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NATIONAL IMPLEMENTATION MEASURES OF UN SANCTIONS, AND RESPECT FOR HUMAN RIGHTS /

MESURES NATIONALES D'APPLICATION DES SANCTIONS DES NATIONS UNIES ET RESPECT DES DROITS DE L'HOMME

Secretariat Memorandum
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ALBANIA

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way?

The Albanian Constitution regulates the relation between the internal and international law in the Republic of Albania. According to its article 5, the Republic of Albania applies international law that is binding upon it and article 122, para. 3 stipulates that "The norms issued by an international organization have superiority, in case of conflict, over the laws of the country if the agreement ratified by the Republic of Albania for its participation in the organization expressly contemplates their direct applicability". In this respect considering that article 25 of the United Nations Charter obliges the Members of the United Nations to accept and carry out the decisions of the Security Council, the resolutions once approved in principle are directly applicable in the Republic of Albania.

As regards the resolutions imposing sanctions, a normative act of the Council of Ministers might be enacted for the implementation of the sanctions.

2. Does the choice depend on the content of the Security Council Resolution?

According to article 122 of the Constitution, for the direct application of the Security Council resolutions it is required that:

- the resolutions are accessible for the public;
- the resolutions provide for self execution.

In case the resolution is not considered self executed, it is necessary the adoption of normative legal acts for their implementation.

E.g. as regards the Resolutions imposing arms embargo, according to a regulation of the Ministry of Defense, which administers the military armament in the Republic of Albania, it is explicitly prohibited the import/export of the arms and other military equipments to/from countries upon which the Security Council Resolutions impose arms embargo.

3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

If the sanctions are imposed for a fixed period of time they are tacitly repealed within the internal legal order and no normative action is required.

4. When a Security Council resolution imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority which is competent to authorize export?

The normative act which implements a resolution imposing sanctions normally appoints the authority or authorities responsible for the implementation of the act. This authority (authorities) is responsible for the authorization of the exceptions in case the resolutions do not establish a committee and the exceptions are provided in the resolution.

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law.

The authority responsible for the implementation of the Security Council regulations takes into considerations and is guided by the decisions of the Sanctions Committee.

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights.

According to the data of the Ministry of Justice there have not been cases where the act was challenged in court.

ARMENIA

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has the implementation given rise to any constitutional or other legal problems at national level? Is there any relevant case-law?

According to the Article 25 of the UN Charter as the other member states the Republic of Armenia as well is bound to observe and implement the Security Council resolutions. To this end, nevertheless, Armenia is bound to implement the UN Security Council Resolutions imposing sanctions, which does not obligatorily require legislative provision or reflection of the sanctions into the legislation; but, if necessary, Armenia may pass respective law, amend acting laws or adopt other legal acts (decree of the president, decision of the government or of the prime-minister etc.). The issue of the implementation of UN Security Council Resolutions by Armenia depends whether and to what extend it concerns Armenia and what kind of practical measures may it take to implement it. Having regard the nature of the sanction the authorities concerned may take appropriate measures, as well as adoption of law, if the implementation of the sanction is impossible without such adoption. There were no constitutional or other legal problems at national level concerning the implementation as there is no case law observed in Armenia.

2. Does the choice depend on the content and the legal nature of the Security Council Resolution?

Yes, if the implementation of the Security Council Resolutions imposing sanctions requires incorporation into the internal legal order of Armenia such choice directly depend on the nature of the sanctions: for instance, if the sanction touches upon the trade embargo question and it concerns Armenia, in this case the adoption of law is required as the right for external economic activities is regulated and provided by law. But in other case, for example, when such trade restrictions apply to the export and import products within Armenia, the Government should decide as it is the licensing body in this field.

3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

When the implementation of the sanction supposes the adoption of the legislative act, such an act shall define fixed, precise period having regard the period provided in the resolution or at least the legislative act shall refer to the resolution indicating that the period of resolution is applicable.

If there is no period mentioned in the legislative act, but it contains provisions that sanction is in force until other decision is taken, it is required, however, to adopt a new legal act to terminate the period of validity of the sanction.

4. When a Security Council Resolution imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority which is competent to authorize export?

The possible establishment of such a national authority will depend on the content of the resolution concerned.

The respective legal act may, e.g. in trade issues, directly define the exceptions and limitations or creation of a temporary committee with its capacities etc. The measures to be taken at national level directly link to the nature and content of the resolution imposing sanctions.

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

It may be provided that the so-called Sanctions Committee is to be established by law or at least by government decision through which it would be incorporated, but it will depend on the questions raised, nature and content of the resolution. Please see replies to questions 1 and 2.

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights? For example, have national courts assumed jurisdiction in cases where sanctions are challenged by individuals affected by sanctions:

a) if implemented through EU-regulations,

b) if implemented directly at national level?

No, there have not been observed such cases.

7. Are there decisions of national courts or state practice concerning the relationship between sanctions directed towards individuals and human Rights of these individuals?

No, there are no decisions or practice of Armenian courts concerning the relationship between sanctions directed towards individuals and human Rights of these individuals.

AUSTRIA

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has the implementation given rise to any constitutional or other legal problems at national level? Is there any relevant case-law?

Sanctions or restrictive measures imposed by binding UN Security Council Resolutions are as a rule incorporated through EU legislation, either EU Common Positions or/and EC Regulations.

As Regards EC Regulations these are directly applicable and binding thus no additional implementation on the national level is necessary.

Regarding measures included in EU Common Positions that fall within the competences of EU member states, in particular arms embargos and travel restrictions, the relevant national laws apply.

2. Does the choice depend on the content and the legal nature of the Security Council Resolution?

Yes, the choice depends both on the nature of the measure of the SC resolution and the competencies of the EU and its member states respectively (see also answer to question1).

3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

As a rule normative action is required if the SC does not renew sanctions or restrictive measures.

4. When a Security Council Resolution imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority which is competent to authorize export?

Without prejudice to EU legislation, the relevant national authorities have the competence to authorize exception provided for in SC resolutions.

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

Both EU and national legislation have the necessary flexibility to implement decisions by UN sanctions committees.

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights?

So far only applications against EU legislations implementing UN sanctions or restrictive measures have been recorded.

7. Are there decisions of national courts or state practice concerning the relationship between sanctions directed towards individuals and human rights of these individuals?

No decisions or state practice are recorded.

AZERBAIJAN

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has the implementation given rise to any constitutional or other legal problems at national level? Is there any relevant case law?

Once UN Security Council Resolutions imposing sanctions have been adopted, Ministry of Foreign Affairs informs Government about them and the later, regardless of their content and legal nature, instructs the relevant governmental structures to take the necessary measures in order to be in conformity with those Resolutions. There is not any case where Resolutions' implementation has given rise to the constitutional or other legal problems.

2. Does the choice depend on the content and the legal nature of the Security Council Resolution?

See question 1.

3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

If sanctions are imposed for a fixed period of time, Government's instructions to the bodies concerned contain indication of time period within which they should be implemented.

4. When a Security Council Resolution imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority which is competent to authorize export?

In accordance with Articles 8.2, 9.1 and 9.2 of the "Law on Export Control" dated 26 October 2004, list of States and final customers, to which export of goods (works, services, products of intellectual property), subject to export control, is prohibited, as well as list of such goods are being determined by President of Azerbaijan.

Export, import, re-export, re-import, transit of goods (works, services, products of intellectual property), subject to export control, are being carried out in the basis of Special Authorization issued by the Cabinet of Ministers.

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

See question 1.

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights? For example, have national courts assumed jurisdiction in cases where sanctions are challenged by individuals affected by sanctions:

a. if implemented through EU-regulations;
b. if implemented directly at national level?

There have been no such cases.

7. Are there decisions of national courts or state practice concerning the relationship between sanctions directed towards individuals and Human Rights of these individuals?

There are no such decisions.

BELGIQUE

1. Quelles sont les procédures d'incorporation des résolutions du Conseil de Sécurité imposant des sanctions dans l'ordre juridique de votre Etat ? L'incorporation s'opère-t-elle par voie législative, réglementaire ou autre ? La mise en œuvre a-t-elle provoqué des problèmes constitutionnels ou d'autres de nature juridique au niveau national ? Y a-t-il jurisprudence à cet égard ?

Les résolutions du Conseil de Sécurité en matière de sanctions (cfr mesures prises par le CS sur base du chapitre VII de la Charte des Nations Unies, article 41) sont intégrées dans l'ordre juridique interne belge par la « Loi du 11 mai 1995 relative à la mise en œuvre des décisions du Conseil de Sécurité de l'Organisation des Nations Unies », publiée au Moniteur belge du 29 juillet suivant. Cette loi stipule que le Roi peut prendre, par arrêté délibéré en Conseil des ministres, les mesures nécessaires à la mise en œuvre des décisions obligatoires du CS.
Elle stipule également que les infractions aux mesures contenues dans les arrêtés pris en application de ladite loi sont punies de peines d'emprisonnement et d'une amende, sans préjudice de peines plus sévères prévues par d'autres dispositions légales (notamment en matière de commerce des armes).

Au niveau de l'Union européenne, de telles sanctions sont adoptées par le Conseil de l'Union aux termes de Positions communes qui sont elles-mêmes exécutées, suivant le champ d'application de la sanction, par des Règlements immédiatement applicables dans l'ordre interne des Etats membres ou par des arrêtés d'exécution pris au niveau interne de chaque Etat membre. Ne nécessitent d'acte normatif d'intégration que les mesures n'entrant pas dans le champ des compétences de la Communauté. Telles sont les mesures déterminant les sanctions pénales applicables en cas d'infraction. Pour cette raison, le législateur belge a adopté la « Loi du 13 mai 2003, relative à la mise en œuvre des mesures restrictives adoptées par le Conseil de l'Union européenne à l'encontre des Etats, de certaines personnes et d'entités », publiée au Moniteur belge du 13 juin suivant. L'article 6 de la loi prévoit les sanctions pénales nécessaires à la mise en œuvre effective des interdictions décidées par le Conseil de l'Union.

Les deux lois précitées ne portent pas préjudice aux pouvoirs dont dispose le Roi en vertu d'autres lois, notamment la loi du 11 septembre 1962 relative à l'exportation, l'importation et le transit des marchandises, la loi du 5 août 1991, relative au commerce des armes et matériel à usage militaire et l'arrêté-loi du 6 octobre 1944 relatif au contrôle de tous transferts quelconques de biens et valeurs entre la Belgique et l'étranger.
Les lois de 1995 et 2003 n'ont pas soulevé de problèmes constitutionnels en rapport avec l'application des décisions obligatoires du CS ni de l'UE. (Voir cependant question 6 ci-après.)

2. Le choix dépend-il du contenu et de la nature juridique de la résolution du Conseil de Sécurité ?

Le choix dépend du contenu de l'harmonisation d'application européenne.

3. Lorsque les sanctions sont imposées pour une période déterminée et non renouvelable, leur abrogation dans l'ordre juridique interne se fait elle implicitement ou un acte normatif est-il requis ?

Conformément aux principes généraux du droit et pour des raisons de sécurité juridique, les décisions qui ne comportent pas de date d'expiration et dont la reconduction est négligée doivent faire l'objet d'un acte normatif d'abrogation.
Aux termes de l'article 3 de la loi de 2003 citée sous point 1, les effets des arrêtés pris en application des mesures adoptées par le Conseil de l'UE en vue d'interrompre ou de restreindre les relations avec certains Etats, sont suspendus ou cessent dès que les mesures adoptées par le Conseil de l'UE sont suspendues ou abrogées.

4. Lorsque les résolutions du Conseil de Sécurité imposant un embargo sur les exportations prévoit des dérogations à celles-ci sans établir un Comité pour les surveiller, l'acte normatif d'incorporation désigne-t-il une autorité nationale compétente pour autoriser l'exportation ?

La Belgique se réfère pour la réponse à cette question à celle qu'à donnée la Commission européenne le 3 février 2005.

5. Les décisions des Comités des sanctions, qui précisent les sanctions du Conseil de Sécurité ou conditionnent le déclenchement de celles-ci, sont-elles incorporées dans le droit interne ?

Lorsque ces décisions concernent des sanctions pour lesquelles la Communauté européenne est compétente, on se réfèrera à la réponse donnée par la Commission européenne à cet égard. Dans les cas contraires, les décisions sont incorporées au droit interne au moyen d'arrêtés royaux délibérés en Conseil des ministres et suivis d'arrêtés d'exécution éventuels, conformément à la Loi du 11 mai 1995 dont question sous 1.

6. Y a-t-il eu des cas où des actes normatifs incorporant des sanctions dans l'ordre juridique interne ont été attaqués devant les tribunaux comme étant contraires aux droits de l'homme ?

7. Y a-t-il des décisions judiciaires nationales ou des pratiques étatiques relatives à la relation entre des sanctions visant des personnes et les droits de l'homme de ces personnes ?

Jusqu'à présent, les autorités belges ont dénombré un seul cas de recours judiciaire contre l'Etat belge dans le cadre de l'exécution des résolutions du CS : il s'agit de la résolution 1267 (1999) du 15 octobre 1999 (mesures restrictives à l'égard des Talibans d'Afghanistan). La plainte déposée par les deux requérants objets des mesures de gel des avoirs invoquait une violation de leur droit fondamental à un procès équitable (art. 6 de la CEDH), de leurs droits fondamentaux à la réputation (art. 12 DUDH), à la vie privée (art. 22 Constitution belge ; art. 8 CEDH et 12 DUDH) et d'accès à un tribunal (art. 11 et 13 Constitution b.).

Concrètement, les requérants reprochaient à l'Etat belge de ne pas apporter d'éléments probants de leur implication dans des actes visés par la décision du Comité des sanctions des Nations Unies et de ne pas vouloir introduire auprès du Comité des sanctions de demande de radiation de leur nom sur la liste établie par ledit Comité.

Dans les attendus de sa décision rendue le 11 février 2005, le juge a relevé qu'au terme d'un délai de deux ans et demi d'instruction sans inculpation, la seule considération exprimée par le défendeur (l'Etat belge) que l'instruction était toujours en cours ne saurait suffire, dans un Etat de droit, à justifier le refus du défendeur d'introduire une demande de radiation auprès des Nations Unies. En conséquence, le juge condamnait l'Etat belge à porter, sous peine d'astreinte, à la connaissance des Nations Unies « l'information pertinente », étant l'absence d'inculpation des demandeurs après près de deux ans et demi d'instruction, et, dès lors, de demander leur radiation de la liste du Comité des sanctions.

En revanche, à la requête de faire constater par le tribunal que les Nations Unies violaient les droits de l'homme à l'égard des demandeurs, ce que le tribunal ne pouvait faire en raison de l'immunité de juridiction dont bénéficie cette organisation internationale, le juge a opposé son incompétence à se prononcer sur la légalité des décisions du Comité des sanctions.

CZECH REPUBLIC

1. **Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has the implementation given rise to any constitutional or other legal problems at national level? Is there any relevant case-law?**

2. **Does the choice depend on the content and the legal nature of the Security Council Resolution?**

The choice of incorporation procedure depends on the nature of the restrictive measure. Measures implementing or reducing economic relations with third countries fall within European Community competence. In such instances the Council Regulations are used as a tool to impose restrictive measures to help attain the objectives of the EU Common Foreign and Security Policy (articulated by Council Common Position). Regulations are directly applicable and have direct effect in the Member States. They are applied and enforced by the competent authorities of the Member States and the Commission. No further legislative action of the Member states is required to transpose them.

The restrictive measures, which fall within EU Member States competence, such as embargoes relating to military goods, are imposed by a Council Common Position and enforced on the basis of export control legislation of Member States. Such national legislation must conform to the Common Position. The legislation adopted by Member States in the field of export control is complemented by the EU "Code of conduct on arms exports" adopted in June 1998 which defines the criteria EU Member States apply for their exports control policy concerning arms. Likewise, restrictions on admission (visa and travel bans) provided for in Council Common Positions are enforced on the basis of Member States national legislation on admission of foreigners.

Restrictive measures, which fall within Member States competence, are implemented in the Czech Republic by means of the Act No. 98/2000 Coll., on the implementation of international sanctions to maintain international peace and security (currently under amendment procedure). According to this Act, the Government of the Czech republic can, after having obtained the approval of the pertinent Committee of the House of Representatives of the Parliament, promulgate Government Decrees by means of which it can impose, alter, suspend, repeal or renew the bans and other restrictions in compliance with the resolutions of the UN Security Council or EU Council imposing international sanctions. Government Decrees have lower normative force than legislative acts adopted by the Parliament.

The Act No. 98/2000 Coll. provides for administrative sanction that shall apply should the provisions of the Government Decree adopted on the basis of the Act be infringed. Sanction consists of penalty payment the amount of which is established with regard to the extent of the threat to foreign and security policy of the State as well as with regard to the actually incurred material losses.

The Act No. 98/2000 Coll. is based on the traditional system of implementation of international sanctions: It makes the application of sanctions against individuals dependant on the imposition of sanctions against subjects of international law (e.g. sanctions against individuals can be enforced only if the individuals are linked to a subject of international law which is in itself target of sanctions). The sanctions directed against individuals are implemented through EU-Regulations.

Certain restrictive measures - specifically embargoes relating to military goods - may be implemented via individual administrative acts adopted by Czech authorities within the limits of their discretion set up by legislative act. Such administrative acts are binding only to their addressee - specific natural or legal person. The Act No. 38/1994 Coll., on foreign trade in military

material, provides for the following mechanism of implementation of international sanctions: The traders – holders of a special concession - have to apply for an import or export licence for every single contract whose object is military material. When the UN Security Council imposes an arms embargo against certain country, the competent authority, which is Ministry of Industry and Trade, refrains from issuing of the licence (after having consulted the Ministry of Foreign Affairs). The Ministry of Industry and Trade may also repeal an already issued licence as soon as a new embargo is imposed.

Another example of the implementation of international sanctions by means of an administrative act is the non-issuance of visa by the Ministry of Interior or Ministry of Foreign Affairs in case of travel bans imposed on citizens of a specific country.

The implementation of UN sanctions in the Czech Republic has not given rise to any constitutional or other legal problems at national level. There is no relevant case law.

3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

The process of abrogation of sanctions depends on the manner in which they were implemented. When a Council Regulation (adopted according to the EC Treaty) or a Government Decree (adopted according to the Act No. 98/2000 Coll.) imposes sanctions for a definite period of time, the sanctions cease to be in force on the expiry date provided in the respective Regulation or Decree. In the absence of an expiry date, another Council Regulation or Government Decree must be adopted to repeal them.

4. When a Security Council Resolution imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority which is competent to authorize export?

There is no special authority within the Czech legal system generally endowed with the power to authorize exceptions from sanctions. In concrete cases, which do not fall within the EC/EU competence, the Czech Government designates, in accordance with the Act No. 98/2000 Coll., by means of a Government Decree specific authorities within the state apparatus (usually ministries) to authorize such exceptions.

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

The Sanctions Committee decisions - as long as they do not fall within the EC/EU competence - are incorporated in domestic law by means of Government Decree adopted by the Czech Government on the basis of the Act No. 98/2000 Coll., on the implementation of international sanctions to maintain international peace and security.

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights?

There has not been any case of act incorporating sanctions in the domestic law being challenged in court for violation of human rights.

7. Are there decisions of national courts or state practice concerning the relationship between sanctions directed towards individuals and human rights of these individuals?

There are no such decisions of national courts.

ESTONIA

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has the implementation to any constitutional or other legal problems at national level? Is there any relevant case law?

In implementing UN SC Resolutions Estonia is bound by the requirements of its EU membership. Therefore UN SC Resolutions imposing sanctions are implemented via relevant EU instruments (mostly through EU common positions and Council regulations). There have not been any Government resolutions for adopting UN Security Council resolutions directly. Should it be necessary to implement the UN SC Resolutions directly (without appropriate EU measures), there are relevant procedures in place. According to the terms and conditions of the International Sanctions Act (in force since 2003) the Government of the Republic shall, on the proposal of the Ministry of Foreign Affairs, make a resolution on taking the measures necessary for the internal application of international sanctions.

2. Does the choice depend on the content and the legal nature of the Security Council Resolution?

There is always the same regime for incorporating UN SC resolutions imposing international sanctions.

3. When sanctions are imposed for a fixed period of time, which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

As the UN SC Resolutions imposing sanctions are implemented via relevant EU instruments (mostly through EU common positions and Council regulations) therefore the sanctions seize to apply on the date of expiration provided therein, or in the absence of the date of expiration, when they are repealed.

Should it be necessary to implement the UN SC Resolutions directly (without appropriate EU measures), the measures necessary for the internal application of international sanctions would also seize to apply on the date of expiration provided in the relevant governmental resolution, or in the absence of the date of expiration, when it is repealed.

4. When a Security Council Resolution imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority, which is competent to authorize export?

In implementing UN SC Resolutions Estonia is bound by the requirements of its EU membership. Therefore UN SC Resolutions imposing export embargos are implemented via relevant EU instruments (mostly Council regulations), which provide the national authorities competent to authorize exceptions to the export embargo.

The import, export and carriage in transit of goods included in the list of strategic goods and the provision of services (including arms and equipment likely to be used for internal repression) requires always special authorisation weather there are sanctions imposed on certain individuals, entities or states or not. The authorization has to be issued by the Strategic Goods Commission formed at the Ministry of Foreign Affairs of the Republic of Estonia. The Commission includes representatives of the Ministries of Foreign Affairs, Defence, Economic Affairs and Communications, the Security Police Board, the Police Board, the Tax and Customs Board and

representatives of other administrative agencies and other specialists according to the necessity. The export and transit of military goods to countries subject to relevant sanctions binding on Estonia is prohibited, regardless of special authorisation.

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

As the UN SC Resolutions imposing sanctions are implemented via relevant EU instruments (mostly through EU common positions and Council regulations) therefore the Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation are also implemented via relevant EU measures. If the Council regulation provide for exemptions which can be granted only by the UN Sanctions Committee, the annexes of the relevant Council regulations also provide inter alia the Estonian national authority(ies) competent to turn to the UN Sanctions Committee in order to request for such exemption.

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights? For example, have national courts assumed jurisdiction in cases where sanctions are challenged by individuals affected by sanctions:

a. if implemented through EU_regulations;

b. b. if implemented directly at national level?

So far there have not been any cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights.

7. Are there decisions of national courts or state practice concerning the relationship between sanctions towards individuals and human rights of these individuals?

So far there have not been any decisions of national courts or state practice concerning the relationship between sanctions towards individuals and human rights of these individuals.

FINLAND

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has the implementation given rise to any constitutional or other legal problems at national level? Is there any relevant case law?

The following complements the reply provided by the European Union.

Sanctions imposed by the UNSC or the EU are implemented at the national level by virtue of the *Act on the Enforcement of Certain Obligations of Finland as a Member of the United Nations and of the European Union* ("Sanctions Act", Act No 659/1967 as amended by Act No 824/1990, 705/1997, 191/2000, 882/2001 and 364/2002). The Act provides a basis for prompt implementation of provisions of Council sanctions regulations in a case where regulations are adopted on the basis of Article 60, 301 or 308 of the Treaty establishing the European Union.

The Sanctions Act, together with the Penal Code, provides for the sanctions and forfeitures to be imposed for violations of UNSC resolutions or Council regulations. According to Chapter 46, section 1 (11) of the Finnish Penal Code, a person who violates or attempts to violate a regulatory provision in a sanctions regulation, adopted on the basis of Article 60, 301 or 308 of the Treaty establishing the European Community, shall be sentenced for a regulation offence to a fine or to imprisonment for at most four years.

The Act further provides a basis for implementing binding UNSC resolutions in the absence of a corresponding Council regulation. In such a case, the resolution would be implemented through a government decree on the enforcement of obligations arising from the applicable resolution. For practical reasons, and in order to avoid undesired parallel legislation, government decrees have not been issued if the Council regulation is expected to be adopted.

The arms embargoes imposed by the UNSC and the EU are implemented at the national level by virtue of the *Act on the Export and Transit of Defence Materiel* (Act No. 242/1990, as amended by Acts 197/1995, 893/2001, 385/2002, and 900/2002). According to the Act, the export, transit or brokerage of defence materiel is subject to specific authorisation (export and brokerage licence). A licence to export or broker shall not be granted if it jeopardizes Finland's security or is inconsistent with Finland's foreign policy. *The General Guidelines for Export, Transit and Brokerage of Defence Materiel* adopted by the Government (1000/2002, as amended by Government decision 101/2003) provide that economic sanctions and arms embargoes imposed by the United Nations Security Council or by the European Union shall be complied with when granting an export licence or licence to the transhipment of defence materiel. The relevant economic sanctions and arms embargoes are listed in annexes of the General Guidelines for Export, Transit and Brokerage of Defence Materiel, which are kept up to date by the Finnish Ministry for Foreign Affairs. A reference to the relevant EU or UNSC decisions is included in these annexes after their entry into force.

According to section 7 of the Act on the Export and Transit of Defence Materiel, a person who commits an export offence shall be fined or imprisoned for a maximum period of four years.

Furthermore, the *Firearms Act* (Act No 1/1998) provides that the transfer, import, export and transit for commercial purposes of firearms, firearm components, cartridges and specially dangerous projectiles shall be subject to an authorisation. The licensing authority shall when appropriate establish with the Ministry for Foreign Affairs that there are no foreign or security policy obstacles for the granting of an export or transit permit.

In the case of travel restrictions, the Ministry for Foreign Affairs informs the visa-issuing officials as well as the Finnish Frontier Guard of the relevant EU common positions. The names of persons

designated as being subject to restrictive measures have been included into the national electronic visa register to which the Finnish Frontier Guard also has access.

As to the relevant case law, there have been no such cases before national courts in Finland.

2. Does the choice depend on the content and the legal nature of the Security Council Resolution?

The choice depends on the nature of the measure that must be taken (see answer to question 1).

3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

See the reply by the European Union.

4. When a Security Council Resolution imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority which is competent to authorize export?

A reference to the competent national authorities is made in the annexes of the relevant EU Council Regulations.

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

See the reply by the European Union.

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights? For example, have national courts assumed jurisdiction in cases where sanctions are challenged by individuals affected by sanctions:
a. if implemented through EU-regulations;
b. if implemented directly at national level?

There have been no such cases before national courts in Finland.

7. Are there decisions of national courts or state practice concerning the relationship between sanctions directed towards individuals and human rights of these individuals.

None.

FRANCE

1. Quelles sont les procédures d'incorporation des résolutions du Conseil de sécurité imposant des sanctions dans l'ordre juridique de votre Etat ? L'incorporation se fait elle par voie législative, réglementaire ou autre ?

Les résolutions du Conseil de sécurité relatives à des mesures de sanctions donnent lieu, au niveau de l'Union européenne (UE), à l'adoption de positions communes du Conseil de l'UE. Excepté le cas des embargos portant sur les armes et celui des interdictions de voyager, ces positions communes font ensuite l'objet de règlements communautaires qui sont directement applicables dans l'ordre juridique interne des Etats membres de l'UE. Les interdictions de voyager et les embargos sur les armes appellent quant à eux des mesures nationales :

- pour les interdictions de voyager, des « fiches d'opposition à entrer sur le territoire » sont adoptées par les autorités nationales. Ces fiches signalent aux services consulaires et à la police aux frontières les étrangers dont la présence sur le territoire présente une menace pour l'ordre public et à qui la délivrance de visa et l'entrée sur le territoire doivent de ce fait être refusées. Les personnes inscrites sur une liste de personnes interdites de voyager en vertu d'une résolution du Conseil de sécurité font l'objet d'une fiche d'opposition ;

- pour les embargos sur les armes, il convient de rappeler que, en France, les activités liées à la production et au commerce des matériels de guerre et matériels assimilés font l'objet d'un régime d'autorisation préalable en vertu du décret-loi du 18 avril 1939 fixant le régime des matériels de guerre, armes et munitions. Lorsqu'un embargo sur les armes est instauré par une résolution du Conseil de sécurité, les exportateurs d'armes en sont informés et aucune autorisation d'exportation ne leur est délivrée.

2. Le choix dépend-il du contenu et de la nature juridique de la résolution du Conseil de sécurité ?

La réponse figure déjà dans la réponse à la question 1.

3. Lorsque les sanctions sont imposées pour une période déterminée et non renouvelable, leur abrogation dans l'ordre juridique interne se fait elle implicitement ou un acte normatif est-il requis ?

En règle générale, les résolutions du Conseil de sécurité prévoient que les sanctions sont imposées pour une période déterminée mais à l'issue de laquelle le Conseil de sécurité pourra décider de leur reconduction.

Pour couvrir l'hypothèse où les sanctions seraient reconduites in extremis, avant la date d'expiration de la résolution, la position commune et les règlements communautaires pris en application ne précisent pas de durée de validité. Ces actes sont abrogés après la date d'expiration de la résolution du Conseil de sécurité, lorsqu'il est constaté que les sanctions n'ont pas été reconduites par ce dernier.

S'agissant des interdictions de voyager, les fiches d'opposition à entrer sur le territoire sont supprimées. S'agissant des embargos sur les armes, des autorisations d'exporter peuvent à nouveau être délivrées.

4. Lorsque la résolution du Conseil de sécurité imposant un embargo sur les exportations prévoit des dérogations à celles-ci sans établir un comité pour les

surveiller, l'acte normatif d'incorporation désigne t-il une autorité compétente pour autoriser l'exportation ?

Il convient de relever que ces dérogations ne concernent que les biens civils. Lorsque la résolution du Conseil de sécurité prévoit des dérogations aux embargos sur les exportations de biens civils, les règlements communautaires qui mettent en œuvre ces embargos fixent la liste des autorités compétentes dans chaque Etat membre pour les accorder. En France, le ministère de l'économie, des finances et de l'industrie et le ministère des affaires étrangères sont généralement désignés.

5. Les décisions des Comités des sanctions qui précisent les sanctions du Conseil de sécurité ou conditionnent le déclenchement de celles-ci sont elles incorporées dans le droit interne ?

Les Comités des sanctions sont le plus généralement chargés d'actualiser les listes des personnes et entités visées par les sanctions instaurées en vertu d'une résolution du Conseil de sécurité.

Lorsqu'une position commune du Conseil de l'UE est adoptée à la suite d'une résolution du Conseil de sécurité relative à des mesures de sanctions, elle précise que les sanctions qu'elle définit s'appliquent aux personnes et entités visées par la liste telle qu'établie par cette résolution et modifiée par le Comité des sanctions créé par le Conseil de sécurité.

En règle générale, cette liste est annexée aux règlements communautaires du Conseil de l'UE qui mettent en œuvre la position commune. Ces règlements habilitent la Commission européenne à modifier ou compléter la liste sur la base des recensements effectués par le Comité des sanctions. Les décisions du Comité des sanctions relatives à des modifications de listes de personnes et entités visées par des mesures de sanction donnent alors lieu à des règlements de la Commission, sans qu'une modification du règlement du Conseil ou de la position commune ne soit par conséquent nécessaire.

S'agissant des interdictions de voyager, toute décision d'un Comité des sanctions ajoutant ou retirant un nom de la liste des personnes visées par de telles interdictions en vertu d'une résolution du Conseil de sécurité donne lieu à une actualisation des fiches d'opposition à entrer sur le territoire décrites à la question 1.

Lorsqu'une décision d'un Comité des sanctions modifie la liste des personnes et entités auxquelles la fourniture d'armes est interdite en vertu d'une résolution du Conseil de sécurité, aucune autorisation d'exporter n'est accordée aux entreprises françaises qui entendent commercer avec ces personnes et entités.

6. Y a t-il eu des cas où des actes normatifs incorporant des sanctions dans l'ordre juridique interne ont été attaqués devant les tribunaux comme étant contraires aux droits de l'Homme ? par exemple, est ce que les tribunaux se sont déclarés compétents dans les cas où des sanctions sont contestées par des personnes affectées par ces dernières :

- ***Quand les sanctions sont mises en œuvre par des actes de l'Union européenne ?***

Voir la réponse de la Communauté européenne sur ce point.

- ***Quand les sanctions sont mises en œuvre au plan national ?***

Les mesures nationales liées à la mise en œuvre de sanctions du Conseil de sécurité ont fait l'objet, devant les juridictions nationales, de très peu de recours mettant en cause la violation des droits de l'Homme. Cependant on peut relever que le Conseil d'Etat français a eu récemment à connaître d'un recours déposé contre une mesure de gel des avoirs à l'encontre d'une association liée au réseau Al-Qaida. Cette association avait fait l'objet d'une mesure nationale préventive, ses

avoirs ayant été gelés quelques jours avant que son nom ait été inscrit sur la liste du comité des sanctions créé par la résolution 1267. L'association contestait notamment:

- l'absence de motivation de la mesure de gel ;

- la méconnaissance des droits de la défense, faute pour l'association d'avoir été invitée à présenter ses observations avant la prononciation de la mesure de gel ;

- le bien fondé de la mesure de gel, l'article L. 151-2 du code monétaire et financier disposant que le Gouvernement peut prendre des mesures de gel « pour assurer la défense des intérêts nationaux ».

Dans son arrêt du 3 novembre 2004, *Association Secours Mondial de France,* le Conseil d'Etat a rejeté ce recours. Il a en effet considéré que :

- les motifs ayant justifié la mesure restrictive étaient couverts par le secret de la défense nationale protégé par l'article 413-10 du code pénal. Par conséquent, l'association en cause n'était pas fondée à soutenir que la mesure de gel aurait dû être motivée ni que celle-ci aurait été prise au terme d'une procédure irrégulière dès lors que l'association n'avait pas été mise à même de présenter ses observations écrites ou orales ;

- dans les circonstances de l'espèce, les autorités françaises n'avaient pas commis d'erreur d'appréciation en estimant que, en application du code monétaire et financier, la défense des intérêts nationaux justifiait que l'association fît l'objet d'une mesure de gel. Ces circonstances renvoient aux renseignements dont disposaient les autorités françaises et au fait que, quelques jours après l'adoption de la mesure national de gel, l'association requérante avait été inscrite, d'une part, sur la liste élaborée par le Comité des sanctions créé par la résolution 1267 du Conseil de sécurité des Nations-Unies et, d'autre part, sur celle élaborée par le règlement (CE) n° 1893/2002, de la Commission, du 23 octobre 2002, modifiant le règlement (CE) n° 881/2002, du Conseil, instituant certaines mesures restrictives spécifiques à l'encontre de certaines personnes et entités liées à Oussama ben Laden, au réseau Al-Qaida et aux Taliban.

7. Y a t-il des décisions judiciaires nationales ou des pratiques étatiques relatives à la relation entre des sanctions visant des personnes et les droits de l'Homme de ces personnes ?

Voir la réponse à la question 6.

GERMANY

Germany aligns itself to the answers provided for by the European Commission (see note of the Commission's Legal Service to the Chair of CAHDI from February 3, 2005) in particular with regard to **questions 2, 3, 4 and 5**, and would like to give additional information on the implementation of those measures under UN Security Council resolutions which do not fall under the exclusive competence of the European Community according to Article 15 of the EU Treaty and are thus taken at a national level.

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has the implementation given rise to any constitutional or other legal problems at national level? Is there any relevant case law?

UN arms embargos

According to Art. 34 para.4 of the German Foreign Trade and Payment Act ("Außenwirtschaftsgesetz") any person who violates this act or a regulation based on this act or a legal provision of the European Communities on the restriction of foreign trade and payments published in the Federal Law Gazette or the Federal Gazette intended to implement an economic measure of the United Nations pursuant to chapter VII of the UN Charter shall be punished by imprisonment for at least two years. According to the German export control legislation every export of arms is subject to a license granted by the competent authority. In case of an existing arms embargo such license will not be granted unless the export is meant to further the purposes specified in the relevant Security Council resolution or is otherwise approved by the Security Council sanctions committee.

UN Travel restrictions

As regards the implementation of the international obligations deriving from UN Security Council resolution 1390 aiming to prevent the entry and transit of terrorists included in the list of UN Security resolutions 1267, 1333 and 1455, those listed persons have been included in the data files on foreigners to whom entry is refused. Germany draws attention to the fact that a person who has been included in such list may only be refused entry and transit if that person can be clearly identified on the basis of the information given in the list. The data of those persons for whom sufficient identifying information is available have also been entered in the Schengen Information System for the refusal of entry. The relevant national data files can be accessed by all offices charged with border control tasks in the Federal Republic of Germany; the Schengen Information System can be accessed by all police and border police authorities of the Schengen Contracting States.

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights?

7. Are there decisions of national courts or state practice concerning the relationship between sanctions directed towards individuals and human rights of these individuals?

Germany is currently preparing a comprehensive survey of the exact number of cases where the act incorporating sanctions in the German legal system was challenged in a legal proceeding before a German court. Once the data will have been established the survey will be provided to the Council of Europe.

GREECE

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has the implementation given rise to any constitutional or other legal problems at national level? Is there any relevant case-law?

The basis for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of Greece are Law 92/1967 on the implementation of Security Council Resolutions and Law 936/1979 on external trade.

According to the former, any Resolution based on article 41 of the U.N. Charter: a) is published in the (state) Official Gazette by ministerial decision and b) is implemented through the issuance of a Presidential Decree. Such Decree further specifies the prohibitions provided for in the Resolution and the measures which are necessary for its implementation. Any violation of the provisions of the aforementioned Presidential Decrees is subject to imprisonment up to five years or to a fine or to both.

Pursuant to the latter Law, Security Council Resolutions and EC Regulations providing measures concerning export and import trade are implemented through decisions of the Ministry of Economy and Finance. The infringement of these measures entails administrative and penal sanctions (imprisonment up to two years, fines, impounding of goods).

Certain problems have been identified with regard to the imposition of sanctions targeted at individuals suspected for terrorist activity. The problem mainly concerns the freezing of assets of such individuals, a measure which, if prolonged, requires a judicial decision and might eventually be considered by the Courts to affect the right to property guaranteed by the Greek Constitution. Such problems also arise from S.C. Resolution 1483 insofar as that Resolution provides for the freezing and the transfer of the frozen assets to a special Fund. This kind of measures which may amount to confiscation of assets might also create a constitutional problem. However, no relevant case has been reported.

2. Does the choice depend on the content and the legal nature of the Security Council Resolution?

In certain cases, the quasi legislative nature of a particular Security Council Resolution may require a formal act for its implementation. Such, for example, is the case of S.C. Resolution 1373. In this connection, Law 3251/2004 qualifies, under specific conditions, certain criminal offences as terrorist acts punished by severe penalties, thus providing more solid ground for the implementation of that Resolution.

3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

The Presidential Decrees mentioned under 1. above provide for the duration of sanctions if there is a relevant stipulation in the Security Council Resolution concerned. In such a case, there is, normally, no need for their repeal. If, however, the sanctions are terminated by a subsequent resolution, a new Presidential Decree is issued in order to repeal the one by which the sanctions were imposed.

4. When a Security Council Resolution imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority which is competent to authorize export?

No such special national authority has been established so far. However, the General Directorate of Policy Planning and Administration of the Ministry of Economy and Finance is competent to authorize such exceptions.

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

This is done by reference in the abovementioned Presidential Decrees to the decisions of the Sanctions Committee.

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights?

No. However, such possibility may not be excluded in the future.

7. Are there decisions of national courts or state practice concerning the relationship between sanctions directed towards individuals and human rights of these individuals?

No. However, such possibility may not be excluded in the future.

HUNGARY

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has the implementation given rise to any constitutional or other legal problems at national level? Is there any relevant case-law?

The adequate transformation of international obligations into the Hungarian legal system and the introduction of executive orders varies by the characteristics of the restrictive measures. It is also to be noted that Hungary's accession to the EU has profoundly altered the process. The pre-accession phase shows examples of Acts of Parliament or Government Decrees or publication of the UN sanctions in the Official Gazette as announcements by the Foreign Minister. Now the joint application of EU and domestic legal institutions provides for speedy execution of UN Security Council Resolutions.
The procedures for incorporation are depending on the types of sanctions imposed by them.
There are currently 4 different types of sanctions, and they are executed differently:

- **Arms** embargoes and restrictions on **dual-use** products are automatically put into effect by Hungarian authorities (Hungarian Trade Licensing Office). The relevant government decrees (Gov. Decree No. 16/2004 on licensing of export, import, transfer and transit of military equipment and service; Gov. Decree No. 50/2004 on licensing of international trade of dual-use products and technologies) provide that the authority shall not grant export or import licence for individuals or entities whom the SC Resolution applies to. The authority is obliged by the law to follow the conditions set out in the SC Resolutions.

- Comparable procedure applies for **travel** restrictions. In line with the provisions of the Act No. XXXIX of 2001 on the entry and stay of foreigners the Office of Immigration and Nationality of the Ministry of the Interior includes the names of individuals whom the SC Resolutions apply to the list of persons whose application for entry should be turned down and even their residency permit may be withdrawn.

- **Trade** and **financial** restrictions are applied by means of EU legislation – however the Act LXXXVIII of 2001 on fighting terrorism and prevention of money laundering also contains provisions for restrictions independently from EU law. In the presently applied process the Council adopts regulations in order to implement SC Resolutions imposing sanctions. Trade matters –and sanctions- are within exclusive competency of the European Community and therefore Member States are obliged to abstain from any legislation in this field. As for financial sanctions, the Community has also the exclusive right to legislate in this field. Community regulations are binding in their entirety and directly applicable in all Member States.

As the EU implements SC Resolutions imposing sanctions based on Chapter VII of the UN Charter without delay and latest within 30 days of the adoption of the UNSC Resolution, Member States are enabled to implement them quickly as well.

2. Does the choice depend on the content and the legal nature of the Security Council Resolution?

To the extent explained above.

3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

In case of arms embargoes and restrictions on dual-use products, as well as travel restrictions no

repeal takes place. There is no need for normative action either. According to the new normative background provided by SC Resolution the authorities cease to apply them.

Trade and financial restrictions remain applicable directly until Community Regulations cease to apply. The expiration date set forth in Regulations is adjusted to the date in the SC Resolutions. If there is no expiration date the Council repeals them according to SC Resolutions.

4. When a Security Council Resolution imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority which is competent to authorize export?

In case of arms and dual-use embargoes, the competent national authority mentioned under point No.1. has the competency to grant exemptions if the conditions set forth in the SC Resolutions are met. The same applies to the other types of sanctions.

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

In case of travel restrictions and arms embargoes Hungarian law empowers national authorities to apply the specified lists created by the UN bodies, therefore, further legislation is not needed.

As for financial and trade restrictions the EC Commission is empowered to amend EC Council Regulations to give legal effect to designations of persons, groups and entities made by the Sanctions Committee. EC Council Regulations are executed directly.

If exemptions must be granted by a UN Sanctions Committee, the EC Council Regulations stipulate that requests must be sent to the competent authorities, which will then take the matter to the Sanctions Committee and inform the applicant of the decision. In order to provide the clarity that is needed, any conditions for granting exemptions laid down in the UN Security Council Resolution are included in the EC Council Regulation.

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights?

Presently there is no such case filed at Hungarian Courts. Similarly Hungary can not report any judicial or state practice concerning the relation between sanctions and human rights of individuals.

IRELAND

The following information is provided on behalf of the Irish delegation and addresses the issues raised by the Greek and Swedish delegations in the documents submitted to the CAHDI meeting of 18-19 March 2003 (documents CAHDI (2004) 7 and 9), as put in the Questionnaire on National Measures to Implement UN Sanctions (CAHDI (2004) 20).

1. Which are the procedures for the incorporation of Security Council resolutions imposing sanctions in the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way?

1.0 The manner of Ireland's incorporation of Security Council resolutions is shaped by our membership of the European Union. As a matter of international law the UN Charter does not bind the European Union or the European Community as neither are members of the United Nations, membership of which is limited to states. Furthermore, neither the EC Treaty nor the Treaty on European Union (TEU) contain an express provision confirming that the Charter or Security Council resolutions are binding on the Community[1] Yet despite the fact that Security Council resolutions are binding upon EU member states as members of the UN, they choose to leave implementation of UN resolutions relating to sanctions to the Community.

1.1 In June 2004 the Council of the European Union adopted the Basic Principles on the Use of Restrictive Measures (Sanctions) which pledges to ensure timely implementation by the EU of measures agreed by the Security Council. The general practice is that virtually all Security Council resolutions imposing sanctions are followed by a Common Foreign and Security Policy common position which in turn usually triggers a Council Regulation imposing an obligation upon member states to apply sanctions.[2] Depending on the subject matter, the implementation of the Common Position may be carried out at a national level.

1.2 EC Regulations implementing Security Council resolutions do not directly provide for criminal or administrative sanctions to be applied in the case of their infringement. The Regulations do however typically set out an obligation for Member States to lay down rules on sanctions for infringement and to take all necessary measures to ensure that they are implemented. The choice between administrative and criminal sanctions is left to the discretion of each Member State, however the sanctions are required to be effective, proportionate and dissuasive.

1.3 Article 249 of the EC Treaty provides that a Regulation "shall be binding in its entirety and directly applicable in all Member States". The true effect of this provision was clarified by the ECJ when it made clear that "Regulations are, as such, directly applicable in all Member States and come into force solely by virtue of their publication in the *Official Journal* of the Communities, as from the date specified therein".[3] As Regulations are directly applicable in Member States, there is no need to introduce further Irish legislation: the sanctions apply automatically as a matter of Irish law.

1.4 Article 29.4.10° of the Irish Constitution gives effect to this principle by stating as follows:

> "No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State which are necessitated by the obligations of membership of the European Union or of the Communities, or prevents laws enacted, acts done or measures adopted by the European Union or by the Communities or by institutions thereof, or by bodies

[1] For the basis of a possible argument that UN Security Resolutions may be binding upon the Community see Eeckhout, Piet, *External Relations of the European Union*, *Legal and Constitutional Foundations*, Oxford University Press, 2004 at 437-440.
[2] Eeckhout, Piet, *External Relations of the European Union*, *Legal and Constitutional Foundations*, Oxford University Press, 2004 at 448.
[3] *Commission v Italy* Case 39/72 [1973] ECR 101, [1973] CMLR 439 at paragraph 17.

> competent under the Treaties establishing the Communities, from having the force of law in the State."

1.5 Section 2 of the *European Communities Act, 1972* effectively repeats this by stating as follows:

> "From the 1st day of January, 1973, the treaties governing the European Communities and the existing and future acts adopted by the institutions of those Communities shall be binding on the State and shall be part of the domestic law thereof under the conditions laid down in those treaties."

1.6 Typically however, a Council Regulation implementing UN sanctions will require a national implementing measure to determine such matters as the sanctions to be applied where the provisions of the Regulation are infringed. Under Irish law this is usually done by way of delegated or secondary legislation, most commonly in the form of a Statutory Instrument. For this to occur, primary legislation, in the sense of an act passed by the Oireachtas [Parliament], must grant an entity, usually a government minister, the power to enact secondary legislation. By virtue of section 15 of the *Interpretation Act, 1937* such power includes a power to revoke or amend the instrument and to replace it with another. Statutory Instruments are governed by the *Statutory Instruments Act, 1947*. Section 1(1) of that Act defines a Statutory Instrument as being "an order, regulation, rule, scheme or by-law" which is made in pursuance of a statutory power. Whereas regulations tend to contain detailed provisions relating to the general matters in the primary act, an order tends to be made in respect of a single exercise of a delegated power. Both regulations and orders have been used in relation to sanctions.

1.7 Section 3 of the *European Communities Act, 1972* is a general provision which grants all ministers of state a delegated power to enact such regulations as are necessary to give binding effect to acts adopted by Community institutions. It states:

> "(1) A Minister of State may make regulations for enabling section 2 of this Act to have full effect.
> (2) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister making the regulations (including provisions repealing, amending or applying, with or without modification, other law, exclusive of this Act.
> (3) Regulations under this section shall not create an indictable offence."

Section 4 of the *European Communities Act, 1972* as inserted by the *European Communities (Amendment) Act, 1973* states:

> "(1)(a) Regulations under this Act shall have statutory effect.
> (*b*) If the Joint Committee on the Secondary Legislation of the European Communities recommends to the Houses of the Oireachtas [*ie* Parliament] that any regulations under this Act be annulled and a resolution annulling the regulations is passed by both such Houses within one year after the regulations are made, the regulations shall be annulled accordingly and shall cease to have statutory effect, but without prejudice to the validity of anything previously done thereunder."

Since 1973 no such annulling resolutions as mention in section 4(1)(b) have been passed by the Oireachtas [Parliament] so that, in practice, regulations made under section 3 of the *European Communities Act, 1972* have had full statutory effect.

1.8 Section 4 of the *Financial Transfers Act 1992* delegates to the Minister for Finance a specific power to enact orders restricting financial transfers with other states. It provides as follows:

> "4(1) The Minister may by order make provision for the restriction of financial transfers between the State and other countries.

(2) An order under this section shall be made in conformity with the treaties governing the European Communities.
(3) An order under this section may be made on such terms and subject to such conditions as the Minister may prescribe.
(4) The Minister may by order amend or revoke any order made by him under this section.
(5) An order under this section may include such supplementary provisions as the Minister thinks fit for the supervision of financial transfers and for the administration and enforcement of the provisions of any such order."

This power has been used by the Minister for Finance in relation to Council Regulation (EC) No 2580/2001 in enacting SI No 458 of 2004, Financial Transfers (Counter Terrorism) Order 2004 and Council Regulation (EC) No 314/2004 in enacting SI No 462 of 2004, Financial Transfers (Zimbabwe) (Prohibition) Order 2004.

1.9 Irish regulations enacted by Statutory Instrument in order to give effect to Council Regulations implementing UN sanctions typically designate contravention of the Council Regulation as a criminal offence and set maximum penalties for conviction following a summary trial. Unlike regulations, orders do not impose criminal sanctions.

1.10 Typically the maximum penalty will be a fine of up to €3,000 and/or imprisonment of up to either 6 or 12 months. Each regulation further provides that where the offence has been committed by a body corporate a director, manager, secretary or other similar officer of a body corporate may also be held so liable where the offence has been proved to have been committed "with the consent, connivance or approval of or to be attributable to any neglect" on the part of that person.

2. Does the choice depend on the content of the Security Council Resolution?

2.0 Generally the choice of Irish implementing measure will remain a Statutory Instrument and while restrictions on financial transactions are usually enacted by way of order under the *Financial Transfers Act, 1992* rather than a regulation pursuant to the *European Communities Act, 1972* this is of no practical consequence.

3. When sanctions are imposed for a fixed period which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

3.0 Increasingly, Council Regulations implementing UN sanctions follow the text of the Security Council resolution with regard to the expiration of the sanctions. Thus, where a Security Council resolution imposes sanctions for a fixed period of time, the Council Regulation will do likewise. When this period expires the Council Regulation automatically ceases to be in force. For example, Council Regulation (EC) No 1745/2000 of 3 August 2000 implemented Security Council Resolution 1306 (2000) which imposed an 18 month prohibition on the importation of rough diamonds from Sierra Leone. The Council Regulation was stated to apply until 5 January 2002. Security Council Resolution 1385 (2001) extended the prohibition for a further 11 months from 5 January 2002. In turn, Council Regulation (EC) No 303/2002 of 18 February 2002 implemented the Security Council's decision by renewing the sanctions until 5 December 2002. Subsequently, Security Council Resolution 1446 (2002) extended the prohibition for a further six months from 5 December 2002, a decision implemented by Council Regulation (EC) No 2290/2002 of 19 December 2002, which was stated to expire on 5 June 2003. There were no further renewals.

3.1 On the other hand, where a Security Council resolution sets no time period or expiration date, the corresponding Council Regulation will similarly be for an indefinite period. In such a case a specific Community measure is required to suspend the sanctions. For example, Security Council Resolutions 864 (1993), 1127 (1997) and 1173 (1998) imposed sanctions upon Angola in relation to the activities of UNITA for an indefinite period. In resolution 1448 (2002), the Security Council decided that these sanctions should cease to have effect. Consequently, having implemented the

UN sanctions in Council Regulation (EC) No 1705/98 of 28 July 1998, a further Council Regulation (No 146/2003 of 27 January 2003) was required in order to repeal the earlier measure and lift the sanctions.

3.2 Just as Council Regulations implementing Security Council resolutions tend to follow the provisions of these resolutions relating to expiration, Irish laws implementing Council Regulations usually mirror the relevant time period. Thus, if a Council Regulation is for a definite period, mention will be made in the Irish implementing measure of an expiration date. To pursue the examples given above, in response to each of the three Council Regulations on Sierra Leone (1745/2000, 303/2002 and 2290/2002) three regulations were enacted by Statutory Instrument (SI No 356 of 2000, SI No139 of 2002 and SI No 65 of 2003) each of which repeated the expiration date of the relevant Council Regulation.

3.3 On the other hand, where a Council Regulation sets no time period or expiration date, any corresponding Irish regulation will similarly be for an indefinite period. In such a case a specific Irish law measure is required to revoke the implementing Irish measure. For example, having given effect to Council Regulation 1705/98 on Angola in SI No 74 of 2002 a further Statutory Instrument was required to revoke the measure, namely SI No 139 of 2003.

4. When a Security Council resolution imposing an export embargo provides for exceptions while not establishing a committee to authorise such exceptions, does the incorporating act appoint a national authority which is competent to authorise export?

4.0 Where a Security Council resolution provides for certain exemptions, a corresponding Council Regulation will usually designate competent national authorities whose function it is to authorise certain activity. For example, paragraph 21 of Security Council Resolution 1493 (2003) provides that certain restrictive measures on the Democratic Republic of the Congo "shall not apply to supplies to MONUC, the Interim Emergency Multinational Force deployed in Bunia and the integrated Congolese national army and police force", without specifying who is to authorise such exceptions. In implementing this exception, Article 2 of Council Regulation (EC) No 1727/2003 provides that the prohibition in Article 1 shall not apply to certain activities, "if an authorisation for such activities has been granted by the competent authority, as listed in the Annex, of the Member State, where the service provider is established".

4.1 Similarly, paragraph 23 of Security Council Resolution 1483/2003 requires states to transfer frozen funds to the Development Fund for Iraq without specifying who is to authorise the unfreezing of funds for this purpose. Council Regulation (EC) No 1799/2003 amends Article 6 of Regulation (EC) No 1210/2003 so that it provides that "the competent authorities of the Member States, as listed in Annex V, may authorise the release of frozen funds or economic resources" if certain conditions are met.

4.2 Where a Council Regulation allows for a national authority to approve of certain activities each Member State will nominate one or more such authorities which are then listed in an annex to the Regulation. Depending on the type of restrictive measure involved, one or more of four government departments or agencies are typically designated as the competent Irish authority capable of authorising certain activity, namely: (i) The Licensing Unit, Department of Enterprise, Trade and Employment, (ii) Aviation Regulations and International Relations Division, Department of Transport, (iii) the Bilateral Economic Relations Division, the Department of Foreign Affairs and (iv) Financial Markets Department, Central Bank of Ireland. The implementing Irish legislation may elaborate on the role of the designated authority. For example, SI No 461 of 2004 which was enacted to implement Council Regulation (EC) No 1210/2003 as amended provides as follows:

> "6. The Central Bank may, for the purposes of the administration and enforcement of the provisions of these Regulations, give such directions or issue such instructions to a person as it sees fit.

7. A person who fails to comply with a direction or an instruction issued under Regulation 6 shall be guilty of an offence."

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

5.0 Decisions of a UN Sanctions Committee which amount to a change in the sanctions regime give rise to the need for corresponding Community measures to amend existing Council Regulations. In this regard, the European Commission has been empowered to take certain implementing decisions amending Council Regulations, in particular as regards the publication of lists of targeted persons, groups or entities.

5.1 Where a Council Regulation has been amended by Commission Regulations so as to give effect to decisions of the UN Sanctions Committee before the enactment of an Irish implementing measure, any such measure will incorporate the amended version of the Council Regulation. So for example, SI No 554 of 2002 provides that for its purposes, "Council Regulation" means Council Regulation (EC) No 881/2002 as amended by six listed Commission Regulations.

5.2 Clearly however not all UN Sanctions Committee decisions will have been incorporated into Irish law in this way. This situation was considered by the High Court in the case of *Bosphorus Hava Yollari Turizim Ve Ticaret Anonim Sirketi v Minister for Transport, Energy and Communications*, *Ireland and the Attorney General*.[4] In that case, having impounded a plane at Dublin Airport pursuant to Council Regulation (EC) 990/93, the Irish authorities requested the advice of the UN Sanctions Committee, which was strongly of the view that the aircraft fell within the terms of Security Council Resolution 820/1993 and should be impounded.

5.3 While the Court noted that Security Council resolutions "do not form part of Irish domestic law and, accordingly, would not of themselves justify the minister in impounding the aircraft",[5] the fact that the UN resolution had formed the "genesis" for the relevant EC provision meant that interpretation of the terms used in the UN resolution could be of considerable assistance. Nevertheless, the Court found that rather than give any commentary or explanation on the Resolution, the decision of the Sanctions Committee was an "unexplained conclusion" and consequently of no value to the Court in the performance of its function. Similar views were expressed by the European Court of Justice (following Advocate General Jacobs) when the matter came before that Court by way of a preliminary reference from the Irish Court.

6. Have there been cases where the act where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights?

6.0 There has been one significant case in Ireland where the act incorporating sanctions in the domestic legal order was challenged for being in violation of human rights, namely *Bosphorus Hava Yollari Turizim Ve Ticaret Anonim Sirketi v Minister for Transport, Energy and Communications*, *Ireland and the Attorney General*.[6] The case has been decided upon by the Irish Supreme Court and the European Court of Justice[7] and was heard by the European Court of Human Rights on 29 September 2004.

6.1 The facts of the case were as follows. Security Council Resolution 820/1993 was implemented by Council Regulation (EC) No 990/93 which prohibited the export to or importation from the Federal Republic of Yugoslavia (Serbia and Montenegro) of any commodities or products. In turn the European Communities (Prohibition of Trade with the Federal Republic of Yugoslavia (Serbia and Montenegro)) Regulations 1993 gave effect to the Council Regulation in Ireland. The

[4] [119] 2 ILRM 551 at 557.
[5] *Ibid*.
[6] [1994] 2 ILRM 551 (High Court), [1997] 2 IR 1 (Supreme Court).
[7] Case C-84/95 [1996] ECR I-3953.

Minister for Transport, Energy and Communications was designated the as competent authority for the purposes of Article 8 of the Council Regulation which provided that "all vessels … and aircraft in which a majority or controlling interest is held by a person or undertaking in or operating from the Federal Republic of Yugoslavia … shall be impounded by the competent authorities of the Member States".

6.2 In April 1993 an aircraft operated by the applicant Turkish company, *Bosphorus Hava*, arrived in Dublin Airport for maintenance. The aircraft was registered with the Turkish Ministry of Transport and Communications General Directorate of Civil Aviation and according to the relevant certificates was owned by Yugoslav Airlines (JAT) and operated by the applicant. By a lease agreement made in 1992, JAT leased two aircraft to the applicant for a period of 48 months in return for a deposit for each aircraft and a monthly rental. The lease expressly provided that ownership stayed with the lessor, JAT. Subsequent to delivery, the applicant had complete control of the aircraft and the cabin and flight crew were employees of the applicant.

6.3 While the aircraft was at Dublin Airport the Minister for Transport, Energy and Communications ordered that it be impounded pursuant to Council Regulation (EC) 990/93. The Minister had been advised by the UN Sanctions Committee that the aircraft fell within the terms of Security Council Resolution 820/1993. In the High Court the applicant sought a declaration that the aircraft did not come within the terms of Article 8 of the Council Regulation and that the Minister was not empowered to impound the aircraft. Adopting a teleological approach to Article 8, the Court found that the relevant interest of the Yugoslav undertaking in the asset was the possession or the right to enjoy control or regulate the use of the asset, rather than the right to income derived from it. As the majority and controlling interest in the aircraft was held by the applicant alone, the High Court held that the Minister had not been empowered to impound the aircraft. Following on from this decision, in a subsequent case it was held that the Minister was required to compensate the applicant for the delay in releasing the aircraft.[8]

6.4 On appeal the Supreme Court referred a question under Article 177 of the EEC Treaty to the European Court of Justice on whether the applicant's aircraft was covered by the Council Regulation. The ECJ ruled that it was and that the Regulation had been correctly applied by the Irish authorities.[9] The Court of Justice also rejected the applicant's argument that such an interpretation would infringe its fundamental rights, in particular its right to peaceful enjoyment of its property and its freedom to pursue a commercial activity, and the principle of proportionality. The Court concluded that, as compared with the fundamental interest of the international community which the Regulation sought to pursue, the impounding of the aircraft could not be regarded as inappropriate or disproportionate.[10]

6.5 On 29 September 2004 the European Court of Human Rights heard the applicant's complaint under Article 1 of Protocol No. 1, concerning the protection of the right to property, that it has had to bear an excessive burden resulting from the manner in which Ireland applied the sanctions regime and that it has suffered significant financial loss.[11] The European Commission, the United Kingdom, Italy and the Institut de Formation en Droits de l'Homme du Barreau de Paris intervened in the case as third parties and submitted written comments. Judgement in this matter is awaited.

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[8] *Bosphorus Hava Yollari Turizim Ve Ticaret Anonim Sirketi v Minister for Transport, Energy and Communications*, *Ireland and the Attorney General (No 2)* High Court, January 22, 1996.
[9] Case C-84/95 [1996] ECR I-3953.
[10] *Ibid* at 3987.
[11] European Court of Human Rights (Fourth Section), *Bosphorus Hava Yollari Turizim Ve Ticaret Anonim Sirketi v Ireland* (Application 45036/98), September 13, 2001.

ITALY

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has the implementation given rise to any constitutional or other legal problems at national level? Is there any relevant case law?

In principle, binding acts of an international organization are given effect through the *ordine di esecuzione* ("order of execution"; "ordre d'exécution") – usually given by ordinary law – that implemented the constituent treaty; to the extent that they are self-executing, therefore, UNSCRs do not need an *ad hoc* act of implementation. In practice, however, UNSCRs are always implemented through a specific act.

The normal instrument implementing UNSCRs is a legislative act: either a law or a *decreto legge* ("law-decree"; "décret-loi"), a provisional measure with the force of law.

According to Article 77 of the Italian Constitution ([12]), in cases of necessity and urgency the Government may issue provisional measures with the force of law, which need subsequent confirmation by Parliament: law-decrees need to be converted into a law within 60 days from their enactment; if they are not, they cease to be in force retroactively (unless a law is passed for the purpose to save the effects they produced while they were into force).

Delegated legislation – an other act with the force of law – which constitutes the normal instrument for implementing EC directives (as well as other acts of EU law) is instead never resorted to for the purpose of implementing UNSCRs.

As a general rule, UNSCRs implemented through EU-regulations do not need national provisions of implementation. According to the case-law of the Court of Justice of the European Community (ECJ), in fact, the direct applicability of regulations implies that national provisions of implementation are not only unnecessary, but even prohibited under the Treaty of the European Community (ECT). However, should a regulation exceptionally require an act of implementation to be taken at the national level, member States are under an obligation to adopt the necessary measures. This is typically the case of EC regulations setting out the obligation for member States to provide for "effective, proportionate and dissuasive" sanctions applicable to their infringements. These sanctions complement the general civil law provision according to which any transaction illegally operated shall be null and void ([13]).

In Italy implementation of EU measures giving effect to UNSCRs – where necessary – required the adoption of an *ad hoc* act ([14]). In this respect, however, Law-decree No. 369 of October 12, 2001,

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[12] Article 77 of the Italian Const. reads as follows:
(1) "The Government shall not, unless properly delegated by the Chambers, issue decrees having the value of law".
(2) "When, in exceptional circumstances, the Government issues, on its own responsibility, provisional measures having the force of law, it shall on the same day submit them for conversion into law to the Chambers […]-
(3) "Law-decrees shall loose effect as of the date of issue if they are not converted into law within sixty days of their publication. The Chambers, may, however, approve laws to regulate rights and obligations arising out of decrees that have not been converted into law".

[13] See e.g. EC Regulation No. 2580/01 "on specific restrictive measures directed against certain persons and entities with a view to combating terrorism" adopted pursuant to Common Positions 2001/930/CFSP and 2001/931/CFSP, for the purpose of implementing UNSCR 1373 (2001).

[14] An example may be illustrative of this pattern. For the purpose of providing sanctions for infringements of the measures adopted against the Taliban, Italy enacted Law-Decree No. 353/2001, converted into Law No. 415/2001. This law provided for administrative fines in implementation of EC Regulation No. 467/01 and subsequent amendments thereto, referred to the lists of names to which these provisions and subsequent updates apply, and established penalties in conformity with Articles 247 and 250 of the Criminal Code, concerning respectively "aiding and abetting acts of war" and "trading with the enemy". The same instrument also provided that any acts performed in violation of the provisions banning export of goods and services as well as of the provisions calling for the freezing of capital and other financial

converted into Law No. 431 of December 14, 2001, introduced two major innovations concerning both the determination and the application of sanctions.

As regards the determination of sanctions, Art. 2 introduced penalties for all breaches of EU regulations aimed at preventing and suppressing the financing of terrorism, also in implementation of UNSCRs, rendering them null and void. The law also makes it possible in future – and here lies its main innovative character – to avoid the need of enacting specific legislative instruments in order to lay down penalties for violation of EU regulations banning exports of goods and services or calling for the freezing of capital and other financial resources, including in implementation of UNSCRs. This provision has been modified by the statute implementing the International Convention for the Suppression of the Financing of Terrorism (Law No. 7/2003) to the effect that not only "acts in violation of provisions concerning a ban on export of goods and services or the freezing of funds or other financial assets" are null and void, but also acts in violation of provisions on "bans of provision of financial services". In all such cases, administrative penalties will henceforth be automatically applicable. Violations are punished through administrative sanctions amounting to at least half of the value of the transaction and up to the double of the same value.

At the institutional level, Art. 1 established the *Financial Security Committee* (CSF) – chaired by the Director General of the Treasury and made up of representatives of the Home Affairs, Foreign Affairs, Justice and defence Ministries, as well as the Bank of Italy, CONSOB (the Stock Exchange Commission), IUC (Italian Exchange Office), Guardia di Finanza (Customs and Excise Police), DIA (Anti-Mafia Directorate) and the Carabinieri. The CSF has the task of monitoring the way in which the prevention system operates and sanctions are imposed on persons violating national legislation, with particular reference to EC Regulations prohibiting the export of goods and services, bans on flights, and the freezing of capital assets. Through the CSF, Italy has thus acquired the instruments for applying the European procedure for imposing penalties in implementation of UNSCR 1373(2001) but also for complying with its international obligations arising under subsequent UNSCRs, including, for instance, Resolution 1455(2003).

Also in the case where a UNSCR states an international obligation to incriminate a certain individual conduct, as does, for instance, Resolution 1373 – the EU or EC measure only restating the obligation to prohibit and punish with a criminal sanction the criminal behaviour in question – implementation of this obligation is required from the member States. Under Italian law, a legislative instrument has to be adopted in order to define the crime to which a criminal sanction applies. See e.g., Law-decree No. 374/2001, converted into Law No. 438/2001 (art. 1) introduced into Italian law the crime of the unlawful financing of association in the pursuit of both international and domestic terrorist activities, by updating Article 270-*bis* ("Conspiracy for the purposes of domestic or international terrorism or for subverting the democratic order") and article 270-*ter* ("providing assistance to associated persons") of the Criminal Code. This Law also extends the provisions of Anti-Mafia legislation to international terrorism as regards restrictions on personal freedom, investigation of economic and financial assets, seizure and confiscation of goods.

To date implementation of UNSCRs imposing sanctions has not given rise to specific constitutional or other legal problems.

2. Does the choice depend on the content of the Security Council Resolution?

The choice to implement UNSCRs imposing sanctions through an *ad hoc* act is independent upon their self- (or non self) executing character. The legal nature of the Security Council Resolution is also irrelevant as to the choice of the national measure – whether a law or a law-decree – that must be taken.

3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action

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resources, as set out in relevant EC Regulations, including in implementation of UNSCR, are null and void. This statute is no longer in force (see *infra*, *sub* question 3(b)).

required?

In principle, national measures provided for as temporary cease to be in force once the period for which they were set up expires (unless their duration is extended or they are renewed by an *ad hoc* act). Most measures introduced for the purpose of implementing UNSCRs (including sanctions provided therein), however, are adopted for an indefinite time. In these cases, their duration may be brought to an end in two different ways.

(a) Where the law (or law-decree) implementing the measure at the national level is silent on this point, an *ad hoc* act with (at least) the same legal force of the act to be repealed is needed for the measure to cease to be applied. In these cases, which are the most frequent ones, instances may occur in which the national measures are not repealed, while the international and/or EU-EC measure they were intended to implement is no longer in force.

(b) Sometimes the national measure provides that its provisions will cease to be in force when the international measure is no more in effect – or is suspended – at the international level. This was the case, for instance, of Law No. 415/2001, providing for administrative sanctions in implementation of EC Regulation No. 467/01 and subsequent amendments thereto. Article 4 of this Law stated that that its provisions would cease to be in force when the measures established in the regulation were suspended or terminated. As Regulation No. 467/01 (together with Regulation No. 1354/01) was repealed by Regulation No. 881/02, the law is no more in force.

With the express provision that measures elapse automatically together with the termination of the international and/or EU-EC sanctions they are intended to implement, the problem of the duration of potentially permanent national measures is solved in principle; there remains, however, the interpretative problem of finding out whether a certain measure is internationally in force or at which date it ceased to be so.

4. When a Security Council Resolution imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority which is competent to authorize export?

To date, no national institution or organ has been endowed with the general power to authorize trade or other action in derogation of embargos established by UNSCRs. Nor has any new body been instituted for this purpose.

EC regulations often provide that derogations or exceptions to the general prohibitions laid down therein be authorized by the "competent authorities of member States" and contain a list of competent authorities attached thereto. See e.g. the List of competent authorities referred to in Articles 3, 4 and 5 of the Annex to EC Regulation No. 2580/01.

In principle, the competent national authority is determined in accordance with the general rules allocating competence among the different branches of the State's apparatus: e.g. the Ministry for Foreign Affairs, the Ministry for Productive Activities, the Ministry for Infrastructures and Transportation, the Ministry of Economics and Finance – or a particular office thereof – depending of the subject matter of the measures concerned.

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

This question should be answered, in principle, in the negative for the Committees of sanctions are generally not endowed with the power to issue binding decisions. It is at the enforcement level; therefore, that conformity with a Committee's interpretation of measures already implemented is to be ensured.

There is no practice of *ad hoc* acts of implementation with respect to binding decisions of Committees of sanctions. Such decisions are given effect through the measures enacted for implementing the UNSCR under which the Committee was established. However, when decisions of a Committee of sanctions amount to a change in the regime of sanctions, implementing measures need to be, and indeed are, accordingly modified through a specific act. See e.g. UNSCR 1452(2002), which explicitly sets out a regime of exceptions to the restrictive measures adopted against Usama bin Laden, members of the Al-Qaida organization and the Taliban, implemented with a series of EC Regulations, pursuant to Common position 2003/140/CFSP.

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights? For example, have national courts assumed jurisdiction in cases where sanctions are challenged by individuals affected by sanctions:

a. if implemented through EU-regulations

b. if implemented directly at national level?

This question is answered taking into account various possible scenarios according to Italian Constitutional law, EU law and the system of judicial protection established under the European Convention on Human Rights. The final paragraph highlights the problem of possible gaps in the judicial protection of fundamental rights vis-à-vis EU and national measures adopted in the implementation of UNSCRs.

(i) Constitutional challenges against UNSCRs and EU-EC measures (or the national measures of implementation thereof)

In principle, UNSCRs have the same force as the act which provides to their introduction into the domestic legal order. As the order of execution of the UN Charter was given by an ordinary law and UNSCRs are implemented by way of a law or an act with the force of law, implementing measures also have the force of law.

By virtue of Article 117 of the Italian Constitution ([15]), however, the Italian legislator is bound to respect all international obligations in force for the Italian State. This means that legislation implementing UNSCRs prevail over conflicting (previous or subsequent) legislation. They cannot, however, run counter the provisions of the Constitution. National measures of implementation could thus be challenged before the Italian Constitutional Court for the purpose of establishing whether they are consistent with the Constitution.

Indeed, albeit in few cases, statutes giving effect to international treaties have been successfully challenged. No such challenge, however, has ever been brought with respect to the law giving effect to the Charter of the United Nations or a law (or a law decree) implementing a resolution of the Security Council.

As to EC regulations, which – as recalled above – are acts endowed with direct applicability, it is a well established principle that they "prevail" over conflicting national legislation and, as a consequence thereof, determine the inapplicability of the latter.

According to the Italian Constitutional Court, they remain subject to the "fundamental principles" of the Italian Constitution and, within these limits, may be subject to the judicial review of the Constitutional Court (possibly by way of a challenge of constitutionality against the law which gave effect to the EC treaty and subsequent amendments thereto). This is a theoretical assertion, however, very unlikely to be ever applied by the Court.

Also acts adopted within the CFSP or the JHA pillars cannot be challenged *per se* before the

[15] Article 117, paragraph 1, of the Italian Const. reads as follows:
"Legislative power belongs to the State and the regions in accordance with the Constitution and *within the limits set out by European Union law and international obligations*" (emphasis added).

Constitutional Court ([16]). Only national laws (or acts with the force of laws) implementing them could eventually be challenged (possibly – again – by raising the question of their constitutionality together with the constitutionality of the law implementing the Treaty of the European Union (TEU)). There are no instances so far of such challenges.

(ii) Judicial protection under the TEU and the ECT

Under Article 6, paragraph 2, TEU, measures adopted by the EU and the EC have to conform to fundamental rights and freedoms. However, EU acts adopted under the II pillar are excluded from the judicial review of the ECJ, in accordance with Article 46 TEU, while EU acts under the III pillar are subject to the Court's powers of judicial control only to the limited extent provided for in Article 35 TUE ([17]). EC regulations only are subject to full judicial review.

Private parties adversely affected by EC regulations, however, can bring a direct challenge before the Court of First Instance only in so far as he/she is "directly and individually concerned" by the regulation in question. This will rarely occur ([18]).

A regulation could also come before the ECJ through a preliminary reference. There are, in fact, a few instances in which the ECJ has ruled with respect to a regulation implementing sanctions decided by UNSCRs. One of such instances is the case *Bosphorus Hava Yollari Turizmve Ticaret AS* vs. *Minister for Transport, Energy and Communications and others*, on reference for a preliminary ruling by the Supreme Court of Ireland. In its judgment given on July 30, 1996, the Court interpreted Article 8 of EC Regulation No. 990/93 on trade between Serbia and Montenegro and the European Community, implementing UNSCR 820(1993), to the effect that it applied to an aircraft owned by Yugoslav airlines but operated by a Turkish charter company ([19]).

(iii) Judicial protection before the ECHR

The scarce number of venues for private parties to effectively enforce their rights allegedly impinged upon by national and/or EC-EU measures adopted for the purpose of implementing UNSCRs is only partially remedied by the existence of the system of judicial protection established under the European Convention for the Protection of Human Rights and Fundamental Freedom ([20]). Under the European Convention, an individual or group of individuals who claims to be a victim of a violation of its rights under the Convention may lodge an application against the State allegedly responsible before the European Court of Human Rights (ECHR). In the *Matthews* judgment, the ECHR stressed the principle that the Convention does not *per se* exclude the transfer of competence by a contracting State to an international organization as long as "equivalent human rights protection" is maintained. Where the alleged violation arises directly from a measure of EC or EU law, however, the ECHR would lack jurisdiction *ratione personae*.

As far as common positions adopted under Titles V and/or VI TEU are concerned, the case brought before the ECHR by two Basque organizations (*SEGI and others* and *Gestoras Pro-*

[16] Under Article 134 of the Italian Const., the Constitutional Court is endowed with the power to decide on "disputes concerning the constitutional legitimacy of laws and acts having the force of law, adopted by the State and the Regions."

[17] See in this respect the decision of the Court of First Instance of the European Communities (Second Section), in the case *SEGI and others* vs. *Council of the European Union* (case T-338/02), Order of June 7, 2004 (available at http://www.europa.eu.int), holding that under Article 35 TEU the Court has no jurisdiction to hear claims for compensation of damages allegedly caused by a common position adopted under Title VI TEU. For more details, see *infra* note 11 and corresponding text.

[18] See, however, in the reply by the European Union for references to a number of appeals against EC Regulations Nos. 881/2002 and 872/2004 lodged by persons and entities designated by a UN Sanctions Committee in accordance with a UNSCR.

[19] European Court of the Justice, *Bosphorus Hava Yollari Turizmve Ticaret AS* vs. *Minister for Transport, Energy and Communications and others* (Case C-84/95), Judgment of July 30, 1996, in *European Court reports 1996*, p. I-3953. See the next paragraph on a parallel proceedings lodged – and still pending – before the European Court of Human Rights.

[20] Or under other – less effective – human rights monitoring mechanisms. See e.g. the Human Rights Committee's Concluding Observations on the United Kingdom and Northern Ireland of December 6, 2002, scrutinizing some national measures taken pursuant to UNSCR 1373(2001) (UN Doc. CCPR/CO73/UK).

Amnistia and others vs. *Germany and others (15 Member States of the European Union)* ([21])) is illustrative of this point.

SEGI and Gestora Pro Amnistia (two organizations close to ETA) filed an application after they were included in the list to be the subject of strengthened police and judicial cooperation on the basis of Common Position 2001/930/CFSP "on combating terrorism" and Common Position 2001/931/CFSP "on the application of specific measures to combat terrorism", both adopted on December 27, 2001 for the purpose of implementing UNSCR 1373 (2001). They alleged a violation of their rights under Articles 6, 10, 11 and 13 of the European Convention and Article 1 of Protocol 1. On May 23, 2002, the ECHR declared their applications inadmissible as they lacked capacity as "victim" within the meaning of Article 14 of the Convention. According to the ECHR, the common positions adopted in the context of CFSP are not, as such, directly applicable in the Member States and their implementation requires adoption of specific provisions in national law in the appropriate legal form in each member State.

An other action was subsequently lodged before the Court of First Instance of the European Communities by the same organizations against the Council of the EU. The applicants claimed compensation for damages suffered as a result of their inclusion in the list of terrorist organizations in the Annex to Common Positions 2002/340/CFSP and 2002/462/CFSP, which updated Common Position 2001/931. The Court rejected the application ([22]), holding *inter alia* that under Article 35 TEU the Court has no jurisdiction to hear claims for compensation of damages allegedly caused by a common position adopted under Title VI TEU. This, notwithstanding the express recognition by the Court that "with all probability, [the applicants] dispose of no effective means of judicial redress either before the judicial organs of the EU or the national jurisdictions against their unlawful inclusion in the list of persons or entities implicated in terrorist activities" (paragraph 38 of the order).

In view of the foregoing, it is difficult not to conclude that the legal protection of individuals is insufficient with regard to the potential consequences of common positions or actions adopted under Title V and/or Title VI TEU.

As to regulations, if one were to apply the reasoning of the Court in the *Matthews* case, one would have to conclude that a State cannot be held accountable for human rights violations arising out of acts not "freely entered into" by the State concerned only to the extent that the existence of a system of "equivalent protection" can be established. As shown above, the right of private parties to judicial review with respect to EC regulations is not guaranteed under the ECT.

In a case still pending before the ECHR – *Bosphorus Hava Yollari Turizmve Ticaret AS* vs. *Ireland* – the applicant, an airline charter company, contends that the impounding of an aircraft leased by it is a disproportionate interference with its peaceful enjoyment of its possession. The impounding was brought about by Ireland in furtherance of its obligations under EC Regulation No. 990/93 (adopted in implementation of UNSCR 820(1993)). The ECHR has yet to rule on the question as to whether "the impugned acts can be considered to fall within the jurisdiction of the Irish State within the meaning of Article 1 of the Convention, when that State claims that it was obliged to act in furtherance of a directly effective and obligatory EC Regulation". On September 13, 2001 the ECHR held that it did not have sufficient information and that the issue was too closely linked with the merit of the case to be decided at the stage of admissibility ([23]). On January 30, 2004 the Chamber relinquished jurisdiction in favour of the Grand Chamber. As the ECHR held Grand Chamber hearing on September 29, 2004, a judgment is expected to be delivered at any time

[21] European Court of Human Rights (Third Section), *SEGI and others* and *Gestoras Pro-Amnistia and others* vs. *Germany and others (15 Member States of the European Union)* (Joint Applications 6422/02 and 9916/02), Decision on admissibility of May 23, 2002 (available at http://www.echr.coe.int).
[22] Court of First Instance of the European Communities (Second Section), *SEGI and others* vs. *Council of the European Union* (case T-338/02), Order of June 7, 2004 (*supra*, note 6).
[23] European Court of Human Rights (Forth Section), *Bosphorus Hava Yollari Turizmve Ticaret AS* vs. *Ireland* (Application 45036/98), Decision on admissibility of September 13, 2001 (available at http://www.echr.coe.int).

soon.

(iv) Filling the gaps in the judicial protection of fundamental rights.

As the previous analysis has shown, there may be instances in which no effective protection is available to individuals whose rights are impinged upon by measures adopted pursuant to UNSCRs. The most sensitive issues arise in regard to the implementation of – and judicial protection against – measures impinging upon individual rights in the criminal field. Other rights that are likely to be especially affected are the right to property and the freedom to pursue a commercial activity.[24] In these fields at least there is an apparent need to fill the gaps in the judicial protection of fundamental rights both at the national and the EU level.

7. Are there decisions of nationals courts or state practice concerning the relationship between sanctions directed towards individuals and human rights of these individuals?

To date there is no relevant case law on the point in question.

[24] See the Thematic Comment on "The Balance Between Freedom and Security in the Response by the European Union and its Member States to the Terrorist Threats" issued in 2003 by the Network of Independent Experts in Fundamental Rights – a group set up by the European Commission at the request of the European Parliament in 2002, in order to assist it in the development of a EU policy relating to human rights. The Report (available at: http://www.europa.eu.int) stresses a number of sensitive areas in which violation of human rights may arise (in the field of fundamental principles of criminal law, personal data protection etc.) and puts forward possible venues to reconcile the measures of the EU and/or the member States with human rights.

THE NETHERLANDS

1. Which are the procedures for the incorporation of Security Council resolutions imposing sanctions in the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way?

The Sanctiewet 1977 ("Law on sanctions", an English translation is attached) is the Dutch legal framework for the implementation of international sanctions. The Sanctiewet authorizes the ministers concerned to implement international sanctions via secondary legislation. Usually UNSC Resolutions imposing sanctions are implemented by the European Union via Regulations; these regulations are directly applicable in member states of the Union and do not require other additional national legislation than is needed for the imposing of penalties. In such cases Dutch legislative measures are restricted to the imposing of penalties on breaches of the European Regulation, via secondary legislation ("Sanctieregeling"). A Sanctieregeling to penalize a breach of an European Regulation simply states that a breach of the specified paragraphs of the European Regulation is punishable. The height of the penalties is regulated in the Wet op de economische delicten ("Law on economic offences").

If specific UNSC sanctions are not within the boundaries of the competence of the European Council – such as arms embargoes or the obligation to transfer money belonging to former Iraqi leaders to the Iraq Development Fund – the Dutch authorities implement the UNSC Resolution directly and completely by means of a Sanctieregeling as well. In such a case the content of the Sanctieregeling is not limited to the penalization of a breach of specified paragraphs of the Resolution: the Sanctieregeling includes the text of the relevant provisions as well. In addition to this the transfer of arms is controlled by means of a licensing system based on the Law on Imports and Exports.

2. Does the choice depend on the content of the Security Council Resolution?

All binding international sanctions are implemented via secondary legislation unless no legislation is required to ensure that individuals, organisations or companies observe the regulations: travel restrictions for instance are implemented by denying access, no additional legislation is needed.

3. When sanctions are imposed for a fixed period which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

Sanctions imposed for a fixed period are implemented by means of temporary secondary legislation. No action is required to repeal that type of legislation.

4. When a Security Council resolution imposing an export embargo provides for exceptions while not establishing a committee to authorise such exceptions, does the incorporating act appoint a national authority which is competent to authorise export?

Yes. The Minister of Economic Affairs is designated to authorize exports.

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

Yes

6. Have there been cases where the act where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights?

No

7. Are there decisions of national courts or state practice concerning the relationship between sanctions directed towards individuals and Human Rights of these individuals?

No

Appendix/Annexe

Sanctions Act 1977

Part 1. Definitions

Section 1

For the purpose of the application of the provisions of or pursuant to this Act:
a. Sanction order means: an Order in Council as referred to in section 2;
b. Sanction regulation means: a regulation as referred to in section 2, subsection two, or in section 7;
c. Our Minister means: Our Minister for Foreign Affairs in concurrence with Our Minister whom it may also concern;
d. Corporate body means: a corporate body within the meaning of section 66, subsection four, of the Industrial Organisation Act.

Part 2. Administration of international sanctions

Section 2

1. By Order in Council, rules may be adopted with regard to the subjects referred to in sections 3 and 4, in order to comply with treaties, resolutions, or recommendations of bodies of international institutions, or with international agreements, related to the keeping or restoring of international peace and safety, or to the furthering of the international rule of law, or to the fighting of terrorism.
2. If the rules to be adopted relate only to the performance of duties under treaties or resolutions of international institutions, they may be adopted by Our Minister.

Section 3

1. The rules referred to in section 2 may apply to the movement of goods and services, financial transactions, shipping, aviation, road transport, post and telecommunication, and all that is required in order to comply with the treaties, resolutions, and recommendations, or the international agreements, referred to in section 2.
2. The traffic referred to in subsection one also includes every act that apparently is directly aimed at realising such traffic.
3. The rules referred to in section 2 may also include regulations regarding the documents normally used in relation with the subjects mentioned in subsection one.
4. This Act is without prejudice to the powers conferred under the Import and Export Act.

Section 4

The rules referred to in section 2 may also apply to the admittance and residence of aliens, insofar as where necessary, and in derogation of sections 3 and 12 of the Aliens Act 2000, the admittance and residence of aliens indicated in the rules may be refused, and that Our Minister of Justice may revoke the residence permits within the meaning of sections 14 and 20 of the Aliens Act 2000 with respect to the said aliens. Revocation under this section shall be regarded as revocation pursuant to sections 19 and 22, respectively, of the Aliens Act 2000.

Section 5

(repealed)

Part 3. Temporary regulations

Section 6

1. A sanction order, as well as a decision to amend or revoke such order, comes into effect two months after the date of publication of the Bulletin of Acts and Decrees in which it is placed.
2. Regarding sanction orders other than those that are given in order to comply with an obligation under a treaty or resolution of an international institution, or regarding a decision to revoke or amend such order, either of the Houses of the States General may express the wish, or such wish may be made on their behalf, or by at least one-fifth of either of these Houses, within one month after the date of publication in the Bulletin of Acts and Decrees in which the order is placed, that the relevant order shall be confirmed by law. If such wish is expressed, We shall propose a bill to that end as quickly as possible.
3. If either of the Houses of the States General rejects a bill proposed in accordance with subsection two, the relevant order shall be withdrawn immediately.
4. If not previously revoked, a sanction order ceases to have effect three years after it has come into effect, unless it is decreed otherwise by further legislation.

Section 7

If Our Minister is considering making a recommendation for the adoption, amendment, or revocation of a sanction order and an urgent cause requires an immediate provision in his opinion, Our Minister may, by regulation, adopt rules in accordance with the order under consideration as well as render inoperative rules stipulated in an existing sanction order.

Section 8

If not previously revoked, a sanction regulation pursuant to section 7 shall remain in force until an order adopted pursuant to section 2 regarding the same subject comes into effect, but with a maximum of ten months after that regulation has come into effect.

Part 4. Exemption and dispensation

Section 9

1. Our Minister, as designated in the sanction order or in the sanction regulation, may grant exemption, and upon request may grant dispensation, from regulations in rules laid down in accordance with section 2 or with section 7 regarding the subjects referred to in section 3.
2. Exemption or dispensation may be granted subject to restrictions. Conditions may be attached to exemptions and dispensations.
3. Our Minister as referred to in subsection one may revoke a dispensation if the information submitted in order to obtain such dispensation turns out to be incorrect or incomplete to such extent, that a different decision would have been taken with regard to the request if the true circumstances were fully known when the request was considered.
4. Our Minister as referred to in subsection one may revoke the dispensations forming part of a group designated by him, if this is so required in his opinion due to urgent cause. Notice of a decision adopted in accordance with subsection one will be given by publication in the Bulletin of Acts and Decrees.

Part 5. Supervision

Section 10

1. The supervision of the compliance with the provisions of or pursuant to this Act will be charged to the officials or other persons designated by Our Minister.
2. Without prejudice to subsection one, Our Minister of Finance may designate one or more legal entities who will be charged with the supervision of the compliance with the provisions of or pursuant to this part 5 with respect to financial transactions carried out by:

a. The credit institutions and financial institutions registered pursuant to section 52, subsection two, under a, b, c, e, and f of the Credit Institutions Supervision Act 1992,

b. The investment institutions registered pursuant to section 18, subsection one, under a and c, of the Investment Institutions Supervision Act,

c. The exchange offices registered pursuant to section 2 of the Exchange Offices Act,

d. The securities institutions within the meaning of in section 7, subsection two, under i, and the securities institutions who possess a permit pursuant to section 7, subsection four, of the Securities Transactions Supervision Act 1995,

e. The pension funds within the meaning of section 1, subsection one, under b, c, d, and l, of the Pension and Savings Funds Guarantee Act,

f. The insurers that are placed on a list within the meaning of section 9, subsection one, under a and b, of the Insurance Industry Supervision Act 1993,

g. The pension fund within the meaning of section 13, subsection three, under d, of the Insurance Industry Supervision Act 1993, and

h. The insurers that are placed on a list within the meaning of section 4, subsection one, under a, of the Funeral Insurance In Kind Supervision Act.

3. The provisions of Chapter 5, part 5.2, of the General Administrative Law Act apply *mutatis mutandis* to persons who are charged by a legal entity designated in accordance with subsection two with the supervision of the compliance with the provisions of or pursuant to this part 5.
4. Notice of a designation order given in accordance with subsection one or two shall be given by publication in the Government Gazette.

Section 10a

Our Minister of Finance may offer the legal entities designated in accordance with section 10, subsection two, the opportunity to voice their opinions regarding the assessment of requests for dispensation within the meaning of section 9, subsection one, as well as regarding the implementation of the rules adopted in accordance with section 2 or section 7 regarding financial transactions.

Section 10b

1. Our Minister of Finance may adopt rules for the management of the administrative organisation and the internal inspection of the institutions as referred to in section 10, subsection two, under a to and including h.
2. Our Minister of Finance may adopt rules regarding providing information, whether or not upon request, by the institutions as referred to in section 10, subsection two, under a to and including h.
3. Our Minister of Finance may grant exemption or dispensation from the rules laid down in accordance with subsections one and two.

Section 10c

1. Our Minister of Finance may impose an order, under pains of a penalty, with respect to violation of the rules laid down pursuant to section 10b. Section 5:32, subsections two through five, and sections 5:33 through 5:35, of the General Administrative Law Act are applicable.
2. Our Minister of Finance may adopt rules regarding the exercise of the power as referred to in the first sentence of subsection one.

Section 10d

1. Our Minister of Finance may impose an administrative fine with respect to the violation of the rules laid down pursuant to section 10b.
2. The administrative fine will revert to the State.
3. Regarding the institutions as referred to in section 10, subsection two, under a, sections 90e, 90f, 90g, 90h, 90i, 90k, 90l, and the classification in article 2 of the schedule as referred to in section 90d, of the Credit System Supervision Act 1992, apply mutatis mutandis.
4. Regarding the institutions as referred to in section 10, subsection two, under b, sections 33e, 33f, 33g, 33h, 33i, 33k, 33l, and the classification in article 2 of the schedule as referred to in section 33d, of the Investment Institutions Supervision Act, apply mutatis mutandis.
5. Regarding the institutions as referred to in section 10, subsection two, under c, sections 23, 24,25, 26, 27, 29 and 30, and the classification in article 2 of the schedule as referred to in section 22, of the Exchange Offices Act, apply mutatis mutandis.
6. Regarding the institutions as referred to in section 10 subsection two, under d, sections 48e, 48f, 48g, 48h, 48i, 48k, 48l, and the classification in article 2 of the schedule as referred to in section 48d, of the Securities Transactions Supervision Act 1995, apply mutatis mutandis.
7. Regarding the institutions as referred to in section 10, subsection two, under e, sections 23d, 23e, 23f, 23g, 23h, 23j, 23k, and the classification in article 2 of the schedule as referred to in section 23c, of the Pension and Savings Funds Guarantee Act, apply mutatis mutandis.
8. Regarding the institutions as referred to in section 10, subsection two, under f and g, sections 188e, 188f, 188g, 188h, 188i, 188k, 188l, and the classification in article 2 of the schedule as referred to in section 188d, of the Insurance Industry Supervision Act 1993, apply mutatis mutandis.
9. Regarding the institutions as referred to in section 10, subsection two, under h, sections 93e, 93f, 93h, 93i, 93k, 93l, and the classification van article 2 of the schedule as referred to in section 93d, of the Funeral Insurance In Kind Supervision Act, apply mutatis mutandis.

Section 10e

1. The amount of the fine shall be determined in the manner as provided in subsection two, on the understanding that the fine shall not exceed the amount of € 200,000.
2. The amount of the fine shall be determined by multiplying the amount of € 5445 with a factor that is applicable in accordance with the classification in article 2 of the schedule referred to in section 10d, subsections three, four, five, six, seven, eight, or nine.
3. Our Minister of Finance may impose in certain events a lower fine than the fine stipulated in subsection one if the amount of the fine is unreasonably high due to extraordinary circumstances.

Section 10f

1. The powers of Our Minister of Finance pursuant to this part may be transferred by Order in Council to one or more legal entities designated in accordance with section 10, subsection two. In this event, the obligations that exist towards Our Minister of Finance pursuant to this part 5 shall exist as obligations towards the relevant legal entities.
2. The transfer as referred to in subsection one may be subjected to restrictions and regulations.

Section 10g

1. All data and information that have been provided or obtained regarding separate undertakings, institutions, or persons, in accordance with the provisions of this part 5 and all data and information received from an authority as referred to in section 10h, shall not be made public and shall remain classified.
2. Anyone who performs any duties under the application of this part 5 or pursuant to decisions adopted in this part, is prohibited from making any further or different use of data or information provided pursuant to the said sections or received from an authority as referred to in section 10h, or of data or information obtained through the examination of business data and documents, or to make such data and information public, other than is required for the performance of his duties in accordance with this part 5.

3. With respect to the person to who subsection two is applicable, subsections one and two are without prejudice to the applicability of the provisions of the Code of Criminal Procedure.
4. Likewise, with respect to the person to who subsection two is applicable, the provisions of subsections one and two are without prejudice to the applicability of the provisions of the Code of Civil Procedure and of section 66 of the Bankruptcy Act that relate to the making of a statement as a witness in a personal appearance of parties or as an expert in civil cases regarding the data or information that have been obtained in the performance of his duties in accordance with this part 5, insofar as it concerns data or information regarding a credit institution that is declared bankrupt or that has been dissolved pursuant to a court ruling. The provisions of the preceding sentence are not applicable to data or information that relate to undertakings or institutions involved in, or that have been involved in, an attempt to allow the relevant credit institution to continue its business.

Section 10h

Without prejudice to the relevant provisions in binding decisions of organs of the European Union or of other international institutions, and in derogation of section 10g, Our Minister of Finance is authorised to supply data or information obtained in the performance of his duties charged to him under this Act, to Dutch or foreign government authorities or to Dutch or foreign authorities charged by their governments with the supervision of the compliance with the treaties, resolutions, recommendations and agreements as referred to in section 2, in the field of financial transactions and the rules laid down pursuant to that section or pursuant to section 7,
unless:
a. The purpose for which the data or information will be used is insufficiently made clear;
b. Providing the data or information would be incompatible with Netherlands law or with public order;
c. The confidentiality of the data or information is insufficiently guaranteed;
d. Providing the data or information is or would reasonably be, or could become, in conflict with the interests this Act intends to protect; or
e. It is insufficiently guaranteed that the data or information will not be used for purposes other than for which they are provided.

Section 11

1. Our Minister may delegate powers vested in him pursuant to a sanction order or a sanction regulation, or pursuant to section 9, to the board of a corporate body or the board of a body having the status of a legal entity within the meaning of section 110 of the Industrial Organisations Act, unless the provisions of or pursuant to this Act would oppose this. Our Minister may subject a delegation in accordance with the first sentence to restrictions.
2. Decisions of a general nature, adopted in view of the exercise of a power delegated in accordance with subsection one, require the approval of Our Minister. Such approval shall only be withheld if such decision would be in conflict with the law or with the common interest.
3. Notice of a decision of Our Minister in accordance with subsection one will be given in the Government Gazette.

Section 12

(repealed)

Part 6. Other provisions

Section 13

Netherlands criminal law is applicable to any Dutch national who commits an act that is punishable under or pursuant to this Act abroad.

Section 14

Interested parties may lodge an appeal against a decision taken in accordance with section 9, subsection three, with the Industrial Appeals Court.

Section 15

The Export Prohibition Act 1935 (Bulletin of Acts and Decrees 599) and the Sanctions Act 1935 (Bulletin of Acts and Decrees 621) cease to have effect with respect to the Netherlands.

Section 16

1. This Act may be cited as Sanctions Act 1977.
2. The day on which this Act is to come into effect shall be decided by Us.

NORWAY

1. Which are the procedures for the incorporation of Security Council resolutions imposing sanctions in the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has the implementation given rise to any constitutional or other legal problems at national level? Is there any relevant case law?

The obligation to comply with binding Security Council resolutions is an obligation under international law, which is only binding on Norway as a state. Private individuals and companies are not directly bound by such resolutions. Norway's dualistic system requires that if these resolutions are also to be binding on private individuals and companies, this must be provided for in national law.

Section 1 of the Act of 7 June 1968 relating to the implementation of mandatory decisions of the Security Council, provides the legal basis for the King in Council to issue such regulations as are necessary for the implementation of such decisions. The relevant provision in Section 1 of the Act states that:

"The King is authorised to take such decisions as are necessary in order to implement mandatory decisions of the Security Council of the United Nations."

The Act applies only to binding resolutions, not recommendations. Moreover, this Act presupposes the adoption of a Royal Decree in order to implement the resolution concerned. The responsibility for implementing UN sanctions lies with the Ministry of Foreign Affairs.

The enabling provision in the Act is worded in such a way that it authorizes the implementation of all binding resolutions adopted by the Security Council regardless of the provision of the UN Charter invoked in the resolution. The Act does not specify what measures might be required. The aim was to be able to cover any measure that could be the subject of a binding resolution. It is the Government who makes the final decision as to whether a resolution is binding. The courts may not review such decisions.

Norway has consistently complied with the binding resolutions adopted by the Security Council through the adoption of implementing regulations in accordance with the above Act. New sanctions regimes are normally implemented in domestic law within two weeks after the Security Council decision, whereas amendments to existing regimes only take a few days to implement. The definitions and wording used in the incorporating domestic regulations are virtually identical to that in the UNSCR.

In addition to the 1968 Act, the Act of 18 December 1987 relating to control of the export of strategic goods, services and technology (Eksportkontrolloven), apply to all arms embargoes adopted by the UNSC. On the basis of this act, the King in Council has adopted regulations relating to the implementation of control of the export of strategic goods, services and technology (hereinafter referred to as the Regulations). Pursuant to section 1 of these regulations, permission from the Ministry of Foreign Affairs (an export licence) is required for the export of certain goods and appurtenant technology. Permission is also required for export of specific technology and certain services.

The implementation of Security Council resolutions has not given rise to constitutional or other legal problems at national level. There is no relevant case law of any significance related to these issues.

2. Does the choice depend on the content and the legal nature of the Security Council Resolution?

The regime is uniform irrespective of the content or legal nature of the UNSCR.

3. When sanctions are imposed for a fixed period which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

As a general rule, a normative action is required. We have, however, enacted regulations that have been time-limited, and thus tacitly repealed.

4. When a Security Council resolution imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority which is competent to authorize export?

According to Act of 18 December 1987 relating to control of the export of strategic goods, services and technology, the King in Council may decide that all exports of such material shall not be exported from the Norwegian customs area without special permission.

On the basis of this act, the King in Council has adopted Regulations No. 51 of 10 January 1989 relating to the implementation of control of the export of strategic goods, services and technology (hereinafter referred to as the Regulations). Pursuant to section 1 of these regulations, permission from the Ministry of Foreign Affairs (an export licence) is required for the export of certain goods and appurtenant technology. Permission is also required for export of specific technology and certain services.

In cases of doubt, the Ministry will decide whether or not the goods or technology is subject to the licensing requirement. A licence is always required for export of any goods, technology or service for military purposes to areas where there is a war or the threat of war, or to countries where there is a civil war.

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated in domestic law?

This is not a requirement in the Norwegian system.

In Norwegian regulations, the need for specifying the scope of the provisions has been solved by inserting a footnote with the link to the Sanctions Committee web-site where for example the list of persons subject to travel restrictions is to be found.

6. Have there been cases where the act incorporating the sanctions in the domestic legal order was challenged in court for being in violation of human rights? For example, have national courts assumed jurisdiction in cases where sanctions are challenged by individuals affected by sanctions:
   a. if implemented through EU-regulations;
   b. if implemented directly at national level?

No.

7. Are there decisions of national courts or state practice concerning the relationship between sanctions directed towards individuals and Human Rights of these individuals?

No.

POLAND

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way?

According to Article 9 of the Constitution of the Republic of Poland, Poland observes the binding international law. The said Article constitutes the general provision that obligates Poland to implement Security Council Resolutions imposing sanctions based on Chapter VII of the UN Charter in order to maintain or restore international peace and security. Binding acts of an international organization, including sanctions imposed by the UNSC, are incorporated into internal legal order through a specific legal act respective of the content.

The implementation of sanctions by the Republic of Poland is accomplished by the laws, regulations or ad hoc acts.

In the cases of implementation of restrictive measures the following laws and regulations, so called the sector's legislation, are mostly applied:
-Penal Code of June 6, 1997(Journal of Laws of 1997, No 88, item 553);
-Law of November 29, 2000 on external trade in goods, technologies and services of strategic importance both for state security and for the keeping of international peace and security and amending certain laws (Journal of Laws of 2000, No 119, item 1250);
-Foreign Exchange Law of July 27, 2002 (Journals of Laws of 2002, No141, item 1178);
-Law of Aviation of July 3, 2002 (Journals of Laws of 2002, No301, item 1112);
-Law of November 16, 2000 on Counteracting Introduction into Financial Circulation of Property Values Derived from Illegal or Undisclosed Sources and on Counteracting the Financing of Terrorism (Journal of Laws of 2003, No153, item 1505).
If the laws and regulations allow implementation of UNSC Resolution, the Council of Ministers after the presentation of the Resolution by the Minister of Foreign Affaires, adopts the decision that designates the execution authority and points out the appropriate law to be applied.

If the implementation of restrictive measures can not be accomplished by the laws and regulations, the UNSC Resolution may be implemented in two ways by the ad hoc acts.

The first possibility is that following the decision of the Council of Ministers the appropriate authorities implement the Resolution by the legal means. The Council of Ministers adopts the decision that designates the authorities responsible for the implementation of restrictive measures on the national level and stipulates the measures that must be undertaken. First of all, the designated authorities, identify whether under the existing laws the restrictive measures may be fully implemented, if not, they are obliged to prepare appropriate legislation and present it to the Council for adoption, according to their competence.
Second possibility applies mostly in the cases of "political" sanctions. The implementation of the Resolution takes place by the solely ad hoc act. For instance, decision as to the interruption or reduction of diplomatic relations with one or more of the third countries, as a result of UNSC sanctions, belongs to competence of the Council of Ministers and is adopted by the resolution of the Council of Ministers.

The implementation of restrictive measures imposed by the UNSC into the Polish internal legal order may be also accomplished by the European Union Regulations based on Article 60 and 301 of the Treaty establishing the European Community. Such Regulations are binding in their entirety and are directly applicable in Poland after its publication in Official Journal of European Union. The other measures, included into Council Common Position, are implemented by the domestic legal acts. The national measures have to comply with Article 15 of EU Treaty.

In order to establish one comprehensive national system of implementation, facilitate the

procedures and strengthen effectiveness of the implementation of international sanctions, new Law on the Implementation of International Sanctions by the Republic of Poland and amending certain laws has been drafted. The legislation procedure concerning the draft is currently on the way.

2. Does the choice depend on the content of the Security Council Resolution?

The choice of the incorporation of UNSC Resolutions imposing sanctions into the internal legal order depends on the nature and contents of the Resolution and the measures that must be undertaken by the Republic of Poland as a member State of UN and EU. The incorporation of Resolutions is usually accomplished by the laws, regulations and ad hoc acts or within the EU Regulations (see answer to question (1).

3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

The national measures of implementation provided for as temporary remain in force during the period for they were established, unless the duration of sanction is extended or renewed by an act of the Security Council.

In principle, if the Security Council fails to renew the restrictive measures or the duration of sanctions expires, accordingly to the domestic legislative procedure, the normative action is not required for the sanctions to be repealed regardless of the form they were implemented through provision of laws or regulations (a.i. in cases of sanctions in the form of freezing of assets, imposed for the fixed period of time which is not renewed, no legislative action is required by the national law).

The restrictive measures regarding the embargo on exportation of certain goods to the third countries, that are usually adopted by the regulations, just require a new regulation for the repealing of the sanction and updating the list of the countries that still remain under the embargo.

4. When a Security Council Resolution imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority which is competent to authorize export?

UNSC Resolutions under Chapter VII are mandatory in accordance with international law. In case of implementation of restrictive measures as an export embargo, imposed by the Security Council, through a resolution, it is practicable to indicate the appropriate Polish authorities that may authorize exemptions concerning the export embargo. For example, in the matter of authorization of export of arms or trade of common goods and services the Minister of Economy and Labor will be appointed in the resolution as a competent authority.

The EU Regulations imposing sanctions include lists of competent authorities that are empowered to grant exemptions. Whereas certain implementing powers are granted to the Commission, it is common practice that the Regulations provide that authorities of the Member States are competent to take decisions for exemptions. In some cases, where the indication of authorities is required by the EC Regulation, the following Polish authorities are indicated as a appropriate: in the matter of authorization of export in derogation of an arms embargo, Minister of Economy and Labor after consultations with Minister of Foreign Affaires and Minister of National Defense, in the matters concerning authorization of trade of common goods or services, Minister of Economy and Labor and Minister of Finance.

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

Decisions of Sanctions Committee specifying Security Council sanctions or setting conditions for their activation are not incorporated into the Polish domestic law.
The decisions specifying sanctions or setting conditions are given effect through the measures enacted for implementing the UNSC Resolution under which the Committee was established.

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights?

On the level of public Courts there are not statistics available in the matters of cases where the act incorporating sanctions in the domestic legal order was challenged for being in violation of human rights.

The national measures of implementation of sanctions could be challenged before the Polish Constitutional Court just for the purpose of establishing whether they are consistent with the Polish Constitution.

PORTUGAL

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions onto the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has implementation given rise to any constitutional or other legal problems at the national level? Is there any relevant case law?

According to article 25º of the Charter of the United Nations and article 8º/3[25] of the Constitution of the Portuguese Republic, sanctions imposed by Security Council Resolutions adopted under Chapter VII are automatically applicable in the Portuguese internal legal order by mere effect of such resolutions and need no incorporation.

Such Resolutions have been made public through publication in the Portuguese official journal (*Diário da República).*

In practice, reliance has mainly been placed upon the adoption of the sanction regimes by EU regulations. According to articles 8º/3 (and now also 8º/4)[26] of the Constitution of the Portuguese Republic and of the relevant dispositions of the Treaty of the European Union, such regulations have direct applicability in the Portuguese internal legal order, with no need of a formal transposition, binding both the State and private entities and individuals.

In 2002, criminal legislation was adopted by the Parliament establishing sanctions in case of violation of sanctions imposed by Security Council Resolutions and EU Regulations (*Lei n.º 11/2002*, of 16 February 2002*)*.

So far, there have been no case courts concerning this issue.

2. Does the choice depend on the content and the legal nature of the Security Council Resolution?

See the reply given *supra* in 1.

3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within you domestic legal order or is any normative action required?

According to the mechanism of article 8º/3 of the Constitution described above in 1., in principle, they should be tacitly repealed.

4. When a Security Council Resolution imposing an export embargo provides for exceptions while not establishing a committee to authorise such exceptions, does the incorporating act appoint a national authority which is competent to authorise the export?

There is no practice in this respect.

5. Are Sanctions Committees decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

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[25] "Norms adopted by the competent organs of international organisations of which Portugal is a member apply directly in the domestic order, if such is provided in the respective constitutive treaties."

[26] "The dispositions of treaties that regulate the European Union and the norms adopted by their institutions, in the exercise of their respective competencies, are applicable in the domestic order as defined by the European Union law, in respect for the fundamental principles of the democratic State and the rule of law."

There is only one instance where such happened with regard to a Sanctions Committee, and the procedure was the same as described in 1. for the Security Council Resolutions.

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights? For example, have national courts assumed jurisdiction in cases where sanctions are challenged by individuals affected by sanctions:
a) if implemented through EU-regulations?
b) if implemented directly at national level?

We are not aware of any court case in Portuguese courts.

7. Are there decisions of national courts or State practice concerning the relationship between sanctions directed towards individuals and human rights of these individuals?

With regard to one sanctions regime, there were complaints regarding human rights issues brought before the *Ombudsman* and the Minister of Foreign Affairs, with no significant legal consequences.

ROUMANIE

1. **Quelles sont les procédures d'incorporation des résolutions du Conseil de Sécurité imposant des sanctions dans l'ordre juridique de votre Etat? L'incorporation s'opere-t-elle par voie législative, réglementaire ou autre? La mise en oeuvre a-t-elle provoque des problèmes constitutionnelles ou d'autres de nature juridique au niveau national? Y a-t-il jurisprudence à cet égard?**

La *Loi no. 206 du 29 juin 2005 concernant la mise en oeuvre des sanctions internationales*, et publiée dans le Moniteur Officiel de la Roumanie no. 601 du 12 juillet 2005 constitue le *cadre général* pour la mise en oeuvre des sanctions internationales pour le maintien de la paix et de la sécurité internationale.

La Loi prévoit le fait que les résolutions du Conseil de Sécurité des Nations Unies adoptées dans la base du chapitre VII de la Charte de l'ONU sont *directement applicables*, et octroient des droits et des obligations directes pour les institutions publiques et pour les autres sujets de droit interne.

La même Loi prévoit que les actions et les positions communes du Conseil de l'Union Européenne et d'autres décisions à caractère similaire adoptées dans le cadre de la PESC par l'intermédiaire desquelles s'instituent des sanctions ou des mesures restrictives vis-à–vis des Etats tiers ou des entités non étatiques *sont obligatoires*, pour les sujets du droit interne – institutions publiques, personnes physiques ou morales.

Tant les résolutions du Conseil de Sécurité que les actes sous-mentionnés adoptés par le Conseil de l'UE sont publiés gratuitement dans le Moniteur Officiel de la Roumanie, par l'ordre du ministre des affaires étrangères.

En vue d'appliquer le contenu de la Loi, celle-ci prévoit aussi la création d'un *Comité interinstitutionnel,* coordonné par le Premier ministre, composé par des représentants des plusieurs institutions étatiques Ce Comité proposera annuellement un *Plan de mesures* pour la mise en application des sanctions internationales qui ont été instituées.

L'adoption de ce *Plan de mesures* sera nécessaire chaque fois que les sanctions internationales adoptées dans la base du chapitre VII de la Charte de l'ONU ou dans le cadre de la PESC et transposées dans le droit interne par la publication dans le Moniteur Officiel ne détaillent pas les mesures qui doivent être adoptées et les institutions responsables pour leur mise en application.

S'agissant des dispositions de cette Loi, on n'a pas rencontré des problèmes constitutionnelles ou d'autres problèmes de nature juridique au niveau national. A peine adoptée, on n'a pas encore de jurisprudence à cet égard.

2. **Le choix dépend-il du contenu et de la nature juridique de la résolution du Conseil de Sécurité?**

Seulement les résolutions du Conseil de Sécurité des Nations Unies *adoptées dans la base du Chapitre VII de la Charte de l'ONU* sont directement applicables, pour le reste elles sont incorporées dans le droit interne par l'intermède des actes normatifs nationaux.

3. **Lorsque les sanctions sont imposés pour une période déterminée et non renouvelable, leur abrogation dans l'ordre juridique interne se fait elle implicitement ou un acte normative est-il requis?**

L'abrogation est implicite.

4. **Lorsque les résolutions du Conseil de Sécurité imposant un embargo sur les exportations prévoit des dérogations à celles-ci sans établir un Comité pour les surveiller, l'acte normatif d'incorporation désigne-t-il une autorité nationale compétente pour autoriser l'exportation**?

En Roumanie est en vigueur la *Loi no. 595/2004 sur le contrôle des exportations* qui prévoit l'interdiction des exports/des demandes des exports d'armes si l'état de destination est un état sous embargo ONU, UE ou OSCE. L'autorité nationale de licence et d' enforcement est L'Agence Nationale pour le Contrôle des Exportations - ANCEX (www.ancex.ro).

5. **Les décisions des Comites des sanctions, qui précisent les sanctions du Conseil de Sécurité ou conditionnent le déclenchement de celles-ci, sont-elles incorporées dans le droit interne ?**

Ces décisions sont directement applicables.

6. **Y a –t –il des cas ou des actes normatifs incorporant des sanctions dans l'ordre juridique interne ont été attaques devant les tribunaux comme étant contraires aux droits de l'homme ?**

Non

7. **Y a –t-il des décisions judiciaires nationales ou des pratiques étatiques relatives à la relation entre des sanctions visant des personnes et les droits de l'homme de ces personnes ?**

Non

RUSSIAN FEDERATION

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way?

In the Russian Federation sanctions imposed by the UN Security Council are implemented through **Decrees of the President**[27] which are followed by more detailed lower level acts such as Orders and Instructions of the Government, acts and regulations of federal ministries, the Central Bank, etc.

This practice of implementation of Security Council Resolutions is based on the provisions of the **Constitution of the Russian Federatio**n stipulating that being the Head of State (para.1 art.80) the President acts as the guarantor of the rights and freedoms, consolidates unified functioning of the state institutions (para. 2 art.80), supervises external relations (para."a" art.86).

There are also a number of **Federal Laws** which specify legal framework for such a practice. For instance, according to para.1 art.13 of the Federal Law *On Basics of State Regulation of International Commercial Activities of 8 December, 2003* "imposing bans and restrictions on external trade in goods, services and intellectual property for the purposes of participation of the Russian Federation in the international sanctions" is the President's prerogative. Several other Federal Laws (*On military technical cooperation of the Russian Federation with foreign states of 19 July, 1998; On action against legalization (laundering) of criminal profits and financing of terrorism of 7 August, 2001*) contain similar provisions.

The wording of above mentioned Presidential Decrees usually starts with "in line with Security Council Resolution No…."

I order state institutions, industrial, commercial, transport and other companies, banks, other legal and natural persons to proceed in their activities from the following". Afterwards comes the description of the restrictions applied.

2. Does the choice depend on the content of the Security Council Resolution?

All Security Council Resolutions imposing sanctions are implemented in the same procedural way.

3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required.

The sanctions imposed by the Security Council including ones with a fixed period of duration which is not renewed are lifted following the same procedure – by the adoption of the **Decree of the President.**

[27] Examples of such Decrees: Decree N968 of 18 August 2003 *On the measures to implement the UN Security Council resolution 1483 of 22 May, 2003;* Decree N1097 of 21 September, 2003 *On the measures to implement the UN Security Council Resolution 1493 of 28 July, 2003;* Decree N6 of 10 January 2002 *On the measures to implement the UN Security Council resolution 1373 of 28 September, 2001;* etc.

4. When a Security Council Regulation imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority which is competent to authorize export?

With the adoption of the Decrees of the President the matter of "national competent authority" does not arise as a rule since the norms contained in Security Council Resolutions are implemented by the federal institutions, bodies and organizations in the areas of their competence drawn up in the Constitution, Federal Laws and other acts of legal order. Nevertheless the Decrees usually contain a paragraph obliging institutions and bodies "to provide implementation of measures set in the present Decree in the area of competence".

According to the legislation in force the responsibility for coordination of international activities of various federal and local authorities including those related to international sanctions lies on the Ministry for Foreign Affaires.

5. Are Sanctions Committees decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

The Ministry for Foreign Affairs of the Russian Federation advises national competent bodies, institutions and organizations on the decisions taken by Sanctions Committee specifying Security Council sanctions. In the presence of the Presidential Decree on the measures to be taken to implement Security Council resolutions this information provided by the MFA is generally sufficient for the adoption of the relevant acts by such bodies aimed at the implementation of the decisions of the Sanctions Committee. In a number of cases the Decrees contain direct links to future decisions of the Sanctions Committee (for instance the Decree of the President of the Russian Federation of 2 September, 1997 *On the measures to implement Security Council Resolutions creating international permanent monitoring and control mechanism in respect of deliveries in Iraq*).

6. Have there been cases where the act, incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights?

7. Y a-t-il des décisions judiciaires nationales ou des pratiques étatiques relatives à la relation entre des sanctions visant des personnes et les Droits de l'Homme de ces personnes ?

In Russia until now there have been neither court applications registered seeking compensation of damages occurring as a result of adoption of implementing legislation nor proceedings initiated in order to interpret relationship between sanctions towards individuals and Human Rights of those individuals.

Nevertheless it is worth mentioning that the Constitution and legislation in force make it possible for the natural and legal persons to seek compensation in these cases in court. General principles stating that damages inflicted on person or property of an individual or the property of a legal entity are to be compensated by the party inflicting those damages and, moreover, that the party even not being the inflicting one can be hold liable for the damages (para.1 art.1064 of the Civil Code of the Russian Federation) are fully applicable in the cases of sanctions.

In the context of the Russia's participation in the international sanctions para.3 art.1064 of the Civil Code is worth special attention. It states that damages occurred as a result of lawful acts are to be compensated in the cases mentioned in the laws. Such laws in this particular situation exist as it is pointed out above (Federal Law *On Basics of State Regulation of International Commercial Activities,* Federal Law *On military technical cooperation of the Russian Federation with foreign states)*. For instance, according to para.11 art.4 and para.1-2 art.18 of the Federal Law *On Basics of State Regulation of International Commercial Activities* an actor in international commerce has

the right to challenge decisions, acts or lack thereof of the state authority if in his opinion they lead to violation of his rights and lawful interests or creating obstacles on the track of realization of these rights or interests.

Art.1069 of the Civil Code further stipulates that damages occurring as the result of unlawful acts of state authorities must be compensated by the federal or local budgets. Such an “unlawful act” could for instance occur when a competent authority fails to take up proceedings on the application of a *bona fide* party for damages resulting from the participation of the Russian Federation in the regime of the international sanctions. Taking into account art.15 of the Civil Code in these cases one can seek full compensation of the damages including losses to cover restitution of the right, loss of property or damage thereto, lost profit.

SLOVAK REPUBLIC

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has the implementation given rise to any constitutional or other legal problems at national level? Is there any relevant case law?

UNSC sanctions are usually adopted by the European Union in the form of common positions. They are subsequently turned into secondary legislation in accordance with Articles 301 and 60 of the Treaty on EU – Amsterdam Treaty. EU legislation is directly applicable in the Slovak Republic, because it is a member state of the EU. In cases when instruments of Community legislation do not impose UNSC sanctions, a national law is used to implement them (Act No. 460/2002 Coll. – The Act implementing International Sanctions to Protect International Peace and Security). The implementation of UNSC sanctions causes no constitutional problems in the Slovak Republic.

2. Does the choice depend on the content and the legal nature of the Security Council Resolutions?

All UNSC sanctions are applicable in the manner specified under point 1.

3. When sanctions are imposed for a fixed period of time, which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

The entry into force of sanctions implemented on the basis of EU legislation depends on the entry into force of the Community legislation. There is no time limit for sanctions based on national law and if the UN lifts these sanctions, this is reflected in the legal system of Slovak Republic without unnecessary delays.

4. When a Security Council Resolution imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority, which is competent to authorize export?

UN embargos are implemented by means of European legislation. Based on EU regulations, national institutions of the Member States have the authority to oversee the application of restrictive measures, including providing of exemptions. Deciding on exemptions from UN embargoes, Slovak authorities follow valid UNSC and EU documents, as well as other documents in the field of disarmament and regulation of trade with selected commodities.

In accordance with provisions of the Act No. 460/2002 Coll., the responsibility for the control of abidance by trade embargoes is held by the Ministry of Economy, which co-operates with the Ministry of Foreign Affairs in this area.

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

From Slovakia’s standpoint, the implementing legislation of EU reflects individual decisions of the Sanctions Committees to the full extent and hence these are directly effective and applicable in the Slovak Republic.

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights? For example, have the national courts assumed jurisdiction in cases where sanctions are challenged by individuals affected by sanctions:

a. if implemented through EU-regulations;

b. if implemented directly at national level ?

No cases or decisions of national courts have been recorded so far in Slovak Republic.

7. Are there decisions of national courts or state practise concerning the relationship between sanctions directed towards individuals and Human Rights of these individuals?

No cases or decisions of national courts have been recorded so far in Slovak Republic.

SWEDEN

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way?

The Swedish Act on Certain International Sanctions (1996:95) contains regulations for the implementation of international sanctions. According to this Act, the Government may decree that UN sanctions shall be implemented. The decree shall then be submitted to the Riksdag (Swedish parliament) for approval. Sanctions that can be implemented through such decrees are limited to prohibitions relating to a state under blockade regarding 1) the residence or sojourn in Sweden of foreign nationals, 2) the import or export of goods, money or any other assets, 3) manufacture, 4) communications, 5) granting of credits, 6) business activities, 7) the circulation of traffic, and 8) education and vocational training. A prohibition may not apply to property that is intended only for the personal use of the owner.

However, since Sweden entered the European Union (EU) in 1995, no UN sanctions have been implemented through the above-mentioned act. In addition, all decrees adopted before the membership have now been repealed. Instead, UN sanctions are implemented jointly through EU Common Positions (political instruments covering all UN sanctions) and European Community (EC) regulations (legal instruments covering those measures that fall within the competence of the EC). Such EC-regulations are binding in their entirety and directly applicable in Sweden. The remaining measures, that are covered by EU Common Positions, but cannot be regulated through EC-regulations since they fall within the competence of the EU Member States, are regulated by Member States. Examples of such measures are arms embargoes and travel restrictions. So far, since Sweden became a member of the EU, there has been no need to enact new legislation covering such measures, due to the fact that the existing Swedish legislation on these areas already covers a situation where sanctions are imposed. Concerning arms embargoes for example, the Swedish Military Equipment Act states that anyone who wants to export military equipment needs a licence and if the UN imposes sanctions, no such licence can be obtained.

Although UN sanctions normally are implemented through measures on the EU level, there are examples where Security Council Resolutions, due to an insufficient legal basis in the EC-treaty, in part have not been met by community legislation. This is the case with UNSCR 1373 (2001) on the freezing of funds, financial assets and economic resources of persons or entities involved in terrorism, in respect to persons or entities having their roots, main activities and objectives within the EU. Sweden is about to launch an official commission that will, among other things, deal with this issue on the national level.

Another measure that is legally complicated to implement is the obligation in paragraph 23 of resolution 1483(2003), to *transfer* frozen funds to the Development Fund for Iraq. If such a transfer is not agreed to by the owner, the so called transfer can in effect be considered to include a confiscation of the funds. This question will also be dealt with by the official commission mentioned above.

We have no knowledge of any case law of relevance to this question.

2. Does the choice depend on the content of the Security Council Resolution?

Yes, as explained above, some measures fall within the competence of the EC and some within the competence of its Member States. The procedure therefore totally depends on the specific measures taken.

3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required.

Concerning those measures regulated by EC-regulations, normative action is normally required since such regulations have to be repealed.

Regarding the measures covered by Swedish legislation, normative action is normally not required. It's more a matter of a change in the application of the laws.

4. When a Security Council Regulation imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority which is competent to authorize export?

Yes, that is the standard procedure. Even in the instruments at the EU-level, authorities of the Member States are appointed as competent authorities. In Sweden the National Board of Trade is normally appointed as the competent authority to authorize exemptions from export embargoes.

5. Are Sanctions Committees decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

Yes, that is common practice regarding measures that are implemented through EC-regulations, where such regulations are drafted in accordance with the conditions in the specific sanctions regime. We have little experience of such conditions in the area of Member State-competence but they do exist, for example concerning travel restrictions, where Sanctions Committees have been entrusted to make decisions on certain exemptions. So far there has been no need to specify such procedures in domestic law, it could be applied anyway if need be.

6. Have there been cases where the act, incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights?

A number of EC-regulations on sanctions have been challenged in the Court of First Instance of the European Communities. For more information on these challenges we refer to the European Commission's reply to this questionnaire.

We have no knowledge of any act on sanctions, either an EC-regulation or a national regulation, being challenged in a Swedish court for being in violation of human rights.

7. Y a-t-il des décisions judiciaires nationales ou des pratiques étatiques relatives à la relation entre des sanctions visant des personnes et les Droits de l'Homme de ces personnes ?

No decisions in this regard have been taken by national courts.

Concerning state practice the EC Court of First Instance has made a decision (Order of 7 May 2002 in Case T-306/01, Aden et al. v. Council and Commission) on interim measures which concerns three Swedish citizens. At the time of that decision, the sanctions regime in question (resolutions 1267(1999), 1333(2000) and 1390(2002) was not as sophisticated as it is today (following resolution 1452(2002)), offering no explicit exemptions for basic or extraordinary expenses. Nevertheless, the decision shows that the families of the three Swedes who were targeted by freezing-measures at least received, or had the possibility to receive, social assistance and family allowances whilst they had their housing benefits frozen. This shows that the Swedish municipal authorities who, according to the Swedish Social Services Law, have the ultimate responsibility for Swedish citizens' economic and social security, let that responsibility take precedence over their obligations according to the sanctions regime.

Furthermore it is a well established position of the Swedish government that all sanctions regimes should include a clause that makes it possible to make exemptions from freezing measures to cover basic and extraordinary expenses. The EC has also taken steps to ensure this. The EC has even, when implementing resolution 1373(2001) through Council Regulation (EC) No 2580/2001, included a clause allowing exemptions i.a. with a view to the interests of its citizens (article 6), even though this possibility is not mentioned in resolution 1373.

SUISSE

1. Quelles sont les procédures d'incorporation des résolutions du Conseil de sécurité imposant des sanctions dans l'ordre juridique de votre Etat ? L'incorporation s'opère-t-elle par voie législative, réglementaire ou autre ? La mise en oeuvre a-t-elle provoquée des problèmes constitutionnels ou d'autres de nature juridique au niveau national ? Y a-t-il jurisprudence à cet égard ?

La Suisse dispose d'une loi fédérale sur l'application des sanctions internationales (loi sur les embargos) du 20 décembre 2000 qui est entrée en vigueur le 1er janvier 2003 et est publiée au Recueil systématique sous rubrique 946.231 (www.bk.admin.ch > Recueil systématique). Cette loi fédérale est une loi-cadre qui habilite le Conseil fédéral (Exécutif) à adopter des sanctions, fixe le régime de contrôle de ces sanctions, contient des dispositions sur la protection des données, prévoit la collaboration entre autorités, indique les voies de droit et précise les mesures pénales en cas de non-respect des dispositions de mises en œuvre des sanctions. C'est sur la base de cette loi que le Conseil fédéral (Exécutif) adopte les ordonnances mettant en œuvre les résolutions du Conseil de sécurité imposant des régimes de sanctions non militaires. A chaque régime de sanctions de l'ONU correspond une ordonnance distincte du Conseil fédéral. La mise en œuvre de ces ordonnances et le contrôle de leur respect sont confiés au Secrétariat d'Etat à l'économie (Département fédéral de l'économie) qui, le cas échéant collabore avec d'autres services de l'administration tels que la Direction du droit international public (Département fédéral des affaires étrangères), l'Office fédéral de la justice (Département fédéral de justice et police), l'Administration fédérale des finances (Département fédéral des finances) et l'Office de l'aviation civile (Département fédéral de l'environnement, des transports, de l'énergie et de la communication).

Avant l'entrée en vigueur de la loi sur les embargos, les ordonnances de sanctions adoptées par le Conseil fédéral se fondaient directement sur la Constitution fédérale.

Pour ce qui est des régimes de sanctions internationaux prévoyant uniquement un embargo sur les armes et le matériel de guerre, l'adoption d'une ordonnance spécifique par le Conseil fédéral n'est pas nécessaire, étant donné que ces mesures de sanctions peuvent être mises en œuvre sur la base de la loi fédérale sur le matériel de guerre (RS 514.51) et de la loi fédéral sur le contrôle des biens utilisables à des fins civiles et militaires (loi sur le contrôle des biens, RS 946.202).

La mise en œuvre des régimes de sanctions par le biais d'ordonnances ne pose guère de problème. Cela dit, la mise en œuvre de la résolution 1483 (2003) imposant des sanctions ciblées à l'Irak a été plus ardue en raison du fait que ce régime prévoit non seulement le blocage des avoirs et ressources économiques des personnes listées, mais aussi la confiscation et le transfert desdits avoirs et ressources économiques au Fonds de développement pour l'Irak (FDI). La loi-cadre susmentionnée ne prévoyant pas ce second type de mesure, une ordonnance spécifique imposant la confiscation et le transfert au FDI et basée directement sur la constitution fédérale a dû être adoptée par le Conseil fédéral (Exécutif). En vertu de cette ordonnance, il appartient au Département fédéral de l'économie de décider la confiscation des avoirs et ressources économiques et de la mettre en œuvre. Les décisions de confiscation pourront être contestées devant le Tribunal fédéral par un recours de droit administratif. Les personnes et entités touchées auront ainsi la possibilité de contester la confiscation devant une autorité judiciaire. En prévoyant une telle voie de recours, la Suisse met en œuvre les obligations issues de la Charte des Nations Unies en respectant les droits fondamentaux et les droits de l'homme garantis par la Constitution fédérale et les instruments européens et internationaux pertinents.

Même si avec l'ordonnance précitée une solution a pu être trouvée pour permettre aux personnes et entités touchées par la confiscation de contester cette mesure devant un organe judiciaire, l'absence au niveau international de voies de recours efficaces permettant aux personnes dont les noms figurent sur une liste de faire revoir leur cas (procédure de de-listing) préoccupe la Suisse.

A ce jour, il n'existe pas de jurisprudence relative à la mise en œuvre des régimes de sanctions de l'ONU.

2. Le choix dépend-il du contenu et de la nature juridique de la résolution du Conseil de sécurité ?

En principe pas. Voir cependant la distinction opérée par la Suisse entre gel des avoirs et ressources économiques (prévu dans l'ordonnance de l'Exécutif imposant le régime de sanctions) et confiscation et transfert des avoirs et ressources économiques gelés (prévus dans une ordonnance spécifique de l'Exécutif) ainsi que la réglementation particulière pour les régimes de sanctions comprenant uniquement un embargo sur les armes et le matériel militaire qui ont déjà été mentionnées au point 1.

3. Lorsque les sanctions sont imposées pour une période déterminée et non renouvelable, leur abrogation dans l'ordre juridique interne se fait-elle implicitement ou un acte normatif est-il requis ?

Les ordonnances de sanctions adoptées par le Conseil fédéral sont normalement d'une durée de validité indéterminée. Si des mesures de sanctions prennent fin au niveau international, soit par l'écoulement du temps en cas de mesures prévues pour une durée déterminée et non renouvelable soit par une résolution y mettant fin, cette modification sera mise en œuvre dans l'ordre juridique suisse par une abrogation de la disposition pertinente de l'ordonnance correspondante ou, le cas échéant, de l'ordonnance dans son intégralité.

4. Lorsque la résolution du Conseil de sécurité imposant un embargo sur les exportations prévoit des dérogations à celles-ci sans établir un Comité pour les surveiller, l'acte normatif d'incorporation désigne-t-il une autorité nationale compétente pour autoriser l'exportation ?

Tel qu'il a déjà été mentionné sous le chiffre 1, le Secrétariat d'Etat à l'économie (seco) est l'autorité compétente en Suisse pour la mise en œuvre de sanctions internationales. A ce titre, le seco est également compétent pour examiner des demandes d'exceptions. Dans les cas où les dérogations nécessitent une autorisation préalable des autorités onusiennes (p. ex. Résolution 1452 (2002)), le seco est l'autorité compétente pour requérir cette autorisation préalable. Dans les hypothèses où une telle autorisation préalable n'est pas nécessaire, les autorisations exceptionnelles sont données par le seco, d'entente avec les services compétents d'autres Départements comme le Département fédéral des affaires étrangères ou le Département fédéral des finances.

5. Les décisions des Comités des sanctions qui précisent les sanctions du Conseil de sécurité ou conditionnent le déclenchement de celles-ci, sont-elles incorporées dans le droit interne ?

Les listes nominatives établies par les comités des sanctions sont incorporées dans l'ordre juridique suisse sous forme d'annexes aux ordonnances de sanctions adoptées par le Conseil fédéral.

6. Y a-t-il eu des cas où des actes normatifs incorporant des sanctions dans l'ordre juridique interne ont été attaqués devant les tribunaux comme étant contraires aux Droits de l'Homme ? Par exemple, est-ce que les tribunaux nationaux se sont déclarés compétents dans les cas où des sanctions sont contestées par des personnes affectées par ces dernières :

a. quand les sanctions sont mises en œuvre par des actes de l'Union Européenne

b. quand les sanctions sont mises en œuvre au niveau national ?

A ce jour, aucun cas.

7. Y a-t-il des décisions judiciaires nationales ou des pratiques étatiques relatives à la relation entre des sanctions visant des personnes et les Droits de l'Homme de ces personnes ?

A ce jour, aucune décision judiciaire.

En principe, les ordonnances prévoient que le Secrétariat d'Etat à l'économie peut, après avoir consulté les offices compétents du Département fédéral des affaires étrangères et du Département fédéral des finances, autoriser le déblocage de sommes d'argent pour protéger des intérêts suisses ou prévenir des cas de rigueur.

TURKEY

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has the implementation given rise to any constitutional or other legal problems at national level? Is there any relevant case-law?

Article 90/4 of the Turkish Constitution reads as follows:

> "*International treaties duly put into effect carry the force of law. No appeal to the Constitutional Court can be made with regard to these treaties on the ground that they are unconstitutional. In case of a conflict between international treaties in the area of fundamental rights and freedoms duly put into effect and the laws due to differences in provisions on the same matter, the provisions of international treaties shall prevail*."

According to the above mentioned constitutional rule and other relevant laws, international treaties ratified by Turkish Government constitute integral part of Turkish Law.

As regards the incorporation of sanctions UNSC resolutions imposing sanctions in the internal legal order, Turkish laws do not provide any specific procedure. However, scope of the recent UNSC resolutions which impose sanctions on real and legal persons and organizations necessitated further actions to incorporate them for the purpose of informing relevant governmental-private institutions and the public as well. Therefore, by virtue of article 90 of the Constitution and article 25 of the UN Charter, the Council of Ministers took decisions (Decrees) to incorporate the UNSC sanctions and appended lists of them, which were then published in the Official Gazette.

Since the Council of Ministers is competent to take necessary measures for the implementation of treaties, the implementation of UNSC Resolutions has not given rise to constitutional or other legal problems. Nevertheless, Decrees of the Council Ministers are of administrative character and article 125/1 of the Constitution lays down the rule that "*all acts and actions of the Administration are subject to judicial review*".

There is no relevant case law.

2. Does the choice depend on the content and the legal nature of the Security Council Resolution?

The choice depends on the legal nature of the UNSC Resolutions imposing sanctions which are of binding nature as well as their content necessitating further actions for effective implementation.

3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

When sanctions are imposed for a fixed period of time, as a rule the Council of Ministers Decrees also prescribe an expiration date concerning the implementation of the sanctions.

4. When a Security Council Resolution imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority which is competent to authorize export?

As a rule, appointment of a national authority to authorize the exports is not necessary , since the Undersecretariat of Foreign Trade attached to the Prime Ministry has an overall competence to

authorize exports. However, Decrees of the Council of Ministers incorporating the UNSC Resolutions 1267/1999, 1333/2000 and 1373/2001 appointed the Ministry of Finance to take all measures and give the necessary permissions.

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

Amendments to the appendix lists of the UNSC resolutions are incorporated through Council of Ministers additional Decrees which were also published in the Official Gazette.

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights?

There have been two cases until present time challenging the incorporation acts. One litigant is an individual and the other one is an entity. The claimants commenced suits before the Council of State (the highest administrative court mainly with appelate jurisdiction) which may assume jurisdiction over the Council of Ministers Decrees. All two complainants alleged inter alia that their fundamental rights were violated and requested the Court to issue stay orders of the relevant Decrees until the final decisions were rendered and the annulment of the Decrees. The Court rejected to issue stay orders on the ground that requirements for such measure did not exist.

The Turkish Government has given information on these actions to the UNSC Counter-Terrorism Comittee.

7. Are there decisions of national courts or state practice concerning the relationship between sanctions directed towards individuals and human rights of these individuals?

The actions referred above, are still pending in the Council of State.

UNITED KINGDOM

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has the implementation given rise to any constitutional or other legal problems at national level? Is there any relevant case law?

Community competence

UN sanctions within Community competence are implemented in the UK as a Member State of the European Union by directly applicable EC Regulation.

Member state or shared competence

Other aspects are implemented domestically through secondary legislation. The UK has legislative powers to implement decisions of the Security Council in the UK and overseas territories by Order under the United Nations Act 1946, which provides:

> "If, under Article 41 of the Charter of the United Nations…, the Security Council of the United Nations call upon His Majesty's Government in the United Kingdom to apply any measures to give effect to any decision of that Council, His Majesty may by Order in Council make such provision as appears to Him necessary or expedient for enabling those measures to be effectively applied…".

The UK possesses other legislative powers to implement sanctions. These may be used, if for example, an EU Common Position gives effect to measures beyond those in the UNSCR.

Travel bans

The UK implements both UN Security Council Resolutions and EU Common Positions using secondary legislation under Section 8B of the Immigration Act 1971 (as inserted by Section 8 of the Immigration and Asylum Act 1999). The Immigration Act 1971 provides for the exclusion from the UK of persons subject to UN or EU travel bans designated by Order. Unless an exemption in the designating order applies, an excluded person must be refused leave to enter or remain in the UK, or have his or her existing leave cancelled. Pending the designation of new UNSCRs (or EU Common Positions) by Order, the UK can use administrative provisions under its Immigration Rules to prevent targeted persons transiting or travelling to the UK. The Home Secretary, an entry clearance officer or an immigration officer may exclude the individual where his presence in the UK would not be conducive to the public good.

Arms embargoes

UN arms embargoes may be implemented under the United Nations Act 1946. Additionally, administrative decision making enforces such measures, as all export licence applications for licensable equipment are assessed on a case-by-case basis against the UK's Consolidated EU and National Arms Export Licensing Criteria, Criterion 1 of which provides that export licences will not be issued if approval would be inconsistent with the UK's international obligations. Trafficking and brokering of arms and related materiel is controlled by secondary legislation under the Export Control Act 2002. Where a directly effective EC Regulation imposes a ban on the supply of technical assistance or training and equipment likely to be used for internal repression (in addition to UN measures), increased penalties and licences will be implemented in the UK by orders under the European Communities Act 1972.

Financial sanctions

UN sanctions can be implemented pursuant to the United Nations Act. Where there is a directly effective EC Regulation implementing UN sanctions, HM Treasury may make regulations under Section 2(2) of the European Communities Act 1972 to increase the penalties for breach of that EC

Regulation to levels found in other sanctions measures.

Other measures
Implementation of other types of sanctions (flight bans, commodity embargoes, investment bans etc) will depend on a case by case examination as to whether they fall within Community competence and the available domestic powers.

Crown Dependencies
The UK has power to legislate for the Crown Dependencies[28] under the United Nations Act 1946. The Crown Dependencies will adopt their own legislation to implement any additional EU measures, or to provide for increased penalties and proceedings in respect of EC Regulations.

Overseas Territories
The UK has power to legislate for the Overseas Territories[29] under the United Nations Act 1946. Where the EU implementation goes beyond the UN sanctions, the UK can legislate in respect of territories other than Gibraltar and Bermuda using powers in the Saint Helena Act 1833, British Settlements Act 1887 and 1947 and prerogative powers. Gibraltar adopts its own legislation to implement any additional EU measures, or to provide for increased penalties and proceedings in respect of EC Regulations. Bermuda adopts its own legislation equivalent to EU measures.

Penalties for breach of sanctions

Breaches of sanctions are generally criminal offences, the severity of which depends on the individual offence, with unlimited fines and maximum custodial sentences of 7 years (10 years for arms exports) for the most serious offences.

Case Law

A number of cases have been heard before the English courts relating to financial sanctions (see, e.g., the case of *Othman* [2001] EWHC Admin 1022). Other cases are stayed pending the outcome of cases before the Court of First Instance of the European Communities (CFI). Cf questions 6 and 7 and the EU questionnaire.

2. Does the choice depend on the content and the legal nature of the Security Council Resolution?

The UK implements all legally binding Security Council resolutions. The implementing legislation will depend on whether the measures fall within Community competence or not, and on the subject matter (cf question 1).

3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

EC Regulations implementing UN sanctions normally remain in force and require normative action to be repealed, if the Security Council fails to renew them. Domestic implementing Orders normally contain a clause permitting their suspension or termination following a Security Council decision, which can be carried out quickly by publication of an official notice. A formal revocation instrument will follow in due course.

4. When a Security Council Resolution imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority which is competent to authorize export?

The Government applies a rigorous export licensing regime for equipment subject to export control restrictions. The Department for Trade and Industry (DTI) is the UK's licensing authority. The licensing authority will follow decisions of the UN Security Council when considering whether or not to issue an export licence. Export of controlled goods without a licence is a criminal offence

[28] See Annex for details.
[29] See Annex for details.

punishable by up to 10 years imprisonment.

Where the export restrictions fall within Community competence and are implemented by an EC Regulation, the EC Regulation will include as an annex competent authorities which are empowered to grant exemptions, and in the case of the UK, it will be the DTI.

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

Such measures may be incorporated in a variety of ways under UK legislation. It is often most convenient to incorporate the measures by direct reference to the decisions of the Sanctions Committee. For example, the Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 (S.I. 2002/112) imposes financial sanctions against "listed persons", which "listed persons" are defined by reference to the Sanctions Committee list. Alternatively the implementing legislation could replicate the substantive decisions of the Sanctions Committee.

For matters within Community competence, please refer to the EU's questionnaire.

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights? For example, have national courts assumed jurisdiction in cases where sanctions are challenged by individuals affected by sanctions:

a. if implemented through EU-regulations;
b. if implemented directly at national level?

a. For cases on UN sanctions directed against individuals which are implemented through EU regulations, see question 7. Cases brought in the UK courts are stayed pending the outcome of *Kadi* and *Aden* in the CFI.

b. In *Othman,* the judge held that welfare payments were affected by the EC legislation then in existence. He rejected the suggestion that the UK's implementing legislation involved a breach of Article 3 of the ECHR.

7. Are there decisions of national courts or state practice concerning the relationship between sanctions towards individuals and human rights of these individuals?

Applications against Regulation (EC) No 881/2002 on financial sanctions targeting Al Qaeda and Regulation (EC) No 872/2004 on financial sanctions targeting former President Taylor of Liberia and associated persons are pending before the Court of First Instance of the European Communities (CFI). The applicants are persons designated by UN sanctions committees in accordance with UNSCRs. The CFI has not yet rendered judgement.

Annex

1. Crown Dependencies

The "Crown Dependencies" comprise:

the Bailiwick of Guernsey (including Alderney, Sark and Herm)
the Isle of Man
the Bailiwick of Jersey

The Islands are not part of the United Kingdom. The Islands have their own legislative assemblies, administrative, fiscal and legal systems and their own courts of law (see our useful website links).

2. Overseas Territories

The British overseas territories are:

Anguilla
Bermuda
British Antarctic Territory
British Indian Ocean Territory
Cayman Islands
Falkland Islands
Gibraltar
Montserrat
Pitcairn, Henderson, Ducie and Oeno Islands
St. Helena and St. Helena Dependencies
South Georgia and Sandwich Islands
Tristan da Cunha
Turks and Caicos Islands
Virgin Islands

EUROPEAN UNION

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has the implementation given rise to any constitutional or other legal problems at national level? Is there any relevant case law?

The EU as a rule implements Security Council Resolutions imposing sanctions based on Chapter VII of the UN Charter. In June 2004, the Council adopted the Basic Principles on the Use of Restrictive Measures (Sanctions)[30] stating, *inter alia*:

"We will ensure full, effective and timely implementation by the European Union of measures agreed by the UN Security Council."

According to the Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of EU Common Foreign and Security Policy (CFSP) of December 2003 the EU aims to have the necessary implementing legislation in place without delay.

The procedure usually involves two steps. First, under Article 15 EU Treaty, the Council adopts a Common Position. Second, depending on the substance matter, the implementation of this Common Position is either carried out at Community or at national level.

Measures interrupting or reducing, in part or completely, economic relations with one or more third countries are in nearly all cases implemented by means of a Community Regulation based on Articles 60 and 301 of the Treaty establishing the European Community. Such Regulations have general application and precedence over conflicting provisions of the law of the Member States. They are binding in their entirety and directly applicable in all Member States.

Other measures generally included in a Council Common Position falling within Member State competence, such as arms embargos and travel restrictions, are implemented by the Member States. Under Article 15 second sentence EU Treaty, Member States shall ensure that their national measures conform to the common CFSP position, leaving a choice of form to the Member States.

Implementation of UN Security Council Resolutions by means of a Community Regulation gave rise to several cases before the European Court of Justice (ECJ) and/or the Court of First Instance (CFI).

As regards the UN embargo on trade with Iraq (SC Resolution 661 of 6 August 1990), the CFI rejected an application under Article 288 (ex 215) paragraph 2 EC by the German company *Dorsch Consult* for compensation for the damage allegedly suffered as a result of the adoption of the implementing Council Regulation (EEC) No. 2340/90 of 8 August 1990. The CFI[31], whose judgment was upheld by the ECJ on appeal[32], elaborated on the conditions of non-contractual liability of the Community. It rejected the application because the applicant had not demonstrated to have suffered actual and certain damage.

Council Regulation No. 1432/1992 of 1 June 1992 implementing the UN trade embargo against Serbia and Montenegro under Security Council Resolution 757 of 30 May 1992 gave rise to two cases. In *Centro Com*, the ECJ held that this Regulation had established a system of mutual confidence between Member States as regards the emission of certificates allowing the transport of goods that had been qualified by the UN Committee on Sanctions as serving humanitarian or

[30] Council document 10198/1/04 Rev 1.
[31] CFI, Judgment of 28 April 1998, Case T-182/95 – Dorsch Consult v. Council and Commission, ECR 1998 II-667.
[32] ECJ, Jugdment of 15 June 2000, Case C-237/98 P – Dorsch Consult v. Council and Commission, ECR 2000 I-4941.

medical purposes in Serbia and Montenegro. Accordingly, a Member State was prevented under Community law to give instructions to its banks not to release Yugoslav financial means from its accounts that could be used for paying such imports from another Member State to Serbia and Montenegro[33]. The other case – *Aulinger* - is currently pending before the ECJ. The Court is asked to determine whether Article 1 (d) of the said regulation prohibited the so-called "broken traffic", i.e. the commercial transport of persons from the EU to the border of Serbia and Montenegro by an EU company, while another company located in Serbia and Montenegro would ensure the transport of these persons from the border to a destination inside the latter's territory[34].

UN Security Council Resolution 820 of 17 April 1993, tightening the above mentioned embargo against Serbia and Montenegro, was implemented by Council Regulation No. 990/1993 of 26 April 1993. Upon reference by an Irish Court, the ECJ interpreted in *Bosphorus* Article 8 of this Regulation in the light of the above mentioned UNSC resolution as covering airplanes that are owned by a company located in Serbia and Montenegro, even if they are leased to a non-related third company situated outside Serbia and Montenegro for four years[35]. In *Ebony Maritime*, a tanker flying the Maltese flag who had taken course towards the coastline of Montenegro was stopped from doing so by NATO/WEU forces on the High Sea and handed over to the Italian authorities in Brindisi. The latter ordered the vessel to be impounded and the cargo to be confiscated. Upon reference the ECJ held that under Article 9 of Regulation No. 990/993 the competent authorities of a Member State must detain all vessels suspected of having breached sanctions imposed against the Federal Republic of Yugoslavia, even if they are flying the flag of a non-member country, belong to non-Community nationals or companies, or if the alleged breach of sanctions occurred outside Community. Likewise, national authorities may, under the second paragraph of Article 10 of the Regulation, confiscate those vessels and their cargoes once the infringement has been established. Articles 9 and 10 of the Regulation were found to be applicable once a vessel is within the territory of the Member Staten und thus under the territorial jurisdiction of that State, even if the alleged infringement occurred outside its territory[36].

Finally, some cases concerning Regulation (EC) No 881/2002 on financial sanctions imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, Regulation (EC) n° 2580/2001 on specific measures directed against certain persons and entities with a view to combating terrorism, and Regulation (EC) No 872/2004 on financial sanctions targeting former President Taylor of Liberia and associated persons that implement relevant UN Security Council resolutions are pending before the Court of First Instance of the European Communities (CFI) (see also answer to question 7).

2. Does the choice depend on the content and the legal nature of the Security Council Resolution?

Legally binding Security Council decisions, adopted under Chapter VII of the UN Charter, are implemented in the European Union due to their obligatory legal nature. The choice of procedure and form depends on the nature of the measure that must be taken (cf also answer to question 1).

3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

As a rule, EU Council Common Positions and Regulations cease to apply either on the date of

[33] ECJ, Judgment of 14 January 1997, Case C-124/95 – Centro Com, ECR 1997 I-114.
[34] Preliminary Reference by the Oberlandesgericht Köln of 21 August 2003, Case C-371/03, Aulinger ./. Federal Republic of Germany, pending.
[35] ECJ, Judgment of 30 July 1996, Case C-84/95 – Bosphorus v. Minister for Transport, Energy and Communications, ECR 1996, I-3953.
[36] ECJ, Jugment of 27 February 1997, Case C-177/95 – Ebony Maritime SA and Loten Navigation Co. Ltd v Prefetto della Provincia di Brindisi and others, ECR 1997 I-1111.

expiration provided therein, without needing any further decision, or, in the absence of an expiry date, when they are repealed. The 2003 Guidelines state in this regard:

"A specific situation exists, when the Security Council decides on measures which expire by a particular date. In such a situation, correct implementation of the UN measures requires immediate legislative action, if the measures are renewed just before the expiration date. In order to prevent expiration of the restrictive measures in cases where renewal is called for, the Council should not copy the expiration date in the implementing Regulation."

Accordingly, the Regulations will normally remain in force and require normative action to be repealed, if the Security Council fails to renew them.

4. When a Security Council Resolution imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority which is competent to authorize export?

The Regulations imposing sanctions include lists of competent authorities which are empowered to grant exemptions. Whereas certain implementing powers are granted to the Commission, it is common practice that the Regulations provide that authorities of the Member States are competent to take decisions on requests for exemptions.

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

Where the UN Security Council Resolution provides that certain decisions can only be taken by a UN Sanctions Committee, the Regulations are drafted accordingly. For example, the Commission is empowered to adopt the measures necessary to implement designations of persons, groups and entities made by the Al Qaeda and Taliban Sanctions Committee, in order to have funds and assets frozen in accordance with Regulation (EC) No 881/2002.

If exemptions must be granted by a UN Sanctions Committee, the Regulations stipulate that requests must be sent to the competent authorities, which will then take the matter to the Sanctions Committee and inform the applicant of the decision. In order to provide the clarity that is needed, any conditions for granting exemptions laid down in the UN Security Council Resolution are included in the Regulation.

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights? For example, have national courts assumed jurisdiction in cases where sanctions are challenged by individuals affected by sanctions:
a. if implemented through EU-regulations;
b. if implemented directly at national level?

In the *Bosphorus* case (see note 1), a company challenged the prohibition contained in Article 8 of Council Regulation No. 990/1993 to use an aircraft leased from a Yugoslav enterprise as violating his right to property and the freedom to pursue a business. The ECJ found[37]:

"22 Any measure imposing sanctions has, by definition, consequences which affect the right to property and the freedom to pursue a trade or business, thereby causing harm to persons who are in no way responsible for the situation which led to the adoption of the sanctions.

23 Moreover, the importance of the aims pursued by the regulation at issue is such as to justify negative consequences, even of a substantial nature, for some operators.

[37] ECJ (note 6), paras. 22-26.

24 The provisions of Regulation No 990/93 contribute in particular to the implementation at Community level of the sanctions against the Federal Republic of Yugoslavia adopted, and later strengthened, by several resolutions of the Security Council of the United Nations. The third recital in the preamble to Regulation No 990/93 states that "the prolonged direct and indirect activities of the Federal Republic of Yugoslavia (Serbia and Montenegro) in, and with regard to, the Republic of Bosnia-Herzegovina are the main cause for the dramatic developments in the Republic of Bosnia-Herzegovina"; the fourth recital states that "a continuation of these activities will lead to further unacceptable loss of human life and material damage and to a further breach of international peace and security in the region"; and the seventh recital states that "the Bosnian Serb party has hitherto not accepted, in full, the peace plan of the International Conference on the Former Yugoslavia in spite of appeals thereto by the Security Council".

25 It is in the light of those circumstances that the aim pursued by the sanctions assumes especial importance, which is, in particular, in terms of Regulation No 990/93 and more especially the eighth recital in the preamble thereto, to dissuade the Federal Republic of Yugoslavia from "further violating the integrity and security of the Republic of Bosnia-Herzegovina and to induce the Bosnian Serb party to cooperate in the restoration of peace in this Republic".

26 As compared with an objective of general interest so fundamental for the international community, which consists in putting an end to the state of war in the region and to the massive violations of human rights and humanitarian international law in the Republic of Bosnia-Herzegovina, the impounding of the aircraft in question, which is owned by an undertaking based in or operating from the Federal Republic of Yugoslavia, cannot be regarded as inappropriate or disproportionate".

The President of the Court of Justice[38] followed a similar line of reasoning in its order rejecting an appeal of the "Invest Import GmbH" against an order a Chamber President of the CFI[39] in the context of the Yugoslav financial embargo (Regulations No. 1294/99 and No. 723/2000).

For cases on UN sanctions directed against individuals which are implemented on the European level see response to question No. 7.

7. Are there decisions of national courts or state practice concerning the relationship between sanctions towards individuals and human rights of these individuals?

A number of applications against Regulation (EC) No 881/2002 2002 on financial sanctions imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and Regulation (EC) n° 2580/2001 on specific measures directed against certain persons and entities with a view to combating terrorism are pending before the Court of First Instance of the European Communities (CFI). Very recently an application has been lodged before the CFI against Regulation (EC) No 872/2004 on financial sanctions targeting former President Taylor of Liberia and associated persons. These applications were lodged by persons and entities designated by a UN Sanctions Committee in accordance with a UN Security Council Resolution. The CFI has up to now decided on requests for interim measures[40], but has not rendered judgement in any of these cases.

[38] Order of the President of the Court of 13 November 2000, Case C-317/00 P – Invest Import and Export GmbH and Invest Commerce v. Commission of the European Communities, ECR 2000 I-9541.

[39] Order of the President of the Second Chamber of the Court of First Instance of 2 August 2000, Case T-189/00 R – Invest Import and Export GmbH and Invest Commerce v. Commission of the European Communities, ECR 2000 II-2993.

[40] See, in particular, Order of 7 May 2002 in Case T-306/01, Aden *et al.* v. Council and Commission.

JAPAN

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has the implementation given rise to any constitutional or other legal problems at national level? Is there any relevant case law?

2. Does the choice depend on the content and the legal nature of the Security Council Resolution?

It is an obligation for Japan to implement the decisions of the Security Council including those imposing sanctions, according to Article 25 of the UN Charter that "[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter" as well as paragraph 2 of Article 98 of the Japanese Constitution, which provides that "[t]he treaties concluded by Japan and established law of nations shall be faithfully observed."

The method of incorporating Security Council Resolutions imposing sanction is not comprehensively provided for in domestic law. They are incorporated into domestic legal order through legal instruments such as law, cabinet order, or ministerial ordinance. The choice of these legal instruments is depends upon the contents and the legal nature of each Resolution as well as the relevant domestic laws and regulations: if necessary, a new legislation will be made.

No constitutional or other legal problems have yet arisen in implementing Security Council Resolutions until now.

The implementation of Security Council Resolutions is obligator as far as they contain the Council's decisions. It is within each Member State's discretion to implement other parts of the Resolutions.

3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

As long as no specific provision exists, sanctions imposed for a fixed period of time are not repealed automatically even after the period and require normative action to invalidate them. In the case of an export embargo measure, for instance, the term of sanctions is dealt by the revision of the appendix list of the Export Trade Control Order.

4. When a Security Council Resolution imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority which is competent to authorize export?

According to the Foreign Exchange and Trade Law and the Export Trade Control Order under the law, permission or approval by the Minister of Economy, Trade and Industry is required to export targeted substances. A Security Council Resolution imposing sanctions, in general, provide that a Member State should acquire approval by the committee established by the Resolution to export exempted goods, materials or other substances. If that is the case, the Minister of Economy, Trade and Industry would hold or reject any application for exporting goods or others to be exempted until the committee approves the exceptions.

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

Sanctions Committee decisions specifying Security Council sanctions are incorporated into

domestic legal order through an amendment (revision) to the appendix lists of relevant laws and orders, and through promulgation or an amendment of the notifications by relevant Ministries in accordance with related laws and orders.

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights? For example, have national courts assumed jurisdiction in cases where sanctions are challenged by individuals affected by sanctions:
   a. if implemented through EU-regulations
   b. if implemented directly at national level

7. Are there decisions of national courts or state practice concerning the relationship between sanctions directed towards individuals and Human Rights of these individuals?

There has been no case where an act incorporating sanctions into the domestic legal order was challenged in court for being in violation of human rights. It is assumed, however, that national courts would have jurisdiction over such cases if they are raised.

MEXICO

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has the implementation given rise to any constitutional or other legal problems at national level?

Mexican law does not prescribe any specific procedure for the incorporation of obligations imposed by the UN Security Council. However, according to article 133 of Mexico's Constitution, treaties signed and ratified by Mexico are ipso facto an integral part of our legal system. This provision could also be interpreted in the sense that no act of transformation of an international treaty of which Mexico is a party to is required. Therefore, international obligations imposed by the Security Council are mandatory within the Mexican legal system by virtue of article 25 of the UN Charter.

To some extent, Mexico's experience on implementing Security Council resolutions has followed the evolution registered by the UN organ. From 1946 until 1989 the Security Council adopted 646 resolutions and just in two cases (Southern Rhodesia, 1966, and South Africa, 1977) established sanctions against specific States. During that period there were not any difficulties implementing the UNSC resolutions and sanctions. In the latter case, mainly because they were directed against States and its dispositions concerned diplomatic actions to be carried out by the Mexican government.

The 1990´s decade observed the evolution in the proceedings of the UNSC. The scope of sanctions evolved from its original nature (i.e. directed to States) to a broader scope. Hence, sanctions were imposed not only on States, but also on Non-State actors and more recently on individuals. Mexico tried to keep up with this evolution, however, its legal system is probing the need for additional adjustments.

During the last decade the Mexican government published the sanctions imposed by the UNSC on Iraq and Kuwait, Yugoslavia (Serbia and Montenegro), Libya, Angola, Haiti, Liberia and Rwanda. In fact, from August 1990 till February 1996, twelve decrees were published in the "Diario Oficial de la Federación" (Official Journal of the Federation) informing about the establishment, suspension and repeal of sanction regimes against the above mentioned States.

Although there is not a specific procedure to incorporate UNSC sanctions resolutions into the Mexican legal system, there have been no constitutional problems in implementing their dispositions. However, as was pointed out before, there is a need for further adjustments in order to cope with the broader scope encompassed in the "new generation" of UNSC sanctions resolutions.

2. Does the choice depend on the content and the legal nature of the Security Council Resolution?

As stated above, the Mexican government's practice in the 1990's was related to the nature of the UNSC resolutions and procedures. The decrees' principle function was to inform concerned governmental agencies of their duties under resolutions, and to promote public awareness of the restrictions on free commerce with the countries subject to UN sanctions.

Bearing in mind the broader scope of current UNSC sanction resolutions, the Legal Adviser's Office of the Mexican Foreign Affairs Ministry is conducting an analysis aimed at identifying whether there is in fact a need for adjusting the Mexican legal system, and if so what kind of adjustments (legal or administrative) would be required to implement this kind of resolutions.

3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

If the UNSC sanction resolution establishes a fixed period of time and since it is published in the "Diario Oficial de la Federación" (Official Journal of the Federation), there is no need for an additional legal order. If a specific sanction regime is concluded through a new resolution, then the publication of the latter would be required.

4. When a Security Council Resolution imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority which is competent to authorize export?

None of the decrees that were enacted by the Federal Executive in the 1990's established or appointed a specific national authority. However, existing governmental agencies in charge of foreign trade regulations are, by definition, responsible for implementing UN export embargoes and their exceptions.

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

Decisions adopted by Sanctions Committees have never been published in the Official Journal of the Federation. It is, however, important to underline that these decisions are, ipso facto, incorporated to our legal system insofar as they constitute an integral part of international obligations imposed by the Security Council to the international community.

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights?

To present, no domestic act of this nature has been challenged, nor has a Mexican Court assumed jurisdiction in cases concerning Security Council Resolutions. Nevertheless, UNSC resolutions establishing a "listing procedure" could pose a challenge to the national legal system. First, because this kind of resolutions do not provide for a judicial mechanism that could initiate a legal action in Mexico. Second, because there are not "delisting mechanisms" within the UNSC procedures nor any other procedure to compensate the individual for erroneously including him/her in a sanction list (particularly those referred to freezing financial and economic assets).

APPENDIX/ANNEXE

QUESTIONNAIRE ON NATIONAL* MEASURES TO IMPLEMENT UN SANCTIONS

1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has the implementation given rise to any constitutional or other legal problems at national level? Is there any relevant case law?

2. Does the choice depend on the content and the legal nature of the Security Council Resolution?

3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?

4. When a Security Council Resolution imposing an export embargo provides for exceptions while not establishing a committee to authorize such exceptions, does the incorporating act appoint a national authority which is competent to authorize export?

5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?

6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights? For example, have national courts assumed jurisdiction in cases where sanctions are challenged by individuals affected by sanctions:
   a. if implemented through EU-regulations;
   b. if implemented directly at national level?

7. Are there decisions of national courts or state practice concerning the relationship between sanctions directed towards individuals and Human Rights of these individuals?

(*) Or European Union.