

TWELFTH COMMISSION

Judicial Review of Security Council Decisions

Rapporteur: M. Rüdiger Wolfrum

**Review of Measures Implementing Decisions of the Security Council
in the Field of Targeted Sanctions**

FINAL RESOLUTION

The Institute of International Law,

Considering that according to Article 24, paragraph 2, of the Charter of the United Nations the Security Council shall “act in accordance with the Purposes and Principles of the United Nations” and that “the specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII”,

Considering the Declaration of the high-level meeting of the United Nations General Assembly on the rule of law at the national and international levels (A/RES/67/1* of 24 September 2012), paragraph 2 of which states that “the rule of law applies to all States equally, and to international organizations, including the United Nations and its principal organs, and that respect for and promotion of the rule of law and justice should guide all of their activities” and paragraph 29 of which emphasises that “we encourage the Security Council to continue to ensure that sanctions are carefully targeted, in support of clear objectives and designed carefully so as to minimize possible adverse consequences, and that fair and clear procedures are maintained and further developed”,

Recalling Security Council Resolution 2178 (2014) which reaffirms that Member States must ensure that “any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law”,

Bearing in mind that in general the rule of law includes a principle according to which all persons, institutions and entities, public and private, including the State itself, are accountable to the laws that are publicly promulgated, equally enforced and independently adjudicated,¹

Noting that already at its Amsterdam Session (1957), the Institute adopted a Resolution entitled “Judicial Redress Against the Decisions of International Organs” (*Annuaire*, Vol. 47-I), emphasising that “every international organization has the duty to respect the law and to ensure that the law be respected by its agents and officials [and] that the same duty is incumbent on States as members of such organs or organizations”,

Guided by the objective that the Institute should promote the rule of law as a leading principle for States and international organisations, including the United Nations and its main organs,

Recognising that the realisation of the rule of law, including the protection of human rights, is itself dependent on the maintenance of international peace and security,

Noting also that in several cases, judgments of national as well as regional courts having declared that national or European Union measures implementing targeted sanctions against individuals or entities have violated human rights, including the right to a fair trial, of those who have been targeted,

Noting, finally, that in the adoption of measures implementing targeted sanctions care has to be taken of the protection of the fundamental rights and freedoms, those being internationally shared values, of the persons concerned,

Adopts the following guiding principles:

CHAPTER I GENERAL PROVISIONS

Article 1 **Use of terms**

For the purposes of this Resolution:

- (a) “Review” means an *ex post* examination of a decision or an act with a view to establishing whether this decision or act is in conformity with applicable law.

Review may take various forms. It may be judicial, administrative or internal, and may be direct or indirect.

¹ See the Annual Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616*), paragraph 6.

- (b) “Security Council decisions” means those pronouncements of the Council itself or of its subsidiary bodies, such as sanctions committees, which are binding upon Member States, non-Member States and other entities or individuals as the case may be, and which are to be implemented.
- (c) “Targeted sanctions” means those decisions adopted by the Security Council, sanctions committees, or any other subsidiary organ which oblige States to take such measures as provided for in the Security Council resolution concerned against individuals or private entities listed by the relevant sanctions committee.
- (d) “Implementation measures” means measures taken by States or regional organisations to implement the sanctions as prescribed by the relevant Security Council decisions.

Article 2
Scope

This Resolution is concerned with the review of measures implementing decisions of the Security Council in the field of targeted sanctions taken by States or regional organisations.

Article 3
Legal framework for Security Council decisions

1. The Security Council shall act in conformity with the Charter of the United Nations including provisions protecting human rights.
2. Considering that it is first and foremost for the Security Council to establish a procedure for listing and delisting which meets the standards of the Charter of the United Nations, including provisions protecting human rights, the Security Council should develop further procedures with a view to ensuring better protection of the rights of targeted individuals or entities.

Article 4
Review of Security Council decisions

1. The Charter of the United Nations does not provide for review of decisions of the Security Council by national or regional courts.
2. However, measures implementing targeted sanctions may be reviewed by national or regional courts. In the course of such review, those courts may interpret Security Council decisions.

CHAPTER II
MEASURES IMPLEMENTING TARGETED SANCTIONS OF THE SECURITY COUNCIL

Article 5

Decision of sanctions committees to list and delist

1. Sanctions committees shall fully respect the Charter of the United Nations including the provisions protecting human rights.
2. The decision of a sanctions committee to list or not to delist an individual or a private entity may not be reviewed directly by regional or national courts.
3. The bar to reviewing decisions of a sanctions committee as referred to in paragraph 2 does not preclude a review of implementation measures taken by States or regional organisations with a view to implementing such decisions.

CHAPTER III
LISTING AND DELISTING

Article 6

Improvement of listing and delisting procedures

Improvements in the listing or delisting procedure by the Security Council would be consistent with general principles of law and could, moreover, reduce the necessity felt by targeted individuals or entities to have recourse to national or regional courts.

Article 7

Ombudsperson procedure

1. The procedure, in particular the Ombudsperson procedure, established for delisting constitutes a valuable procedural innovation which provides, as far as delisting is concerned, a possible remedy for petitioners. It is primarily designed as a mechanism to assist sanctions committees in their decisions on delisting rather than to review the original decision on listing.
2. This procedure applies only to certain sanctions regimes but not to others which likewise target individuals and private entities with similar possible consequences for the enjoyment of human rights.
3. Accordingly, it is recommended that the Ombudsperson procedure be applied to all such regimes, present and future, when providing for the prescription of targeted sanctions, and that its procedure be rendered more transparent.
4. It is further recommended that the Office of the Ombudsperson be established as an independent, properly resourced institution.

Article 8

Further improvement of listing and delisting procedures

In accordance with Article 3, the Security Council should improve listing and delisting procedures. Such improvements may include for example:

- (a) strengthening of the internal review procedure by the Security Council;
- (b) establishment of a periodic review as to whether the conditions of the targeted sanctions on a particular individual or entity are still met;
- (c) leaving the implementing States or regional organisations some discretionary power concerning the implementation of the measures requested, by taking into consideration the circumstances of a particular case; and
- (d) improving the listing process involving the State of nationality and the State of residence in the process of a listing initiative by a third State.

**CHAPTER IV
REVIEW**

Article 9

Identifying individuals or entities for listing and delisting

1. Taking into account that the identification of individuals and entities for listing originates with the States taking such initiative, it will be noted that:

- (a) such process possibly leading to a listing should be transparent for the targeted individual or entity;
- (b) considering the possible human rights consequences of listing, such process shall respect international, regional and national human rights standards; and
- (c) the individual or entity should be provided with an opportunity to have the national or regional decision on their listing judicially reviewed according to the relevant national legal system.

2. These principles shall guide the authorities of the designating State, of the State of nationality or of the State of residence, as the case may be, if they are considering initiating or supporting the delisting of the individual or entity concerned.

3. The national authorities as well as the entities engaged in this process of listing and delisting shall take into account the object and purpose of targeted sanctions.

Article 10

Implementing targeted sanctions

1. In implementing targeted sanctions, States or regional organisations shall act in the fulfilment of their obligations under the Charter of the United Nations in respect of decisions of the Security Council.
2. This does not exclude that implementation measures undertaken by States or regional organisations may be reviewed as set forth in Article 4.

Article 11

Review by regional or national courts

1. Any judicial review of measures implementing targeted sanctions shall take into account the object and purpose of such sanctions. In this context, particular attention shall be paid to Article 103 of the Charter of the United Nations.
 2. Account should also be taken by any regional or national judicial review as to whether the petitioner has applied for delisting under the relevant delisting procedure. In particular, any recommendation of the Ombudsperson should be taken into consideration.
 3. Review of measures implementing Security Council decisions shall be consistent with all relevant provisions of the Charter of the United Nations, including in particular Articles 24, 25 and 103.
 4. In reviewing implementation measures and declaring them not to be in conformity with relevant human rights standards, the regional or national courts should take into account that their decision does not exempt the implementing State or regional organisation from its duty to meet its international obligations under the Charter of the United Nations. Such obligations remain valid.
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