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COUNTERING TERRORISM FINANCING AT THE TIME OF ISIL: TRENDS AND PITFALLS IN THE EVOLUTION OF THE UN SECURITY COUNCIL TWO-TIER FRAMEWORK**

SUMMARY: 1. Introduction. – I. Background: Early international regulatory efforts against terrorism and its founding and the original (two-tier) counter-terrorism normative framework established by Security Council Resolutions 1267/1390 and Resolution 1373. – 2. The rising international relevance of terrorism and the early international counter-terrorism initiatives. – 3. The first pillar of the original Security Council counter-terrorism framework: The 1267/1390 (Taliban/Al-Qaida) sanctions regime and its post 9/11 evolution. – 4. The second pillar of the original Security Council counter-terrorism framework: The Resolution 1373 regulatory system against terrorism financing. – II. Recent Security Council initiatives against ISIL terrorism and its financing. – 5. The *new* ‘terrorist threat’ coming from ISIL and other Al-Qaida’s splinter groups/former affiliates. – 6. The Security Council first response. – 7. The Security Council (territorial) measures against the financing sources of ISIL and Al-Nusrah Front. – 8. The renaming and further strengthening of the UN Security Council counter-terrorism sanctions regime. – 9. The response of the Security Council to the *evolving* threat of ISIL. – 10. Concluding remarks: A critical appraisal of the framework established by recent Security Council resolutions against ISIL terrorism financing.

1. Introduction

From 2013 and mostly from the Spring of 2014, the International Community has been quite suddenly and very dramatically struck by the brutal violence and terrorist actions of the so called Islamic State of Iraq and the Levant (ISIL, also ISIS, Islamic State of Iraq and Syria, and Daesh),¹ responsible of massive human rights atrocities committed daily in

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¹ On the origin and development of ISIL, see *inter alia*, J. ASKENAS, A. TSE, D. WATKINS, K. YOURISH, *A Rough State Along Two Rivers. How ISIS Came to Control Large Portions of Syria and Iraq*, in *The New York Times*, 3 July 2014, <http://www.nytimes.com/interactive/2014/07/03/world/middleeast/syria-iraq-isis-rogue-state-along-two-rivers.html>; M. CHOULOV, *ISIS: The Inside Story*, in *The Guardian*, 11 December 2014, <http://www.theguardian.com/world/2014/dec/11/-sp-isis-the-inside-story>; G. WOOD, *What ISIS Really Wants*, in *The Atlantic*, March 2015, <http://www.theatlantic.com/features/archive/2015/02/what-isis-really-wants/384980>; M. MOLINARI, *Il califfato del terrore: perché lo Stato islamico minaccia l'Occidente*, Milano, 2015.

the North-eastern part of Syria, in a huge portion of the Iraqi territory and also in the North Western part of Libya.² As widely known, ISIL is (originally and at hearth) a group of extremist jihadist rebels³ that in 2013-2014 gained control over wide portions of the territory of the above mentioned States⁴. However, ISIL is also (better, it *was* at its peak during the period 2014-2016), a self-proclaimed ‘State’ as – differently from other jihadist groups such as Al-Qaida (“AQ”) – it proclaimed its intent to create a ‘Caliphate’ over the territories under its control⁵. At the same time ISIL is a terrorist organisation⁶ and, admittedly, a very peculiar one given: *i*) its many, original and complex sources of founding,⁷ *ii*) its manifold ties with transnational organised crime⁸, *iii*) its (consequent) deep

² For some details on ISIL atrocities, considered worldwide as gross human rights violations, see the reports of the UN Human Rights Council: *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, Rule of Terror: Living under ISIS in Syria*, UN Doc. A/HRC/27/CRP.3 (2014); *Report of the Office of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Light of the Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups*, UN Doc. A/HRC/28/18 (2015); and also *Report on the Protection of Civilians in the Context of the Ninewa Operations and the Retaking of the Mosul City, 17 October 2016-10 July 2017*, jointly issued in November 2017 by OHCHR and the UNAMI.

³ ISIL history actually began in 1999 in Iraq, where a group of Islamic fighters, mainly composed of Sunni militias and called Jama’at al-Tawhid wal-Jihad, originally appeared. After the 2003 invasion of Iraq, the group in 2004 renamed ‘Al-Qaida in Iraq’ and took active part in the insurgency against the occupying coalition; it also started a policy of cooperation with other militias, especially with former members of the Baath party. In 2006 Al-Qaida in Iraq joined other Sunni Iraqi armed groups and formed the Mujahideen Shura Council, which gave birth shortly afterwards to the ‘Islamic State of Iraq’. Abu-Bakr Al-Baghdadi was the leader of this group and led it against the counterinsurgency actions of the Iraqi government, which failed to defeat the rebels, especially after the U.S. abandoned Iraq in 2010.

⁴ Taking advantage from the fragile control that Bashar Al-Assad maintained over the Syrian territory, Al-Baghdadi also led the rebels into the Syrian Civil War and joined its forces with the Al-Nusra Front (“ANF”, a ferocious coalition of Syrian anti-Assad groups). Accordingly, having involved his militias in the Syrian carnage and merged with the Al-Nusra Front, Al-Baghdadi coined the new name of ‘Islamic State of Iraq and Syria’ in April 2013. Meanwhile, taking also advantage from the chaotic and highly unstable political situation existing in Libya, ISIL’s militias gradually started to enlarge their influence and control even on portions of the North Western Libyan territory, merging their forces with those of local Islamist groups as well.

⁵ On 29 June 2014, Al-Baghdadi proclaimed in fact the creation of a worldwide ‘Caliphate’ and renamed the group ‘Islamic State’; the same Al-Baghdadi obtained the role of ‘Caliph’, merging religious and political authority. The issue of ISIL’s (asserted) statehood, clearly beyond the purview of this essay, has gained scientific attention and given rise to academic literature: see (also for further bibliographical references) A. L. CHAUMETTE, *Daech: un ‘État Islamique?*, in *Ann. fr. droit int.*, vol. 60, 2014, p. 71 ff.; C. TOMUSCHAT, *The Status of the ‘Islamic State’ under International Law*, in *Fried. Warte*, vol. 90, 2015, p. 223 ff.; M. SINKONDO, *Daech est-il un Etat? Retour critique sur la théorie néopositiviste des éléments constitutifs de l’Etat à l’épreuve de l’actualité internationale*, in *Rev. dr. int. dr. comp.*, vol. 93, 2016, p. 240 ff.; A. VAN ENGLAND, *Statehood, Proto States and International Law: New Challenges, Looking at the Case of ISIS*, in J. CRAWFORD ET AL. (eds.), *The International Legal Order: Current Needs and Possible Responses. Essays in Honour of Djambid Momtaz*, Leiden, 2017, p. 75 ff.; and recently M. LONGOBARDO, *The Self-proclaimed Statehood of the Islamic State between 2014-2017 and International Law*, in *Anuario Español de Derecho Internacional*, vol. 33, 2017, p. 205 ff.

⁶ In a number of occasions, the United Nations Security Council has designated ISIL as a ‘terrorist organisation’: see for instance UNSC Resolution 2170(2014); UNSC Resolution 2178(2014); UNSC Resolution 2199(2015), just to mention a few of them.

⁷ For details to this respect see: the sixteenth report of the *Analytical Support and Sanctions Implementation Monitoring Team* (“MT”) of the *1267 Security Council Sanctions Committee* (“1267 Committee”), UN Doc. S/2014/770 of 29 October 2014; the report of the same Monitoring Team on the threat posed by ISIL and Al-Nusra Front (UN Doc. S/2014/815 of 14 November 2014) and – above all – the *ad hoc* report of the *Financial Action Task Force* (“FATF”), *Financing of the Terrorist Organisation Islamic State in Iraq and the Levant*, February 2015, <http://www.fatf-gafi.org/topics/methodsandtrends/documents/financing-of-terrorist-organisation-isil.html>. Significantly, at its peak in 2014-2015, ISIL was estimated to have an annual budget of

rooting to the territory on which it exercises its control.⁹ The latter features have made ISIL an absolute novelty in the most recent jihadist terrorist groups' scenario.

While at the time of writing ISIL appears luckily about to be defeated (at least as to its territorial control capacity in the areas of Syria, Iraq and Libya it 'conquered' by violence and terrorist action between 2013-2017)¹⁰ and it seems therefore to show again the legal nature of a group of extremist jihadist rebels¹¹, this phenomenon still deserves scholarly attention because of the many challenges it poses, at various levels, to international law. This is particularly true in relation to the topic of this essay, concerning, specifically, the regulatory initiatives and sanctions measures undertaken by the United Nations ("UN") Security Council ("SC") since 2014 to adequately thwart the many and very complex sources of financing benefiting both ISIL and some other AQ splinter groups (such as the Al-Nusra Front). Such initiatives and sanctions measures represent indeed a crucial instrument within a broader Security Council strategy aimed – on the one hand – at cutting the actual (economic) sources of the unprecedented terrorist violence of these groups and – on the other – at disrupting, also, the equally complex ties they show to have with transnational organised crime.

The topic of the SC action against *ISIL* terrorism financing has been until now relatively unexplored by legal scholars¹². It is worth therefore of an investigation aimed,

over \$ 2 billion: for a comment and further details see *The World's Richest Army*, in *The Guardian*, 23 April 2015; *ISIS Finances are Strong*, in *The New York Times*, 19 May 2015; *ISIS Inc.: How Oil Fuels the Jihadi Terrorists*, in *The New York Times*, 14 October 2015; and *Draining ISIS Coffers*, in *The New York Times*, 20 November 2015.

⁸ As correctly pointed out in the periodical reports on the (AQ) terrorist threat submitted to the Security Council 1267 Sanctions Committee by its above mentioned Monitoring Team, also terrorist groups – like any criminal group – adapt pragmatically to changing circumstances. Recently, they seem to resort more frequently to the activities of (both transnational and local) organised crime, obtaining a considerable profit. In general, on the increasingly frequent ties between (AQ) terrorist groups and transnational/local organised crime, see e.g. the thirteenth report of the 1267 Security Council Sanctions Committee's MT (UN Doc. S/2012/968 of 12 December 2012, paragraphs 45-47). As to, specifically, the significant (and stronger) ISIL ties with transnational organised crime, see UNSC Resolution 2195 (2014) of 19 December 2014, the seventeenth report of the 1267 Sanctions Committee's MT (UN Doc. S/2014/441 of 16 June 2015, paragraphs 26 and 69), and recently UNSC Presidential Statement 9(2018) of 8 May 2018.

⁹ In fact, the rising ties between organised crime networks and several terrorist groups tend to determine – in turn – a strong(er) attachment of the latter to the social and local fabric of the States (often weak or unstable) in which these groups operate. In the case of ISIL, such a rooting clearly emerges from the fact that a significant part of the group's sources of financing comes from (illicit) activities carried out, *mostly*, in the territory under its control (i.e. through trade in oil, various form of smuggling, drugs and weapons trafficking, looting and smuggling of heritage items from local archaeological sites, museums or archives above all in Syria and Iraq, as well as through taxation, ordinary thefts or extortions against local population).

¹⁰ See in this regard twenty-first comprehensive report of the 1267 Sanctions Committee's MT (UN Doc. S/2018/14/Rev. 1 of 5 March 2018, paragraphs 1-3). See also the Monitoring Team's twenty-second comprehensive report (UN Doc. S/2018/705 of 27 July 2018, paragraphs 1-3) and the sixth and seventh reports of the Secretary-General on the threat posed by ISIL to international peace and security and the range of United Nations efforts in support of Member States in countering the threat (UN Doc. S/2018/80 of 31 January 2018 and UN Doc. S/2018/770 of 16 August 2018, respectively at paragraph 5 and p paragraphs 4-5).

¹¹ On this point see the aforementioned Monitoring Team's twenty-first comprehensive report, cit., at paragraphs 4-6; and the Monitoring Team's twenty-second comprehensive report, cit., at paragraphs 4-5. See also the sixth and seventh reports of the Secretary-General on the threat posed by ISIL, cit., respectively at paragraph 6 and at paragraphs 3 and 6.

¹² For an early comment on the 2014-2015 Security Council initiatives aimed at countering ISIL terrorism financing see C. M. PONTECORVO, All that Glitters is not Gold. *Sviluppi recenti in tema di contrasto al finanziamento del terrorismo: le sanzioni del Consiglio di sicurezza nei confronti di ISIS e di Al-Nusra*, in *Ordine*

particularly, at examining and discussing the actual *content*, very *scope* and legal *relevance* of the significant regulatory initiatives and sanctions measures undertaken by the Council (since 2014 and above all in the period 2014-2017) with a view to adequately counter the *peculiar* and *changing* ‘threat to the peace’ coming from ISIL and other AQ former affiliates, such as ANF. More precisely, our investigation will focus on the many recent Security Council initiatives aimed to prevent, ‘dry-up’ and – if necessary – destroy the equally changing sources of financing benefiting these groups. This author considers the above mentioned investigation to be also pivotal for (and very prodromal to) the final aim of this study, which is twofold. On the one hand, to ascertain and verify the *role* that the recent SC initiatives aimed at thwarting the multiple sources of ISIL founding actually plays in the (ongoing) evolution experienced, as well known, over the last 15 years by the original two-tier (1267/1373) Security Council counter-terrorism regulatory framework. On the other hand, our study is also aimed shedding light on some persisting *limits* and *pitfalls* that – as the following analysis will illustrate – the SC counter-terrorism and terrorism financing framework still seems to show despite the (further) evolution it has recently undergone by the means of the Council’s resolutions here examined.

Under such a perspective, our inquiry will be structured as follows. It firstly starts (*Part I*) with a brief background overview of both the early international community efforts against terrorism and its financing (paragraph 2) and the (original and post 9/11) normative architecture and evolution of the two-tier (1267/1373) Security Council sanctions regime against Taliban and AQ terrorism and its financing (respectively, in paragraphs. 3 and 4). Subsequently, it will consider (*Part II*) the *further* evolution experienced since 2014 by the UN sanctions framework against AQ terrorism and its financing, as a consequence of the rising threat coming from ISIL (paragraph 5). Firstly, by the means of Security Council Resolutions 2161 and 2170 (paragraph 6); and, subsequently, by the important restrictive measures established in February 2015 by SC Resolution 2199 in order to *specifically* prevent, counter and disrupt the many sources of *ISIL* terrorism *financing* (paragraph 7). In paragraphs 8 and 9 the investigation will analyse then the further measures most recently adopted by the Security Council to the same extent, as included *i.e.* in both Resolution 2253 (with its 28 pages the longest in the UN’s history on the topic of terrorism financing) and in several other 2016-2017 Council’s decisions (*e.g.*, *inter alia* and above all, last Resolution 2368(2017)). In paragraph 10 the essay will critically discuss the *actual role* played by recent SC resolutions countering the multiple sources of ISIL financing within the context of the aforementioned ongoing evolution of the original 1267/1373 SC regulatory counter-terrorism framework; this particularly, as we will see, in terms of a (*further*) ‘individualisation’, procedural ‘formalisation’ and (*increased*) normative strictness introduced by recent resolutions into such a framework¹³. The article concludes by discussing the

internazionale e diritti umani, vol. 2, 2015, p. 958 ff. See also (but specifically on the role played by ransom payments by States as a source of ISIL terrorism financing) M. BUSCEMI, *Sugli obblighi internazionali degli Stati in merito al pagamento di riscatti per la liberazione di propri cittadini sequestrati da gruppi terroristici associati all’ISIL e ad Al-Qaeda*, *Riv. dir. int.*, 2016, p. 454 ff., pp. 454-459. In general on terrorism financing see (also for bibliographical references) I. BANTEKAS, *The International Law of Terrorist Financing*, in *Am. Jour. Int. Law*, vol. 97, 2003, p. 315 ff., pp. 324-325; ID., *The International Law of Terrorist Financing*, in B. SAUL (eds.), *Research Handbook of International Law and Terrorism*, Cheltenham, 2014, p. 121 ff.; S. DE VIDO, *Il contrasto del finanziamento al terrorismo internazionale*, Padova, 2013.

¹³ It is widely known indeed that, like other UN sanctions regimes, the 1267 counter-terrorism sanction framework (as well as that established by resolution 1373 against terrorism financing) has recorded since its creation in 1999 and over the last fifteen years a process of gradual but significant ‘individualization’ and

degree to which the existing counter-terrorism legal framework, as reinforced and expanded by recent SC decisions, is able to thwart *adequately* and *effectively* the phenomenon of terrorism financing and to do so in compliance with international human rights law.

1. *Background: Early international regulatory efforts against terrorism and its founding and the original (two-tier) counter-terrorism normative framework established by Security Council Resolutions 1267/1390 and Resolution 1373*

2. *The rising international relevance of terrorism and the early international counter-terrorism initiatives*

It is well known that since the 1960s, following a series of aircraft hijackings, *terrorism* became a subject of major concern for the United Nations. Therefore, over the past 50 years a considerable body of international norms, institutions and procedures specifically designed to deal with terrorism has emerged¹⁴. It is equally known that the international community has attempted several times to achieve the goal of agreeing on a generic definition of ‘terrorism’¹⁵ for the purpose of prohibition and/or criminalisation¹⁶. So far these attempts¹⁷ have only led, however, to the adoption of *sectorial* treaties¹⁸, proscribing certain acts or protecting specific targets without filling the gap in the transnational repression of terrorist offences¹⁹. Consequently, nowadays there is still no (formally codified) single definition of ‘terrorism’ at the international level²⁰.

‘formalisation’ (on which see, also for further bibliographical references, L. VAN DEN HERIK, *The Individualization and Formalization of Sanctions*, in ID. (ed.), *Research Handbook on UN Sanctions and International Law*, Cheltenham, 2017, p. 52 ff.; L. GINSBORG, *UN Sanctions and Counter-Terrorism Strategies*, *ibid.*, p. 73 ff.; T.J. BIERSTECKER, S. ECKERT, M. TOURINHO (eds.), *Targeted Sanctions. The Impact and Effectiveness of United Nations Action*, Cambridge, 2016; and N. D. WHITE, *Sanctions against Non State Actors*, in N. RONZITTI (eds.), *Coercive Diplomacy, Sanctions and International Law*, Leiden/Boston, 2016, p. 127 ff.). The latter process (both procedural and substantive/normative, as the following analysis will show), has been coupled to a progressive but significant ‘strengthening’, in terms above all of *stricter* States’ obligations to counter terrorism financing. As a result, such a two-tier counter-terrorism and terrorism financing framework is currently among the most stringent and complex sanctions and regulatory regimes created by the UN Security Council.

¹⁴ See, *ex multis* and also for further bibliographical references: L. VAN DEN HERIK, N. SCHRIJVER, *The Fragmented International Legal Response to Terrorism*, in L. VAN DEN HERIK, N. SCHRIJVER (eds.), *Counter-Terrorism Strategies in a Fragmented International Order: Meeting the Challenges*, Cambridge, 2013, p. 20 ff., pp. 20-25; A. CONTE, *Human Rights in the Prevention and Punishment of Terrorism – Commonwealth Approaches: The United Kingdom, Canada, Australia and New Zealand*, Berlin-Heidelberg, 2010, p. 7 ff.; and among Italian scholars F. BATTAGLIA, *Il terrorismo nel diritto internazionale*, Napoli, 2012.

¹⁵ As it has been correctly pointed out, «few words are plagued by so much indeterminacy, subjectivity and political disagreement as ‘terrorism’» (B. SAUL, *Defining ‘Terrorism’ to Protect Human Rights?*, in D. STAINES (eds.), *Interrogating the War on Terror: Interdisciplinary Perspective* Cambridge, 2007, p. 190 ff., p. 190).

¹⁶ B. SAUL, *Attempts to Define ‘Terrorism’ in International Law*, in *Neth. Int. Law Rev.*, vol. 52, 2005, p. 57 ff., p. 58.

¹⁷ On the significant attempt to define terrorism as an international crime undertaken by the League of the Nations in the period 1934-1937 see G. MARSTON, *Early Attempts to Suppress Terrorism: The Terrorism and International Criminal Court Conventions of 1937*, in *Br. YB. Int. Law*, vol. 72, 2002, p. 293 ff., pp. 293-297; and J. STARKE, *The Convention for the Prevention and Punishment of Terrorism*, *ibidem*, vol. 19, 1938, p. 214 ff., pp. 214-217.

¹⁸ For a survey of those treaties see, *inter alia*, SAUL, *Defining Terrorism in International Law*, Oxford, 2006, pp. 130-142.

¹⁹ See recently, R. GROZDANOVA, “Terrorism” – *Too Elusive a Term for an International Legal Definition?*, in *Neth. Int. Law Rev.*, vol. 61, 2014, p. 305 ff. By the end of 2000, the Ad Hoc Committee on Measures to Eliminate

Terrorism *financing* in its turn gained prominence at the international level only in the mid-1990s²¹. It was, however, with the advent of Islamist terrorism that the issue of financing became more international and pressing. In the aftermath of 9/11, it was widely known that the Taliban and Al-Qaida were using proceeds from the cultivation of opium in Afghanistan to finance their operations abroad. Moreover, Islamic charities were routinely utilised by terror groups to raise money, despite the fact that most of the smaller donors were unaware of the funds' intended application²². As a result, it had become evident that the existing system of anti-terrorist treaties was inadequate to deal with Islamic terrorism, particularly its financing dimension²³. Attempts were made consequently to agree an international treaty on terrorist financing, culminating in the adoption of the 1999 International Convention for the Suppression of the Financing of Terrorism ("Terrorism

International Terrorism established by the UN General Assembly Resolution 51/210 had begun to work on a Draft Comprehensive Convention on International Terrorism. In spite of the significant efforts undertaken by the Committee, the ultimate goal to adopt a single codified international definition of terrorism has not yet been achieved, mainly because it has not been possible to reach an agreement on the exact scope of application of the Draft Convention: see A. BIANCHI, *Security Council's Anti-Terror Resolutions and their Implementation by Member States*, in *Journal of International Criminal Justice*, vol. 4, 2006, p. 1044 ff., pp. 1048-1051; and UNGA, Ad Hoc Committee, *Finalizing Treaty Require Agreement on 'Armed Forces', 'Foreign Occupation', Anti-Terrorism Committee Told*, PR L/2993, 1 February 2002.

²⁰ See M. DI FILIPPO, *The definition(s) of Terrorism in International Law*, in *Research Handbook on International Law and Terrorism*, cit., p. 3 ff., pp. 6-12. Notwithstanding, a 'common understanding' of the key elements of terrorism can be inferred from domestic and international case law as well as from legal documents. As to the contribution provided for by legal documents, it is worth mentioning UN Security Council Resolution 1566(2004), which at paragraph 3 defines 'terrorist acts' as acts (i) committed with the intent to cause death or serious bodily injury, or taking of hostages, (ii) with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organisation to do or to abstain from doing any act, which, (iii) constitute offence within the scope of and as defined in the international conventions and protocols relating to terrorism. Thereby, the SC has (consciously) preferred not to offer a definitive version of what *terrorism* means (thus explicitly and intentionally leaving the task of determining it to the Member States). For a comment on the content and scope of UNSC Resolution 1566(2004), adopted by the UN SC on 8 October 2004, see *ex multis* B. SAUL, *Definition of 'Terrorism' in the UN Security Council: 1985-2004*, in *Chin. Jour. Int. Law*, vol. 4, 2005, p. 141 ff., pp. 164-165.

²¹ At a time when the alleged State sponsors of terrorism (namely, Libya, Syria, Sudan and Iran) effectively stopped financing terrorist groups to commit acts of terrorism. This typology of State-sponsored terrorism was intended primarily to agitate political foes (Libya) or further political aspirations in particular regions (Syria and Iran in respect of Shi'ite influence in the Middle East). At the same time, other regional forms of terrorism were being financed by organized criminal activities, particularly drug cultivation and trafficking, as was the case with the Colombian FARC. Expatriate communities also financed terrorism, as was the case with the Irish Republican Army in Northern Ireland.

²² P. BROOKES, *A Devil's Triangle: Terrorism, Weapons of Mass Destruction and Rogue States*, Oxford, 2005, p. 53.

²³ The only available legal tool was in fact legislation on money laundering, including the relevant Financial Action Task Force Recommendations, which share a number of similarities with terrorism financing. Like money laundering, the collection of funds for terrorist operations was designated a 'predicate' offence where the funds were derived from an *illicit* activity, such as drug trafficking. However, this meant that if the source of funds was *legitimate* (namely, charity collection) the money-laundering paradigm was inadequate to criminalise the intended use of the funds. In order for States to counter 'clean money' terrorist financing what was needed was not an *inchoate* offence but a *wholly independent* terrorist financing offence whereby the *mere collection* of funds with *intent or knowledge* that such funds would be used to finance acts of terrorism would give rise to criminal liability under both domestic and international law.

Financing Convention”).²⁴ At first very sparsely ratified, the Convention would have probably made little impact in international relations had it not been for the terrorist attacks of 9/11,²⁵ in spite of its important provisions. It (i) provided indeed a useful *definition* of ‘terrorist financing’ as an (independent) international offence (Article 2(1))²⁶, and for the first time (ii) *criminalised* it *absent* a (terrorist) predicate offence (Article 2(3))²⁷. It also required Parties (iii) to cooperate in preventing and repressing the behaviours concretising the financing (Article 4) and (iv) not to refuse any request for mutual legal assistance on the ground of bank secrecy (Article 12(2)). More importantly the Convention on the one hand (v) established an elaborate mechanism for information exchange, extradition, and other forms of mutual legal assistance between national authorities; on the other, it obliged Parties (vi) both to impose effective sanctions – criminal or otherwise – on legal persons (Article 5) and to freeze or confiscate those assets that were used to perpetrate terrorist acts (Article 8).

In the persistent absence of legal certainty as to who ultimately decides whether a group or an individual shall be labelled as ‘terrorist’, a further important international initiative on counter-terrorism was adopted by the UN Security Council. As well known, the latter has embarked indeed on the task since 1999 by *legislating* in the field and by establishing *two* complex regulatory frameworks through the adoption of binding resolutions. Firstly, in response to the rising threat from the Taliban/AQ terrorism²⁸; secondly, to adequately thwart terrorism financing in the aftermath of 9/11²⁹. As a result, by Resolution 1267(1999)/1390(2002)³⁰ and Resolution 1373(2001)³¹ a ‘two-tier framework’ has been set up in fact by the Council, able to *dictate*³² or to *channel*³³ Member States’ efforts to identify and thwart terrorist groups as well as their sources of funding.

²⁴ International Convention on the Suppression of the Financing of Terrorism, adopted 9 December 1999, *United Nations Treaty Series*, vol. 2178, p. 197 (entered into force 10 April 2002, and ratified at present by 188 countries).

²⁵ I. BANTEKAS, *The International Law of Terrorist Financing*, *Am. Jour. Int. Law*, 2003, cit., at pp. 324-325. See also S. DE VIDO, *Il contrasto del finanziamento al terrorismo internazionale*, cit., pp. 55-51.

²⁶ Encompassing any *unlawful* and *wilful* provision or collection of funds, whether direct or indirect and by any means, where there is *intent or knowledge* that those funds will be used, in full or in part, to carry out: (a) an offence under any of the pre-existing anti-terrorism conventions (for example, bombings or hijacking), or (b) any other offence intended to cause death or serious injury to a civilian, the purpose of which is to intimidate a population, or to compel a government or an intergovernmental organisation to do, or abstain from doing, something.

²⁷ An important element of the new offence of “terrorist financing” as established by the Convention is indeed that “[f]or an act to constitute an offence set forth in paragraph 1, it shall *not* be necessary that the funds were *actually used* to carry out an offence[...]” (Art. 2(3), emphasis added). Therefore, liability arises under the Convention *independently* of the predicate (terrorist) offence so long as the perpetrator has sufficient knowledge of the context and intends to raise funds to commit an act of terror: see M. PIETH, *Criminalizing the Financing of Terrorism*, *Journal of International Criminal Justice*, vol. 4, 2006, p. 1074 ff., pp. 1081-1082 and R. LAVALLE, *The International Convention on the Suppression of the Financing of Terrorism*, in *ZaöRV*, vol. 60, 2000, p. 491 ff., pp. 498-500.

²⁸ L. GINSBORG, *The United Nations Security Council’s Counter-Terrorism Al-Qaida Sanctions Regime: Resolution 1267 and the 1267 Committee*, in *Research Handbook on International Law and Terrorism*, cit., p. 608 ff., pp. 609-611.

²⁹ Given the limited success (in term of State ratifications) registered, at that time, by the above-mentioned 1999 Convention on the Suppression of Terrorism Financing.

³⁰ UNSC Resolution 1267(1999) of 15 October 1999 and UNSC Resolution 1390(2002) of 16 January 2002.

³¹ UNSC Resolution 1373(2001) of 28 September 2001.

³² In the case of the sanctions regime established under Resolution 1267(1999) and further expanded by Resolution 1390(2002) the *Security Council* has *identified* the list of individuals and entities to which the sanctions apply.

A short reference both to the main features of this two-tier regulatory framework against terrorism and its financing and to the gradual evolution it has undergone in the period 2002-2011 seems necessary and useful to identify the very pillars of the original normative architecture within which recent SC resolutions against ISIL terrorism have been adopted since 2014.

3. *The first pillar of the original Security Council counter-terrorism framework: The 1267/1390 (Taliban/Al-Qaida) sanctions regime and its post 9/11 evolution*

The first tier of the (original) UN SC counter-terrorism framework was set up, as already mentioned, by Resolutions 1267(1999) and 1390(2002) creating an international mechanism to allow States to freeze funds and other financial assets of persons and entities designated as ‘terrorist’ by an authorised *international* entity (*i.e.* the Sanctions Committee) working *under* the SC.³⁴

Resolution 1267 imposes in particular a series of restrictive measures³⁵ *specifically* targeting those individuals (organs) and entities associated with the Taliban which at the time controlled most of Afghanistan.³⁶ In the context of the SC move towards ‘smart sanctions’³⁷, the 1267 sanctions system was therefore just another example of a SC (centralised³⁸) regime specifically targeted against the decision-making *élite* governing a given territory or State.

In the following years the mandate and scope of such a regime have been gradually expanded by further Chapter VII SC resolutions. Firstly by Resolution 1390³⁹, adopted by the SC on 16 January 2002 because of the historical circumstances that followed original

³³ Instead, UNSC Resolution 1373(2001) has given rise to a (peculiar) *decentralised* sanctioning regime, providing *Member States* with the task of *autonomously identifying* terrorist suspects (absent in such a regulatory framework a *centralised* sanction list managed by the UN SC).

³⁴ According to Art. 6 of Resolution 1267(1999) the Sanctions Committee is tasked, *inter alia*, with administering the listing and delisting process of the individuals and entities to which the sanctions apply and with maintaining the list resulting from such process (1267 Sanctions List); its mandate also includes monitoring the implementation of the sanctions. The Committee is comprised of diplomats representing all 15 members of the SC and adopts its decisions by *consensus*. In practice the 1267 Sanctions Committee follows a ‘no objection procedure’, so that if no State has opposed a listing proposal (or has put in ‘on hold’) within ten working days, the individual or entity will be added to the list.

³⁵ In the form of assets freezing and (limited) air ban (Art. 4).

³⁶ See L. GINSBORG, *cit. supra* note 28, p. 609.

³⁷ D. CORTRIGHT, G. A. LOPEZ, *Reforming Sanctions*, in *The UN Security Council: From the Cold War to the 21st Century*, London, 2004; S. ECKERT, *The Evolution and Effectiveness of UN Sanctions*, in D. M. MALONE (eds.), *Research Handbook on UN Sanctions*, cit., p. 52 ff.; N. D. WHITE, *cit. supra* note 13, p. 127 ff.; N. RONZITTI, *Sanctions as Instruments of Coercive Diplomacy: An International Law Perspective*, in *Coercive Diplomacy*, cit., p. 1 ff., pp. 9-11; S. ECKERT, *Thinking About UN Sanctions*, in T. J. BIERSTECKER, S. ECKERT, M. TOURINHO (eds.), *Targeted Sanctions*, cit., p. 11 ff.; and M. IOVANE, *L’attività normativa del Consiglio di sicurezza nei confronti dei privati e il problema della legittimità delle sanzioni individuali*, in T. VASSALLI DI DACHENHAUSEN (eds.), *Atti del convegno in memoria di Luigi Sivo*, Napoli, 2011, p. 113 ff.

³⁸ That is, as mentioned, a regime in which listing decisions are *adopted by the SC* on the base of *nominations by Member States*.

³⁹ But see also UNSC Resolution 1333(2000) of 19 December 2000, expanding both the air embargo and the financial embargo (to include into the latter the freezing of the funds of Usama Bin Laden and associates) and imposing also an arms embargo over the Afghanistan’s territory controlled by the Taliban and an embargo on the chemical acetyl anhydride (paragraphs 5, 8, 10 and 11).

Resolution 1267 and the Taliban being removed from the power in Afghanistan. Under Resolution 1390 the sanctions measures were *extended* indeed to AQ as a terrorist organisation, thus broadening significantly the scope and mandate of the 1267 sanctions regime. Such an expansion made however the regime both ground-breaking and legally problematic for several relevant reasons. First of all, under Resolution 1390 the sanctions measures were – remarkably – no longer aimed at the political and/or military leadership in the country, but at a *worldwide terrorist organization/network*. For this reason, Resolution 1390 was groundbreaking, as it was the first case of a sanctions resolution having *no link* to a *specific* territory or State⁴⁰. As well known, the 1267 Al-Qaida regime consequently became the first (and so far the only) sanctions framework administered by the SC of *global reach*⁴¹. Moreover, under Resolution 1390 not only was the new category of addressees of global reach but the threat to the international peace which the SC was responding to was – *solely* – ‘acts of international terrorism’. In other words, for the first time the SC imposed sanctions on individuals uniquely on the base of a (broad) determination that acts of international terrorism constitute a threat to international peace and security. Another important element introduced by Resolution 1390 is that, though it established that there would be a review of the measures imposed after 12 months, it also (explicitly) stated that the measures would then either be maintained in their current form or strengthened⁴², with the result of remaining in force *indefinitely* and becoming consequently a *permanent* sanctions regime. Further, given that the threat to which the measures were responding (‘acts of international terrorism’) did not help to provide an end-point for the resolution, it could actually remain in force until the global threat to which it was responding disappeared. Additionally, hand in hand with the new global nature of the SC sanctions under Resolution 1390 also came their *indeterminacy*, as the category of addressees was significantly widened in Resolution 1390⁴³ by including *any* individual, group, undertaking and entity *associated with* Osama bin Laden, AQ or the Taliban, *located anywhere* in the world. Moreover, while identifying ‘membership’ and ‘associated with’ an open-ended terrorist network is complicated by definition, the power and authority to make such determinations on individual responsibility under Resolution 1390 lay *fully* in the hands of the 1267 Sanctions Committee; and, what is more, it was a power to *continually* make such determinations⁴⁴. Therefore, clear ‘evidential’ differences in identifying a terrorist network, often based on intelligence material, further stood the 1267 sanctions regime apart from its predecessors⁴⁵. Consequently, under Resolution 1390 the AQ sanctions regime took the trend towards ‘individualisation’ (already started, as illustrated, with Resolution 1267) to its extreme consequences, as it became the first sanctions regime administered by the SC against

⁴⁰ See J. E. STROMSETH, *The Security Council's Counter-Terrorism Role: Continuity and Innovation*, in *ASIL Proceedings*, 2003, p. 41 ff.; H. KELLER, A. FISCHER, *The UN Anti-Terror Sanctions Regime under Pressure*, in *Hum. Rights Law Rev.*, vol. 9, 2009, p. 257 ff.

⁴¹ I. CAMERON, *UN Targeted Sanctions, Legal Safeguards and the ECHR*, in *Nord. Jour. Int. Law*, vol. 72, 2003, p. 159 ff., p. 164.

⁴² UNSC Resolution 1390(2002), paragraph 3.

⁴³ In the past the SC had generally ordered sanctions or targeted sanctions against State or government members, their families, militia leaders or other officials or rebel groups (see for a discussion on this point B. VAN GINKEL, *The Practice of the United Nations in Combating Terrorism from 1946 to 2008: Questions of Legality and Legitimacy*, Antwerpen/Oxford, 2010).

⁴⁴ P. GUTHERIE, *Security Council Sanctions and the Protection of Individual Rights*, in *New York University Global Survey of American Law*, vol. 60 2004, p. 491 ff., p. 495.

⁴⁵ See I. CAMERON, *Protecting Legal Rights: On the (In)Security of Targeted Sanctions*, in P. M. WALLENSTEEN, C. STAIBANO (eds.), *International Sanctions: Between Word and Wars in the Global System*, Abingdon, 2005, p. 190.

individuals of *global reach*. In such a regime the only real foundation for blacklisting became therefore the direct or indirect determination by the SC that a given individual represents a *threat* to international peace and security and/or that her/his listing will restore international peace and security⁴⁶. Moreover, the leading role of the United States in the 1267 listings has by now become common knowledge;⁴⁷ on the other hand, the United States' long-established framework for blacklisting (where most of the entries on the 1267 list come from directly) also served as the institutional model for the 1267/1390 sanctions regime⁴⁸.

Furthermore, since 9/11, because of the Security Council move towards 'global sanctions', the actual functioning of the 1267 sanctions regime has also been – as widely known – legally problematic, as a consequence of its many procedural deficiencies and shortcomings. Therefore, over the following years the AQ sanctions regime has also witnessed (hands in hands with its increasing 'individualisation') a high degree of (procedural) 'formalisation', having been gradually subjected to several formal standards of procedural nature, combined with the introduction of internal and external review processes, as exposed by legal scholars, international organisations, and national and regional courts.⁴⁹ The gradual improvements in this area are evidence of the recognition by the SC itself of the need to provide greater procedural guarantees for individuals and entities listed, with the Sanctions Committee after Resolution 1390 appearing to have spent

⁴⁶ A. CIAMPI, *Sanzioni del Consiglio di sicurezza e diritti umani*, Milano, 2007, p. 93.

⁴⁷ See, for example, A. HUDSON, *Not a Great Asset: The UN Security Council's Counter-Terrorism Regime: Violating Human Rights*, in *Berk. Jour. Int. Law*, vol. 25, 2007, p. 203 ff., p. 207.

⁴⁸ See on this point P. FROMUTH, *The European Court of Justice Kadi Decision and the Future of UN Counterterrorism Sanctions*, in *ASIL Insights*, 30 October 2009, <https://www.asil.org/insights/volume/13/issue/20/european-court-justice-kadi-decision-and-future-un-counterterrorism>.

⁴⁹ Extensive literature exists on the failure by the 1267 sanctions regime, since 9/11, to guarantee due process rights to individuals and entities subject to the sanctions. For a detailed analysis of the procedural shortcomings in the 1267 sanctions regime also in relation to the gradual improvements introduced by the Security Council, see for instance: the reports by the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism (M. Scheinin) UN Docs A/61/267, A/63/223 and A/65/258; as well as European Center for Constitutional and Human Rights, *Blacklisted: Targeted Sanctions, Preemptive Security and Fundamental Rights*, December 2010, p. 10; and also, *inter alia*, M. ARCARI, *La tutela dei diritti umani nel quadro dell'attività del Comitato delle sanzioni del Consiglio di sicurezza dell'ONU*, in P. GARGIULO, C. VITUCCI (eds.), *La tutela dei diritti umani nella lotta e nella guerra al terrorismo*, Napoli, 2009, p. 55 ff.; F. SALERNO (eds.), *Sanzioni individuali del Consiglio di Sicurezza e garanzie processuali fondamentali*, Padova, 2010; C. MICHAELSEN, *The Security Council's Al Qaeda and Taliban Sanctions Regime: 'Essential Tool' or Increasing Liability for the UN's Counter-Terrorism Efforts?*, in *Studies in Conflicts and Terrorism*, vol. 33, 2010, p. 449 ff.; M. BOTHE, *Security Council's Targeted Sanctions against Presumed Terrorists: The Need to Comply with Human Rights Standards*, in *Journal of International Criminal Justice*, vol. 6, 2008, p. 541 ff.; and G. A. LOPEZ, D. CORTRIGHT, A. MILLAR, L. GERBER-STELLINGWERF, *Overdue Process: Protecting Human Rights while Sanctioning Alleged Terrorists*, Report from the Fourth Freedom Forum and Kroc Institute for International Peace Studies, April 2009. Further, a growing body of case law tells the story of States being held accountable by national and regional courts for their failure to protect procedural rights in their implementation of the 1267 sanctions. See for example, Court of Justice of the European Union (Grand Chamber), Judgment of 3 September 2008, Joined Cases C-402/05 P and C-415/05 P, *Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities*, and (Grand Chamber) Judgment of 18 July 2013 Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, *European Commission and Others v. Yassin Abdullah Kadi*; United Nations Human Rights Committee, Communication No. 1472/2006, *Final Views of the Human Rights Committee*, 22 October 2008, *Sayadi and Vinck v. Belgium*; European Court of Human Rights (Grand Chamber), Judgment of 12 September 2012, *Nada v. Switzerland*, applic. No. 10593/08, 12 September 2012, and (Grand Chamber), Judgment of 21 June 2016, *Al-Dulimi and Montana Management Inc. v. Switzerland*, applic. No. 5809/08.

much time trying to remedy to its post 9/11 steps⁵⁰. In other words, as a direct result of its procedural shortcomings, the AQ sanctions regime has gradually (but significantly) evolved to meet some core procedural requirements under international human rights law, thereby becoming *increasingly formalised* in its procedures. Overall, the SC itself has committed to ensuring that fair and clear procedure exist for placing individuals and entities on sanctions lists.⁵¹ Particularly, reforms to the regime have included: incremental improvements for the status of affected individuals – such as, the notification of listed individuals,⁵² the dissemination of statements and narrative summaries of reasons for listing, and the mandatory review of all entries on the list⁵³. Moreover, the establishment of the Office of the Ombudsperson brought about further improvements to the Committee’s procedures for listing and delisting⁵⁴; and the Ombudsperson delisting system, in its turn, has been gradually improved and increasingly formalised both by the Security Council and by the Ombudsperson herself.⁵⁵ Significantly, the move of the 1267/1390 AQ sanctions regime towards more or less procedural ‘formalisation’ continues to take place as the regime evolves over the years, most recently – as examined below – in relation to Security Council Resolutions 2253(2015) and 2368(2017).

Finally, in relation to the evolution undergone by the 1267/1390 sanctions regime in its mandate and scope, it is also worth recalling that in 2011 by Resolutions 1988(2011) and 1989(2011) the original AQ and Taliban sanctions system split into two separate regimes: i) a *country-specific* regime, imposing sanctions on those Taliban “constituting a threat to the peace, stability and security of Afghanistan”⁵⁶, and ii) the 1267/1989 sanctions measures, which apply to designated individuals and entities *associated with AQ wherever located*.⁵⁷

4. *The second pillar of the original Security Council counter-terrorism framework: The Resolution 1373 regulatory system against terrorism financing*

The second important tier of the UN SC counter-terrorism system was established – as mentioned above – by Resolution 1373(2001), adopted on 28 September 2001 three weeks after the 9/11 attacks and a few months before Resolution 1390. Sponsored

⁵⁰ See T. MARAUHN, I. STEGMILLER, *Sanctions and the Protection of Human Rights: The Role of Sanctions Committee*, in *Coercive Diplomacy*, cit., p. 161 ff.

⁵¹ Report by the President of the Security Council of 22 June 2006, UN Doc S/PRST/2006/28.

⁵² Under UNSC Resolution 1735(2006) of 22 December 2006.

⁵³ UNSC Resolution 1822(2008) of 30 June 2008.

⁵⁴ UNSC Resolution 1904(2009) of 17 December 2009. The Ombudsperson receives requests from individuals and entities seeking to be removed from the Sanctions List, and makes recommendations to the Sanctions Committee on these delisting requests.

⁵⁵ UNSC Resolution 1989(2011) of 17 June 2011, by which the SC decided that, having considered requests for delisting from the AQ Sanctions List, the Ombudsperson should present to the Committee observations and a recommendation either to retain the listing or that the Committee consider delisting (paragraph 21). Thereby Resolution 1989 supplemented the requirement of *consensus* by all Committee Members for delisting decisions with a *new* procedure, to be initiated either by the Ombudsperson or the designating State, and which shifted the burden of *consensus* onto the decision to retain the sanctioning measures. However, in the absence of such *consensus* to retain the listing, *any* Member State of the SC may still submit the Ombudsperson’s delisting proposal to the SC.

⁵⁶ Under UNSC Resolution 1988(2011) of 17 June 2011.

⁵⁷ Under the aforementioned UNSC Resolution 1989.

(unsurprisingly) by the United States, the Resolution 1373 was aimed in fact at obliging all States to adhere to the regime established under the 1999 Terrorist Financing Convention (as mentioned, only sparsely ratified at the time). The effect of the resolution was thus to indirectly impose the new terrorist *financing* offences (however largely *undefined* in its text as the resolution was hurriedly adopted) and an international regime *requiring* States to detect, freeze and confiscate assets designated as ‘terrorist’, irrespective of bank secrecy laws.⁵⁸ The latter regime was however far *broader* than that envisaged in the Terrorist Financing Convention, encompassing a wide range of obligations on States. Under such a perspective, another effect of the resolution was that of providing a significant contribution to the normative ‘formalisation’ of the UN counter-terrorism framework.

The resolution requested all UN Member States to implement a number of broad obligations,⁵⁹ globally intended to enhance their (legal and institutional) ability to counter terrorist activities both nationally and internationally. Its operative paragraphs 1 and 2 set indeed that *all* States shall take certain actions against the *financing* of terrorist activities as well as a miscellany of other actions designed to *prevent* any *support* for terrorists and terrorist activities. Among the obligations imposed on Member States were the *criminalisation* of the financing of terrorism⁶⁰ and the *freezing* «without delay [of] funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on the behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities»⁶¹. In this latter provision the 1373 regime came closest to the 1267/1390 regime, although directed much more broadly at *terrorist financing as a whole* as opposed to (in the case of Resolution 1267) a *defined* terrorist group or network⁶². Thereby, the wide-ranging resolution covering measures and strategies to thwart international terrorism *worldwide* became in fact the first ‘legislative’ resolution imposed by the SC⁶³, while *failing* to define terrorism internationally.

⁵⁸ See L. M. HINOJOSA-MARTINEZ, *A Critical Comment on UN Security Resolution 1373*, in *Research Handbook on International Law and Terrorism*, cit., p. 626 ff.

⁵⁹ Imposing an obligation of *result*, leaving them to choose the means by which they give effect to the measures listed therein.

⁶⁰ Operative paragraph 1(b).

⁶¹ *Ibid.*

⁶² More generally, although the Resolution 1373 addressed the terrorist threat *globally*, historically it was clearly adopted in response to the *AQ* terrorist threat in the post 9/11 context.

⁶³ Unlike other resolutions adopted under Chapter VII, Resolution 1373 is in fact *not* specifically related to any event or situation – even though the 9/11 attacks are mentioned in its preamble (see A. BIANCHI, *Security Council's Anti-Terror Resolutions*, cit., p. 1047). It also *lacks* any space or time limitation, and since most of its text establishes binding rules of international law, it seems to be intended that those rules be destined to remain in force *indefinitely*. The resolution’s dearth of connection with any particular situation and its general scope are the main reasons why many commentators have characterised Resolution 1373 as a ‘piece of legislation’: see, *ex multis*, P. C. SZAZ, *The Security Council Starts Legislating*, in *Am. Jour. Int. Law*, vol. 96, 2002, p. 901 ff., pp. 902-903; M. HAPPOLD, *Security Council Resolution 1373 and the Constitution of the United Nations*, in *Leid. Jour. Int. Law*, vol. 16, 2003, p. 593 ff., pp. 593-596; G. GUILLAUME, *Terrorism and International Law*, in *Int. Comp. Law Quart.*, vol. 53, 2004, p. 537 ff., pp. 540-543; and L. M. HINOJOSA-MARTINEZ, *The Legislative Role of the Security Council in its Fight Against Terrorism: Legal, Political and Practical Limits*, *ibidem*, vol. 57, 2008, p. 350 ff. The same considerations also apply to other law-making exercises of the SC, namely Resolution 1540(2004) (on which see R. LAVALLE, *A Novel, if Awkward Exercise in International Law-Making: Security Council Resolution 1540 (28 April 2004)*, in *Neth. Int. Law Review*, vol. 51, 2004, p. 413 ff., pp. 416-437) and more recently

Significantly, Resolution 1373 also provided for an institutional development within the regulatory system on terrorism financing it gave rise to, by establishing the Counter Terrorism Committee (“CTC”) as a subsidiary organ of the SC, whose mandate was – mainly – to *monitor* implementation of and to *assess* national compliance with the measures stipulated in the resolution.⁶⁴ In this respect it is worth pointing out that if, on the one hand, the adoption by SC Resolution 1373 of counter-terrorism legal obligations placed on the whole community of States (though by a political body as the UN SC) is, *per se*, a radical development within the UN counter-terrorism sanctions framework, on the other the fact that under such a framework the enforcement of the obligations it establishes is monitored by another *political* organ (the CTC⁶⁵, which is in fact a ‘toothless’ supervisory mechanism whose proactive role is circumscribed to recommending the adoption of implementing measures)⁶⁶ raises doubts both on the effectiveness of this supervisory mechanism and on the *actual* implementation and enforcement of States’ counter-terrorism obligations.

Finally, it is also worth mentioning that the implementation of the 1373 sanctions regime was (and still is) rather fluid and vague. This is related to the fact that whereas typically under other SC sanctions regimes the Council *identifies* and *enforces* collective sanctions (delegating only implementing powers to a subsidiary organ, namely a sanctions committee), under Resolution 1373 the Council *did not* identify any targets of the terrorist financing measures. Rather, *national* authorities (including intelligence agencies), and particularly those of the US, acted under the authority of Resolution 1373 to identify to whom national terrorist financing measures would apply. This practice soon created serious political problems, because on many occasions these agencies bypassed the SC and its subsidiary organs altogether and began to dictate terrorist lists to foreign government agencies and private financial institutions⁶⁷. At the inter-State level, the matter was certainly

Resolutions 2178(2014) and 2396(2017) on foreign terrorist fighters. Challenging the legitimacy of the SC’s exercise of legislative powers is clearly beyond the scope of this essay, provided also that the legal effects of *ultra vires* resolutions have been already scrutinized (e.g. E. ROSAND, *The Security Council as ‘Global Legislator’: Ultra Vires or Ultra Innovative?*, in *Fordb. Int. Law Jour.*, vol. 28, 2004, p. 542 ff., pp. 551); and also because the resolutions of the SC, which is the initial judge of the legality of its own acts (International Court of Justice, Advisory Opinion of 21 June 1971, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276(1970)*, I.C.J. Reports, 1971, p. 16 ff., p. 22), are generally seen as being legal (M. HAPPOLD, *Security Council Resolution 1373*, cit., p. 609).

⁶⁴ UNSC Resolution 1373(2001), paragraph 6. Composed of all 15 members of the UN SC, the CTC does *not* possess the authority to order States and private actors to freeze assets designated as ‘terrorist’; the *ratio* of the establishment of such new sanctions committee is, rather, that through it the SC would identify terrorist organisations and terrorist suspects, thereafter *transmitting* this information to national authorities with the aim of freezing assets found in their territory.

⁶⁵ See E. ROSAND, *Resolution 1373 and the CTC: The Security Council’s Capacity-Building*, in G. NESI (eds.), *International Cooperation in Counter-Terrorism. The United Nations and Regional Organizations in the Fight against Terrorism*, Hampshire, 2006, p. 81 ff., pp. 81-86.

⁶⁶ It is important to recall that with the adoption of UNSC Resolution 1624(2005) the mandate of the CTC has been expanded. In fact, Resolution 1624 in its operative paragraph 4 requests Member States to report their implementing measures, which must conform to their legal obligations under international law, including human rights, humanitarian law and refugee law, to the CTC.

⁶⁷ While private financial institutions were not obliged to adhere to such requests or ‘orders’, in practice the US achieved compliance by threatening to remove the ‘Qualified Intermediary’ *status* of those institutions with branches or activities in the US (such a *status* is necessary to undertake banking activities there): see I. BANTEKAS, *The International Law on Terrorist Financing*, in *Research Handbook on International Law and Terrorism*, cit., at p. 128. This gave rise to legal problems given that national agencies and private financial institutions were unsure if they were violating domestic laws (such as banking laws) by adhering to the dictates of a

ameliorated by the fact that the post-1373 regime is now part of standard practice, particularly after a methodical streamlining of processes by the Council itself and by the 1267 AQ Sanctions Committee and avoiding further procedural irregularities.⁶⁸ Like-minded States have also developed effective and informed modes of collaboration. Nonetheless, many States still exercise power to *unilaterally* identify terrorist organisations and financiers.

II. Recent Security Council initiatives against ISIL terrorism and its financing

5. The new 'terrorist threat' coming from ISIL and other Al-Qaida's splinter groups/former affiliates

Over the last four years, with the international landscape and terrorist threat constantly evolving – in terms both of metamorphic trends within the same structure of the AQ terrorist network⁶⁹ (mainly after the emergence of the new terrorist threat posed by ISIL) and of a significant expansion and diversification of its funding sources⁷⁰ – the Security Council AQ sanctions regime has undergone a *further* significant normative development. Moreover, it is in fact continuing to develop alongside the (ongoing) evolution in the threat posed by ISIL, which is still active despite the significant reduction in its 'worldwide offensive capacity' consequent to the international military campaign undertaken against it, as widely known, since 2015.

Since June 2014, because of the rapid and violent emergence of ISIL as leading terrorist group within the AQ's network⁷¹ and 'the world's richest terrorist army'⁷², the SC

foreign agency. This remains an issue to the present day and no one can declare with certainty to what degree foreign private banks are dealing with such requests by US agencies.

⁶⁸ The CTC effectively became the vehicle for determining all international freezing and listing requests and urged parties to foster further collaboration by relying on existing instruments, whether multilateral or bilateral: see CTC Executive Directorate, *Technical Guide to the Implementation of SC Resolution 1373(2009)*, p. 39 ff.

⁶⁹ Particularly, from a model of *centralized* terrorist organization capable of *directly* directing and financing its affiliates, Al-Qaida has gradually been transformed into a *decentralized* terrorist network, branched into several *autonomous* (and often conflicting) groups and subgroups that (quite independently) draw from the territory in which they operate the economic resources for their survival.

⁷⁰ As already mentioned (note 7), recent data show that a substantial part of the financing sources of the terrorist groups included in the 'Al-Qaida's galaxy', and those of ISIL and ANF in particular, comes mostly from illegal activities carried out *in the territory* (at that time) under their control. In the case of ISIL and ANF, their particularly rich and various sources of financing (in the period 2014-2015) include: oil trade, various form of smuggling, drugs and weapons trafficking, the proceeds from looting ancient artifacts in Syria and Iraq, ransom payments from kidnapping, and – more generally – extortion payments imposed on individuals residing in the territories controlled by the terrorist groups. For details on ISIL's financing, see the aforementioned Report of 14 November 2014 of the 1267 Sanctions Committee's Monitoring Team on the threat posed by ISIL and ANF (UN Doc. S/2014/815) and the *ad hoc* report of the FATF of February 2015, *Financing of the Terrorist Organisation Islamic State in Iraq and the Levant*.

⁷¹ As already mentioned, ISIL emerged on the *world* stage in June 2014 when its fighters seized Mosul (Iraq's second-largest city) and Al-Baghdadi, the self-appointed caliph, declared that ISIL's goal was to establish an Islamic caliphate in the Middle East. Over the coming months, ISIL rapidly controlled large swaths of territory in Iraq and Syria (seizing control of Ramadi, the capital of Iraq's Anbar province, and Palmyra in central Syria). In these countries, ISIL also seized towns along important supply routes, and controlled critical infrastructure and border crossings.

has adopted indeed further binding Chapter VII resolutions. They are generally aimed at countering the rising terrorist threat coming from the AQ's (current and former) affiliates and, particularly, at disrupting the new and "unprecedented" – in terms of violence and consequences – 'global terrorist wave' represented by ISIL and the complex net of individuals and entities associated with it.

As the following analysis will show, by these resolutions the UN SC has in fact significantly integrated, specified and further strengthened its original two-tier (1267/1373) regulatory system against terrorism and its financing. On the one hand, by adopting *new* and *smarter* sanctions on individual and entities 'having ties with' these terrorist groups; on the other, by imposing *further* and *significant* obligations – of result and/or of due diligence – on Member States and the other actors involved in the complex UN global counter-terrorist strategy.⁷³ Thereby, the SC has provided a relevant contribution to the *further* evolution of its counter-terrorist legal framework, by making – as it will emerge from the following analysis of the most significant recent SC resolutions – an(*other*) important 'step' in the aforementioned ongoing trend towards its progressive 'individualisation' and (procedural as well as normative) 'formalisation'.

6. The Security Council first response

Under such a perspective, on 14 June 2014 the SC adopted by unanimity Resolution 2161⁷⁴. Though seemingly (only) reiterating the existing counter-terrorism/terrorism financing obligations of Member States, this resolution as a matter of fact marked – instead – a first important step in the gradual 'adaptive process' of the 1267/1373 counter-terrorist sanctions framework to the changing international security context and 'threats' to peace. The resolution explicitly refers indeed to the *changeable* nature of the terrorist threat coming from Al-Qaida in previous months, in a moment of its evident and significant internal transformation as to both its organisational structure (with the emergence of numerous splinter groups) and its way of operating (above all in some regions of the Middle East and Northern Africa). Therefore, the reiteration of the (existing) Members States' counter-terrorism obligations is made by the resolution in a 'new context' and in response to 'new phenomena' towards which the SC express "its deep concern"⁷⁵. Moreover, based on the

⁷² See *The World's Richest Terror Army*, cit.; *ISIS Finances are Strong*, cit.; *ISIS Inc.: How Oil Fuels the Jihadi Terrorists*, cit.; and *Draining ISIS Coffers*, cit. On the recent evolving trend in the financing sources benefiting ISIL and other groups of the Al-Qaida terrorist network over the period 2016-2018 see the already mentioned Monitoring Team's twenty-first and twenty-second comprehensive Reports on the threat of ISIL and other terrorist groups, cit. (at, respectively, paragraphs 9-18, 26, 30, 4, 43, 49, 61, 81 and paragraphs 15-17, 21, 26, 36, 43, 49, 71, 90); as well as the data included into the sixth and seventh Secretary General Reports on the threat posed by ISIL, cit., (at, respectively, paragraphs 13-14, 21, 23, 26, 32, 36 and paragraphs 11-12, 16-18, 21, 25, 27, 40-41).

⁷³ As developed by the UN General Assembly by, *inter alia*, its wide and robust *United Nations Global Counter-Terrorism Strategy* (UN Doc. A/RES/60/288 of 20 September 2006).

⁷⁴ UNSC Resolution 2161(2014) of 14 June 2014.

⁷⁵ Such as «the increased use by terrorist and their supporters of new information technologies[...]to facilitate terrorist acts as well as their use to incite, recruits, *fund* or plan terrorist acts», «the flow of international recruits to Al-Qaida and to those groups associated with it», «the abuse of non-profit and charitable organisations *by and for* terrorists», and «the *rising financing of terrorism* and terrorist organisations, *including from the proceed of international crimes*»: see *ibidem*, Preamble, paragraphs 20, 21, 18 and 17 (emphasis added).

recommendations⁷⁶ received from the 1267 Sanctions Committee's Monitoring Team⁷⁷, the resolution also makes three significant references. First, to the rising phenomena of kidnapping for ransom by the terrorist groups, specifying to this respect that the assets freezing measures included in its paragraph 1 (a) *apply also to* the payment of ransom to individual or entities included in the 1267 Sanctions List⁷⁸. Second, to the fact that, in order to increase the effectiveness of its action against terrorism financing, the existing States' obligations of assets freezing apply to «financial and economic resources of every kind» used for the support of Al-Qaida and other individual or entities included in the Sanctions List, thereby *widening* considerably the scope of these obligations⁷⁹. Third, to the ties that the terrorist groups affiliated to Al-Qaida show to have with the so-called transnational organized crime in relation to the activities likely to determine substantial gains and sources of financing for such groups (such as, *inter alia*, drugs and arms trafficking), urging States to adopt preventive and repressive measures to this extent⁸⁰.

Even more relevant in the aforementioned perspective of a further and progressive evolution of the original UN counter-terrorism regulatory and sanctions framework 'in response to' the ongoing transformations within the Al-Qaida terrorist organization is SC Resolution 2170⁸¹. It was adopted on 15 August 2014 in the peculiar context originated by the very rapid and dramatically violent rise of ISIL within the 'AQ galaxy' over the two previous months and by its shaping as a terrorist group also capable of significant territorial acquisition (above all, but not only, in vast areas of Iraq, Syria and Libya). Consequently and significantly, the resolution for the first time, on the one hand, *explicitly* and *directly* refers to the *threat* arising 'from ISIL and Al-Nusrah Front', stressing also the particular relevance of the problem of the *financing* of these groups in consideration of the possibly huge profits they can achieve both through trafficking in oil and in a series of other resources available in the territories under their control and/or through the multiple economic and financial sources of funding accessible to them otherwise⁸². Meanwhile, the resolution *explicitly extends* on the other hand to (the fight against) these groups the obligations and sanctions measures of the 1267/1373 two-tier counter-terrorism framework⁸³. More precisely, the resolution places in

⁷⁶ See UN Doc. S/2014/41 of 23 January 2014.

⁷⁷ Established pursuant to resolution 1526(2004) and responsible for assisting the 1267 Sanctions Committee in fulfilling its mandate to ensure that Member States are implementing the counter-terrorism measures imposed by the Security Council.

⁷⁸ *Ibidem*, paragraph 7.

⁷⁹ *Ibidem*, paragraphs 5 and 6.

⁸⁰ *Ibidem*, Preamble paragraph 17 and operative paragraph 3. On the rising relevance and implications of the phenomenon of 'terrorist groups benefiting from transnational organised crime' see also UNSC Resolution 2195, adopted by the Council on 19 December 2014; and, for a comment, C. M. PONTECORVO, *All that Glitters is not Gold*, cit. *supra* note 12, pp. 976-981.

⁸¹ UNSC Resolution 2170(2014) of 15 August 2014.

⁸² Preamble (where the SC «expresses its gravest concern that territory in parts of Iraq and Syria is under the control of Islamic State in Iraq and the Levant (ISIL) and Al- Nusrah Front (ANF) and about the negative impact of their presence, violent extremist ideology and actions on stability in Iraq, Syria and the region» and is also «gravely concerned by the financing of, and financial and other resources obtained by, ISIL, ANF and all other individuals, groups, undertakings, and entities associated with Al-Qaida, and underscoring that these resources will support their future terrorist activities»). A specific section of the operative part of the resolution is indeed on 'terrorist financing'.

⁸³ Actually, the obligations and sanctions measures under Resolution 1267 were in fact *already* in force against both ISIS and ANF as terrorist organizations, as the two groups had already been included in the AQ Sanction List: ISIL since 2003 as an aka of 'Al-Qaida in Iraq' (QDe.115); ANF (previously listed between 30 May 2013 and 13 May 2014 as an aka of 'Al-Qaida' in Iraq) since 14 May 2014 under its name (QDe.137).

particular three main obligations upon Member States. Firstly, it reiterates the obligation set out in Resolution 1373(2001) on the duty to prevent and suppress the financing of terrorism⁸⁴. Secondly, it confirms the applicability of the 1267(1999) sanctions regime and expresses “its readiness to consider listing” under the AQ sanctions regime those involved in facilitating the activities of ISIL, ANF and all other groups associated with AQ, including those financing, arming, planning or “recruiting through information and communication technologies”⁸⁵. Thirdly, it reprehends both the recruitment of foreign terrorist fighters by ISIL, ANF and other entities associated with AQ⁸⁶ and the multiple sources of financing these groups benefited from. In addition, with respect to terrorism financing the resolution – after explicitly reiterating the obligations for States under Resolutions 1373 and 2161⁸⁷ and noting with concern that «oilfields and related infrastructure controlled by ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida, are generating income which *support* their recruitment efforts and *strengthen* their operational capability to organise and carry out terrorist attacks» – condemns any engagement in direct or indirect trade involving ISIL, ANF and all other individuals, groups or entities associated with Al-Qaida. It also reiterates, significantly, that such engagement «could constitute *financial support*» for entities designated under Resolution 1267, leading – as such – to *further* listing⁸⁸. Remarkable is finally, in terms of follow-up, the request the resolution makes to the 1267 Sanctions Committee’s Monitoring Team «to submit a *report* to the Committee within 90 days on the threat [...] posed by ISIL and ANF, their sources of arms, funding, recruitment and demographics, and *recommendations* for additional action to address the threat»⁸⁹.

In a nutshell, Resolution 2170 clearly represents the international community’s comprehensive rejection of certain emerging terrorist groups and expresses also its unequivocal determination to respond, promptly and effectively, *inter alia*, to the prodromal phenomenon of their financing as well as to that of foreign terrorist fighters⁹⁰.

⁸⁴ UNSC Resolution 2170(2014), paragraph 11.

⁸⁵ *Ibidem*, paragraph 18. See also paragraph 7 (where the SC observes that “ISIS is a splinter group of Al-Qaida” and recalls that “ISIL and ANF are included on the Al-Qaida sanctions list”). The resolution further *named* (in an Annex to the text) a number of individuals (mainly ISIL and ANF leaders) *to be added* to the AQ Sanctions List (!). On this (unusual) way of listing, see C. M. PONTECORVO, *op. ult. cit.*, p. 971.

⁸⁶ Paragraphs 7-10.

⁸⁷ Paragraphs 5, 11 and 12.

⁸⁸ Paragraph 13 (emphasis added).

⁸⁹ Paragraph 22 (emphasis added).

⁹⁰ As regards phenomenon of ‘foreign terrorist fighters’, it is worth recalling that an important (normative) development within the SC counter-terrorism framework was carried out on 24 September 2014, with the adoption of Resolution 2178 as a true legislative exercise by which the Council imposes *new* and *specific* counter-terrorism obligations upon UN Member States in this respect. Though very important (and controversial) as to the significant normative developments it introduces within the UN SC counter-terrorism framework, an examination of Resolution 2178 is clearly beyond the purview of this contribution. For a comment on its relevant content and on its (many) legally controversial aspects, see, *inter alia*, M. SOSSAI, ‘Foreign Terrorist Fighters’: *una nozione ai confini del diritto internazionale*, in *Federalismi.it*, 25 settembre 2015, <http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=30335/>; moreover, on the impact of Resolution 2178 on the SC counter-terrorist framework see particularly F. CAPONE, *Countering “Foreign Terrorist Fighters”: A Critical Appraisal of the Framework Established by the UN Security Council*, in *It. YB. Int. Law*, vol. 25, 2015, p. 228 ff., p. 232 ff. On the notion of ‘foreign terrorist fighters’ see, also for further bibliographical references and extensively, both A. DE GUTTRY, F. CAPONE, C. PAULUSSEN (eds.), *Foreign Terrorist Fighters under International Law and Beyond*, Den Haag, 2015; and recently C. RAGNI, *International Legal Implications concerning ‘Foreign terrorist Fighters’*, in *Riv. dir. int.*, 2018, p. 1052 ff.

7. The Security Council (territorial) measures against the financing sources of ISIL and Al-Nusrah Front

A further important step in terms of actual normative developments introduced into the SC counter-terrorism and terrorism financing legal framework was made by the Council in February 2015, when it adopted (by unanimity and under Chapter VII) Resolution 2199⁹¹. *Specifically* targeting the many and different sources of funding benefiting ISIL, ANF and other terrorist groups associated with AQ with a view to dry them up, the resolution's significance relates to the fact that, as we will see, *a)* it introduces a series of *new obligations* on UN Member States; and *b)* it also *strengthens* the existing counter-terrorism sanctions measures against individuals.

Prompted in part by the report submitted under paragraph 22 of Resolution 2170 by the 1267 Sanctions Committee's Monitoring Team (which identified some areas where *additional enhanced* sanctions could curb ISIL and ANF revenue generation)⁹², more specifically Resolution 2199 on the one hand imposes *new obligations* (of result and/or of due diligence) on Member States and/or on the other actors involved in the UN counter-terrorism strategy, requiring them particularly to prevent and repress a series of activities which can configure 'financial support to terrorism' and also to report to the SC on the measures adopted. On the other hand, it reiterates and *further expands* targeted sanctions against the individuals and entities directly or indirectly involved in activities originating funding for (or providing other forms of 'support' to) ISIL, ANF or any other terrorist group affiliated to AQ. This, in particular, with reference to a series of activities or trades from which the aforementioned groups achieve significant direct revenues and/or other economic or financial benefits, including: *i)* illegal oil trade, *ii)* looting and smuggling of cultural heritage items from Iraq and Syria, *iii)* trafficking in many natural resources of considerable economic value, *iv)* human trafficking, *v)* many other activities (i.e. kidnapping for ransom, foreign donations) as well as several traditional or innovative forms of financial transfers, and also *vi)* extortions or even thefts at the local level in the territories on which the terrorist groups exercise their control. Consequently, countering – by new obligations on States and 'smarter' sanctions on individuals – the *many* ways in which these trades or activities provide financial support to the targeted groups, the Resolutions 2199 gives rise in fact to a *further* step in the gradual process of strengthening/specification experienced since 1999 by both the State obligations and the individual sanctions measures on which, as illustrated above, the UN counter-terrorist regime is traditionally grounded. In doing so, the resolution particularly (and significantly) 'targets' these obligations and measures to the *specific* needs of the international counter-terrorism effort *against ISIL and ANF*, after having recognised these groups as an (actual and unprecedented) global terrorist threat to international peace and security.

In this regard, some additional interesting hints emerge from the resolution's text, which motivates a closer look to and a short analysis of some of its provisions being particularly relevant to our investigation.

⁹¹ UNSC Resolution 2199(2015) of 12 February 2015. Promoted by Russia, the resolution was adopted, in a context of great political pressure and media attention, few weeks after the Paris terrorist attack and after months of uninterrupted worldwide violence by ISIL and/or its affiliated.

⁹² UN Doc. S/2014/815 of 13 November 2014, including (as requested by the Security Council) recommendations to this extent.

For example in its Preamble, after having stressed *i)* the peculiar gravity and duration of the terrorist threat coming from ISIL and ANF, *ii)* the Council resolve to «address all aspects of such a threat», *iii)* the need to “fully disrupt these groups” and to adopt «a comprehensive approach that integrates multilateral strategies with national action by Member States», and *iv)* the important role that financial sanctions play in thwarting the aforementioned groups and any other AQ’s affiliate, the resolution expresses the SC deep concern for the fact that important economic resources – such as oil,⁹³ other natural resources including precious metals⁹⁴ and diamonds, and other assets “are made available to ISIL, ANF and other individual or entities associate to AQ”. Moreover, it explicitly refers to the fact that «oilfields and their related infrastructure, as well as other infrastructure (such as dams and power plants) controlled by these groups *are generating a significant portion of their income*, alongside extortion, private foreign donations, kidnap ransoms and stolen money from the territory they control, which *support their recruitment efforts and strengthen their operational capability* to organize and carry out terrorist attacks»⁹⁵. Consequently, the resolution generally reaffirms the existing obligation of Member States to freeze without delay funds and financial assets or economic resources of persons who commit, or attempt or commit, terrorist acts.

As to specifically oil trade, in the resolution’s operative part the SC – after expressing concern that vehicles (aircrafts, cars and trucks) departing from or going to ISIL or ANF-held areas of Syria and Iraq could be used to transfer economic resources for sale on the international markets or barter for arms and *further specifying* the relevant obligations existing to this respect for States under paragraph 1 of Resolution 2161⁹⁶ – *merely* “encourages”, however, neighbouring Member States to take appropriate steps in accordance with international law to prevent and disrupt activities that would result in violation of the already existing measures under Resolution 2161 (assets freezing and targeted arms embargo)⁹⁷. In this sense, the resolution does *not* mandate neighbouring States (as requested, instead, in the recommendations of the Monitoring Team) to promptly seize oil tanker or trucks traveling to or from ISIL or ANF controlled territories. The only obligation for these States is, therefore, to report to the 1267/1989 Committee (within 30 days) of the interdiction in their territory.⁹⁸

As regards then cultural heritage in Iraq and Syria the resolution, besides condemning its destruction particularly by ISIL and ANF (whether incidental or deliberate, including targeted destruction of religious sites and objects), explicitly notes with concern that these groups are generating income from engaging – directly or indirectly – in the looting and smuggling of cultural heritage items. It imposes significantly a *new legal obligation* on Member States (though quite generic) to take appropriate steps to prevent the trade in Syrian cultural property and other items of archaeological, historical, cultural, rare scientific and religious importance illegally removed from Syria since 15 March 2011⁹⁹. In relation to

⁹³ As well as oil, oil products, modular refineries and related materials.

⁹⁴ Such as gold, silver and copper.

⁹⁵ Preamble, emphasis added.

⁹⁶ See UNSC Resolution 2199, operative paragraph 6; and paragraphs 3 and 7.

⁹⁷ See operative paragraph 10. See also in this regard paragraph 13 (equally “encouraging” Member States to submit to the Sanctions Committee listing requests of the individuals engaged in oil trade-related activities to ISIL).

⁹⁸ See operative paragraph 12.

⁹⁹ The resolution also recalls, for the Iraqi cultural items, the validity of a similar ban on antiquities illegally removed from the country established by Resolution 1483 adopted on 22 May 2003. Remarkably, by the

payments of ransoms, the resolution does not include instead new obligations for Member States; on the one hand, it rather reaffirms that these payments to individuals, groups, entities or undertakings on the AQ Sanctions List are considered as a violation of international legal obligations *regardless* of how and by whom the ransom is paid. On the other, it specifically calls upon Member States to encourage private sector partners to adopt or to follow relevant guidelines or good practices for preventing and responding to terrorist kidnappings without paying ransom. As to the role of external donations in developing and sustaining ISIL and ANF, the SC expresses its deep concern in this respect, and also *urges* Member States to take steps to ensure that financial institutions within their territory prevent these groups from accessing the international financial system. Finally, Resolution 2199 also creates some new interesting reporting requirements, calling on in particular *a*) Member States to report (within 120 days) to the 1267/1989 Sanctions Committee on measures undertaken to comply with its provisions; and *b*) the Monitoring Team to assess the impact of the new measures and to report consequently to the Sanctions Committee (within 150 days). While the first report is clearly aimed at monitoring and promoting the *implementation* of the resolution, the latter report is prodromal to further *adjustments* to the regime (with respect, particularly, to the humanitarian impact and effectiveness of the measures introduced in it by the resolution).

As to, finally, the very role played by Resolution 2199 within the evolution of the UN counter-terrorism regime, from the above analysis of its provisions it emerges first of all how it certainly establishes *more traditional* SC sanctioning measures – such as, *inter alia*, those concerning the illegal trade in oil and antiquities. Secondly, Resolution 2199 shows to have a clear ‘territorial focus’ in relation to the groups it targets, which is likely due to their control of *specific* territories. In other words, the resolution seems to provide, also, a more ‘geographically oriented focus’ to the sanctioning measures that it imposes, showing thereby a move away from the more ‘individualised focus’ that, as already observed above, has been a significant as well as recurring feature in the recent SC practice on sanctioning. Thirdly, Resolution 2199 also demonstrates – as already pointed out – a rising focus of the Security Council *on ISIL* (and on the threat to peace coming from it) and the consequent recognition of this group (although still formally defined in the resolution’s text as an ‘AQ’s splinter group’ and, as such, included into the AQ’s network and Sanctions List) as the *main* terrorist group on which to focus attention when integrating the existing counter-terrorism framework to increase its effectiveness and to make it better responding to the more complex and more violent terrorist threat recently posed to the international peace and security. On these peculiar features of Resolution 2199 we will further discuss below in paragraph 10.

following Resolution 2347 (UNSC Resolution 2347(2017), adopted on 24 March 2017 and exclusively dealing – for the first time – with the destruction of cultural heritage and trafficking of cultural property in situation of armed conflict and *in connection with* terrorist activities) the Security Council *also urges* Member States to introduce effective national measures, at the legislative and operational levels, to *prevent* and *counter* trafficking in cultural property and related offences *especially when* they benefited organised criminal groups and terrorist groups (the measures that States are called on to adopt are listed at operative paragraph 20 of the Resolution). For a comment on the relevance of Resolution 2199 (and more broadly on recent Security Council action) in the field of cultural heritage protection, see *amplius* and recently M. FRIGO, *Approaches Taken by the Security Council to the Protection of Cultural Heritage: An Evolving Role in Preventing Unlawful Traffic of Cultural Property*, in *Riv. dir. int.*, 2018, p. 1164 ff., at pp. 1168-1169.

8. *The renaming and further strengthening of the UN Security Council counter-terrorism sanctions regime*

Another remarkable development within the SC counter-terrorism and terrorism financing regulatory and sanctions framework took place on 17 December 2015, when the Council adopted Resolution 2253 at a meeting including the participation of Ministers of Finance from around the world¹⁰⁰. Based on what the New York Times called a “mammoth 28-page draft resolution”¹⁰¹ and defined by a scholar as “the longest sanction resolution ever adopted”¹⁰², the new resolution expands in fact the original AQ sanctions regime to include in it – formally and explicitly – a *specific focus* on ISIL¹⁰³. The resolution renames consequently both the 1267/1989 Al-Qaida Sanctions Committee and the corresponding Sanctions List (now, respectively, the “1267/1989/2253 ISIL and Al-Qaida” Sanctions Committee and Sanctions List)¹⁰⁴.

As to its content, though mainly reiterating existing States’ obligations, the resolution also introduces – compared to Resolution 2161(2014) – some *new* elements in the sanctions regime, for instance by enhancing *inter alia* the criteria for inclusions on the Sanctions List¹⁰⁵. Overall the resolution after expressing concern over both the lack of implementation of previous resolutions (particularly 1267, 1373 and 2199) by Member States and their insufficient level of reporting¹⁰⁶, stresses the importance of State implementation of the sanctions measures of assets freezing, arms embargo and travel ban¹⁰⁷ as well as States’ crucial role in holding those involved in terrorist acts accountable through assisting in investigations and proceedings and in cutting off sources of funding

¹⁰⁰ UNSC Press release, *Unanimously Adopting Resolution 2253(2015), Security Council Expands Sanctions Framework to Include Islamic State in Iraq and the Levant*, UN Doc. SC/12168 of 17 December 2015.

¹⁰¹ *UN Security Council to Adopt Sanctions against ISIS*, *The New York Times*, 16 December 2015, http://nytimes.com/2015/12/17/world/middleeast/un-council-to-adopt-sanctions-against-isis-html?smid=tw-share&_r=0.

¹⁰² See D. CORTRIGHT, *Tougher International Sanctions against ISIL*, 21 December 2015, <https://davidcortright.net/2015/12/21/tougher-international-sanctions-against-isil/>. It includes 34 preambles, 99 operative paragraphs and two extensive technical appendices each of which with dozens of specifications for implementation.

¹⁰³ UNSC Resolution 2253(2015), paragraph 2.

¹⁰⁴ *Ibidem*, paragraph 1.

¹⁰⁵ Under Resolution paragraph 3 (a) an individual, group or entity may be added to the List for participating in “the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on the behalf of, or in support of” ISIL or AQ. An individual or entity may also be added to the Sanctions List for “supplying, selling or transferring arms and related materials” to these terrorist organisations or recruiting for or supporting the activities of AQ, ISIL or “any cell, affiliate, splinter group or derivative thereof” (paragraph 3 (b)-(c)).

¹⁰⁶ Paragraph 15 refers, particularly, to the Resolutions 1267(1999) and 1989(2011), and to paragraph 12 of Resolution 2199(2014) (which requires States to report to the Sanctions Committee interdictions in their territory of any oil, oil products, or related materials being transferred to or from ISIL). Paragraph 14 also encourages States to more actively submit to the Sanctions Committee listing requests of individuals and entities engaged in oil and antiquities trade-related activities with ISIL as required by Resolution 2199.

¹⁰⁷ *Ibidem*, paragraph 11. To this respect, the resolution also directs the Sanctions Committee to identify cases of non-compliance with the duty to freeze terrorist assets, ban travels and arms sales to ISIL and AQ, and determine the appropriate action to be taken in each case (paragraph 40). Finally, paragraph 93 directs the 1267 Sanctions Committee’s Monitoring Team “to identify, gather information on, and keep the Committee informed of instances and common patterns of non-compliance with the measures imposed” in Resolution 2253.

for these groups, particularly from oil trade¹⁰⁸. Remarkably, the resolution also clarifies that the obligation in paragraph 1(d) of Resolution 1373(2001) on terrorism financing (which, as mentioned, decides that States shall prohibit anyone within their territories from making funds available from the benefit of terrorist organisations or individual terrorists for any purpose, including recruitment, travel, or training) applies «*even in the absence of a link to a specific terrorist act*»¹⁰⁹. Additionally, the resolution calls upon States to ensure that they have established a serious criminal offence in their domestic legal systems for violating this prohibition.¹¹⁰ Another important aspect of the resolution (particularly under the perspective of a further ‘procedural formalisation’ of the sanctions regime) is that, in reaffirming the listing procedures for inclusion on the ISIL and AQ Sanctions List, it encourages States to submit additional identifying information and supporting documentation to ensure the accuracy of the Sanctions List. Under the same perspective, it also enhances the procedures for delisting requests submitted to the Ombudsperson, and expands the mandate of the latter until December 2019¹¹¹. Moreover, a set of comprehensive and detailed procedures for *a*) the submission of delisting requests by individuals, groups, or entities on the Sanctions List, *b*) the review of such requests by the Ombudsperson, and *c*) the determination by the Sanctions Committee on whether to continue or terminate the listing, are provided in turn by Annex II to the resolution. Resolution 2253 also extends till December 2019 the mandate of the Monitoring Team¹¹² and imposes an exhaustive list of tasks and responsibilities upon the latter¹¹³, including the requirement *i*) to introduce, in its reports to the Committee, reporting on thematic and regional topics and *ii*) to provide the Committee, within 30 days, with «recommendations on measures to strengthen the implementation of Resolution 2199 and Resolution 2178» and then to report orally on this topic on a quarterly basis¹¹⁴. Finally, Resolution 2253 contains new significant reporting requirements for both Member States and the Secretary General. States are required indeed to submit the Committee, within 120 days, an update report on their *implementation* of the sanctions regime, including on relevant enforcement actions¹¹⁵. The Secretary General is requested, in its turn, *a*) to report to the Committee within six months on the arrangements necessary for ensuring the independence of the Ombudsperson, and *b*) to provide the Security Council with a “strategic-level report” reflecting the gravity of the threat coming from ISIL and other terrorist groups, the sources of financing of these groups, and the range of UN efforts in support of Member States in countering the ISIL threat, providing updates on this strategy every four months¹¹⁶.

As it was correctly pointed out immediately after the adoption of the resolution, its name change of the AQ sanctions regime, long overdue, clearly shows (and formally means) that the Committee can now *concentrate* on ISIL as *the main* international terrorist

¹⁰⁸ *Ibidem*, paragraphs 12 and 13.

¹⁰⁹ *Ibidem*, paragraph 19 (emphasis added).

¹¹⁰ *Ibidem*, paragraph 20.

¹¹¹ UNSC Resolution 2253(2015), paragraph 54.

¹¹² *Ibidem*, paragraph 89.

¹¹³ *Ibidem*, Annex I.

¹¹⁴ *Ibidem*, respectively, paragraphs 91, 95 and 96.

¹¹⁵ *Ibidem*, paragraph 36. Under paragraph 35 States are required to report to the Committee also on obstacles to the implementation of the measures established under paragraph 2, with a view to facilitating technical assistance to this extent.

¹¹⁶ *Ibidem*, paragraphs 59 and 97.

threat¹¹⁷. Admittedly, the Security Council had already started (by Resolution 2170) to impose sanctions *against ISIL*, although – as mentioned – based on a (somewhat tenuous) link to Al-Qaida¹¹⁸. In Resolution 2253 the Council continues (surprisingly) to consider ISIL as a “splinter group” of Al-Qaida despite the fact that ISIL has severed its ties with AQ¹¹⁹. The link was criticized, for serving a precise political/legal purpose (in particular for the US government) which went beyond the targeted sanctions measures, among others by Schenin, who explicitly asked the question whether «ISIL remains associated with Al-Qaida because the UN Security Council says so?»¹²⁰. However, whether or not such a link actually remains, the sanctions regime has clearly now been renamed to include *both* organizations, while most of the focus (at least in terms of listing) appears to have shifted to ISIL as the main terrorist threat¹²¹.

More generally it is worth stressing that, after Resolution 2253 and its (further significant) procedural as well as substantive developments, the 1267/1989/2253 Sanctions List continues to manifest however a certain degree of *open-endedness* and *indeterminacy*, as demonstrated by the fact that it includes in the listing also groups that have no direct link to AQ, such as Boko Haram¹²². The criteria for listing remain indeed quite *vague* in it and continue to provide a very wide margin to include a broad understanding of ‘association with ISIL and Al-Qaida’, based on the evidentiary standard of proof of “reasonable grounds” or “reasonable basis”.¹²³ Therefore, admittedly, as the sanctions regime evolves over the years it seems to be gradually expanding (rather than narrowing) the targets of the counter-terrorism measures, thus shifting in the direction of ‘global terrorist sanctions’ against individuals; that is, sanctions adopted against a *growing* number of more or less interrelated terrorist groups. Further, it is also evident that the current regime is quite far from its original focus on Taliban-controlled Afghanistan (which has now been split, as mentioned, under a separate regime under Resolution 1988) and that the ‘association with terrorism’ (or at least a number of terrorist groups) element is what holds the list together at present. Yet, the regime’s vague criteria for listing compounded by the persisting lack of an international definition of ‘terrorism’ (still) represent a serious intrinsic limitation of the regime itself while it is moving, as observed above, away from territorial sanctions (linked to a *specific* situation to which the Security Council is responding) to *global* and permanent sanctions (targeting a rising number of addresses and based on more or less permanent listing decisions) against individuals.

9. The response of the Security Council to the evolving threat of ISIL

¹¹⁷ D. CORTRIGHT, *Tougher International Sanctions against ISIL*, cit.

¹¹⁸ See UNSC Resolution 2170(2014), paragraph 7 (where, as already mentioned, the SC notes the link between ISIL, ANF and AQ, in particular that ISIL is a “splinter-group of Al-Qaida”).

¹¹⁹ *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, UN Doc. A/HRC/29/51, Advanced Edited Version, 16 June 2015, p. 36.

¹²⁰ M. SCHEININ, *ISIL/ISIS remains associated with Al-Qaida because the UN Security Council says so?*, in *Just Security*, 15 September 2014, <https://www.justsecurity.org/15014/isisil-remains-al-qaeda-security-council-so/> (“In a sense, through its own action and influence in the UN SC, the US government has been in the position to create the fact that ISIL continues to be associated with Al-Qaida”).

¹²¹ See also the 2016–2017 additions to the ISIL and Al-Qaida Sanctions List under the SC ‘Press Releases’, <https://www.un.org/sc/suborg/en/sanctions/1267/press-releases>.

¹²² See UNSC Press release, *Security Council Al-Qaeda Sanctions Committee Adds Boko Haram to Its Sanctions List*, UN Doc. SC/11410 of 22 May 2014.

¹²³ See UNSC Resolution 2253(2015), paragraph 16.

Such characters of the Security Council (ISIL and Al-Qaida) regulatory and sanctions regime have not been substantially altered, rather confirmed and strengthened, by recent Resolution 2368 adopted on 20 July 2017 as a result of the review process of the measures included in paragraph 2 of Resolution 2253 undertaken by the Council «with a view to their possible further strengthening» in the light of the evolving global threat of ISIL¹²⁴. Under such a perspective, Resolution 2368 renews and updates the 1267/1989/2253 sanctions regime.

In the light of the findings of the (fifth) *ad hoc* strategic report of the Secretary General on the evolving threat posed by ISIL, released on 31 May 2017 according to paragraph 97 of Resolution 2253¹²⁵, the new SC resolution includes a number of updates globally intended to better reflect and counter the highly changing threat posed to peace and security by ISIL, AQ and the other terrorist group associated with them. These updates focus particularly on addressing: the phenomenon of foreign terrorist fighters returning to their respective countries of origin, the trafficking in persons and kidnapping for ransom by AQ and ISIL and – above all, as far as our analysis is concerned – the measures to restrict AQ and ISIL financing. The resolution also provides relevant updates concerning the office of the Ombudsperson, including regarding communication among the latter, the Sanctions Committee and petitioners.

More specifically the resolution, after condemning the frequent, recent terrorist attacks perpetrated by ISIL around the world and recognizing the need for sanctions to reflect current terrorist threat associated to this group¹²⁶, reaffirms the assets freeze, travel ban and arms embargo affecting all individuals and entities on the ISIL and AQ Sanctions List¹²⁷. Further, it notes that the assets freeze requirements apply to financial transactions involving any funds, economic resources or income-generating activities that benefit individuals, groups, undertakings and entities on the ISIL-AQ Sanctions List (including, but not limited to, trade in petroleum products, natural resources, chemical and agricultural products, weapons, or antiquities by listed individuals, groups, undertakings and entities, kidnapping for ransom and the proceeds of other crimes including trafficking in persons, extortions and bank robbery)¹²⁸. Resolution 2368 also urges all States, including those where ISIL is present, to prevent any trade, economic and financial ties with ISIL, AQ and associated individuals, groups, undertakings and entities, also through their enhanced border security efforts;¹²⁹ and it calls them specifically upon: *i*) to develop the capability to process Passenger Name Records (“PNR”) data and to ensure that PNR data is used by the relevant national competent authorities¹³⁰; as well as *ii*) to improve cooperation to address the issue of foreign terrorist fighters returning to their countries of origin, transiting

¹²⁴ According to paragraph 98 of Resolution 2253.

¹²⁵ UN Doc. S/2017/467. In a nutshell, the fifth SG report noted that over the last few months ISIL and ISIL affiliated groups had conducted terrorist attacks against an increasing number of States across the globe. Remarkably, the report stressed also that – although in the same period ISIL finances had declined because of its loss of territories – the international community would need to continue to counter the funding of ‘ISIL 2.0’, which continue to raise funds through – mainly – criminal activities, extortion and foreign donations.

¹²⁶ UNSC Resolution 2368(2017), Preamble.

¹²⁷ UNSC Resolution 2368(2017), paragraph 1 (*a*).

¹²⁸ *Ibidem*, paragraph 7.

¹²⁹ *Ibidem*, Preamble.

¹³⁰ *Ibidem*, paragraph 36.

through, traveling to or relocating to or from other Member States, also with a view to identify and adequately counter the financial flows associated to their trips, propaganda and terrorist activities¹³¹. Additionally, States are urged *iii*) to expeditiously exchange information concerning the identity of foreign terrorist fighters and the financial flows associated to them¹³².

Remarkably, in Resolution 2368 the SC also decides that some individuals and entities specified in Annex III to the resolution «shall be subject to the measures [of assets freezing, travel ban and arms embargo] imposed in paragraph 1... and *added to the ISIL and AQ Sanctions list*» and directs the Committee to make accessible on the Committee's website the narrative summaries of reasons and list entries for listing the specified individuals/entities¹³³. The motivation of the inclusion (after a prolonged and controversial debate) of this annex in the resolution's text were frustrations on the part of some SC members (*i.e.* the United States and United Kingdom) at delays in the Committee's process for listing (including holds being put on names)¹³⁴.

Finally, it is also worth stressing that in the resolution's Preamble the SC – in recalling its previous Resolution 2331 on human trafficking,¹³⁵ – condemns all act of trafficking and reiterates its “intention to invite the Special Representatives of the Secretary General on Sexual Violence in Conflict and on Children and Armed Conflict to brief the Committee, and to provide relevant information including – if applicable – the name of individuals involved in the trafficking in persons who may meet's the Committee's designation criteria”¹³⁶. Moreover, the Council confirms also its intention «to *consider targeted sanctions for individual and entities associated with ISIL or AQ involved in trafficking in persons in areas affected by armed conflicts and in sexual violence in conflict*» and encourages all Member States «to consider submitting to Committee listing requests in this regards»¹³⁷. Other important elements in Resolution 2368 concerns: *i*) the extension of the mandates of both the Monitoring Team and the Ombudsperson until December 2012¹³⁸; *ii*) the call upon all States (being their compliance with the obligations established by Resolutions 1267, 1989, 2199 and 2253 largely inadequate according to the Council) to submit (within 120 days from the Resolution's adoption) an updated report to the Committee on the implementation of the measures they are required to adopt under these

¹³¹ *Ibidem*, paragraph 39.

¹³² *Ibidem*, paragraph 28.

¹³³ *Ibidem*, paragraphs 102 and 103.

¹³⁴ During the negotiation, Russia had previously expressed its opposition to the use of annexes to resolutions as a means for adding individuals to the sanctions list, arguing that the listing of individuals is a matter for the Sanctions Committee. It is worth recalling that, in responding to a similar approach in August 2014 during the negotiation of Resolution 2170, Russia had already expressed its concern that «such a step undermines the credibility of a key subsidiary body of the Council and leads to the weakening of the established procedures operating effectively within its framework that enable States to take balanced and informed decisions» (see UN Doc. S/PV.7242, pp. 2-3).

¹³⁵ UNSC Resolution 2331(2016) of 20 December 2016, the first ever on human trafficking by the Security Council. In it the Council strongly condemns the phenomenon and stresses also how it can significantly exacerbate conflicts and foster therefore insecurity.

¹³⁶ *Ibidem*, Preamble.

¹³⁷ *Ibidem*, paragraph 15 (emphasis added).

¹³⁸ *Ibidem*, paragraphs 94 and 60.

resolutions¹³⁹; and, finally, *iii*) the decision to modify (from four to two per year) the number of the Secretary General's strategic analysis on the threat coming from ISIL¹⁴⁰.

10. *Concluding remarks: A critical appraisal of the framework established by recent Security Council resolutions against ISIL terrorism financing*

As final step of our investigation, a critical assessment of the role that recent Security Council initiatives aimed at thwarting the multiple ISIL and ANF funding sources *actually* play in the evolution of the original two-tier 1267/1373 counter-terrorism and terrorism financing regulatory framework seems necessary, in order to appraise their very scope and relevance to this extent. Such assessment is also useful to shed light on (and shortly discuss) the limits and pitfalls that, in fact, this framework still seems to show despite the (both normative/substantive and procedural) further evolution that – as illustrated in the previous paragraphs – it has undergone since 2014.

The first element emerging from the above scrutinised SC practice in the field of counter-terrorism is that, overall, recent Council's Chapter VII initiatives build in fact extensively on the already complex UN SC regime governing the international community's efforts to counter terrorism and its financing; and that, in particular, these initiatives *further* develop the process of 'individualisation' (of sanctions measures) and 'formalisation' (of both procedures and obligations) that, as illustrated, such a regime has been experiencing over the last 15 years.

This holds particularly true for Resolution 2253, in relation to the 'individualisation' of the sanctions measures. Building indeed on the qualification (made under Resolution 1390) of AQ as *worldwide* terrorist organisation (and, as such, addressee of sanctions against the individuals and entities 'associated to' it *regardless* of their location), Resolution 2253 *further* extends in fact the application of the existing 1267/1989 sanctions regime to a wide range of (*all*) terrorist groups 'having ties with' AQ and *wherever* located. Thereby, this resolution expresses the SC significant shift towards *global* terrorist financing sanctions against individuals; that is, its move towards expanding the target of counter-terrorism sanctions to a rising number of terrorist groups (vaguely) interrelated for being 'associated with' AQ terrorism. In doing so, the Security Council clearly moves away from its traditional *territorial* sanctions (linked to a given and *specific* situation to which the SC responds) and takes the ongoing trend to the 'individualisation' of sanctions 'one step further'. However, in relation to this trend it is also worth stressing how Resolution 2199 provides – instead – a (partial) 'step back', as it establishes more traditional 'territorial sanctions' (*e.g.* on oil trade and on the trafficking in cultural heritage items from the territories under the control of ISIL and ANF) by which the Council tends to (specifically) counter a series of (territorially defined) economic and financial sources of financing for

¹³⁹ *Ibidem*, paragraph 44.

¹⁴⁰ Pending the publication of this study, the Security Council, by its Presidential Statement n. 21 (UNSC PRST/2018/21, adopted on 21 December 2018 within the requested 18 months' review process of Resolution 2368 and of the targeted measures specified in its par. 1) decided that «no further adjustments are necessary at the time» to these measures. It also (ritualistically) stated that it «will continue to evaluate their implementation and to make adjustments – as necessary – to support their full implementation».

these terrorist groups in the regions of Iraq and Syria under their control¹⁴¹. At the same time, Resolution 2199 seems to be, however, totally in line with the ongoing evolution of the Security Council counter-terrorism sanctions regime towards an increasing (normative) ‘formalisation’, given the new obligations that – as illustrated above – the resolution imposes upon Member States with a view to disrupting the (specific) sources of funding of the terrorist group it addresses.

A further development that recent SC initiatives seem to introduce into the original 1267/1373 legal framework against terrorism financing concerns the broadening of the listing criteria established under the 1267/1989 sanctions regime. In relation to the acts or activities by which terrorism might be financed (covered, as such, by the obligations imposed upon States by paragraph 1 (*d*) of Resolution 1373), Resolution 2253 at paragraph 18 refers indeed to those acts or activities giving rise to «the financing of terrorist organisations of individuals *for any purpose* [...], *even in absence of a link to a specific terrorist act*», thus expanding further and considerably the original scope of application of the SC’s counter-terrorism sanctions framework.

Equally significant is also the contribution provided by SC resolutions 2199, 2253, and 2368 to the original 1267/1373 counter-terrorism financing framework in terms of *further* increase of Member States’ obligations by either the establishment of new obligations or the strengthening of those already existing. In this respect the wide array of obligations imposed on Member States, though sometimes only vague and of ‘due diligence’,¹⁴² lead to an ‘anticipated criminalisation’ that covers both the conduct (*i.e.* a terrorism financing offence) and all its forms of (direct or indirect) support, regardless of how remote they are.

Another remarkable development emerging from recent SC counter-terrorism and terrorism financing practice concerns the *further* ‘procedural formalisation’ that, as mentioned, Resolutions 2253 e 2368 introduce in the pre-existing UN counter-terrorism financing regime¹⁴³, building on the relevant procedural development already introduced in such a regime over the last ten years to increase its compatibility with States’ obligations under human rights law.

The second important element emerging from recent SC practice in the field of counter-terrorism is that, overall, recent resolutions, though adding some ‘extra-layers’ to the pre-existing UN framework governing the international community’s efforts to cope with terrorism and its financing, *fully rely on* such a regime and at the same time (quite uncritically) *perpetuate* its well-known strategy of privileging the goal of enhancing security and criminalization over accountability and individual’s rights. Consequently, these

¹⁴¹ As already mentioned, the ‘territorial focus’ of Resolution 2199 in relation to the terrorist groups it targets seems however likely grounded in (and explained by) the control exercised by these groups (at the time of the resolution) on *specific* territories. Therefore, such an approach is not inconsistent, in our opinion, with the ongoing trend toward ‘global individual sanctions’ against terrorists.

¹⁴² Therefore, as such, only urging States ‘to do their best’ in order to achieve the *result* of countering terrorism financing, leaving them free to choose the means by which they give effect to the measures they are, generically, required to adopt.

¹⁴³ As to, for instance, the enhancement of the procedure for delisting requests submitted to the Ombudsperson, the request to Member States to submit further identifying information and supporting documentation to ensure the accuracy of the Sanctions List, or the establishment of new procedure for the submission of delisting requests by individual, entities, undertakings or groups as well as for the revision of such requests by the Ombudsperson.

resolutions tend to embrace all the limits and shortcomings of the original counter-terrorism framework and sometimes even exacerbates them.

Significant in this respect is firstly the fact that recent resolutions (still) do *not* provide a definition of ‘terrorism’. Central to the SC counter-terrorism framework are the planning, preparation, perpetration of terrorist acts, the financial ‘support to’ these acts, as well as receiving and financing terrorist training and the detection of both a terrorist intent and a terrorism financing will. However, within the legal framework established by recent SC resolutions these concepts are (still) mainly presumed rather than *adequately* determined on *legal* grounds. Thus, the lack of a comprehensive and universally accepted definition of ‘terrorism’ and of its ‘financing’ (coupled with the insufficient definition of the latter provided, as mentioned, by Resolution 1373) has been and *still is* an ongoing obstacle to building a unified global stance against terrorism and its funding and, on a more practical level, in concretising and optimizing the meaning, implementation, and effect (*iveness*) of UN resolutions as well as international treaties involving terrorist issues. Moreover, the SC recent resolutions on counter-terrorism definitely prove that the concept of ‘terrorism’ is concretely applied within the UN sanctions regime in the light of political (rather than legal) consideration that guide the designation of ‘who’ is terrorist, which groups pursue a terrorist purpose and also what behaviours constitutes terrorist financing.

Besides the limit related to the persisting lack of a definition of ‘terrorism’, further pitfalls that the 1267/1373 sanctions regime shows in spite of its recent development concern the persisting *open-endedness* and *indeterminacy* of the Sanction List, which also includes – as mentioned – groups (such as Boko Haram) having no direct link with AQ.

Further shortcomings relate, thirdly, to the aforementioned persisting *vagueness* of the regime’s listing criteria and the *poorly defined* boundaries of ‘association with’ a loose and composite terrorist network. The current listing criteria under Resolution 2253 continues to provide indeed a very broad margin to include a wide understanding of ‘association with’ ISIL and AQ, essentially based on (evidentiary) standards of proof (of “reasonable ground” or “reasonable basis”).

Another relevant limit of the current counter-terrorism sanctions framework arises from the still *insufficient* procedural formalisation it shows. Though the important role of the office of the Ombudsperson in providing procedural guarantees to individuals listed under the regime, and in spite of the many significant procedural improvements adopted in the regime with a view to increase its compliance with international human rights standards, such recent improvements have not gone in fact far enough to meet relevant international (human rights) standards¹⁴⁴.

Other significant pitfalls of the current counter-terrorism sanctions framework concern the issues of its *implementation* and *effectiveness*. In this respect the sanctions regime seems to be, first, somewhat deficient in term of its full formalisation towards effective implementation mechanisms. Moreover, it is worth stressing the fact that, as repeatedly pointed out in both SC resolutions and the reports of either the Secretary General or the SC counter-terrorism subsidiary organ¹⁴⁵, the actual implementation of the obligations and sanctions measures imposed by the relevant SC resolutions (1267, 1373, 2199, and 2253)

¹⁴⁴ Under this perspective, according to many legal scholars greater procedural formalisation and stronger procedural guarantees (possibly through their codification in SC resolution), coupled with stricter standards of evidence for listing and delisting, increased openness, and greater cooperation by States with the Ombudsperson mechanism, would significantly improve the current counter-terrorism sanctions framework.

¹⁴⁵ *I.e.* the 1267/1989/2253 Sanctions Committee’s Monitoring Team.

upon both Member States and (indirectly) national operators is still (largely) inadequate. Without entering into the details of such a complex issue, suffices it to observe here that the main reasons for the current limited obligations' implementation are: on the one hand, the intrinsic vagueness of some of these obligations; on the other, the different 'compliance capacity' of both Member States and the other actors (mainly national operators and agencies) which the counter-terrorism financing obligations are addressed to. To this respect, States either involved in armed conflict or in situation of serious internal political instability, as well as those experiencing high level of corruption, are just a few examples of cases in which the implementation of the SC counter-terrorism obligations may be (*in fact*) quite difficult. This gives rise to problems of *actual* effectiveness of the counter-terrorism sanctions regime, to which the SC tends to 'react' by both calling on States to increase and improve their implementation and (also) by imposing upon them stricter reporting obligation in this respect.

Finally it cannot be neglected that, in the current context, while the international community remains stuck on the definition of 'international terrorism' and the boundaries of association with a loose and composite terrorist network remain poorly defined, the Security Council's move towards 'global terrorist sanctions against individuals' can be quite problematic for a number of (more general) reasons. These range from *legitimacy* considerations to the *effectiveness* of individual sanctions. Whether the SC is the appropriate body to apply individual sanctioning measures for association with terrorism, and effectively taking on a quasi-judicial role has been discussed widely and at length by legal scholars and remains highly debatable.¹⁴⁶ Without repeating these well-known arguments, suffices it to note here that a number of scholars, mirroring the position of the courts, have held that if the Security Council is to take on such a quasi-judicial functions, it is proper to require that it must observe the procedural requirements universally applied to courts and tribunals, or – at least – guarantee an equivalent level of due process. Many legal scholars have also argued that what is essential to keep in mind as the strongest limit to the Security Council's powers is the peace-enforcement *emergency* nature of the Chapter VII action; and that therefore action by the SC should remain *situation-specific*, *time-limited* and therefore *preliminary*.¹⁴⁷ Yet, this continues to be at odds with the increasingly *permanent* nature of the counter-terrorism framework emerging from the original 1267 sanctions regime.

¹⁴⁶ See e.g. M. SCHEININ, *Report by UN Special Rapporteur on the promotion and protection of human rights while countering terrorism*, UN Doc. A/65/258 of 6 August 2010.

¹⁴⁷ In line with this, Frowein and Krisch have argued that, in cases of doubt, legal determinations by the Security Council should be interpreted as being of a preliminary rather than a final character, and should conform to the general standards for judicial findings, by meeting the respective procedural requirements and respecting the substantive law in place: see J. A. FROWEIN, N. KRISCH, *Introduction to Chapter VII*, in B. SIMMA, D. E. KHAN, G. NOLTE, A. PAULUS (eds.), *The Charter of the United Nations: A Commentary*², vol. I, Oxford, 2002, p. 708.