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**NATIONAL IMPLEMENTATION OF UN SANCTIONS AND
RESPECT FOR HUMAN RIGHTS**

Document submitted by the delegation of Sweden

International sanctions – how to improve legal safeguards for individuals

Background

Following the terrorist attacks in the United States on 11 September 2001, the international community has reacted in a number of ways to combat terrorism. International sanctions, such as freezing of assets and travel restrictions, directed against individuals and organisations, decided by the UN Security Council, are important features of these reactions. However, experiences from several countries have shown that such measures may have damaging consequences for the individuals targeted by such sanctions in cases where their human rights and the due process of law have been set aside. This memo outlines, from a human rights perspective, some of the issues and possible solutions which could be considered in an effort to improve the international sanctions instrument in the UN Security Council.

Problems and possible solutions

1. Criteria and evidence for listing individuals and organisations are often vague and/or inconclusive. Individuals and organisations may therefore find it difficult or impossible to challenge decisions on sanctions imposition in cases where they attempt to show that there are no sufficient reasons for the sanctions imposed on them.

Could this inadequacy be overcome by more elaborated criteria, and by a right for the individual or organisation to be properly informed of the statement of the case?

2. Could the need for swift action to stop the financing of terrorism and the need to protect the rights of individuals be met by a system of interim measures? In a given case, a state's request for immediate sanctions imposition could be met by an interim decision by the relevant sanctions committee, based on circumstantial evidence which must only meet the requirement that there is reason to suspect involvement in or financial support to terrorist activities. Such a decision must be followed up by more substantial evidence within a certain time limit in order to confirm the interim decision, and make it final. In the absence of such evidence, the interim decision would automatically be quashed and lose all legal effects.

3. There is a fundamental lack of due process in the sense that listed individuals and organisations neither have the right nor the possibility to have an independent legal examination of the facts and the evidence presented against them in a given case, or the right to a legal review of decisions behind it.

Could this lack of legal safeguards be improved by a system in which the first interim decision is referred to a panel of experienced lawyers (e.g. judges experienced in dealing with security cases), appointed by the Security Council, who could examine the facts and the evidence invoked against the individual or the organisation? Such a panel could act as a legal counsel to the Security Council (or the relevant sanctions committee) before the final decision is taken.

Or could a system be established in which complaints from a listed individual or organisation against a final decision are referred to an advisory panel of experienced lawyers, appointed by the Security Council, who could examine the complaints and the evidence and act as counsellors to the Security Council (or the relevant sanctions committee) when the Council or committee reviews its own decision at the request of the complainants?

4. A great number of individuals and organisations are now listed by the UN as associated with terrorism, and the system of listing will certainly prevail. It seems inevitable that mistakes will be made, and in order to uphold the rule of law, it seems necessary to introduce ways or systems whereby individuals and organisations can obtain redress.

Could a system be created whereby individuals and organisations, which have been wrongly subjected to sanctions, obtain financial redress through the international community?

**Permanent Missions of
Sweden and Germany
to the United Nations
New York**

**Terrorism and Targeted Sanctions:
Shortcomings and Possible Remedies for Individuals and Entities**

Workshop held on 24 November 2003
at the Permanent Mission of Germany to the United Nations
in New York

--Summary by the Chair (Co-sponsors) --

The workshop was sponsored by the Governments of Sweden and Germany, under the auspices of the Italian Presidency of the European Union and the European Commission, and brought together over 60 sanctions experts from academia, governments, UN Security Council members and other interested UN member states as well as the UN Secretariat. The main results are summarized as follows:

Background:

Targeted sanctions imposed by the Security Council are far-reaching restrictive measures with legal consequences such as freezing of assets and accounts, travel restrictions etc. Until the 1990s such acts have been the prerogative of states, which in turn provide certain procedures in accordance with their national legislation and grant remedies to affected individuals. The fight against terrorism has however prompted the UN Security Council, as well as individual states and regional organizations, to impose sanctions on both individuals and entities connected with terrorism.

Sanctions imposed by the Security Council offer few remedies for individuals to challenge the lawfulness of their inclusion in sanctions lists or to seek exemptions. As the experience of the Al-Qaeda and Taliban Sanctions Committee has shown, there is a need to address some of these issues and to develop proposals for practical solutions.

The workshop focussed on the possibilities and perspectives of remedies available to individuals or entities affected by targeted sanctions in the UN as compared with national or regional measures. The informal character of the workshop allowed for a free-flowing and open discussion without any prejudice to a particular "course of action" to be taken.

The main points of discussion included the following:

- Targeted Sanctions remain an important instrument of the UN Security Council in the global fight against terrorism;
- In order to be effective, sanctions have to be applied in a speedy and transparent way, with the cooperation of all UN member states;

- The global fight against terrorism is a long-term effort; therefore its multilateral instruments must be designed with a view to a possible long-term use;
- Targeted sanctions have to be applied against clearly identified individuals or entities, as specified in relevant resolutions and sanctions lists, while strictly avoiding other targets;
- As decisions by the relevant UN sanctions committees in this context are directly and severely restricting the rights of individuals, these individuals should have the possibility to be heard and to present their case directly before a reviewing body;
- Since there are already lawsuits under way in some UN member states as well as at the European Court of Justice, the question of possible legal remedies should be addressed actively.

Some concrete suggestions:

- The relevant resolutions, i.e. the legal bases for the restrictions, should contain clear criteria and definitions for the listings as well as for their scope;
- The 1267 Committee's Guidelines could be amended to include further documentation to accompany and specify listing requests (e.g. arrest warrants and indictments, in addition to the narrative description of the case in paragraph 5b) or additional identification criteria (cf. paragraph 5c);
- After being entered into the consolidated sanctions list, the individual concerned should, to the extent possible, be informed about
 - -- the fact of being included in the list
 - -- as appropriate, the main reasons for the listing
 - -- the consequences (financial freeze, travel ban, arms embargo)
 - -- the right to be heard and to present his/her case before a reviewing body, either directly or through his/her country of residence or citizenship.
- This "reviewing body" could be
 - -- the existing expert panel / monitoring group (equipped with additional legal expertise) or
 - -- a newly established independent organ ("arbitrary body", ombudsman, review panel etc.)
- The de-listing procedure described in paragraph 7 of the Guidelines would have to be adapted accordingly.

Further questions like a system with interim measures to meet the need for urgency as well as compensations to wrongfully listed individuals were also discussed.

A Swedish non paper on concrete suggestions was distributed. The non paper is attached.

Follow up discussions should take place no later than 2004 in a framework to be agreed at a later stage.--