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NATIONAL MEASURES TO IMPLEMENT UNITED NATIONS SANCTIONS AND RESPECT FOR HUMAN RIGHTS

Document submitted by the delegation of Greece

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State practice regarding the incorporation of unilateral acts of international organisations, such as Security Council resolutions, in the internal legal order of states has always been divergent. This fundamental difficulty is further exacerbated by the specific content of the Council's decisions. The punitive nature of the latter, the fact that they encroach on the rights of the States sanctioned as well as on those of individuals, the fact that they oblige States to take specific measures with binding effect on their authorities and thereby become applicable to individuals result in a rather delicate situation which demands the highest level of vigilance on the part of the legislator. In addition, in recent years, the Council has diversified the subjects covered by making more and more frequent use of targeted sanctions (smart sanctions): whereas previously it aimed only at States, it now no longer hesitates to "lift the veil" of the state with a view to directly sanctioning physical and legal persons, including political leaders and persons collaborating with them. Consequently, the legislation of certain States on the incorporation of Security Council resolutions is not well-suited to this new breed of sanctions. In parallel to this diversification, the content of the sanctions has also been enriched: as opposed to a straight trade embargo, sanctions are now increasingly more and more sophisticated, such as the freezing of assets or even more, their transfer to an account held by the United Nations (see for example, para. 23 of resolution 1483[2003]), the obligation to prosecute individuals involved in terrorist acts without their names being necessarily mentioned in the Security Council resolutions or in the lists of Sanctions Committees (see resolution 1373[2001]).

In view of the above, our exchange of views on the subject could address the following questions:

1. Which are the procedures for the incorporation of Security Council resolutions imposing sanctions in the internal legal order of states? Are they incorporated through legislation or regulations? Is there a uniform regime or does the choice between the two methods depend on the content of the Security Council resolution?

If the regulatory method is opted for, is this done on the basis of a legislative mandate with the specific purpose of implementing Security Council resolutions?

2. Which are the sanctions provided for in domestic law (criminal or administrative) to punish violations of Security Council resolutions?

3. When sanctions are imposed for a fixed period which is not renewed (as was the case with most of the measures imposed by resolution 1333(2002) on the situation in Afghanistan), are they tacitly repealed within the domestic legal system or is a normative act required?

4. When a Security Council resolution imposing an export embargo provides for exceptions not requiring a surveillance committee (see for example para. 10 of resolution 1483(2003) which authorises, despite the embargo, the supply of arms to the Authority in Iraq), does the incorporating act appoint a national authority which is competent to authorise export?

5. The Security Council often instructs the Sanctions Committee to identify the products covered by the sanctions or exceptions thereto. There are even cases, as with the sanctions against UNITA adopted by resolution 1173(1998), when the entry into force of sanctions is subject to the adoption by the Committee's of a decision on their precise scope. This is common practice for smart sanctions, which take effect only when the committee has designated the individuals targeted (see for example resolutions 1132(1997) on the situation in Sierra Leone, 1127(1997) on the situation in Angola, 1333(2002) and 1390(2002) on the situation in Afghanistan). In such cases should sanctions committee decisions specifying

Security Council sanctions or set conditions for their activation be incorporated in domestic law?

6. Have there been cases where the act incorporating the sanctions in the domestic law have been challenged in court for being in violation of human rights? In such a case, do you consider that the fact that the State was acting only as an agent implementing a United Nations measure adopted under chapter VII could constitute an adequate defence or, on the contrary, that the State should prove *in concreto* that the normative measure of incorporation does not violate human rights? In this connection the ECJ decision of 30 July 1996 in the case of *Bosphorus Hava Yollari v. Ireland*[1] and the forthcoming ruling of the European Court of Human Rights on the same case[2] are of relevance.

We believe that this question of potential conflict between human rights and Security Council sanctions could be raised by the affected persons, especially in the case of irreversible measures depriving them of property rights. One example is para. 23(b) of resolution 1483 which orders not only the freezing but also the transfer of the financial assets of Saddam Hussein, senior officials of the Iraqi regime and their relatives to an account held by the United Nations - the Development Fund for Iraq- whereas the confiscation of private assets is normally subject, in domestic law, to very strict conditions, especially a criminal sentence.

[1] See Reports of Cases ECJ 1996, p. I-03953 (Case C-84/95).
[2] The Court has already ruled on the admissibility of the application in a decision of 13.09.2001