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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

**Database on National Implementation Measures of UN Sanctions,
and Respect for Human Rights /
*Base de données sur les mesures nationales d'application des
sanctions des Nations Unies et le respect des droits de l'homme***

**Contributions of Estonia and Serbia /
*Contributions de l'Estonie et de la Serbie***

41st meeting
Strasbourg, 17-18 March 2011

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Directorate of Legal Advice and Public International Law, DLAPIL

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I. NEW CONTRIBUTIONS TO THE DATABASE ON NATIONAL IMPLEMENTATION MEASURES OF UN SANCTIONS, AND RESPECT FOR HUMAN RIGHTS

A. UPDATE OF THE CONTRIBUTION OF 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 given rise to any constitutional or other legal problems at national level? Is there any relevant case law?**

In implementing UN Security Council (UNSC) Resolutions Estonia is bound by the requirements of its EU membership. Estonia implements UNSC Resolutions usually through relevant EU measures – Council Decisions and Regulations. As EU Council Regulations are directly applicable and binding in their entirety, there is usually no need to adopt additional national measures. If needed, the International Sanctions Act (hereinafter *ISA*, new reduction in force since 5 October 2010) provides a basis for adopting national implementing acts. ISA regulates the internal enforcement, application and supervision of international sanctions where the imposition of international sanctions has been decided by UN, EU, other international organization, or Estonian Government. According to the terms and conditions of the ISA the Government of the Republic shall, on the proposal of the Ministry of Foreign Affairs, take the appropriate measures necessary for the internal enforcement and application of international sanctions.

In case of the absence of relevant EU Council Regulation, the ISA provides a basis for implementing UNSC Resolutions directly by adopting governmental regulations or orders.

Measures included in EU Council Decision that fall under the competence of the Member States, such as travel restrictions and arms embargo, are implemented by national implementing measures. Travel restrictions are implemented by governmental orders. Arms embargo is implemented directly by Strategic Goods Act.

As to the relevant case law, there have been no cases before the national courts of Estonia.

- 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 UNSC Resolutions imposing international sanctions. Estonia implements UNSC Resolutions usually through EU implementing measures. In case of the absence of relevant EU Council Regulation, the ISA provides a basis for implementing UNSC Resolutions directly by adopting governmental regulations or orders.

- 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 UNSC Resolutions imposing sanctions are implemented through relevant EU instruments the sanctions cease to apply on the date of expiration provided therein, or in the absence of the date of expiration, when they are repealed. For further information please see the reply by the European Union.

Should it be necessary to implement the UNSC Resolutions directly (without appropriate EU measures), the measures necessary for the internal application of international sanctions would also cease to apply on the date of expiration provided in the relevant governmental regulation, 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?

UNSC Resolutions imposing export embargoes are implemented in Estonia through relevant EU instruments. The competent national authorities of the Member States to authorize exceptions to the export embargo are usually indicated in the websites listed in the annex of the EU Council Decision or a Regulation.

According to the terms and conditions of ISA when an act (UNSC Resolution, EU Council Decision or Regulation or Estonian governmental regulation) imposing export embargo on goods (except arms, related material and dual use goods) provides for exception, the competent authority is the Ministry of Finance.

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 authorization whether 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, Defense, Economic Affairs and Communications, the Security Police Board, the Police and Border Guard Board, the Tax and Customs Board and representatives of other administrative agencies and other specialists according to the necessity.

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

As the UNSC Resolutions imposing sanctions are implemented through relevant EU instruments, the Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation are also implemented through relevant EU measures. Where the UNSC Resolution provides that certain decisions can only be taken by Sanctions Committee, the EU Regulations are drafted accordingly.

For further information please 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?

So far there have been no 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 the human rights of these individuals?

So far there have been no decisions of national courts or state practice concerning the relationship between sanctions towards individuals and human rights of these individuals.

B. NEW CONTRIBUTION OF SERBIA

- 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 Republic of Serbia has not yet adopted the Law on the Enforcement of International Restrictive Measures, as a commission of legal experts is currently working on a draft proposal. In the absence of the implementing legislation, the incorporation of relevant provisions from UN Security Council resolutions in each particular case is done by the adoption of Conclusion of the Government. The Conclusion is based on Information prepared by the Ministry of Foreign Affairs, which contains the reasons for imposing sanctions and the description of restrictive measures to be adopted. In addition, the Government, by its Conclusion, appoints Ministry or Ministries tasked with enforcing and implementing measures stipulated by the UN SC Resolution. Following the adoption of the Governmental Conclusion on the enforcement of restrictive measures stipulated by the relevant UN SC resolution, the Ministry of Foreign Affairs, through its Permanent Mission to the UN, communicates the Governmental Report on restrictive measures to the competent UN SC Committee.

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

The modality for the incorporation of UN SC resolutions is invariable and is carried out in accordance with the aforementioned procedure. However, appointing a competent Ministry is contingent upon the content of the relevant UN SC 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?**

Where a UN SC resolution imposes sanctions for a fixed period of time, which is not renewed, the Government of the Republic of Serbia adopts a specific Conclusion on lifting the sanctions.

- 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?**

If a UN SC resolution imposing an export embargo provides for exceptions while not establishing a Committee competent to authorize them, in the cases prescribed by the resolution, the Government of the Republic of Serbia, through its Conclusion, appoints a Ministry competent to authorize stipulated exceptions.

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

Each new decision of a UN SC Sanctions Committee is incorporated into domestic law on the basis of a new Conclusion adopted by the Government of the Republic of Serbia.

- 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 ?**

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

To date there is no case law on the points in questions 6 and 7.

II. DATABASE ON NATIONAL IMPLEMENTATION MEASURES OF UN SANCTIONS, AND RESPECT FOR HUMAN RIGHTS

National contributions / Contributions nationales	English	Français
Albania / Albanie		
Andorra / Andorre		
Armenia / Arménie		
Austria / Autriche		
Azerbaijan / Azerbaïdjan		
Belgium / Belgique		
Bosnia and Herzegovina / Bosnie-Herzégovine		
Bulgaria / Bulgarie		
Croatia / Croatie		
Cyprus / Chypre		
Czech Republic / République Tchèque		
Denmark / Danemark		
Estonia / Estonie		
Finland / Finlande		
France / France		
Georgia / Géorgie		
Germany / Allemagne		
Greece / Grèce		
Hungary / Hongrie		
Iceland / Islande		
Ireland / Irlande		
Italy / Italie		
Latvia / Lettonie		
Liechtenstein / Liechtenstein		
Lithuania / Lituanie		
Luxembourg / Luxembourg		

Malta / Malte		
Moldova / Moldavie		
Monaco / Monaco		
Montenegro / Monténégro		
Netherlands / Pays-Bas		
Norway / Norvège		
Poland / Pologne		
Portugal / Portugal		
Romania / Roumanie		
Russian Federation / Fédération de Russie		
San Marino / Saint-Marin		
Serbia / Serbie		
Slovakia / Slovaquie		
Slovenia / Slovénie		
Spain / Espagne		
Sweden / Suède		
Switzerland / Suisse		
"the former Yugoslav Republic of Macedonia" / "l'ex-République yougoslave de Macédoine"		
Turkey / Turquie		
Ukraine / Ukraine		
United Kingdom / Royaume-Uni		
European Union / Union Européenne	 	
Japan / Japon		
Mexico / Mexique		
USA		