution 1452 (2002) to oblige States to seek agreement from the Committee before allowing an exemption for extraordinary expenses, as at present, but otherwise permit States to decide themselves what is appropriate by national standards to allow for basic expenses, informing the Committee of their decisions. This would make clearer the distinction between the obligation to notify the Committee of payments necessary for basic expenses and the obligation to await the approval of the Committee before allowing the use of frozen assets to meet extraordinary expenses. The Team believes that by providing States with greater discretion, the Council will encourage them to cooperate more closely with the Committee, so enhancing their overall implementation of the measures.

H. Counter-Terrorism Implementation Task Force Working Group on Tackling the Financing of Terrorism

72. As a member of the Counter-Terrorism Implementation Task Force Working Group on Tackling the Financing of Terrorism, the Team contributed to the Group’s report, which was finalized in January 2009. Among other areas, the report offers recommendations on the general application of combating the financing of terrorism measures; criminalizing terrorism financing; enhancing domestic and international cooperation; the role of value transfer systems in terrorism financing and combating the financing of terrorism; the role of non-profit organizations in combating the financing of terrorism, and the need to adopt effective measures for implementation

⁶⁷ See in particular the Team’s fourth report (S/2006/154), paras. 31, 37-39 and 51-60; its fifth report (S/2006/750), paras. 53-60; and its sixth report (S/2007/132), paras. 16 and 47-51.

of the freezing of assets. All these issues are relevant to the effectiveness, success, and vitality of the Al-Qaida/Taliban sanctions regime.⁶⁸

VI. Travel ban

A. Obstacles to effective implementation

73. The travel ban is a critical part of the sanctions regime but both implementation and impact are lacking. This is not to say that border posts do not check travellers against the Consolidated List, but the few reports of officials having stopped individuals on this basis have all turned out to be cases of mistaken identity. While the entries on the List for at least 75 individuals note that they are reported to be dead or in some form of detention, and while many more are unlikely to cross borders, there have been several reported cases of international travel by listed individuals in contravention of the travel ban,⁶⁹ and the Team believes there may be more. Many of these cases are hard to authenticate through official sources, but not all.

74. One main problem is that the great majority of listed individuals will do their best to avoid detection, either by using forged, altered or false travel documents, or by crossing borders away from control points. Another is the porosity of borders, both in areas of conflict, such as Afghanistan, Iraq and Somalia, and in open areas like the Sahel. The Team has discussed with States their capacity needs with regard to border controls and has routinely passed on the information to the Counter-Terrorism Committee Executive Directorate, which, in addition to UNODC, is the United Nations body that coordinates the need for and delivery of assistance in such areas. One proposal that may merit further consideration in Afghanistan is to rebuild its national database. INTERPOL has already offered to support an initiative to photograph and fingerprint all individuals arrested in Afghanistan, which would clearly be of value in this regard.

75. A further problem is that some listings still contain too few details to make identification easy. This not only makes implementation difficult, but causes unintended individuals unnecessary inconvenience and anxiety. In previous reports,⁷⁰ the Team has recommended that whenever a State applies the travel ban only to find that the individual is not listed, it report to the Committee; but more could be done to help the Committee to identify those listings that cause the most problems through lack of identifiers. The Team recommends that the Committee also call on INTERPOL to inform it when an individual has been mistakenly prevented from crossing a border based on an INTERPOL-United Nations Security Council special notice so that the notice may be revised to prevent a recurrence.

76. When the Team learns of a possible case of non-compliance with the travel ban, it either writes to the State(s) concerned to ask for information, or informs the Committee and seeks instruction. The Team recommends that the Committee consider giving the Team additional authority, on a case-by-case basis, to seek out, collate, assess and verify information related to possible violations of the travel ban.

⁶⁸ The report is available at www.un.org/terrorism/workgroup5.shtml.

⁶⁹ For example, Ahmed Ali Yusaf (QI.Y.47.01). See the Team's sixth report (S/2007/132, box 6).

⁷⁰ For example, the Team's sixth report (S/2007/132, para. 77).

77. One area where violations of the travel ban may occur is in reconciliation talks between the Afghan Government and the Taliban,⁷¹ in so far as these may take place in another country. In this case, the Team recommends that the Committee make clear to the Afghan Government that such talks must respect the sanctions regime but exemptions to the travel ban exist and the Government may apply for them on behalf of the listed Taliban concerned. If the talks are successful, the Committee will need to be involved in considering the resultant de-listing requests, and the Team recommends that the Afghan Government, and all other States involved in the reconciliation process, establish a partnership with the Committee at an early stage to seek appropriate exemptions from the travel ban, as well as to discuss issues to do with de-listing.⁷²

B. Exemptions to the travel ban

78. The Security Council has 11 sanctions regimes, 9 of which impose a travel ban. Like some of these others, the Al-Qaida/Taliban sanctions regime has three categories of exemption: Member States may permit entry to their nationals, they may permit entry for the fulfilment of a judicial process, and they may permit entry when authorized to do so by the Committee. Since the Team last reported, the Committee has adopted and posted on its website a new section of its Guidelines that explains the procedures for applying for a temporary exemption from the travel ban, as well as a fact sheet and an explanation of terms paper.⁷³ The Team recommends that the Committee encourage States to update, where necessary, their national guidelines and regulations in accordance with these documents.

79. In the case where the Committee allows the travel of a listed individual who is resident in a State of which he is not a national, the Team recommends that the Committee make clear that for the purpose of the travel ban, the State should treat him as if he were a national and allow him re-entry.

C. Identifying challenges to implementation

80. The large numbers of travellers who cross borders and the many national agencies that are involved in the process have made it difficult for States to manage the flow securely without creating delays and disruptions. States that do not have a developed capacity to make automated checks against all national and international stop lists are less likely to scrutinize documents used by listed individuals who try to hide in the crowd. The Team recommends that the Committee, in conjunction with the Counter-Terrorism Committee, and together with their expert groups, identify which States are particularly vulnerable and provide tailored advice and assistance to help them towards better implementation.

81. States may also be proactive in this regard by assessing their capacity to implement the travel ban and analysing the deficiencies in whatever system they

⁷¹ Various listed Taliban have been reported to be engaged in these talks, including Wakil Ahmad Mutawakil Abdul Ghaffar (TI.M.32.01), Abdul Hakim Mujahid Muhammad Awrang (TI.M.116.01), Abdul Wasay Mu'tasim Agha (TI.M.29.01) and Abdul Salam Zaeef (TI.Z.62.01).

⁷² See also sect. III.E, para. 33 above.

⁷³ Available at www.un.org/sc/committees/1267/pdf/1267_guidelines.pdf.

employ. The Team recommends that the Committee encourage all States to conduct such assessments and to submit them to the Committee if they need assistance.

82. The Committee has produced an information package on the sanctions regime that several international organizations have begun to use, not just to improve their own understanding, but also for briefing and training courses. The Team recommends that the Committee also include the information package on its website. INTERPOL is one user of this package, and the Team has discussed providing a version more precisely suited to its training courses for police and border control officers. The Team recommends that the Committee authorize this and similar work with other international bodies. The Team also recommends that the Committee encourage States to use the information package when training national officials who may have to deal with the implementation of the travel ban.

VII. Arms embargo

A. Definition of the arms embargo

83. The majority of States view the arms embargo largely as a requirement to control their arms exports through licensing, while some also enforce it through domestic arms regulations. Few, if any, States have implemented the embargo to its full extent, which requires the control of arms-related materials and military technical advice, assistance, and training, the prevention of any indirect provision of the above, and control in this respect of their nationals and registered ships and planes beyond their borders. As a partial solution, the Committee has provided on its website a paper that explains the range and scope of the arms embargo.⁷⁴

84. One obligation that States find difficult is to prevent the indirect supply, sale or transfer of arms and related material, or military technical advice, assistance and training, to individuals who are members of listed entities, but are not themselves listed. The Committee could, as a first step, clarify that compliance with the indirect provision obligation requires States to detect and identify non-listed individuals acting as part of a listed entity for the purposes of obtaining arms, related material or military technical advice. Secondly, while listing such individuals should be a priority, the Committee could encourage States to share information about them through other, more operational channels, including those established by INTERPOL.

B. Implementation of the arms embargo

85. A practical measure of the effectiveness of the arms embargo and of its comprehensive implementation is whether Al-Qaida, the Taliban and their associates are forced as a result to use less efficient arms and related materiel with less sophisticated military skills. Success in these terms varies globally: in most areas, Al-Qaida associates have had to resort to improvised means of attack and their frequency is limited; in other places, such as Afghanistan, the Afghan-Pakistan border area, Somalia, Iraq and small areas of the Philippines, they have the support of an active and ample logistical supply and of military recruitment and training

⁷⁴ Available at www.un.org/sc/committees/1267/pdf/EOT%20Arms%20embargo_ENGLISH.pdf.

networks. The burden of implementation in these cases continues to extend beyond the boundaries of the States concerned, including to States where funds and arms originate and States whose nationals are involved in their supply. With access denied to such external support and safe havens, the insurgency campaigns would eventually wither away. Thus the work of the Committee on non-compliance continues to be of utmost importance in effective implementation of the arms embargo and in achieving the aims of the sanctions regime.

C. The situation in Afghanistan and Pakistan

86. The fact that Taliban-associated insurgencies in Afghanistan and Pakistan have expanded both in scale and intensity since 2002 suggests insufficient implementation of the arms embargo. This may have resulted from the lack of capacity in the two States most concerned, but the Committee could also try to determine whether other States have failed to prevent the direct or indirect provision of arms and related material to Al-Qaida, the Taliban and their associates in the area, whether from their territories or by their nationals outside their territories.⁷⁵ By doing so, the Committee might also help reduce Al-Qaida affiliated recruitment and terrorist training of individuals from outside the region who intend to conduct terrorist operations elsewhere.⁷⁶

D. The situation in Somalia and the Horn of Africa

87. The absence of an effective government in Somalia has made full implementation of the arms embargo in the Horn of Africa impossible. However, the withdrawal of Ethiopian forces in January 2009, the election of a new president and the commitment of the Security Council to support stabilization of the country⁷⁷ offer Somalia some possibility of recovery. There remain, however, well armed, violent extremists, some of them supporters of Al-Qaida, who are likely to reject any political solution that does not accept their vision of government.

88. States in the region have failed to stem the flow of arms into Somalia and some have themselves supplied weapons and other embargoed assistance to listed persons and entities.⁷⁸ While the Committee may be limited in its ability to influence the general availability of arms in the subregion, it is well placed to deter and deal with instances of wilful non-compliance, referring them to the Security Council as necessary. Given the security and humanitarian impact of continued internal warfare in Somalia, the Committee may wish to remind States, particularly those of the region, of their responsibilities in relation to the Al-Qaida/Taliban arms embargo and the potential repercussions of non-compliance.

⁷⁵ Or failed to ensure that economic resources for this purpose have not been provided by their nationals or by persons within their territory, as required by Security Council resolution 1822 (2008), para. 1 (a).

⁷⁶ Such as Fritz Martin Gelowicz (QI.G.259.08), Daniel Martin Schneider (QI.S.260.08) and Adem Yilmaz (QI.Y.261.08), arrested in Germany and added to the List on 27 October 2008.

⁷⁷ The Security Council recently outlined its position vis-à-vis Somalia in resolution 1863 (2009).

⁷⁸ For example, the Monitoring Group on Somalia reported that Eritrea provided arms to Hassan Dahir Aweys (QI.D.42.01) on several occasions (S/2005/625), paras. 36-42; and (S/2006/229), para. 15.

89. At present, the Consolidated List identifies very few individuals and groups in the Horn of Africa that are associated with Al-Qaida. Most of the entries related to the region were added in 2001, with three more entities listed in 2004.⁷⁹ Since then, several individuals have changed allegiance, or have been killed, detained, exiled or otherwise sidelined,⁸⁰ and new leaders have emerged.⁸¹ Several listed entities have ceased to function⁸² or have morphed into new, unlisted groups.

90. Al-Shabaab is one such group that, while it has no formal relationship with Al-Qaida, has expressed its support for Al-Qaida's leaders and their objectives,⁸³ and is often referred to as a partner by Al-Qaida affiliated groups.⁸⁴ There have been several reports of fighters travelling to Somalia from elsewhere to join Al-Shabaab, and Al-Qaida leaders have encouraged them to do so. Senior leaders are believed to have trained and fought with Al-Qaida in Afghanistan and their statements and videos, which are published by the Al-Qaida related media outlet the Global Islamic Media Front, are aligned with the Al-Qaida agenda.⁸⁵ Al-Shabaab, even though not listed, would appear to fit the criteria covered by the arms embargo in that it carries out armed operations on behalf of and in support of Al-Qaida and acts as a conduit for arms, related material and military training to Al-Qaida members in Somalia.

91. Al-Shabaab which translates as "the youth" has also reportedly recruited and trained children as young as 8 years-old to carry out military operations such as assassinations, planting roadside bombs and other explosive devices for financial reward, leading to death and injury among the children themselves.⁸⁶ These acts are in violation of international law, as well as being conducted within the overall strategy of Al-Qaida.

92. In the context of paragraphs 9 and 25 of Security Council resolution 1822 (2008), the Committee may wish to encourage relevant States to submit for inclusion on the Consolidated List names of individuals and entities from the

⁷⁹ Al-Haramayn Foundation in Kenya (QE.A.105.04), Tanzania (QE.A.106.04) and Al Haramain: Ethiopia Branch (QE.A.113.04).

⁸⁰ For example, Ahmed Khalfan Ghailani (QI.G.28.01) was apprehended in July 2004 and remains in custody. Fahid Mohammed Ally Msalam (QI.M.34.01) and Sheikh Ahmed Salim Swedan (QI.S.35.01) reportedly died in January 2009.

⁸¹ For example, Ahmed Abdi Aw-Mohammed, Issa Osman Issa, Sheikh Mukhtar Robow Abu Mansoor and Ali Salih Nabhan, are all believed linked to Al-Qaida.

⁸² For example, Al-Itihaad Al-Islamiya/AIAI (QE.A.2.01) has largely ceased to function.

⁸³ In June 2008, Shaykh Mokhtar Abu Zubayr, the Emir of Al-Shabaab, outlined the principles and goals of his organization in terms of the "global jihad". He sent greetings to Mullah Omar (TI.O.4.01), Usama bin Laden (whom he called "our sheikh"), Aiman al-Zawahiri* and other leaders, as well as to Al-Qaida fighters in Algeria and elsewhere. In February 2009, Aiman al-Zawahiri* in turn congratulated Al-Shabaab for "the expulsion of the [Ethiopian] invaders from Somalia". In a related statement, Hassan Abdullah Hersi Al-Turki (QI.A.172.04), a commander of Al-Shabaab who is aligned with Al-Qaida, said that although not affiliated with Al-Qaida as an organization, they are united by a common goal.

⁸⁴ For example, in November 2008, Al-Qaida in Yemen paid its respects to deceased Al-Shabaab leader Aden Hashi Farah Ayrow and referred to Al-Shabaab as part of Al-Qaida's global alliance.

⁸⁵ For example, a video released in December 2008 referred to Abu Yahya al-Libi and Abu al-Hasan al-Saeedi. In September 2008 a statement by Al-Shabaab agreed with Al-Zawahiri "to fight America and Israel and their allies" everywhere.

⁸⁶ For example, in September 2007, a child trained by Al-Shabaab killed a Transitional Federal Government officer near a school in Hamar Jahid. See report of the Secretary-General on children and armed conflict in Somalia (S/2008/352), para. 25.

subregion, such as Al-Shabaab and its leaders, who are associated with Al-Qaida. In doing so, it would strengthen implementation by clarifying to Member States which persons and groups in the region are subject to the Al-Qaida/Taliban arms embargo, as might already be implied by virtue of their reported association with Al-Qaida and the prohibition against indirect supply, sale or transfer in paragraph 1 (c) of resolution 1822 (2008).

E. Children and armed conflict

93. Beyond the Horn of Africa, Al-Qaida, the Taliban and their associates have increasingly targeted children in their recruitment and indoctrination campaigns. In Afghanistan, Taliban fighters have reportedly used children to perpetrate attacks, including suicide operations, and in some cases have used them as human shields.⁸⁷ A study by UNAMA has documented cases of children allegedly used as suicide bombers. Most were between 15 and 16 years old and were tricked, promised money or forced to mount such attacks.⁸⁸ Al-Qaida in Iraq* and associated groups there have reportedly used children as suicide bombers and for a range of other tasks including scouting, spying, digging holes for and planting improvised explosive devices, videotaping attacks for financial reward, as well as in more traditional combat roles.⁸⁹ They have also used children as decoys in suicide car bombings.⁹⁰ In Algeria, Al-Qaida in the Islamic Maghreb* has increasingly recruited children to its ranks.⁹¹

94. In the Philippines, Government security forces believe that the Abu Sayyaf Group* and Jemaah Islamiyah* have enticed young people to join their ranks. Video footage of Abu Sayyaf Group members involved in kidnappings has shown adolescent boys carrying rifles. United Nations case studies on children formerly associated with the Abu Sayyaf Group have revealed that the group lured children to join its ranks with the promise of material reward.⁹²

95. Al-Qaida, the Taliban and some of their associates appear to regard children as a readily accessible, impressionable and cheap source of manpower. Apart from the fact that those involved in the recruitment of children act in contravention of the arms embargo by providing human resources to listed entities,⁹³ the Security

⁸⁷ For example, in February 2007, a boy between 12 and 15 years old killed himself and a guard and injured four civilians as he attempted to enter a police station. Also, a 14-year-old boy was caught wearing a suicide vest on his way to assassinate a provincial governor. See report of the Secretary-General on children and armed conflict (A/62/609-S/2007/757), para. 22.

⁸⁸ For example, in May 2008, a boy of 12 was near a joint ISAF/Afghan National Army foot patrol when the suicide vest he carried detonated, presumably by remote control. See report of the Secretary-General on children and armed conflict in Afghanistan (S/2008/695), paras. 22-23.

⁸⁹ Report of the visit of the Special Representative for Children and Armed Conflict to Iraq and the region, 13-25 April 2008, pp. 8-9. Available at www.un.org/children/conflict/_documents/countryvisits/IraqVisitReport.pdf.

⁹⁰ In March 2007, the presence of two children helped facilitate a car loaded with explosives to pass through a checkpoint in north-eastern Baghdad. The car blew up with the children inside. Report of the Secretary-General on children and armed conflict (A/62/609-S/2007/757), para. 53.

⁹¹ Information provided to the Team by the Government of Algeria.

⁹² Report of the Secretary-General on children and armed conflict in the Philippines (S/2008/272), para. 25.

⁹³ Recommendations contained in the eighth report of the Analytical Support and Sanctions

Council by resolution 1612 (2005) urged United Nations entities to take appropriate measures to control inter alia the use and recruitment of children as soldiers. The Team therefore proposes to work with the Office of the Special Representative of the Secretary-General for Children and Armed Conflict to identify areas for possible cooperation.

VIII. Activities of the Monitoring Team

A. Visits and meetings

96. The Team visited 19 Member States between April 2008 and February 2009, three of them jointly with the Counter-Terrorism Committee Executive Directorate and three in order to conduct sanctions workshops at the request of the States concerned. In addition, in October, with the help of the Central Bank of the United Arab Emirates, the Team held its second bankers group meeting on issues related to the effective implementation of the assets freeze, attended by hawala brokers and formal banking sector representatives from the region. A member of the Team also accompanied the Chairman of the Committee on his visit to three States in Africa in March and April 2008.

B. International, regional and subregional organizations

97. The Team believes that regional and international organizations can play a vital role in strengthening implementation of the sanctions measures. In particular they can identify common weaknesses and the reasons behind them. The Team has therefore maintained its close cooperation with international and regional organizations and held meetings during this period with the Organization for Security and Cooperation in Europe, the Organization of American States, the International Maritime Organization, FATF, the World Bank, INTERPOL, the European Union, the Council of Europe, and the African Centre for the Study and Research on Terrorism. The Team also participated in 28 international and regional conferences to promote a better understanding of the sanctions regime and the work of the Committee.

C. Cooperation with the Counter-Terrorism Committee and the Committee established pursuant to resolution 1540 (2004)

98. The Team, the Counter-Terrorism Committee Executive Directorate and the expert group that supports the Committee established pursuant to Security Council resolution 1540 (2004) have made specific efforts to coordinate their participation in international and regional workshops and meetings and to publicize their distinct but connected mandates. With the same objective, the Committee, the Counter-Terrorism Committee and the 1540 Committee approved in May 2008 a comparative table which explains their distinct but complementary roles. This table, updated in November 2008, is available on the websites of all three Committees.⁹⁴

Monitoring Team: position of the Committee (S/2008/408), para. 21.

⁹⁴ Available at www.un.org/sc/committees/1267/pdf/Revised%20comparative%20table_ENGLISH

99. The Team has now made 12 joint country visits with Counter-Terrorism Committee Executive Directorate experts and for the first time, in November 2008, participated with the 1540 experts in a border security workshop. The Team continues to coordinate its travel plans with the Directorate and to exchange information prior to and after its trips.

100. In earlier reports, the Team provided details of the common strategy approved by the three committees designed to assist States that have fallen behind with their reporting to the Security Council. The strategy is based on a joint subregional/regional approach, with the initial emphasis on the African region. It involves the three expert groups, with the Terrorism Prevention Branch of UNODC as facilitator, organizing a series of subregional reporting workshops for those officials who are involved in the implementation of the relevant Security Council resolutions or who are responsible for writing their country reports to the three committees.

101. Two subregional workshops took place in 2007 and the third and final workshop for the remaining 14 North and East African States was held in November 2008 in Nairobi. All 53 African United Nations Member States have now been covered under the common strategy. While all three expert groups and the representatives of the participating States have found these workshops useful, two key issues have emerged: first a general lack of understanding by the officials on the ground of the scope of Member State obligations under the Al-Qaida/Taliban sanctions regime, and second, the need for technical assistance to improve implementation of the relevant resolutions.

102. The first of these issues can be alleviated in part by the current efforts of the Committee, with the assistance of the Team, to provide explanatory papers on Member State obligations with regard to the sanctions measures, as well as other useful documents posted on the Committee website.⁹⁵ In addition, the trips made to Member States by the Chairman and the Team allow for direct dialogue with the relevant officials on the ground, and for the sanctions workshops to be conducted by the Team, either on its own or in conjunction with UNODC technical missions to States, also help.

103. At the same time, the three expert groups have sought to increase the dissemination of information on the work and mandate of the three committees and their expert groups through relevant international and regional organizations so as to create further opportunity for Member States to understand what is required of them by the Security Council.

104. To address the assistance needs of States is harder, but possibly more important. As the Team has no mandate to deal with technical assistance, it has adopted the practice of collecting information from States on their needs relevant to the Al-Qaida/Taliban sanctions regime, and forwarding it to the Counter-Terrorism Committee Executive Directorate and to UNODC for action. The Team recommends that as the issue of technical assistance is of common interest to all three Committees, the three expert groups should develop, for the consideration of their respective Committees, another common strategy that sets out a more

%20_7-11-2008_.pdf.

⁹⁵ Available at www.un.org/sc/committees/1267/usefulpapers.shtml.

comprehensive and coordinated approach to technical assistance by both the Committees and their expert groups.

105. In May 2008, the Committee endorsed the Team's recommendation to develop, in consultation with the Counter-Terrorism Committee Executive Directorate and the expert group that supports the 1540 Committee, a new common strategy to engage with relevant international, regional and subregional organizations, entities and agencies.⁹⁶ The three expert groups have submitted a joint paper for the consideration of the three committees in which they suggest four key organizations for their initial approach.

D. Security Council-INTERPOL cooperation

106. With the encouragement of the Security Council and the Committee, the Team has continued to develop its cooperation with INTERPOL, in particular through the development and improvement of INTERPOL-United Nations Security Council special notices for individuals and entities on the Consolidated List.⁹⁷ These notices have become an important and widely used implementation tool, not only by the 187 member countries of INTERPOL but also by international and regional bodies, the private sector and non-governmental organizations. As of 28 February 2009, INTERPOL had posted on its restricted website 332 notices related to listed individuals, 316 of which are also available on its public website, and 20 notices related to listed entities, available on both the restricted and the public websites. Almost all the restricted versions of the notices are available in all four INTERPOL official languages: Arabic, English, French and Spanish.

107. One advantage of the notices is that they can carry information additional to the List entries, for example photographs, now on 95 notices, which can be of particular assistance to border guards and financial institutions. The Team and INTERPOL recognize the importance of ensuring that the photographs are accurate and work closely with States both to acquire and to verify them.⁹⁸ To enhance the special notices still further, there is a proposal to add the relevant narrative summaries of reasons for listing as approved by the Committee for posting on its website. The Team sees merit in this proposal and recommends that the Committee revise its agreement with INTERPOL to incorporate this suggestion.

108. The INTERPOL Fixed Interpol Network Database and Mobile Interpol Network Database allow relevant officials to check a travel document instantly — in 3 to 4 seconds — against the INTERPOL Stolen and Lost Travel Documents database and their own national or regional databases.⁹⁹ This tool, used in conjunction with the special notices, can greatly facilitate implementation of the travel ban and the Team recommends that the Committee request designating States, wherever possible, to provide passport details on their submissions so as to take full

⁹⁶ See the Team's eighth report (S/2008/324), paras. 94 and 95, and the position of the Committee on its recommendations (S/2008/408), para. 23.

⁹⁷ These are available at www.interpol.int/Public/NoticesUN/Default.asp.

⁹⁸ The United Kingdom's Metropolitan Police (SO15) Photographic Intelligence Cell (PIC) has added all the images available on the special notices to their facial recognition system so that they can search against them when they receive any terrorist context image for evaluation (source: Metropolitan Police).

⁹⁹ See www.interpol.int/public/FindAndMind/Default.asp.

advantage of this facility. INTERPOL has other tools available through its I-24/7 secure global police communications system, such as databases of suspected terrorists and wanted persons, DNA records and fingerprints. These can also help States to implement the sanctions measures effectively and comprehensively.

109. The Stolen and Lost Travel Documents database has grown considerably since its inception in 2002 when it contained 3,900 documents provided by 10 countries. As of 20 February 2009 it contained details of 16,513,637 travel documents, provided by 145 member countries, nearly 9.8 million of which were lost or stolen passports.¹⁰⁰ In 2008 INTERPOL member countries conducted 76,541,088 searches of the database, generating 14,635 hits.¹⁰¹

110. Given the value of special notices to States, it is important to minimize any delay between the Committee's decision to add a name to the Consolidated List and the appearance of the corresponding notice in the INTERPOL database. To facilitate this process, INTERPOL has proposed that the Team and the Secretariat establish access to its I-24/7 secure global police communications system, subject to the agreement of the Committee and the approval of the INTERPOL General Assembly. The Team recommends that the Committee agree.

111. INTERPOL has suggested that the Team attend some of its conferences and seminars that attract staff from national central bureaus so as to brief them on the Committee and how the link between the Security Council and INTERPOL may help their counter-terrorism work. The Team endorses this suggestion and will submit specific proposals to the Committee accordingly.

IX. Reporting by Member States

A. Member States appearing before the Committee

112. In paragraph 30 of resolution 1822 (2008) the Security Council repeats an invitation first extended in paragraph 11 of resolution 1526 (2004) for States to address the Committee for in-depth discussion of relevant issues; so far 10 States have done so,¹⁰² the most recent, in February 2009, being Algeria, which met the Committee to describe what it had done to combat terrorism and to discuss the current level of threat posed by Al-Qaida in the Islamic Maghreb*. The delegation also made a useful suggestion that Committee members might help to gather identifiers on specific names that States wish to propose for listing but for which they lack sufficient detail.

B. Resolution 1455 (2003) reports

113. The submissions by Madagascar in May 2008 and by Kenya in February 2009 brought the number of resolution 1455 (2003) reports received by the Committee to 155, leaving 37 States that have yet to report almost five years after the extended

¹⁰⁰ Also provided by the United Nations Interim Administration Mission in Kosovo (UNMIK).

¹⁰¹ Source: INTERPOL.

¹⁰² The United States of America, the United Kingdom of Great Britain and Northern Ireland, the Netherlands, Australia, Sweden, Switzerland, Germany, Denmark, Liechtenstein and Algeria.

deadline.¹⁰³ Although the Team earlier recommended that the Committee engage directly with each of the 37 non-reporting States,¹⁰⁴ some States are concerned that this could be heavy-handed or even counter-productive. The Team recognizes that implementation is more important than reporting and recommends that it continue to engage with the non-reporting States singly or in regional or subregional groupings. It will also explore other ways to assist them, including through sanctions workshops.

C. The checklist and new reporting tools

114. Submissions by Madagascar in May 2008 and by the Netherlands in June 2008 increased the number of resolution 1617 (2005) checklists received to 60, leaving 132 States that have yet to submit a checklist nearly three years after the deadline.¹⁰⁵ The Committee needs updated information on the implementation of the measures but has no wish to add to the reporting burden of States.¹⁰⁶ Accordingly the Committee has adopted two new tools that States may use to provide a variety of information for the List, or concerning their implementation of the measures, on a voluntary basis. These are a Voluntary National Assessment of Implementation Survey, and an Annual Statement of Information. The Voluntary Survey is designed to prompt States to provide information of use to the Committee and to remind them of the actions they should take to ensure effective implementation. The Annual Statement is intended to remind States of the action required for all new names added to or deleted from the List during the year. Both tools are available on the Committee website.¹⁰⁷

X. Other issues

Committee website

115. The Team has pointed out previously that although the Committee has made great improvements to its website and has posted many new documents there, Member States and international and regional organizations are often unaware of this. To encourage use of the website, the Committee has introduced a site map accessible from the home page with relevant hyperlinks to the indexed pages. The Committee has also agreed to an e-mail alert system that notifies users of changes to its website, though this service would currently be available only for the English version. To increase the speed and relevance of searches, the search function now limits searches to documents on the Committee website, rather than including the whole United Nations Official Document System as before. In addition, the Committee has agreed how to post the narrative summaries of reasons for listing, as directed by paragraph 13 of resolution 1822 (2008). Users may access these directly from the home page or from the corresponding entry on the List. It has also allowed

¹⁰³ Resolution 1455 (2003) set the deadline at 17 April 2003 and resolution 1526 (2004) extended it to 31 March 2004.

¹⁰⁴ See the Team's eighth report (S/2008/324), para. 108.

¹⁰⁵ Resolution 1627 (2005) set the deadline at 1 March 2006.

¹⁰⁶ SC/9348.

¹⁰⁷ Available at www.un.org/sc/committees/1267/tools.shtml.

for the posting of exemptions from the travel ban to help Member States check quickly and accurately whether a claimed exemption exists and remains current.

Annex I

Litigation relating to individuals and entities on the Consolidated List

1. The number of legal challenges involving individuals and entities on the Consolidated List known to the Monitoring Team stands at 30. There have been four new cases since its last report, all are described below.^a

European Union

2. In the case of Yasin Abdullah Ezzedine Qadi (QI.Q.22.01) and Barakaat International Foundation (QE.B.39.01),^b the Court of Justice of the European Communities held that the European Union had infringed the basic rights of the petitioners, namely their right to be heard and their right to effective judicial protection, by failing to communicate the evidence justifying the restrictive measures imposed upon them and thus precluding their right to defend against such measures. Accordingly, the court annulled Council of the European Union regulation (EC) No. 881/2002 which implements the assets freeze measure insofar as it applied to Qadi* and Barakaat,* but allowed the measure to remain in place for a period not to exceed three months from the date of the judgement to allow the Council to remedy the infringements found.^c After communicating to Qadi* and Barakaat* the reasons for listing provided by the Committee, and after careful consideration of the comments received from Qadi* and Barakaat,* the European Union Commission enacted a new regulation providing for continued sanctions against them.^d

3. Two cases remain pending before the Court of Justice of the European Communities. These appeals were brought by Shafiq ben Mohamed ben Mohamed al-Ayadi (QI.A.25.01)^e and Faraj Faraj Hussein al-Sa'idi (QI.A.137.03).^f

4. The case brought by Uthman Omar Mahmoud (QI.M.31.01)^g remains pending before the Court of First Instance; a hearing was held in that case in January 2009. Also pending in the Court of First Instance are the four cases brought in 2006 by Abd al-Rahman al-Faqih (QI.A.212.06), Sanabel Relief Agency (QE.S.124.06), Ghuma Abd'Rabbah (QI.A.211.06) and Tahir Nasuf (QI.N.215.06).^h

European Court of Human Rights

5. Youssef Mustapha Nada Ebada (QI.E.53.01) has brought suit in the European Court of Human Rights following rejection of his challenge to the imposition of

^a S/2008/324, annex I.

^b See paras. 19-22 above.

^c Kadi v Council of the European Union and Commission, preambular para. 375 and operative para. 3.

^d Commission regulation (EC) 1190/2008 of 28 November 2008.

^e Case T-253/02 and C-403/106 P, Ayadi v Council.

^f Case T-49/04 and C 399/06, Hassan v Council and Commission.

^g Case T-318/01, Othman v Council and Commission.

^h 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.

sanctions against him by the highest court in Switzerland. He claims violations, inter alia, of article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (pertaining to the right to a fair trial).ⁱ

Human Rights Committee

6. In December 2008, Belgium received an opinion of the Human Rights Committee, a body created by the International Covenant on Civil and Political Rights,^j with respect to a complaint filed by Nabil Sayadi (QI.S.84.03) and Patricia Vinck (QI.V.85.03), both Belgian nationals and residents. The majority opinion took the view that Belgium had violated article 12 of the Covenant (right of liberty of movement) and article 17 (protection from attacks on honour and reputation). The article 12 violation was because travel restrictions against the petitioners were no longer justified as they did not represent a threat to national security or public order after Belgium had concluded an investigation without prosecution and had petitioned the Committee for their de-listing. The article 17 violation was because the Committee, at the request of and based on information from the Belgian authorities, had published Sayadi's and Vinck's names and identifying information in the context of sanctions against Al-Qaida and the Taliban.

Pakistan

7. The action brought by the Al Rashid Trust (QE.A.5.01) remains pending in the Supreme Court of Pakistan on the Government's appeal from a 2003 adverse decision.^k The challenge brought by Al-Akhtar Trust International (QE.A.121.05) remains pending before a lower court.

Switzerland

8. The Federal Tribunal in Lausanne, the highest court in Switzerland, has rejected a challenge brought by Ali Ghaleb Himmat (QI.H.43.01) to the imposition of sanctions against him. That suit was dismissed on 22 April 2008.^l

Turkey

9. Yasin Qadi* requested the Administrative Cases Bureau, the highest reviewing body for challenges to Cabinet decisions, to reconsider its decision of 22 February 2007 upholding the freezing of his assets. That request was denied.^m

ⁱ See sect. III.B., para. 24 above.

^j See www2.ohchr.org/english/bodies/hrc/index.htm.

^k Information provided by the authorities in Pakistan.

^l Decision of the Federal Tribunal in Lausanne, Case 1A.48/2007, 22 April 2008, available at <http://www.bger.ch/fr/index/jurisdiction/jurisdiction-inherit-template/jurisdiction-recht/jurisdiction-recht-urteile2000.htm>.

^m Decision No. E:2007/1129, K:2008/969 of the Administrative Case Bureau. Information provided by the authorities of Turkey.

United Kingdom of Great Britain and Northern Ireland

10. The Court of Appeal (Civil Division) for England and Wales issued a judgement in the matter of A, K, M, Q, & G v. H.M. Treasury on 30 October 2008.ⁿ “G” is a listed individual subject to the Al-Qaida, Taliban sanctions. Taking a cue from the Court of Justice of the European Communities decision on Qadi* and Barakaat,* the Court held that the United Kingdom must provide a merits based review of the reasons for listing an individual on the Consolidated List who had been proposed for designation by the United Kingdom, but in the meantime maintained the measures against him. “G” has petitioned the House of Lords for permission to appeal.^o

United States of America

11. The United States District Court for the District of Oregon issued an opinion in the challenge by the Al-Haramain Foundation (United States of America) (QE.A.117.04) to its designation in the United States. In an opinion and order issued on 6 November 2008,^p the district court upheld the designation of Al-Haramain Foundation* as “rational and supported by the administrative record”. The Court left a number of related and subsidiary issues undecided and called for additional briefing on them.

12. The United States District Court for the District of Columbia dismissed a challenge brought by former Al-Haramain chairman Aqeel Abdulaziz Aqeel al-Aqeel (QI.A.171.04). Al-Aqeel* had challenged, among other things, the United States’ refusal to provide him with privileged portions of the administrative record supporting his designation. The court dismissed Al-Aqeel’s claims in a memorandum opinion issued on 4 August 2008.^q

13. On 16 January 2009, Yasin Qadi* filed a lawsuit challenging his designation in the United States District Court for the District of Columbia.^r The complaint alleges, among other things, that his designation and the freezing of his assets is a violation of the Administrative Procedure Act and of his First, Fourth, and Fifth Amendment rights^s under the United States Constitution.

ⁿ Available at www.bailii.org/ew/cases/EWCA/Civ/2008/1187.html.

^o Information provided to the Team by the authorities of the United Kingdom.

^p United States District Court for the District of Oregon, civil case No. 07-1155-KI, Al Haramain Islamic Foundation, Inc. and Multicultural Association of Southern Oregon vs. United States Department of the Treasury, Henry M. Paulson, Office of Foreign Assets Control, Adam J. Szubin, United States Department of Justice, and Alberto R. Gonzales.

^q United States District Court for the District of Columbia, Civil Action No. 05-943 (GK), Memorandum opinion of 4 August 2008.

^r United States District Court for the District of Columbia, Case 1:09-cv-00108, Yassin Abdullah Kadi v. Henry M. Paulson, Adam J. Szubin, the United States Department of the Treasury, Office of Foreign Assets Control.

^s First Amendment rights to freedom of speech and freedom of association; Fourth Amendment right to be secure against unreasonable search and seizure; Fifth Amendment rights to due process and to just compensation for the taking of property.

Annex II

Attacks by Al-Qaida and associated groups

1. Al-Qaida and its listed affiliates mounted 78 attacks,^a as recorded by the Team between 1 April 2008 and 27 February 2009, killing 608 people;^b an average of over 55 per month, or close to two per day. These attacks affected the nationals or territory of at least 22 countries.^c Algeria, Iraq, Pakistan, the Philippines, the United States of America and Yemen, as well as Afghanistan and India, suffered the most.^d Ten additional States were the target of terrorist threats from listed groups,^e mainly those based in the Islamic Maghreb and the Arabian Peninsula.

2. The type of attack has varied: 35 per cent involved small conventional weapons; 19 per cent were suicide attacks;^f another 19 per cent involved conventional explosives; 9 per cent involved improvised explosive devices or vehicle-borne improvised explosive devices, but were not suicide attacks;^g 13 per cent were kidnappings, hostage-takings or hijackings,^h and 5 per cent were targeted assassinations.

3. Al-Qaida associates in the Islamic Maghreb, the Arabian Peninsula and Iraq were the most active, accounting for at least 60 per cent of all attacks. Listed groups in South Asia, Jaish-i-Mohammed (QE.J.19.01), Lashkar I Jhangvi (QE.L.96.03), Lashkar-e-Tayyiba (QE.L.118.05), and Harakat Ul-Mujahidin (QE.H.8.01), were responsible for 16 per cent of attacks, as were groups in South-East Asia, mainly the Abu Sayyaf Group (QE.A.1.01). In Central Asia, the Eastern Turkistan Islamic Movement (QE.E.88.02) and the Islamic Jihad Group (QE.I.119.05), an offshoot of the Islamic Movement of Uzbekistan (QE.I.10.01), were responsible for about 5 per cent of attacks.

4. When judged by their lethality, the impact of listed groups is as follows: Al-Qaida in the Islamic Maghreb* was responsible for 26 per cent of all deaths and Lashkar-e-Tayyiba* for 25 per cent. Other groups in South Asia, Jaish-i-Mohammed,* Lashkar I Jhangvi* and Harakat Ul-Mujahidin* account for another 25 per cent, with Al-Qaida in Iraq* at 10 per cent, Al-Qaida itself (QE.A.4.01) 8 per cent and its franchise in Yemen 4 per cent.

^a These figures exclude the Taliban.

^b The Monitoring Team has based its figures on sources it assesses as credible, as well as statements by the groups themselves. Al-Qaida-affiliated groups that are not listed, such as Al-Shabaab in Somalia, are not included in these statistics. These figures may therefore be a conservative estimate of the number of attacks and victims during the period surveyed.

^c Afghanistan, Algeria, Austria, Canada, China, Ethiopia, France, Germany, India, Iraq, Italy, Mauritania, the Niger, Pakistan, the Philippines, Somalia, Switzerland, Tunisia, Turkey, the United States of America, the United Kingdom of Great Britain and Northern Ireland and Yemen. Israel suffered an attack from an unlisted group calling itself Al-Qaida in the Levant.

^d 70 per cent of the attacks recorded by the Team directly affected at least one of these eight countries.

^e Denmark, Egypt, the Libyan Arab Jamahiriya, Morocco, Nigeria, the Russian Federation, Saudi Arabia, Spain, the Sudan and the United Arab Emirates.

^f Attacks planned to damage others and likely to kill the perpetrator.

^g These were unconventional in nature and usually homemade. Suicide vehicle-borne improvised explosive devices are included as suicide attacks.

^h Attacks to abduct somebody, seize transport or commercial vehicle, usually for ransom.