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WHEN SANCTIONS VIOLATE HUMAN RIGHTS

UNITED NATIONS  NATIONS UNIES

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Editor's note:

The methodology for this paper was designed in response to a call from the United Nations Special Rapporteur on Unilateral Coercive Measures for analysis whether the use of sanctions violates human rights. Using aggregated global data, the paper's authors attempt to systematize and apply a single set of metrics to the implementation of sanctions, drawn largely on the work of the Financial Action Task Force (FATF), the global standard-setting body for anti-money laundering and counterterrorism financing efforts. The justification for sanctions is often highly political and subjective. This paper does not ascribe a normative judgment to any country's domestic security or foreign policy priorities or its decision to use sanctions, nor does it represent the national security or foreign policy positions taken by the Atlantic Council, its staff, or affiliates. The GeoEconomics Center is pleased to publish the results of this methodological exercise to inform and enrich the debate over sanctions as a tool of financial regulation and economic statecraft.

EXECUTIVE SUMMARY

As the Joseph R. Biden, Jr. administration prioritizes global human rights and anti-corruption, and taking a harder line against Russia and China, sanctions and their use have taken center stage.

Together with Canada and Europe, the Biden administration's early sanctions targets have largely been linked to human rights abuses and repression by the governments of Russia, China, Belarus, and Saudi Arabia. These actions have been met with bitter recriminations, demands for retractions, retaliatory sanctions, and accusations that it is actually the United States and Europe that are abusing human rights through their sanctions.

Sanctions definitely can violate human rights, but most discussions on this topic are politicized. The arguments are not factual. Commentators are not using data and there is no methodology to

evaluate whether, and how, sanctions are violating human rights.

In response to this situation, the team at Castellum.AI, a startup that organizes the world's compliance data, built a methodology to provide the relevant data to the public. The perfect opportunity to conduct this research came in the form of a United Nations (UN) call for analysis¹ regarding unilateral sanctions and human rights. Such an analysis and comparison had never been published before.

As part of our response to the UN, Castellum.AI found that the biggest violators of human rights through sanctions are Russia, Pakistan, and Turkey. All three are heavily engaged in sanctioning those not involved in terrorism or criminal activity and none provide information about listing rationale or procedures.

Castellum.AI analyzed primary source data from a December 31, 2020, snapshot of the world's twenty-six largest sanctions programs, including all Group of Twenty (G20) members, five non-G20 countries with over one thousand designees each, and the UN. Our analysis found that unilateral sanctions do not equate to human rights abuse.

What does lead to human rights abuse are sanctions processes with little or no transparency in the listing rationale and process.² Additionally, the UN itself provides a strong legal foundation for unilateral sanctions, as UN Security Council Resolution 1373³ explicitly calls for states to have *their own* freezing capabilities.

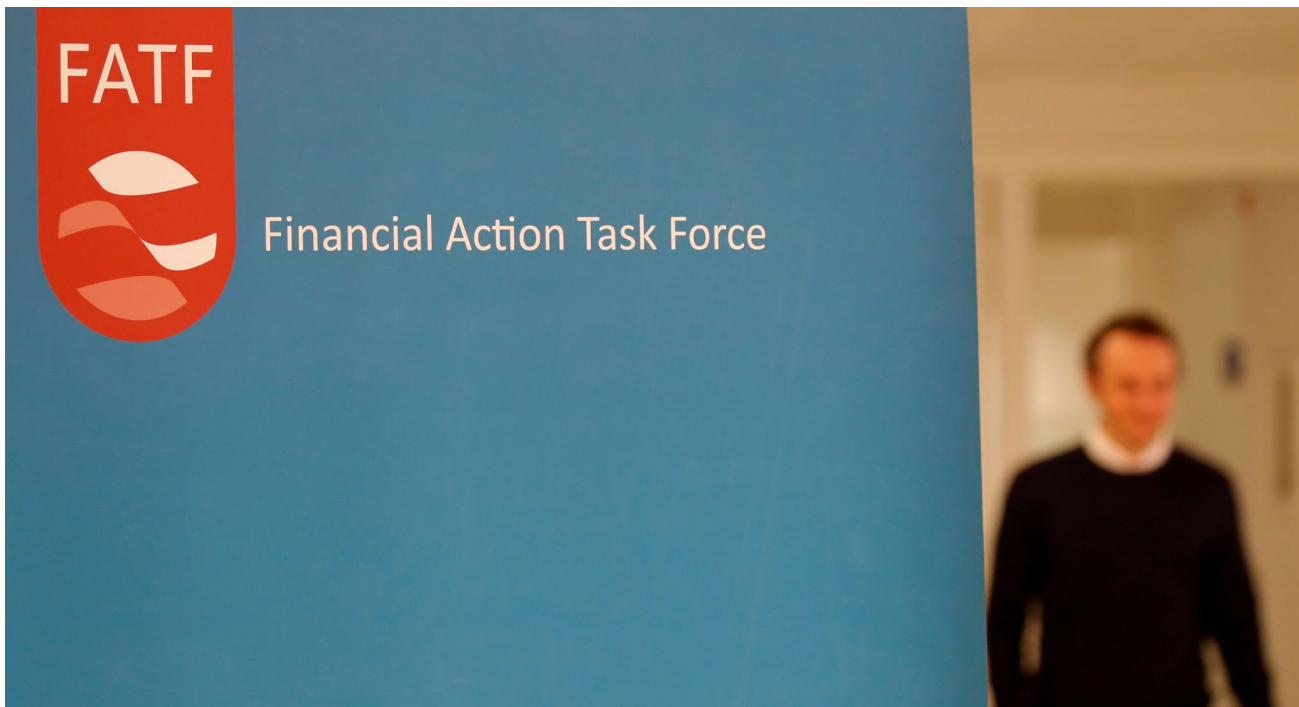
We recommend that the UN and the Financial Action Task Force emphasize transparency over multilateralism, and press authorities to institute what we call the four pillars of sanctions:

- Provide clear and public criteria for designations
- Provide public notice of designations, delistings, and qualifying evidence
- Provide a legal avenue to challenge designations
- Publish procedures for unblocking incorrectly frozen funds

1 "Call for Submissions: UCM-Study on the Notion, Characteristics, Legal Status and Targets of Unilateral Sanctions," United Nations, Human Rights, Office of the High Commissioner, accessed January 13, 2021, <https://www.ohchr.org/EN/Issues/UCM/Pages/Call-for-submissions-UCM-Study.aspx>.

2 Ibid.

3 United Nations Security Council, "Resolution 1373 (2001)," September 28, 2001, https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf.



The logo of the FATF (the Financial Action Task Force) is seen during a news conference after a plenary session at the OECD Headquarters in Paris, France, October 18, 2019. REUTERS/Charles Platiau.

In total, six of the world's twenty-six largest sanctions programs are unilateral (over 50 percent of designees are not on other countries' lists); six are multilateral (over 50 percent of designees are on other countries' lists); and fourteen are global (over 50 percent overlap with UN sanctions).

UN sanctions are the biggest source of shared designees, strongly influencing thirteen of the world's twenty-six largest sanctions programs.⁴ Following the UN, US sanctions are also highly influential, as seven countries and the UN share 50 percent of their sanctions lists with those of the United States. For example, Switzerland's Secretariat for Economic Affairs has 2,067 designees and 60 percent of these are also listed by the US Treasury's Office of Foreign Assets Control. European Union (EU) sanctions are close behind, as six countries and the UN have over 50

percent overlap with the EU.^{5,6,7} In terms of total designees, Russia, the United States, and Pakistan (in this order) have the world's largest sanctions programs, with more designees than the next twenty countries combined.

China's sanctions program does not meet our criteria for a significant program as it has fewer than one hundred designees. However, over the course of 2020, China created multiple legal instruments that would allow it to take effective retaliatory actions against those that sanction the People's Republic, and it has already used its powers more often in 2021 than it did in all previous years.

4 Some governments differentiate between "international sanctions" and "autonomous sanctions." International in this case refers to treaty obligations, such as enforcing European Union or United Nations mandates, whereas autonomous refers to domestic decisions. Autonomous sanctions, however, can still be linked to or done together with the autonomous sanctions of other countries. For example, Australia's autonomous sanctions program is strongly influenced by the United Kingdom's and United States' sanctions programs, due to the close security and political ties among these countries.

5 Ibid.

6 "Restrictive Measures (Sanctions)," European Commission, accessed January 13, 2021, https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions_en#where.

7 "Castellum.AI Automating Compliance Screening," Castellum.AI, accessed January 13, 2021 <https://www.castellum.ai/>.

METHODOLOGY

Castellum.AI is a US company, and is led by a former US Treasury official. This did not stop Castellum.AI from critically reviewing the United States' record on human rights and sanctions. In the interest of increasing access to global sanctions information, and to allow independent researchers to verify Castellum.AI's findings, we are happy to provide free access to public sector, press, and nongovernmental organization (NGO) researchers to use our platform, and view the database used to conduct this research. If you are a public sector, press, or NGO researcher and would like to gain free access to the Castellum.AI global watchlist platform, and review the database used to achieve these findings, please email contact@castellum.ai.

WHAT DATA DID WE ANALYZE?

Our analysis looked only at financial sanctions, not travel bans or export controls. We relied on our own database, which consists of over six hundred watchlists covering two hundred countries and six categories (sanctions, export controls, law enforcement most wanted, contract debarment, politically exposed persons, and elevated risk). We update our watchlists every five minutes directly from issuing authorities, and the data are automatically enriched.

HOW DID WE SEGMENT THE DATA?

As the UN's query is focused on sanctions, we examined only sanctions watchlists and restricted our analysis to twenty-four countries, the EU, and the UN:

- G20 members that maintain autonomous and public sanctions watchlists
- Non-G20 countries that maintain autonomous and public sanctions watchlists, and have over one thousand designees
- UN sanctions lists

HOW DID WE ASSIGN LIST SOURCES TO CATEGORIES?

We assigned each sanctions program to one of the categories below:

- **Unilateral:** >50 percent of designees are not on other countries' lists
- **Multilateral:** >50 percent of designees are on other countries' lists
- **Global:** >50 percent of designees are on UN sanctions lists

Before diving into the data, it is important to explain the reasons for selecting such a cross-section of data, and what this cross-section represents:

- **Why One Thousand?:** We picked one thousand designees as a cutoff because it is significant, shows a serious commitment to watchlisting, and is readily comparable to the number of designees on the UN list (1,005). At the low end, there are lists like Latvia's, which have a total of three designees.
- **Date of These Data:** All numbers used in this analysis are from a snapshot of our database taken on December 31, 2020, and represent the total designees on the analyzed sanctions lists.
- **Designee:** This is a term that can be used to refer to someone or something that has been designated (sanctioned). The reason we chose to use this term, as opposed to another, is because it covers every potential listed entry (individual, entity, vessel, aircraft, location), while also not causing confusion. For example, if we were to say "there are so many *names* on a sanctions list," would we be referring to primary aliases, aliases, or total names? Unclear. Other often interchangeable terms used include "sanctioned person," which legally covers individuals and entities, but excludes aircraft, locations, and vessels. OFAC uses "Specially Designated Nationals," or SDNs, but no other country uses this term and many designees do not have a listed nationality.
- **Autonomous Sanctions List:** An autonomous sanctions list is one that is controlled by that country, and where the country makes its own additions, even if the designees do not appear on a UN sanctions list. Examples of autonomous sanctions lists are Russia's (11,412 designees) and the United States' (9,076 designees). Most countries globally do not have autonomous lists. Instead, they publish either an exact or modified

copy of the UN sanctions lists. For example, both Ukraine and South Africa publish modified versions of the UN sanctions lists.^{8,9} Ukraine has translated some parts into Ukrainian and added several names, whereas South Africa chose to impose only some UN sanctions, publishing a list with 317 designees.

- **Public List:** A public list is one that is accessible by anyone with an internet connection, and requires no special administrative or legal permission to view. This is an important distinction because there is no way for the public and private sectors to implement sanctions lists they cannot view. Such lists cannot, by definition, be sanctions lists, and are more akin to terrorism threat and do-not-fly lists. Such lists are in use in many countries globally, such as Saudi Arabia.¹⁰
- **List Maintenance:** Finally, it has to be an actual list. Specifically, a list in a single online location, with a history of additions, modifications, and removals. Non-sequential PDFs published by different ministries, press releases, and websites that have not been updated in years show only that a government does not take sanctions seriously. If the private sector cannot easily find who has been sanctioned, enforcement is impossible. For this reason, we are not analyzing sanctions data from such governments.

HOW DID WE DETERMINE WHICH DESIGNEES ARE ON MULTIPLE LISTS?

We extracted and isolated primary aliases from each list source, removed duplicates (some list sources have the same primary alias multiple times), and compared the primary aliases on each list source against each other. In cases where the list source did not assign one of the aliases as primary, we chose the first listed alias. We used two algorithms to match primary aliases: One is our proprietary Jgram algorithm, which normalizes text, takes into account gluing and reordering of words, splits text into variable length tokens, and takes the ratio of tokens that match to come up with a similarity

score. We also used Microsoft's Fuzzy matching algorithm, which uses weighted Jaccard similarity and tokenization of records.

The algorithms account for variances in the data such as abbreviations, spelling mistakes, synonyms, and added or missing text. For example, they detect that Mr. Jonathan Tower; Tower, Jonathan H; and John Tower all may be referring to the same individual, returning a similarity score for each match. The matching also works in multiple languages, so we were able to compare Cyrillic and other non-English language aliases to each other across lists.

If 50 percent or more of the primary aliases were shared with other countries' or the UN's lists, we placed that list source in the appropriate category. There are intrinsic limitations in conducting such an analysis: List sources often use different primary aliases for the same designee, sources enter that information in different languages, the same primary alias can belong to two different designees, and, finally, many entries are missing information. An ideal comparison would involve primary aliases and dates of birth for individuals and primary aliases and addresses for entities, but many list sources do not include this information.

Still, a robust analysis is possible, and to improve our confidence we used a very simple cutoff: 50 percent for different categories. We also used Russian- and French-speaking staff to analyze the five key list sources in those languages, examined the full designee entry in our database when in doubt, and, when the similarity between two lists fell between 40 and 60 percent, reviewed the data manually. As a result, we are fully confident in our categorizations.

HOW DID WE COLLECT THIS DATA?

Castellum.AI obtains global sanctions information from primary sources, and then proceeds to standardize and clean the data, extract key information like IDs and addresses from text blobs, and enrich the entries with additional information. Castellum.AI enriches as many as fifteen separate

8 "Actual List of Persons Related to Terrorist Activity or Persons to Whom International Sanctions Were Applied," The State Financial Monitoring Service of Ukraine, accessed January 13, 2021, <https://www.sdfm.gov.ua/en/pages/dijalnist/protidija-terorizmu/perelik-teroristiv/aktualnij-perelik-osib-pov-yazanix-iz-zdijsnennyam-teroristichnoji-diyalnosti-abo-stosovno-yakix-zastosovano-mizhnarodni-sankcziji.html>.

9 "Targeted Financial Sanctions," South Africa Financial Intelligence Center, accessed January 13, 2021, <https://www.fic.gov.za/International/sanctions/SitePages/Home.aspx>.

10 "Saudi Arabia – Global Sanctions Guide," Eversheds Sutherland, accessed April 17, 2021, <https://ezine.eversheds-sutherland.com/global-sanctions-guide/saudi-arabia/>.



Russian President Vladimir Putin delivers his annual address to the Federal Assembly in Moscow, Russia April 21, 2021. REUTERS/Evgenia Novozhenina.

items per entry. This analysis is based on the enriched primary source data that populates our database. The database consists of over 600 watchlists, covering over 200 countries and six different categories (sanctions, export control, law enforcement most wanted, contract debarment, politically exposed persons and elevated risk). Castellum.AI updates their watchlists every five minutes directly from issuing authorities.

THE INTERSECTION OF SANCTIONS AND HUMAN RIGHTS

At their core, sanctions focus on accomplishing one key task: preventing those involved in terrorism or criminal activity from using their assets through “freezing.” Sanctions, even unilateral ones, do not automatically violate human rights. The United

Nations (UN) issues sanctions, and explicitly calls for states to have *their own* freezing capabilities in Resolution 1373. The Financial Action Task Force (FATF) further emphasizes this, promoting best practices related to freezing capabilities.^{11,12}

Sanctions violate human rights when they freeze assets arbitrarily, and without recourse. In procedural terms, sanctions can violate human rights if listing authorities do not explain why the designee was listed, do not implement publicly known procedures to unfreeze funds related to false positives, and do not provide an avenue for delisting. The most relevant articles from the UN Human Rights Declaration include the following:¹³

- Article 17. (1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.

¹¹ United Nations Security Council, “Resolution 1373 (2001),” accessed January 13, 2021.

¹² Financial Action Task Force, *International Best Practices: Targeted Financial Sanctions Related to Terrorism and Terrorist Financing (Recommendation 6)*, June 2013, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/BPP-Fin-Sanctions-TF-R6.pdf>.

¹³ United Nations, “Universal Declaration of Human Rights,” accessed January 13, 2021, <https://www.un.org/en/universal-declaration-human-rights/>.

- Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.
- Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

The only article in the UN Human Rights Declaration that explicitly mentions the right to control assets is Article 17. Whether Article 17 has been violated or not depends on whether the freezing is “arbitrary,” which is influenced by two factors:

- **Press release:** Without it, the listing can seem arbitrary. At a minimum, an explanation can be the assignment of a designee to a thematic list, e.g., “Iran sanctions” or “North Korea” sanctions; at best, it is a detailed press release.
- **Unique Identifying information:** This could be, for example, an individual’s name with a date of birth or a company’s name with a tax identification (ID) number and address. Without unique identifying information, the likelihood of the wrong person having their funds frozen increases exponentially, which leads to arbitrary freezing of funds. To prevent this, list sources should provide unique identifying information as well as guidance regarding false positives.

The issue of false positives is enshrined in international standards promulgated by the FATF in its forty recommendations document, specifically Recommendations 6 and 7 and their interpretive notes:¹⁴

False Positives

For persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism (i.e. a false positive), countries should develop and implement publicly known procedures to unfreeze the funds or other assets of such persons or entities in a timely manner, upon verification that the person or entity involved is not a designated person or entity.

The issue of delisting is covered in Articles 8 and 10. In the sanctions context, Article 8, “remedy,” and

Article 10, “fair and public hearing,” apply to whether a designee has an avenue for delisting, and whether delisting is possible. Like false positives, this issue is also in the FATF recommendations:

Delisting

Countries should develop and implement publicly known procedures to submit de-listing requests to the Security Council [...]; countries should have appropriate legal authorities and procedures or mechanisms to delist and unfreeze the funds or other assets of persons and entities that no longer meet the criteria for designation. Countries should also have procedures in place to allow, upon request, review of the designation decision before a court or other independent competent authority.

HOW SANCTIONS CAN VIOLATE HUMAN RIGHTS

The most important factor in determining if a sanctions program violates human rights goes back to the core purpose of sanctions: whether the sanctioned are involved in terrorism or criminal activity.

Based on UN and FATF recommendations, sanctions should be used to freeze assets of those involved in terrorism or criminal activity, not as a tool to punish political enemies or minority groups.

Additionally, we considered listing rationale and process:

- Does a list source explain why a designee is listed?
- Does a list source provide an avenue for delisting?
- Does a list source implement publicly known procedures to unfreeze funds related to false positives?

Neither the data nor UN resolutions nor FATF recommendations support the premise that unilateral sanctions equate to human rights violations. For this reason, we did not consider a program’s unilateral or multilateral nature as a determinative factor regarding human rights

14 Financial Action Task Force, “International Standards on Combatting Money Laundering and the Financing of Terrorism & Proliferation,” October 2020, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

violations. Sanctions are most likely to violate human rights when authorities are not transparent about the listing rationale and process, which does not depend on the sanctions being unilateral or multilateral.

WHICH SANCTIONS PROGRAMS VIOLATE HUMAN RIGHTS?

Using the UN Charter on Human Rights and FATF's UN-endorsed recommendations as our foundation, we found that Russia, Pakistan, and Turkey violate human rights through their sanctions programs. Russia, Pakistan, and Turkey frequently sanction those not involved in terrorism or criminal activity and fail to explain why a designee has been listed. In addition, Pakistan and Turkey have not provided avenues for delisting or publicly known procedures to unfreeze funds.

RUSSIA

Russia violates human rights through sanctions because it lists hundreds of designees with no relation to terrorism or criminal activity and does not explain the reasons for such designations.

Explanations for Russia's designations can occasionally be found in court cases or political statements, but Russia's sanctions authority, Rosfinmonitoring, does not provide press releases regarding designees. In the overwhelming majority of cases, it does not even provide "additional information" on the list itself, such as "member of al-Qaeda" or "wanted for money laundering."¹⁵

This lack of information makes Russia's designations appear arbitrary, and is confusing because in some cases other countries provide more information about Russia's own designations than Russia does. For example, ГЕЗАЛОВ АЗАД ЯШАР ОГЛЫ (Gezalov Azad Yashar Oglu), a "terrorist/extremist"

on a Russian sanctions list, is also on a Kyrgyz sanctions list. Russia's sanctions list provides his name, date of birth, and approximate address, but no reason for his designation, or a timeline. Kyrgyzstan's list shows the same information as Russia's, but adds that he has been "wanted by the Russian government since 28 September 2017."¹⁶

Rosfinmonitoring's sanctions also include numerous high-profile cases of human rights abuses. Without providing any information related to "terrorism," the Russian government has listed as terrorists 408 chapters of the Jehovah's Witnesses in Russia, leading to widespread legal harassment, arrests, and financial freezes for the group and its members in the country.¹⁷ When asked about the sanctions on Jehovah's Witnesses in December 2018, even Russian President Vladimir Putin criticized Rosfinmonitoring, saying that "Jehovah's Witnesses are Christians too. I don't quite understand why they are persecuted. So this should be looked into."¹⁸ Since then, only more Jehovah's Witnesses chapters have been sanctioned.

Rosfinmonitoring has also sanctioned journalists, most recently Svetlana Prokopyeva, a freelance journalist in Pskov, a city near the country's border with Estonia, in July 2020. Although Rosfinmonitoring provides no information on the designation, a court case explains that the origins of her "terrorism" are a text message she sent in 2018 critical of Russia's government.¹⁹ Prokopyeva remained on the list as of early 2021, her finances frozen.

Russia does follow international sanctions recommendations in some areas. It provides guidance to the public and private sectors on how to ascertain if a match is a true or false positive, which minimizes erroneously frozen funds. It also provides a path for delisting, and frequently removes names from its sanctions list, though also without explanation. Still, the arbitrary nature of its

15 Росфинмониторинг - Перечень террористов и экстремистов (действующие). Росфинмониторинг. <http://www.fedsfm.ru/documents/terrorists-catalog-portal-act>. (Translation: "Rosfinmonitoring – List of Terrorists and Extremists [Active]"), accessed January 13, 2021.

16 Государственная Служба Финансовой Разведки при Правительстве Кыргызской Республики – Кыргыз Республикасынын Жыйынды санкциялык тизмеги. Kyrgyzstan FIU. <https://fiu.gov.kg/sked/9>. (Translation: "Government Service of Financial Intelligence of the Kyrgyz Republic – Kyrgyz Sanctions Lists"), accessed January 13, 2021.

17 "Russia: Escalating Persecution of Jehovah's Witnesses," Human Rights Watch, January 9, 2020, <https://www.hrw.org/news/2020/01/09/russia-escalating-persecution-jehovahs-witnesses>.

18 Editorial Board, "Opinion: Christians Are Being Unjustly Imprisoned. Where Is Bible-Toting Trump?" *Washington Post*, June 12, 2020, https://www.washingtonpost.com/opinions/global-opinions/christians-are-being-unjustly-imprisoned-where-is-bible-toting-trump/2020/06/12/529c8974-ab30-11ea-a9d9-a81c1a491c52_story.html.

19 Andrew Higgins, "Russian Court Convicts Journalist for 'Justifying Terrorism,'" *New York Times*, July 6, 2020, <https://www.nytimes.com/2020/07/06/world/europe/russia-journalist-convicted.html>.

sanctions, the lack of transparency regarding listing reasons, and the serious problems with hundreds of cases mean that Russia's sanctions program violates human rights through sanctions.

PAKISTAN

Pakistan's sanctions program violates human rights due to the arbitrary nature of its listings and delistings (which number in the thousands) and the lack of transparency in its listing process.

Pakistan's sanctions law, the Anti Terrorism Act, dates to 1997, but the first time it was reviewed domestically was in 2014.²⁰ By then Pakistan had accumulated over seven thousand designees, almost entirely domestic, but did not and still does not explain why designees have been listed. Potentially in relation to an FATF evaluation, in 2020 Pakistan delisted over four thousand designees, also without explanation.²¹ According to a *Wall Street Journal* article about this incident (which also cited Castellum.AI), Pakistani official Tahir Akbar Awan, a section officer with the Ministry of Interior, said the list had become "bloated with multiple inaccuracies" because it contained names of individuals who had died and those who may have committed crimes but were not associated with a designated terrorist group.

Delisting designees can be a positive step, but this raises the question of what crimes Pakistan initially considered to be reasonable for inclusion and no longer does. Crimes for which other countries implement sanctions include corruption, nuclear proliferation, cyber attacks, and narcotics trafficking.

Pakistan's listing agency, the National Counter Terrorism Authority (NACTA), does not provide an avenue for delisting or make it clear how to apply for delisting. On its own site, NACTA even states that it "is not directly involved in the process of proscription [designation] of an individual."²²

Unlike Russia, whose problems with sanctions transparency and due process seem willful, Pakistan's seem more tied to a lack of coordination and proper processes. Pakistan could significantly improve its process by publishing press releases related to listings and delistings, providing a clear avenue for delisting, and issuing guidance on how to ascertain correct versus false matches. Additionally, the public and private sectors would significantly benefit if Pakistan provided more information regarding designees. As of December 2020, NACTA provided only names, regional locations, and sometimes ID numbers, but not dates or places of birth.²³

TURKEY

Turkey lists designees with no known ties to terrorism or criminal activity, lacks transparency in its listing process, and does not provide an avenue for delisting.

Turkey publishes designees' names, what organizations they are connected to, such as al-Qaeda or the Islamic State of Iraq and al-Sham (ISIS), a photo, and date and place of birth.²⁴ This is more than many countries provide; however, simply stating that a designee is tied to a certain organization leaves significant questions. No information is provided about the listing process and there is no delisting process. While there is no guidance on false positives, the photos and dates and places of birth are helpful in making these cases less common.

Turkey's sanctions on designees with no known ties to terrorism or criminal activity focus on individuals known as "Gülenists." The Turkish government accuses US-based cleric Fethullah Gülen of leading a terrorist organization that Turkey calls Fethullahist Terrorist Organisation, or FETO. Turkey holds Gülen responsible for a July 2016 coup attempt, but the cleric and his supporters deny responsibility.²⁵ Turkey's National Security Council described

20 "Proscribed Persons," National Counter Terrorism Authority (NACTA), Pakistan, accessed January 13, 2021, <https://nacta.gov.pk/proscribed-persons/>.

21 Dylan Tokar, "Pakistan Removes Thousands of Names from Terrorist Watch List," *Wall Street Journal*, April 20, 2020, <https://www.wsj.com/articles/pakistan-removes-thousands-of-names-from-terrorist-watch-list-11587393001>.

22 "Proscribed Persons," NACTA, accessed January 13, 2021, <https://nacta.gov.pk/proscribed-persons/>.

23 "Schedule-IV Data List - NACTA - Schedule-IV(Proscribed Persons) Data," NACTA, accessed January 13, 2021, <https://nfs.punjab.gov.pk/>.

24 "Wanted List," Ministry of Interior, Turkish National Police, accessed January 13, 2021, <http://en.terorarananlar.pol.tr/tarananlar>.

25 "Turkey Coup: What Is Gülen Movement and What Does It Want?" BBC News, July 21, 2016, <https://www.bbc.com/news/world-europe-36855846>.



Zhu Xiaoliang, director of Commerce Ministry's Department of Market Operation and Consumption Promotion, Vice Commerce Minister Qian Keming, Chu Shijia, director of the Commerce Ministry's comprehensive department, Zong Changqing, director-general of the Commerce Ministry's foreign investment administration attend a news conference in Beijing, China January 29, 2021. REUTERS/Tingshu Wang.

Gulenists as a terrorist group in April 2015, a year before the coup attempt.²⁶

In 2017, Turkey requested that the European Union (EU) and United Kingdom (UK) sanction FETO but both refused, saying they needed to see "substantive evidence."^{27,28} Other countries have publicly supported Turkey but, for unclear reasons, have not followed through in practice. Pakistan's supreme court ordered the government's executive branch to designate Gulenists as terrorists in 2018; however, three years later FETO is not on Pakistan's list of banned organizations.^{29,30} Pakistan has

not explained why the executive branch has not complied with the supreme court ruling.

The Gulf Cooperation Council and Organisation of Islamic Cooperation have also issued declarations proclaiming Gulenists to be terrorists,^{31,32} but neither organization maintains sanctions lists, and no member country has added Fethullah Gulen or FETO to their sanctions lists, according to a review of their lists conducted by Castellum.AI.

Out of Turkey's 1,301 designees, 26 percent (339 designees) are designated for their ties to Gulen,

26 "The UK Relations with Turkey," House of Commons, Foreign Affairs Committee, United Kingdom Government, March 23, 2017, <https://publications.parliament.uk/pa/cm201617/cmselect/cmfaaff/615/61507.htm>.

27 Tulay Karadeniz and Tuvan Gumrukcu, "EU Says Needs Concrete Evidence from Turkey to Deem Gulen Network as Terrorist," Reuters, November 30, 2017, <https://www.reuters.com/article/uk-eu-turkey-security/eu-says-needs-concrete-evidence-from-turkey-to-deem-gulen-network-as-terrorist-idUKKBN1DU0DV?edition-redirect=uk>.

28 House of Commons, Foreign Affairs Committee, "The Coup Attempt, and the 'Gülenists,'" United Kingdom Government, March 23, 2017, <https://publications.parliament.uk/pa/cm201617/cmselect/cmfaaff/615/61507.htm>.

29 Islamuddin Sajid, "Pakistanis Laud 'Landmark' Verdict on FETO Terror Group," Anadolu Ajansı, December 28, 2018, <https://www.aa.com.tr/en/asia-pacific/pakistanis-laud-landmark-verdict-on-feto-terror-group-/1351082>.

30 "79 Organizations Proscribed by Ministry of Interior u/s 11-B-(1) r/w Schedule-I, ATA 1997," NACTA, accessed January 13, 2021, <https://nfs.punjab.gov.pk/Organization>.

31 "GCC Declare Gulen Group a 'Terrorist Organisation,'" *Middle East Monitor*, October 14, 2016, <https://www.middleeastmonitor.com/20161014-gcc-declare-feto-a-terrorist-organisation/>.

32 "Organization of Islamic Cooperation Declares FETÖ a Terrorist Group," *Daily Sabah*, October 18, 2016, <https://www.dailysabah.com/war-on-terror/2016/10/19/organization-of-islamic-cooperation-declares-feto-a-terrorist-group>.

while only 6 percent are designated for their ties to ISIS (81 designees) and 1 percent for ties to al-Qaeda (14 designees).³³

DOES THE US SANCTIONS PROGRAM VIOLATE HUMAN RIGHTS?

The United States is second globally in terms of number of designees (behind Russia), and most of its sanctions are unilateral. But, as noted earlier, a high number of designees and the use of a unilateral program do not equate to human rights abuse.

US sanctions against International Criminal Court (ICC) judges are a clear violation of human rights, and were rescinded by the Biden administration on April 2.³⁴ Also bearing no relation to terrorism or financial crime are US sanctions on the Nord Stream 2 gas pipeline, a Russia-tied energy project.³⁵ There are also significant high-level disagreements among US, EU, and UN leadership on sanctions. For example, while the United States has about 1,700 designees on its Iran sanctions lists, there are about 300 on the EU's and about 80 on the UN's, according to Castellum.AI data. While the numerical differences are large, the disagreement comes down to which sanctions should be implemented and how many, not whether. Moreover, all three have similar sanctions programs for other areas, including North Korea, Sudan, Libya, Mali, and the Democratic Republic of the Congo.³⁶

International disagreements do not prevent the US sanctions program from being the most transparent globally, both in terms of listing rationale and procedures. The US sanctions administrator, the Office of Foreign Assets Control (OFAC), provides

more guidance than any other country, the EU, and the UN.³⁷

OFAC explains the rationale behind its actions and how to implement the sanctions, publishes public notifications for all of its sanctions, and issues detailed press releases for almost all of them. OFAC provides an avenue for delisting, as well as detailed instructions on how to apply for delisting.³⁸ OFAC's delisting process, however, lacks transparency in terms of rationale. OFAC announces delistings, but it is not clear if designees are delisted because they no longer meet the criteria for designation because they changed their behavior, they divested from an entity, the legal rationale no longer applies, they won a lawsuit, or any other reason. Unlike the UN and Pakistan (among others), OFAC does not proactively delist dead designees, and you can still find Saddam Hussein, Osama bin Laden, and Qasem Soleimani on OFAC sanctions lists. Delistings are not done well globally, however, and dead designees can be found on many other lists, including those of Australia, France, Switzerland, and the UK. Even the UN has issues here; Qasem Soleimani remains designated by the UN a year after his death.

OFAC does provide identifying information such as dates of birth for individuals and addresses for entities in almost all cases, and in all cases, it assigns designees to lists that provide context. For example, a designee on the North Korea list is sanctioned for activity related to North Korea. This may seem like an obvious item, but many list sources globally, such as Russia and Pakistan, do not subdivide their sanctions into thematic lists, depriving users of valuable information. OFAC has also published hundreds of pages of guidance, answering questions ranging from how to deal with and identify false positives to how to

33 "Wanted List," Ministry of Interior, Turkish National Police, accessed January 13, 2021, <http://en.teroraranlar.pol.tr/taranlar>.

34 Antony J. Blinken, "Ending Sanctions and Visa Restrictions against Personnel of the International Criminal Court," Press Statement, US Department of State, April 2, 2021, <https://www.state.gov/ending-sanctions-and-visa-restrictions-against-personnel-of-the-international-criminal-court/>.

35 Timothy Gardner and Daphne Psadedakis, "EXCLUSIVE: U.S. Tells European Companies They Face Sanctions Risk on Nord Stream 2 Pipeline," Reuters, January 13, 2021, <https://www.reuters.com/article/usa-nord-stream-2-sanctions/exclusive-u-s-tells-european-companies-they-face-sanctions-risk-on-nord-stream-2-pipeline-idUSL1N2JO094>.

36 Ibid.

37 "Office of Foreign Assets Control - Sanctions Programs and Information," US Department of the Treasury, accessed January 13, 2021, <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>.

38 "Filing a Petition for Removal from an OFAC List," US Department of the Treasury, accessed January 13, 2021, <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-list-sdn-list/filing-a-petition-for-removal-from-an-ofac-list>.

Table 1. Global Sanctions Comparison

List Source	Count	Category	UN Overlap	EU Overlap	US Overlap	Russia Overlap
Russia	11,412	Unilateral	4,28%	4,28%	3,02%	X
United States	9,076	Unilateral	8,62%	12,54%	X	3,80%
Pakistan	3,236	Unilateral	15,00%	15,00%	87,00%	15,00%
Tajikistan	2,594	Unilateral	0,00%	0,00%	0,00%	4,24%
France	2,409	Multilateral	41,18%	77,54%	49,40%	20,46%
United Kingdom	2,304	Multilateral	43,23%	82,07%	56,73%	21,83%
European Union	2,230	Multilateral	40,04%	X	51,03%	21,93%
Switzerland	2,067	Multilateral	48,62%	85,29%	60,04%	24,24%
Australia	1,808	Global	56,53%	75,50%	67,53%	27,88%
Kazakhstan	1,714	Unilateral	0,00%	0,00%	0,00%	3,50%
Canada	1,424	Multilateral	1,05%	39,61%	52,60%	0,35%
Turkey	1,301	Unilateral	0,15%	0,15%	0,61%	0,15%
Kyrgyzstan	1,033	Multilateral	0,00%	0,00%	0,00%	43.85%**
United Nations	1,005	X	X	88,86%	77,81%	48,66%
Indonesia	756	Global	93,65%	82,67%	71,30%	63,49%
Argentina	516	Global	93,02%	77,71%	66,86%	92,83%
17 - 26	1,005	Global	100,00%	NA		

Global

Multilateral

Unilateral

Note: 17-26: Brazil, China, Germany, India, Italy, Japan, Mexico, Saudi Arabia, South Africa, and South Korea implement UN sanctions and do not maintain autonomus public sanctions lists. **In addition to overlap with Russia, Kyrgyzstan has 9.49% overlap with Kazakhstan.

send humanitarian aid into regions controlled by sanctioned actors.³⁹

Additionally, OFAC has a robust licensing program, which eases or removes the burden of sanctions in certain cases and for certain actors, and is often focused on ensuring that sanctions do not prevent humanitarian aid. There are general licenses

(anyone can take advantage of them) and specific licenses (for a specific party and circumstance), and there is even a License Application page.⁴⁰ The UK has a licensing regime, and the EU and UN have humanitarian exemptions, but none are as developed as OFAC's program.^{41,42,43}

39 "Frequently Asked Questions," US Department of the Treasury, accessed January 13, 2021, <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/topic/1601>.

40 "OFAC License Application Page," US Department of the Treasury, accessed January 13, 2021, <https://home.treasury.gov/policy-issues/financial-sanctions/ofac-license-application-page>.

41 "Licences that Allow Activity Prohibited by Financial Sanctions," United Kingdom Government, August 4, 2014, <https://www.gov.uk/guidance/licences-that-allow-activity-prohibited-by-financial-sanctions>.

42 European Commission, "Sanctions or Restrictive Measures," 2008, https://eeas.europa.eu/archives/docs/cfsp/sanctions/docs/index_en.pdf.

43 "Humanitarian Exemption Requests Security Council," United Nations Security Council, accessed March 30, 2021, <https://www.un.org/securitycouncil/sanctions/1718/exemptions-measures/humanitarian-exemption-requests>.

Table 2. Sanctions Procedures and Transparency

Authority	Count	Press Releases	Avenue for Delisting	False Positives Guidance
Russia	11 412	No	Yes	Yes
United States	9 076	Yes	Yes	Yes
Pakistan	3 236	No	No	No
Tajikistan	2 594	No	No	No
France	2 409	No	Yes	Yes
UK	2 304	Yes	Yes	Yes
EU	2 230	Yes	Yes	Yes
Switzerland	2 067	Yes	No	Yes
Australia	1 808	Yes	Yes	Yes
Kazakhstan	1 714	No	No	No
Canada	1 424	Yes	Yes	Yes
Turkey	1 301	No	No	No
Kyrgyzstan	1 033	No	No	No
UN	1 005	Yes	Yes	Yes
Indonesia	756	No	No	No
Argentina	516	No	No	Yes

US sanctions may deprive designees more than other countries' sanctions, an effect due to both the primacy of the US dollar and long-standing US efforts to fine sanctions violators globally, the result of which is adoption of US sanctions by non-US financial institutions.

SECTORAL SANCTIONS AND THE 50 PERCENT RULE

An argument can be made that US sanctions are much broader than stated due to two factors: the United States' use of sectoral sanctions and the "50 percent rule." Sectoral sanctions target an entire economic sector, and are generally used when identifying all the designees one by one would be impossible. This means that although sectoral sanctions generally do not name designees, they have a broad effect. Likewise, OFAC's 50 percent rule sanctions even entities that are not listed, but

that are "directly or indirectly owned 50 percent or more" by a designee or cumulatively by designees.⁴⁴ This rule has such broad ramifications that an entire industry sprung up to identify companies affected by 50 percent sanctions risk.

US sanctions likely affect tens of thousands more than just the named designees, through both sectoral sanctions and the 50 percent rule. This, however, does not mean that the United States immediately vaults to being the worst human rights violator through sanctions. The EU also has a 50 percent rule, and both the EU and UN implement sectoral sanctions, affecting tens of thousands of unnamed designees. A good example of this is UN Security Council Resolution 2379, which passed unanimously in December 2017. The resolution imposed sectoral sanctions, directing countries globally to expel North Korean workers, a move that

44 "Entities Owned by Blocked Persons (50% Rule)," US Department of the Treasury, August 13, 2014, <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/401>.

affected an estimated one hundred thousand North Koreans outside the country.⁴⁵

Due to a lack of data, 50 percent rules and sectoral sanctions cannot be factored into this analysis.⁴⁶ Comparing designees is binary. Designees either are or are not on a list. But sectoral sanctions can be interpreted differently in each country, and often overlap with export controls, turning them into much more complicated regulations.

CHINA

China's sanctions program does not meet our criteria for a significant program as it has fewer than one hundred designees; however, over the course of 2020 China created multiple legal instruments that would allow it to take effective retaliatory actions against those that sanction the People's Republic, and it has already used its powers more often in 2021 than it did in all previous years.

China's Ministry of Commerce released an order in early 2021 titled "Order No. 1 of 2021 on Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures," which provides a mechanism for the Chinese government to prohibit domestic enforcement of external sanctions.⁴⁷ However, the order does not name specific programs that cannot be enforced and does not, yet, prohibit compliance with international sanctions.

In September 2020, China's Ministry of Commerce also issued "Order No. 4 of 2020 on Provisions on the Unreliable Entity List," which provided China with the mechanism to label foreign entities as "Unreliable"; however, the exact consequences of being listed as unreliable are not specified by the People's Republic.⁴⁸ Both orders provide China with ways of increasing pressure on its critics, and of signaling to foreign governments, primarily the

United States and EU, that it is ready and able to retaliate economically against Western sanctions.

Still, a review of China's sanctions list at the time of publication shows that the majority of the targets are political, not economic. As of late March 2021, China had imposed sanctions on sixty targets, comprising fifteen entities and forty-five individuals. The entities are primarily democracy-promotion organizations and think tanks in the West, including the National Endowment for Democracy, Human Rights Watch, the Mercator Institute for China Studies, and the Uyghur Tribunal. The individuals are mostly politicians and activists, ranging from US senators to British and European members of Parliament and activists in Hong Kong. There is only one target of economic importance—US defense manufacturer Lockheed Martin—but such a company is already unlikely to have any assets or business ties to China.

GLOBAL SANCTIONS COMPARISON

We found the following:

- Russia, the United States, and Pakistan (in this order) have the world's largest sanctions programs, and all three are unilateral. Although Russia has the most designees, it has almost no overlap with other countries except its neighbors Kyrgyzstan, Kazakhstan, and Tajikistan.
- EU sanctions are highly multilateral, as six countries and the UN have over 50 percent overlap with the EU.
- Despite US sanctions being unilateral, seven countries and the UN have over 50 percent overlap with US sanctions.

45 Rick Gladstone and David E. Sanger, "Security Council Tightens Economic Vise on North Korea, Blocking Fuel, Ships and Workers," *New York Times*, December 22, 2017, <https://www.nytimes.com/2017/12/22/world/asia/north-korea-security-council-nuclear-missile-sanctions.html>.

46 There is a lack of available data on how the 50 percent rule applies because ownership data globally is often either unavailable due to corporate secrecy, difficult to access (paper records only), or requires payment. As a result, when the US government sanctions a large entity with many subsidiaries, often even it is not fully aware of the impact, and it is absolutely a case of the US government imposing an expensive compliance burden onto the public and private sectors. This process usually sets off a race by private sector due diligence firms to identify corporate ownership structures of sanctioned entities, which are then purchased by those with both an interest in complying, and the budget to pay for this difficult to obtain data.

47 "MOFCOM Order No. 1 of 2021 on Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures," Ministry of Commerce, People's Republic of China, January 9, 2021, <http://english.mofcom.gov.cn/article/policyrelease/announcement/202101/20210103029708.shtml>.

48 "MOFCOM Order No. 4 of 2020 on Provisions on the Unreliable Entity List," Ministry of Commerce, People's Republic of China, September 19, 2020, <http://english.mofcom.gov.cn/article/policyrelease/questions/202009/20200903002580.shtml>.

- In total, six of the world's twenty-six largest sanctions programs are unilateral, six are multilateral, and fourteen are global (over 50 percent overlap with UN sanctions).
- UN sanctions are the biggest source of list overlap; however, thirteen of the world's twenty-six largest sanctions programs have lists larger than the UN's, meaning only part of the overlap is due to UN sanctions.

SANCTIONS PROCEDURES AND TRANSPARENCY

Table 2 is based on a review of FATF's recommended best practices for implementing sanctions and a detailed review of the guidance published by each country's sanctions authority.⁴⁹ Whether or not these criteria are met is not sufficient to determine whether the sanctions equate to human rights abuse.

For example, the United States' sanctioning of judges on the ICC is a clear case of targeting persons not involved in terrorism or criminal activity, and it brought criticism globally and domestically.⁵⁰ Yet US sanctions are best in class in terms of the three categories examined (press releases, avenue for delisting, false positives guidance).⁵¹ Examining the opposite scenario, Indonesia does not publish sanctions press releases, does not provide an avenue for delisting, and does not publish false positives guidance, but its autonomous sanctions target only terrorists and criminals and have not received any criticism for human rights violations.⁵²

Still, all countries should provide press releases, an avenue for delisting, and false positives guidance to ensure transparency around their sanctions programs. Not doing so invites questions about motive and makes implementation more difficult for anyone who needs or wants to comply with the relevant sanctions program.

RECOMMENDATIONS

Analysis of the world's largest sanctions lists does not show causation between unilateral sanctions and human rights abuses. The UN and FATF should emphasize transparency over multilateralism, and press authorities to institute what Castellum.AI calls the four pillars of sanctions. Adhering to the following four pillars of sanctions ensures that they do not violate human rights:

- Provide clear and public criteria for designations
- Provide public notice of designations, delistings, and qualifying evidence
- Provide a legal avenue to challenge designations
- Publish procedures for unblocking incorrectly frozen funds

All four of these pillars are already in use by the UN, and should be implemented globally.

PROVIDE CLEAR AND PUBLIC CRITERIA FOR DESIGNATIONS

Clear and public criteria are crucial for designations because they explain to the public, law enforcement, people working in financial services, and anyone else impacted by the designations the risk associated with the designee, and imply that there is a good reason for the public and industry to avoid the designee. This requires clearly stated criteria, strictly enforced by the listing authority, and, strengthened over time (whether by the UN or a national body), also builds legitimacy.

Without criteria, all the public and industry see are names punitively slapped onto a list, and haphazardly removed. This undermines the legitimacy of sanctions, and of the government implementing them. What is to ensure that there is not corruption in the process? What ensures due process? Only transparency. As an example, the UN clearly states why a designee is listed, and what actions led to the designation.⁵³

49 Financial Action Task Force, *International Best Practices*.

50 Pranshu Verma, "Trump's Sanctions on International Court May Do Little beyond Alienating Allies," *New York Times*, October 18, 2020, <https://www.nytimes.com/2020/10/18/world/europe/trump-sanctions-international-criminal-court.html>.

51 "Sanctions Programs and Information," Office of Foreign Assets Control, US Department of the Treasury, accessed January 13, 2021, <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>.

52 "DTTOT & PROLIFERASI WMD," Beranda, Pusat Pelaporan Dan Analisis Transaksi Keuangan (Translation: Financial Transaction Reports and Analysis Center), September 26, 2016, <https://www.ppatk.go.id/link/read/23/dttot-proliferasi-wmd.html>.

53 For examples, see "Press Releases," United Nations Security Council, ISIL (Da'esh) & Al-Qaida Sanctions Committee, accessed January 13, 2021, <https://www.un.org/securitycouncil/sanctions/1267/press-releases>.

PROVIDE PUBLIC NOTICE OF DESIGNATIONS, DELISTINGS, AND QUALIFYING EVIDENCE

Public notice is crucial in sharing with the public and industry, both domestically and globally, that a designee poses a certain type of risk. Designations generally involve asset freezes and sometimes export controls and travel bans, but they also generally have exemptions for items like medical care, seeing family, paying rent, and the like. These exemptions are well covered by both the UN and FATF and are often different for different kinds of sanctions.^{54,55}

Without public notice, a listing authority undermines its own credibility, but also its effectiveness. If you do not want industry to do business with a designee, you need to tell them, and the way to do this is through a well maintained public list and press releases.

Helping the public and others understand the reasons behind sanctions also allows them to better understand the risk and react appropriately. This is especially relevant for autonomous, non-UN sanctions. In a world where global travel and global payments travel faster than ever, a person designated by Country A could be living in and be protected by Country B, and then be traveling and doing business in Countries C and D. How do Countries C and D decide what to do? The more information they have available regarding this designee, the better. As an example, the UN provides press releases related to all designations and delistings.⁵⁶

PROVIDE A LEGAL AVENUE TO CHALLENGE DESIGNATIONS

A legal avenue where designations can be challenged is another crucial pillar in ensuring the legitimacy of a sanctions regime. Sanctions that cannot be challenged intrinsically lack due process, and are little more than government organized theft. If a listing authority is confident in its sanctions process, it must allow it to be challenged. If it is

not confident in its sanctions process, it should not proceed with sanctions. For example, the UN has a focal point for delisting.⁵⁷

PUBLISH PROCEDURES FOR UNBLOCKING INCORRECTLY FROZEN FUNDS

When payments are sent globally, they can be stopped globally. This means that any one authority's list might be used to stop a payment around the world, by someone with very little context about why the designee is listed. Industry statistics show that over 99 percent of payments flagged for manual review in the sanctions screening process are false positives, yet many remain in limbo due to similar names or lack of identifying information. As an example, OFAC provides step-by-step instructions for how to ascertain if a match is valid or if it is a false positive.

In addition to the recommendations above, countries should focus on implementing FATF's recommendations, especially Recommendations 6 and 7 (Targeted financial sanctions related to terrorism & terrorist financing and Targeted financial sanctions related to proliferation).⁵⁸

The UN has long worked with the FATF and, in 2019, the UN Security Council adopted Resolution 2462, reaffirming the essential role of the FATF in setting global standards to combat financial crime. The UN has already urged all member countries to cooperate with the FATF and implement its recommendations.⁵⁹

54 "Humanitarian Exemption Requests," United Nations Security Council, accessed January 13, 2021, <https://www.un.org/securitycouncil/sanctions/1718/exemptions-measures/humanitarian-exemption-requests>.

55 Financial Action Task Force, *International Best Practices*.

56 "Humanitarian Exemption Requests," United Nations Security Council.

57 "Focal Point for De-listing," United Nations Security Council, accessed January 13, 2021, <https://www.un.org/securitycouncil/sanctions/delisting>.

58 Financial Action Task Force, *International Best Practices*.

59 "New UN Resolution Reaffirms the Close Collaboration between the FATF and the United Nations in the Fight against Terrorist Financing," Financial Action Task Force, March 28, 2019, <https://www.fatf-gafi.org/publications/fatfgeneral/documents/un-fatf-2019.html>.

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