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Terrorism Financing Blacklists At Risk

Global System Faces Multiple Challenges

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BRUSSELS -- The global blacklisting system for financiers of [al-Qaeda](#) and other terrorist groups is at risk of collapse, undermined by legal challenges and waning political support in many countries, according to counterterrorism officials in Europe and the United States.

In September, the European Court of Justice threw the future of the [United Nations'](#) sanctions program against al-Qaeda and the [Taliban](#) into doubt when it declared the blacklist violated the "[fundamental rights](#)" of those [targeted](#). The Luxembourg-based court said the list lacked accountability and made it almost impossible for people to challenge their inclusion.

Courts in Britain and France have also questioned whether European countries can enforce the U.N. sanctions and other blacklists without violating local laws, including a defendant's right to see evidence. The United Nations keeps such evidence secret.

The U.N. blacklist is the backbone of an international effort to prevent al-Qaeda supporters from raising or transferring money. All U.N. members are required to impose a travel ban and asset freeze against the 503 individuals, businesses and groups [on the list](#). About \$85 million in al-Qaeda and Taliban assets is frozen worldwide.

Enforcement, however, is inconsistent; some countries have quietly permitted alleged supporters of al-Qaeda to travel and to access their bank accounts.

Moreover, the U.N. program is just one of several terrorism-financing blacklists sponsored by the United States, the [European Union](#) and Britain. While each is intended to prevent terrorism, they overlap and sometimes clash with each other, leading to confusion over whose assets, besides al-Qaeda's, should be frozen, and under whose authority. [Hezbollah](#), for instance, is included on the U.S. and British blacklists. But it is not considered a

terrorist group by the European Union.

Some counterterrorism officials say the blacklists are a vital, if imperfect, tool in fighting al-Qaeda and other groups -- particularly the U.N. sanctions program, which is the only one that governments and banks are compelled to enforce worldwide.

But other officials say the sanctions have outlived their usefulness. They note that al-Qaeda largely avoids the international banking system and [needs only small sums of money to finance terrorist plots](#). The number of assets frozen in recent years by the United Nations, for instance, has remained static.

Worries About Procedures

In Europe, opposition to the blacklists has centered on what critics claim is a lack of due process and the potential for political abuse. People named to the U.N. blacklist cannot examine the evidence against them, cannot remain on the list indefinitely and are not granted an automatic right of appeal.

[In January, the 47-nation Council of Europe](#), the continent's leading human rights watchdog, concluded that the U.N. and E.U. blacklists were "totally arbitrary and have no credibility whatsoever."

European prosecutors have dropped criminal investigations of several accused al-Qaeda financiers targeted by the U.N. sanctions after failing to find evidence that would stand up in court. But the United Nations has refused to remove all but one of those individuals from its blacklist, saying that it still believes they are supporters of terrorism.

"You can be added to the list for political reasons, without any serious evidence of wrongdoing," said Armando Spataro, the deputy chief prosecutor in Milan, whose office investigated three people on the U.N. blacklist but found no grounds to press criminal charges. "There is a risk of making many, many mistakes."

The United Nations has made several modifications in response to the criticism. But Richard Barrett, a British diplomat and coordinator of the U.N. team monitoring the Taliban and al-Qaeda, which maintains the blacklist, said the world body would probably not go as far as some European courts and governments would like.

For example, he said, it was highly unlikely the United Nations would ever agree to allow a court or independent panel to review its decisions. Such a move could infringe on powers granted under the U.N. charter, he said.

Barrett warned that a solution was elusive. If European governments stop enforcing the blacklist because of local court decisions, he said,

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other countries might also effectively abandon the program.

"It can clearly lead to collapse," Barrett said in an interview in New York. "People are worried about the whole procedure, about the difficulty in getting people off the list and the possibility of legal challenge. . . . We have to address these problems."

A Dwindling of Support

The U.N. blacklist was created in 1999 by the Security Council to pressure Afghanistan -- then ruled by the Taliban -- to expel al-Qaeda founder [Osama bin Laden](#) and his followers.

Previously, the United Nations had used sanctions only against entire countries, such as Iraq. The Security Council, however, wanted to avoid punishing the general population of Afghanistan and decided instead to target individuals, businesses and groups that supported al-Qaeda. The U.N. sanctions program is controlled by the council, which has the power to add and delete names based on intelligence reports and other evidence, which are kept secret.

Most of the names were added at the urging of the United States, according to U.S. and U.N. officials. As long as no one on the Security Council objects, nominations are automatically approved.

Getting off the list is more difficult. Until two years ago, targets could not even approach the United Nations to ask for a review; they had to ask their country of nationality to take up their cause, something many are reluctant to do. Today, targets can write directly to the Security Council to plead their case. But the council is under no obligation to respond.

In July, the council agreed to make public the reasons why specific individuals and groups had been added to the blacklist. U.N. officials said the disclosures will be published on the Internet soon, although only a few paragraphs will be released on each case.

Diplomats said there had been widespread backing for the al-Qaeda sanctions at first, especially after the Sept. 11, 2001, attacks. But enthusiasm later waned in some countries, in part because of opposition to the U.S.-led war in Iraq.

"Once we got into the middle of 2003, we found that people were not so supportive anymore," said Michael Chandler, a former [British Army](#) officer who headed the United Nations' Taliban and al-Qaeda monitoring group from 2001 to 2004. "Too many countries, for a variety of reasons, really didn't implement the sanctions properly."

Victor D. Comras, a former [State Department](#) official who also served on the U.N. monitoring group until 2004, acknowledged that many countries had lost faith in the blacklist and that as a result, the number of new names had dwindled in recent years.

But he said the blacklist ought to be expanded rather than curtailed, arguing that it does not reflect al-Qaeda's evolution into a decentralized

movement and that it needs to include financiers of affiliated terrorist groups.

"The list is much too short. It is significantly out-of-date," he said. "It's not used as effectively or efficiently as it could be."

A Legal Challenge

The most serious challenge to the U.N. sanctions has been posed by Yassin Abdullah Kadi, a Saudi businessman who had millions of dollars in assets frozen by several countries after he was named to the blacklist in October 2001. Kadi is a co-plaintiff in the lawsuit before the European Court of Justice, which ruled that his right to a fair hearing was violated by E.U. countries enforcing the U.N. list.

Kadi, 53, resides in Jiddah, Saudi Arabia, but has business holdings in Switzerland, Malaysia, Albania, Turkey and other countries. He has denied ever supporting al-Qaeda, financially or otherwise. In December 2007, the Swiss attorney general dropped an inquiry into his finances after finding no evidence of criminal acts. About \$9 million of his assets remain frozen in Switzerland, however, because the United Nations has not removed him from its blacklist, Swiss officials said.

"He's never been given a fair opportunity to challenge this," said Guy Martin, Kadi's London-based attorney. "This is what is so iniquitous: He'd be better off if he was a criminal defendant and subject to the rule of law."

Martin declined to say how many of Kadi's assets remain frozen worldwide. He also declined to speculate why Kadi was named to the blacklist in the first place. "We can only assume it was a knee-jerk reaction to the events of 9/11," he said.

The European Court of Justice has given the European Union until December to provide Kadi with an explanation of why he was blacklisted, as well as a mechanism to appeal.

Officials at the European Union's headquarters in Brussels said they were preparing a response but were in an awkward position.

"It would have been better to have this system at the U.N. level, for them to decide," said Gilles de Kerchove, the E.U. counterterrorism coordinator.

Lobbying for a Change

Meanwhile, Switzerland is being sued by [Youssef Nada](#), a 77-year-old Egyptian citizen and [Muslim Brotherhood](#) supporter who has been on the U.N. blacklist since 2001.

Nada has taken his case to the [European Court of Human Rights](#) in Strasbourg, France. He has accused Switzerland of violating his rights by blocking his assets even though the Swiss federal prosecutor, after a long investigation, found no evidence that he had broken any laws.

As in the Kadi case, Switzerland has said it is compelled to keep Nada's assets frozen because of its legal obligation to the U.N. blacklist, a stance upheld by the Swiss Supreme Court. But Swiss officials said they are worried they could still be held liable by the European Court of Human Rights.

"We have an obligation to follow U.N. sanctions but also to follow human rights laws," said Christine Schraner, the Swiss Foreign Ministry's coordinator for counterterrorism. "We feel it's very important not to have a conflict."

Switzerland is one of a group of European countries -- others include Germany, Sweden, Denmark and Liechtenstein -- that have been lobbying the United Nations to change its policy. [Among other recommendations](#), they have asked the Security Council to form an advisory panel of terrorism-financing experts that could review requests by individuals to have their names removed from the list.

"Our intention is not to weaken the system. To the contrary, we want to strengthen the sanctions system," Schraner said in an interview in Bern, the Swiss capital. "But if there's no fair and clear delisting process, then countries will be reluctant to put names on the list to begin with."

"We've been warning for the past two to three years about these court decisions, but we just were not taken seriously," she added.

U.S. officials said they were not persuaded. Adam J. Szubin, director of the [Office of Foreign Assets Control](#), the [U.S. Treasury](#) agency that oversees blacklisting procedures, said permitting a court or outsiders to hear appeals would be "troubling," as well "antithetical" to the U.N. charter. He also said it would discourage countries from sharing sensitive intelligence about people on the list.

"The procedure is confidential, and confidential for a reason," he said.

'The Bush List'

The U.S. Treasury maintains its own blacklist of suspected terrorism financiers. Established shortly after the Sept. 11 attacks under an executive order signed by [President Bush](#), [the list of "specially designated global terrorists"](#) originally focused on al-Qaeda but includes other groups, as well.

The Treasury circulates its blacklist around the world; foreign officials commonly refer to it as "the Bush list." Although it overlaps with the U.N. blacklist, the Treasury cannot compel other countries to enforce it.

Differences between the lists can lead to confusion. Unlike the United Nations, the Treasury provides brief, public explanations of why individuals and groups are added to its blacklist.

The U.S. government also allows for appeals, either administratively or in the courts. Under the terms of the executive order authorizing

the blacklist, the Treasury needs to show that it acted with "reasonable cause" in adding a name; it does not need to prove guilt.

In some cases, the Treasury has blacklisted alleged al-Qaeda supporters only after failing to persuade the [U.N. Security Council](#) to do so.

In January 2007, the U.S. government asked the Security Council to enforce sanctions against two South African citizens: Junaid Ismail Dockrat, a Johannesburg dentist, and his cousin, Farhad Ahmed Dockrat, a Muslim cleric. U.S. officials said there was evidence Farhad Dockrat had donated money to a charity that supported the Taliban and al-Qaeda. They said Junaid Dockrat paid travel costs for South Africans to train at al-Qaeda camps in Pakistan.

South Africa, a rotating member of the Security Council, placed an indefinite hold on the U.S. request, however, arguing that the evidence was insufficient. On Jan. 26, 2007, [the Treasury added the men to the U.S. blacklist](#) anyway, irritating South African officials.

In another case, the government of Saudi Arabia has pressured Britain to take action against Saad al-Fagih, a Saudi physician living in exile in London.

Officials in Riyadh accuse Fagih, who has called for the overthrow of the Saudi government, of supporting al-Qaeda. After Britain refused to take action against Fagih, Saudi Arabia persuaded the U.N. Security Council and the U.S. Treasury to add him to their lists in 2004. As a result, Britain was required to freeze his assets under the U.N. sanctions program.

Alexander Alvaro, a German member of the [European Parliament](#) who has criticized the selection process for the various blacklists, said it was clear in several cases that politics had overshadowed legitimate security concerns.

"Is the purpose to actually prevent terrorist attacks and cut off funding for terrorist organizations, or is it to please who it might serve to put them on the list?" he said.

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