

Oxford Public International Law

United Nations Security Council 1267 on Measures Against the Taliban, 15th October 1999 (UN Doc S/RES/1267 (1999)), OXIO 33

United Nations Security Council [UNSC]

Content type: Notes, UN SC resolutions

Article last updated: 01 April 2016

Product: Oxford International

Organizations [OXIO]

Subject(s):

Terrorism — Economic sanctions — Paramilitary groups — Collective security — International peace and security

Core Issues

1. The obligations imposed by United Nations Security Council (UN SC) Resolution 1267.
2. The normative issues which arose in the implementation of the obligations under UN SC Resolution 1267.

This headnote pertains to: United Nations Security Council 1267 on Measures Against the Taliban, an act of an international organization. [Jump to full text](#)

Background

United Nations (UN) Security Council (SC) Resolution 1267 on measures against the Taliban ('Resolution 1267') is the first of a series of SC resolutions which imposed non-military enforcement measures against the Taliban, and subsequently Al-Qaida and the Islamic State in Iraq and the Levant (ISIL), as part of the UN SC's measures against international terrorism. Resolution 1267 and subsequent resolutions obliged UN Member States to impose arms embargos, asset freezes, and travel bans against those regimes whose conduct constituted a threat to international peace and security. A noteworthy aspect of Resolution 1267 and subsequent resolutions is the geographical proliferation of targets, which helped shed light on a normative conflict with Member States' human rights obligations. Such a normative conflict provides Resolution 1267 with a point of connection to the law of international organizations.

Resolution 1267 should be understood against the background of US executive orders which prohibited transactions with specifically designated terrorists. On 20 August 1998, the US listed Osama bin Laden and Al-Qaida as the targets of sanctions. On 4 November 1998, the US indicted bin Laden for the bombings of US embassies in Kenya and Tanzania on 7 August 1998, which killed 224 individuals and were strongly condemned by the UN SC (see United Nations Security Council Resolution 1189, para 1). On 4 July 1999, the US prohibited transactions with the Taliban which the US claimed was allowing the territory of Afghanistan to be used for bin Laden and Al-Qaida (see Executive Order 13129 Blocking Property and Prohibiting Transactions with the Taliban (4 July 1999) 64 Fed.Reg. 36759 (1999)).

Resolution 1267 was part of the initiatives to broaden the jurisdictional coverage of financial sanctions against the Taliban. On 15 October 1999, the UN SC, acting under Chapter VII of the UN Charter (1 UNTS 16), unanimously adopted a draft resolution sponsored by Canada, the Netherlands, Russia, Slovenia, UK, and US.

Summary

Having strongly condemned the use of Afghan territory by the Taliban for the 'sheltering and training of terrorists and planning of terrorist acts', the UN SC determined that international peace and security was threatened by the 'failure of the Taliban authorities to respond to the [SC's] demands'. [ref 1] [ref 2] The demands were made earlier on 8 December 1998 to 'stop providing sanctuary and training for international terrorists and their organizations' and 'to cooperate with efforts to bring indicted terrorists to justice' (see United Nations Security Council Resolution 1214, para 13). The UN SC insisted the Taliban comply with these demands also under Resolution 1267. [para 1]

Based on the determination of the threat, which allowed the UN SC to act under Chapter VII of the UN Charter, the UN SC demanded that the Taliban turn over Osama bin Laden to 'appropriate authorities in a country where he has been indicted' or in a country where he would be effectively brought to justice. [ref 3] [para 2]

For the purpose of enforcing such a 'demand', the UN SC obliged Member States to impose flight

bans and asset freezes on 14 November 1999 unless the UN SC decided that the Taliban fully complied with its obligation to turn over bin Laden. [para 3] More specifically, firstly, all states were obliged to deny permission for any aircraft 'if it [was] owned, leased or operated by or on behalf of the Taliban'. [para 4(a)] Secondly, states were required to '[f]reeze funds and other financial resources', including 'funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any undertaking owned or controlled by the Taliban'. [para 4(b)]

The aircraft and funds were supposed to be designated by the Sanctions Committee ('Committee') established by Resolution 1267, which also had authority to approve exceptions 'on the grounds of humanitarian need'. [paras 6, 4(a)] The Committee was also tasked with information gathering and periodical reporting to the UN SC. [para 6]

The termination of sanctions would be conditional upon on the Secretary-General reporting that the Taliban had fulfilled the obligation to hand over Osama bin Laden. [para 14] The termination clause is accompanied by the UN SC's readiness for further measures in order to fully implement Resolution 1267. [para 15]

Analysis

The significance of Resolution 1267 lies in the fact that it epitomizes the point of connection among: (i) the specific acts of violence (the bombings); (ii) an individual (bin Laden); (iii) his organization (Al-Qaida); (iv) authorities controlling a territory (Taliban); and (v) international terrorism. Resolution 1267 was motivated by the August 1998 bombings of US embassies for which Osama bin Laden was subsequently indicted. Osama bin Laden was part of 'international terrorists and their organizations' which implicitly included Al-Qaida. By providing sanctuary for bin Laden and Al-Qaida, the Taliban authorities threatened international peace and security, in response to which the UN SC imposed sanctions as part of wider counter-terrorism efforts. By acknowledging the point of factual and conceptual connection among this set of factors, Resolution 1267 paved the way for the subsequent development of the sanctions regime against Al-Qaida and ISIL in conjunction with other counter-terrorism UN SC resolutions.

The nuanced manner in which the UN SC addressed the Taliban under Resolution 1267 illuminates the Taliban's legal status. Resolution 1267 used the term 'authorities' in labelling the Taliban while, at the same time, addressing the Taliban with the word '[d]emands', instead of the term 'decides' which is used for the imposition of obligations on Member States under Article 25 of the UN Charter. [ref 4] [para 2] These words reflect the fact that, at the time of adoption, the Taliban enjoyed the status of the de facto government of Afghanistan without being recognized as its legitimate government. At the UN, Afghanistan continued to be represented by Mr Farhâdi from the government of Burhanuddin Rabbani ousted by the Taliban, who supported Resolution 1267 (see United Nations Security Council 405 1st Meeting (15 October 1999) S/PV.4051, p 2).

Finally, the sanctions imposed by Resolution 1267 were 'targeted' in nature, in the sense that the restrictive measures were directed against those aircraft and funds specifically designated by the Committee. After the sanctions came into force, the Committee approved the list of aircrafts subject to the ban on 22 December 1999 (see United Nations Security Council Committee established by Resolution 1267 (1999) concerning Afghanistan approves list of Taliban aircraft (22 December 1999) SC/6777), flight exemptions for Afghan pilgrims to perform the Hajj on 4 February 2000 (see United Nations Security Council Committee concerning Afghanistan adopts guidelines, authorizes travel by Afghan pilgrims to perform the Hajj (8 February 2000) SC/6802), and humanitarian flight exemptions (see United Nations Security Council Committee established by Resolution 1267 (1999) concerning Afghanistan reaffirms its procedures for humanitarian flights (1 December 2000) SC/6968). Having defined the meaning of 'funds and other financial resources', the Committee further approved entities and individuals subject to asset freeze, including Da Afghanistan Bank (the central bank of Afghanistan) and Omar Mohammed as the Leader of the Faithful (see United

Nations Security Council Committee concerning Afghanistan designates funds, financial resources of Taliban (13 April 2000) SC/6844). [para 4b] Such targeted sanctions have been employed since United Nations Security Council Resolution 917 for the Haiti sanctions regime in order to minimize adversarial humanitarian effects of comprehensive alternatives such as those imposed against Iraq in the 1990s.

Impact

By the Taliban's failure to comply with the UN SC's demands, the aviation and financial sanctions under paragraph 4 went into effect on 14 November 1999. Ariana Afghan Airline's flights to the United Arab Emirates—which was the Airline's only destination—were terminated (see Report of the Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security*, para 16). The asset freeze led to the closure of Afghan bank branches in Pakistan. Yet the aviation and financial sanctions did not succeed in inducing the compliance by the Taliban, whose control was ultimately reduced by the US-led invasion of Afghanistan in October 2001. As the Taliban was no longer the de facto government of Afghanistan, the UN SC's sanctions against the Taliban likewise shifted in nature to those against a non-state armed group. In fact, UN SC resolutions adopted after October 2001 no longer label the Taliban as 'authorities'.

Resolution 1267 launched the UN SC's unprecedented sanctions imposed against specific terrorist groups. In December 2000, United Nations Security Council Resolution 1333 extended the target of the asset freeze measures to Osama bin Laden and members of Al-Qaida (see Resolution 1333, para 8(c)). The consolidated list of targeted individuals and entities considerably expanded after the September 11 terrorist attacks. In January 2002, United Nations Security Council Resolution 1390 expanded the targets of the assets freeze to those 'associated with' members of Al-Qaida and imposed a travel ban and arms embargo not limited to the territory of Afghanistan (see Resolution 1390, para 2). In June 2011, the sanctions regime was split into one for Al-Qaida (see United Nations Security Council Resolution 1989) and another for the Taliban (see United Nations Security Council Resolution 1988). In December 2015, the sanctions regime against Al-Qaida was expanded into the one against ISIL (see United Nations Security Council Resolution 2253).

The expansion of the list of individuals designated by the Committee gave rise to criticism that the UN SC and the Committee failed to respect the human rights of those listed individuals, including the right to a fair hearing and the right to an effective remedy. In an absence of effective petition mechanisms at the level of the UN, several listed individuals and entities brought proceedings before national and European Union (EU) courts against domestic and EU law, which had implemented the obligations under UN SC resolutions. The UN SC and the Committee in turn introduced a series of procedural improvements to make the listing procedure fair and transparent, including the establishment of the focal point (see United Nations Security Council Resolution 1730), the Office of the Ombudsperson (United Nations Security Council Resolution 1904 (2009) on the Continuation of Measures Imposed Against the Taliban and Al-Qaida), and their power to make recommendations (UN SC Resolution 1989). Human rights criticisms levelled against the Resolution 1267 sanctions regime have led to the realisation among UN Member States that that the listing procedures ought to be 'fair and clear' (see United Nations General Assembly Resolution 60/1, para 109), which is one of the lasting impacts of the sanctions regime developed from Resolution 1267.

The compatibility of the Committee with human rights raises one of the issues of principle in the law of international organizations. There is a divergence of views as to whether, and to what extent, the UN and other international organizations are formally bound to ensure respect for human rights under international law. Despite the lack of consensus in the legal debate, the UN and other international organizations can be pressured to respond to human rights criticisms levelled against their institutional decisions. This is in part because the UN and other international organizations often present themselves as an advocate of human rights whose discourse can constrain the practice of international organizations themselves.

Further Analysis and Relevant Materials

Leading Comments

Jeremy Matam Farrall *United Nations Sanctions and the Rule of Law* (Cambridge University Press 2007)

M Kanetake 'The Interfaces between the National and International Rule of Law: The Case of UN Targeted Sanctions' (2012) 9 *Intl Org L Rev* 267–338

Materials Cited

The Report of the Secretary-General, The Situation in Afghanistan and Its Implications for International Peace and Security (10 March 2000) UN Doc A/54/791; UN Doc S/2000/205

United Nations General Assembly Resolution 60/1 on World Summit Outcome (16 September 2005) UN Doc A/RES/60/1

United Nations Security Council Resolution 2253 (2015) (17 December 2015) UN Doc S/RES/2253

United Nations Security Council Resolution 1988 (2011) on threats to international peace and security caused by terrorist acts (17 June 2011) UN Doc S/RES/1988

United Nations Security Council Resolution 1989 (2011) on threats to international peace and security caused by terrorist acts (17 June 2011) UN Doc S/RES/1989

United Nations Security Council Resolution 1904 (2009) on Continuation of the Measures against the Taliban and Al-Qaida (17 December 2009) UN Doc S/RES/1904

United Nations Security Council Resolution 1730 (2006) on General Issues Relating to Sanctions (19 December 2006) UN Doc S/RES/1730

United Nations Security Council Resolution 1390 (2002) on Continuation of the Measures against the Taliban and Al-Qaida (28 January 2002) UN Doc S/RES/1390

United Nations Security Council Resolution 1333 (2000) on Measures against the Taliban (19 December 2000) UN Doc S/RES/1333

UN Security Council Resolution 1214 (1998) on the situation in Afghanistan (8 December 1998) UN Doc S/RES/1214

United Nations Security Council Resolution 1189 (1998) concerning the terrorist bomb attacks of 7 Aug. in Kenya and Tanzania (13 August 1998) UN Doc S/RES/1189

United Nations Security Council Resolution 917 (1994) on the expansion of the sanctions until the return of the legitimately elected President of Haiti (6 May 1994) UN Doc S/RES/917

Reporter(s): Machiko Kanetake

Source text

Original Source PDF

Adopted by the Security Council at its 4051st meeting on 15 October 1999

The Security Council,

Reaffirming its previous resolutions, in particular resolutions 1189 (1998) of 13 August 1998, 1193 (1998) of 28 August 1998 and 1214 (1998) of 8 December 1998, and the statements of its President on the situation in Afghanistan,

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan, and its respect for Afghanistan's cultural and historical heritage,

Reiterating its deep concern over the continuing violations of international humanitarian law and of human rights, particularly discrimination against women and girls, and over the significant rise in the illicit production of opium, and stressing that the capture by the Taliban of the Consulate-General of the Islamic Republic of Iran and the murder of Iranian diplomats and a journalist in Mazar-e-Sharif constituted flagrant violations of established international law,

Recalling the relevant international counter-terrorism conventions and in particular the obligations of parties to those conventions to extradite or prosecute terrorists,

Strongly condemning the continuing use of Afghan territory, especially areas controlled by the Taliban, for the sheltering and training of terrorists and planning of terrorist acts, and reaffirming its conviction that the suppression of international terrorism is essential for the maintenance of international peace and security,

Deploring the fact that the Taliban continues to provide safe haven to Usama bin Laden and to allow him and others associated with him to operate a network of terrorist training camps from Taliban-controlled territory and to use Afghanistan as a base from which to sponsor international terrorist operations,

Noting the indictment of Usama bin Laden and his associates by the United States of America for, inter alia, the 7 August 1998 bombings of the United States embassies in Nairobi, Kenya, and Dares Salaam, Tanzania and for conspiring to kill American nationals outside the United States, and noting also the request of the United States of America to the Taliban to surrender them for trial (S/1999/1021),

Determining that the failure of the Taliban authorities to respond to the demands in paragraph 13 of resolution 1214 (1998) constitutes a threat to international peace and security,

Stressing its determination to ensure respect for its resolutions,

Acting under Chapter VII of the Charter of the United Nations,

1. Insists that the Afghan faction known as the Taliban, which also calls itself the Islamic Emirate of Afghanistan, comply promptly with its previous resolutions and in particular cease the provision of sanctuary and training for international terrorists and their organizations, take appropriate effective measures to ensure that the territory under its control is not used for terrorist installations and camps, or for the preparation or organization of terrorist acts against other States or their citizens, and cooperate with efforts to bring indicted terrorists to justice;

2. Demands that the Taliban turn over Usama bin Laden without further delay to appropriate authorities in a country where he has been indicted, or to appropriate authorities in a country where he will be returned to such a country, or to appropriate authorities in a country where he will be arrested and effectively brought to justice;

3. Decides that on 14 November 1999 all States shall impose the measures set out in paragraph 4 below, unless the Council has previously decided, on the basis of a report of the Secretary-General, that the Taliban has fully complied with the obligation set out in paragraph 2 above;

4. Decides further that, in order to enforce paragraph 2 above, all States shall:

(a) Deny permission for any aircraft to take off from or land in their territory if it is owned, leased or operated by or on behalf of the Taliban as designated by the Committee established by paragraph 6 below, unless the particular flight has been approved in advance by the Committee on the grounds of humanitarian need, including religious obligation such as

the performance of the Hajj;

(b) Freeze funds and other financial resources, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any undertaking owned or controlled by the Taliban, as designated by the Committee established by paragraph 6 below, and ensure that neither they nor any other funds or financial resources so designated are made available, by their nationals or by any persons within their territory, to or for the benefit of the Taliban or any undertaking owned or controlled, directly or indirectly, by the Taliban, except as may be authorized by the Committee on a case-by-case basis on the grounds of humanitarian need;

5. Urges all States to cooperate with efforts to fulfil the demand in paragraph 2 above, and to consider further measures against Usama bin Laden and his associates;

6. Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all the members of the Council to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

(a) To seek from all States further information regarding the action taken by them with a view to effectively implementing the measures imposed by paragraph 4 above;

(b) To consider information brought to its attention by States concerning violations of the measures imposed by paragraph 4 above and to recommend appropriate measures in response thereto;

(c) To make periodic reports to the Council on the impact, including the humanitarian implications, of the measures imposed by paragraph 4 above;

(d) To make periodic reports to the Council on information submitted to it regarding alleged violations of the measures imposed by paragraph 4 above, identifying where possible persons or entities reported to be engaged in such violations;

(e) To designate the aircraft and funds or other financial resources referred to in paragraph 4 above in order to facilitate the implementation of the measures imposed by that paragraph;

(f) To consider requests for exemptions from the measures imposed by paragraph 4 above as provided in that paragraph, and to decide on the granting of an exemption to these measures in respect of the payment by the International Air Transport Association (IATA) to the aeronautical authority of Afghanistan on behalf of international airlines for air traffic control services;

(g) To examine the reports submitted pursuant to paragraph 9 below;

7. Calls upon all States to act strictly in accordance with the provisions of this resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the date of coming into force of the measures imposed by paragraph 4 above;

8. Calls upon States to bring proceedings against persons and entities within their jurisdiction that violate the measures imposed by paragraph 4 above and to impose appropriate penalties;

9. Calls upon all States to cooperate fully with the Committee established by paragraph 6 above in the fulfilment of its tasks, including supplying such information as may be required by the Committee in pursuance of this resolution;

10. Requests all States to report to the Committee established by paragraph 6 above within 30 days of the coming into force of the measures imposed by paragraph 4 above on the steps they

have taken with a view to effectively implementing paragraph 4 above;

11. Requests the Secretary-General to provide all necessary assistance to the Committee established by paragraph 6 above and to make the necessary arrangements in the Secretariat for this purpose;

12. Requests the Committee established by paragraph 6 above to determine appropriate arrangements, on the basis of recommendations of the Secretariat, with competent international organizations, neighbouring and other States, and parties concerned with a view to improving the monitoring of the implementation of the measures imposed by paragraph 4 above;

13. Requests the Secretariat to submit for consideration by the Committee established by paragraph 6 above information received from Governments and public sources on possible violations of the measures imposed by paragraph 4 above;

14. Decides to terminate the measures imposed by paragraph 4 above once the Secretary-General reports to the Security Council that the Taliban has fulfilled the obligation set out in paragraph 2 above;

15. Expresses its readiness to consider the imposition of further measures, in accordance with its responsibility under the Charter of the United Nations, with the aim of achieving the full implementation of this resolution;

16. Decides to remain actively seized of the matter.