

Maja Lukić, LL.M.

Assistant Lecturer,
University of Belgrade Law Faculty

THE SECURITY COUNCIL'S TARGETED SANCTIONS IN THE LIGHT OF RECENT DEVELOPMENTS OCCURRING IN THE EU CONTEXT

The shift from economic sanctions against whole nations to sanctions targeted at individuals brought a new dimension to the focus of international law: the contradiction between (procedural) standards of human rights protection and the authority of the UN Security Council acting pursuant to the UN Charter Chapter VII. The encounter of the UNSC targeted sanctions with the EU and ECHR system of human rights protection, as articulated in recent ECJ decisions, not only affirms the EU as a gradually appearing sovereign legal system with strong human rights safeguards, but also clarifies the authority of the UNSC with respect to maintaining peace and security in the world.

Key Words: *Economic sanctions. – Targeted sanctions. – Resolution 1267. – Yusuf and Kadi case.*

1. INTRODUCTION

The United Nations Security Council (referred to herein as “UNSC”) has gradually adopted targeted financial and travel sanctions¹ against individuals in the past decade, which has widely been regarded as a step forward from economic sanctions² that it had been using against certain nations.

¹ Such individually targeted sanctions have also been referred to as “smart” or “designer”, due to the fact their negative effects are limited to the very group of individuals from which a certain threat originates, instead to a nation as a whole.

² The UN Charter does not contain the term “sanctions” at all, but refers to measures that may be adopted in response to identified threats to the peace, breaches of the peace and acts of aggression.

However, the narrowing of the scope of UN sanctions and putting individuals into the sanctions' crosshairs instead of whole nations has given room to wide spread criticism from the perspective of human rights protection.

For the benefit of addressing the global, and still growing, threat of international terrorism in accordance with the level of political and legal standards pertinent to developed democracies, certain distinctions among the arguments raised in connection with the targeted sanctions need to be put forth from the perspective of international law. A particular attention is paid to differentiating the objections to targeted sanctions coming from the human rights perspective between those that question of the validity of these acts *per se*, on the international law level, and those that are grounded in the standards of human rights protection of sovereign supra-national and national legal systems.

2. ECONOMIC SANCTIONS

Economic sanctions can be defined as a political act which uses economic tools to exert a pressure on a third State in order to obtain a change of its behavior.³

Within the United Nations framework, economic sanctions have been implemented by the Security Council⁴ with the aim of maintaining peace, pursuant to the Chapter VII of the UN Charter. Though effectiveness of the Security Council was limited during the Cold War, the 1990s saw a great expansion in its activity.⁵ Since 1990 the UN Security Council has imposed ten arms embargoes in an effort to limit local conflicts,⁶

³ See: M. Milojević, "Sankcije u međunarodnom pravu", *Analiza Pravnog fakulteta u Beogradu*, 4–6/97, 435–440; T. de Wilde d'Estamel, "The Use of Economic Tools in Support of Foreign Policy Goals: the Linkage between EC and CFSP in the European Union Framework", Discussion Paper prepared for the ECSA's Fifth Biennial International Conference, Seattle, 29 May 1997, 5; G. C. Hufbauer, B. Oegg, "Targeted Sanctions: A Policy Alternative?" <http://www.iie.com/publications/papers/paper.cfm?ResearchID=371>, last visited 15 October 2009.

⁴ M. Kreća, S. Avramov, *Međunarodno javno pravo*, Beograd 1997, 11.

⁵ S. Chesterman, "The UN Security Council and the Rule of Law", Public Law & Legal Research Paper Series Working Paper No. 08–57, November 2008, <http://ssrn.com/abstract=1279849>, last visited 15 October 2009. Between 1946 and 1989 the Security Council met 2,903 times and adopted 646 resolutions, averaging fewer than 15 per year; in the following decade it met 1,183 times and adopted 638 resolutions, an average of about 64 per year. In its first 44 years, 24 Security Council resolutions cited or used the enforcement powers contained in Chapter VII of the UN Charter; by 1993 the Council was adopting that many such resolutions every day. *Ibid.*

⁶ Iraq (1990), Yugoslavia (1991), Somalia (1992), Libya (1992), Liberia (1992), Haiti (1993), Angola (1993), Rwanda (1994), Sierra Leone (1998) and again against the Federal Republic of Yugoslavia (1998) over the Kosovo conflict.

and in total has imposed sanctions on 16 countries: Afghanistan, Angola, Eritrea, Ethiopia, Haiti, Iraq, Liberia, Libya, Rwanda, Sierra Leone, Somalia, South Africa, Southern Rhodesia (now Zimbabwe), Sudan, the Federal Republic of Yugoslavia (FRY) and the Socialist Federal Republic of Yugoslavia.⁷

Economic sanctions against whole nations have been widely criticized as both ineffective and disproportional, i.e. as inflicting too much collateral damage while producing too few results.⁸ Such economic sanctions have been found to harm civilian population of the targeted country instead of the leaders of the regime in power.⁹ The inadequacy of such general approach is intensified whenever sanctions are targeted at a country whose political system lacks democratic transmission of electorate's will upon political leadership, since it is hard to justify infliction of harm upon population that lacks capacity to influence the behavior of its political leaders. Oftentimes even a contrary effect can take place, so that broad economic sanctions in fact "may play into the hands of 'hardliners' in the target country....The effect would tend to entrench the target's objectionable policy."¹⁰ Another argument against broad economic sanctions, this time grounded in legitimate interests outside the target country, would be that such sanctions put a heavy burden on international commerce, harming the international companies that transact with the target country.¹¹

Criticism of the broad economic sanctions, grounded on their non-discriminative character, ineffectiveness and arbitrariness of the UNSC, led to the formation of the UN Working Group on General Issues of Sanctions, with the aim of defining a framework for imposing sanctions by the UNSC. A draft report was presented to group members in February 2001, who then decided to defer the consideration of the report by the UNSC indefinitely. The report nevertheless influenced the practice of the UNSC in several important respects, e.g. by the fact that time-limited sanctions have been introduced, excluding arbitrariness of the UNSC with respect

⁷ I. Anthony, "Sanctions applied by the European Union and the United Nations", *SIPRI Yearbook 2002: Armaments, Disarmament and International Security*, 204.

⁸ In his 1997 report on the work of the United Nations, Secretary General Kofi Annan stressed the importance of economic sanctions: the Security Council's tool to bring pressure without recourse to force. At the same time, Annan expressed concern because of the harm economic sanctions inflict upon civilian population, as well as for the collateral damage to third states. He acknowledged that "it is increasingly accepted that the design and implementation of sanctions mandated by the Security Council need to be improved, and their humanitarian costs to civilian populations reduced as far as possible." Annual Report of the Secretary-General on the Work of the Organization (1997), A/52/1

⁹ M. D. Evans, *International Law*, Oxford University Press, 2003, 526.

¹⁰ W.H. Kaempfer, A.D. Lowenberg, "Targeted Sanctions – Motivating Policy Change", *Harvard International Review*, Fall 2007, 69.

¹¹ W.H. Kaempfer, A.D. Lowenberg, 68.

to indefinite prolongation of the staying in force of sanctions against a particular country.¹²

3. TARGETED SANCTIONS

Partly in response to criticism aimed at general economic sanctions, and partly due to specific historical circumstances (impossibility to target any particular nation in retribution for terrorist attacks of 11 September 2001), targeted sanctions have appeared with greater frequency in the past decade. Their main aim has been to put pressure on specific individuals and limit their ability to undermine international peace and security, while limiting the collateral impact on general population of the country at hand. The specific forms through which the individuals who have so far been targeted by UN Security Council sanctions had threatened international peace have been financing of terrorism and proliferation of weapons of mass destruction.¹³ Targeted sanctions can include travel bans, arms embargoes, or financial sanctions such as the freezing of assets¹⁴. Application of targeted sanctions has been intensified particularly after the terrorist attacks on the US soil on 11 September 2001.¹⁵

The first targeted sanctions were introduced in 1997 and 1998 against the UNITA political party in Angola. The most comprehensive system of targeted sanctions so far was put in place by UNSC Resolution 1267 of 1999, that established a sanctions regime against individuals and entities associated with *Al-Qaida*, Osama bin-Laden and/or the Taliban

¹² I. Anthony, "Sanctions applied by the European Union and the United Nations", *SIPRI Yearbook 2002: Armaments, Disarmament and International Security*, 206–210.

¹³ Resolutions 1373 of 28 September 2001 on the fight against terrorism, 1540 of 28 April 2004 on the non-proliferation of weapons of mass destruction; L. Van Den Herik, "The Security Council's Targeted Sanctions Regimes: In Need of Better Protection of the Individual", *Leiden Journal of International Law*, 20/2007, 798.

¹⁴ Travel restrictions and/or freezing of financial assets concerning persons designated ('listed') by a Committee of the Security Council have been imposed by a number of UNSC resolutions in the following cases: Sierra Leone, resolutions 1132 of 8 October 1997 and 1171 of 5 June 1998; Afghanistan; Taliban, Al-Qaida, resolutions 1267 of 15 October 1999, 1333 of 19 December 2000, 1390 of 16 January 2002, 1455 of 17 January 2003, 1526 of 30 January 2004, 1617 of 29 July 2005, 1735 of 22 December 2006; Iraq, Resolution 1483 of 22 May 2003; Liberia, resolutions 1521 of 22 December 2003, 1532 of 12 March 2004; Côte d'Ivoire, resolutions 1572 of 15 November 2004, 1584 of 1 February 2005, 1643 of 15 December 2005; Sudan (Darfur), Resolution 1591 of 29 March 2005; DRC, resolutions 1596 of 18 April 2005, 1649 of 21 December 2005, 1698 of 31 July 2006; Lebanon, Resolution 1636 of 31 October 2005; North Korea, Resolution 1718 of 14 October 2006; Iran, resolutions 1737 of 23 December 2006, 1747 of 24 March 2007.

¹⁵ I. Anthony, "Sanctions applied by the European Union and the United Nations", *SIPRI Yearbook 2002: Armaments, Disarmament and International Security*, 203.

wherever located. The system has since been modified by more than 10 UNSC resolutions.

Two modalities may be observed in respect of how UNSC resolutions that have introduced targeted sanctions so far have been structured: the above mentioned UNSC Resolution 1276 comprised a list of targeted individuals drafted by a special UNSC Committee, whereas the UNSC Resolution 1373, of 2001, adopted in the wake of terrorist attacks on 11 September 2001, did not comprise such a list, leaving the determination of the targeted individuals' identities up to the will of member states, as well as to the results of their cooperation in fighting terrorism, and at the same time verstring the member states with certain monitoring and reporting obligations. The latter model, called by some authors as "autonomous listing at the lower level",¹⁶ has not been repeated however, and may be regarded as an exception that had been provoked by the gravity of the threat of terrorism in 2001.

Another important benchmark within the body of targeted sanctions was the UNSC Resolution 1390 of January 2002, which renewed the Taliban and *Al-Qaida* blacklists started by the Resolution 1267, and which was and so far has remained the only one without direct territorial connection.

A general agreement with respect to effectiveness of targeted sanctions so far has not been reached.¹⁷

4. CONFLICTING PERSPECTIVES ON TARGETED SANCTIONS

It has been widely acknowledged that targeted sanctions in general successfully reduce negative humanitarian consequences of sanctions as a tool of international relations, but this regime has been receiving criticism for the manner in which individuals may come to be selected for such coercion without either transparency or the possibility of formal review.

The repositioning of the sanctions' cross hairs from nations to individuals has thus raised a chorus of criticism on the grounds of human rights, both from the academic perspective, as well as from the perspective of national and supranational legal systems required to implement such UNSC resolutions.

Leaving aside the paradoxicality of the phenomenon that targeting specific (and only few) individuals has raised considerably more theoretical

¹⁶ M. Bothe, "Security Council's Targeted Sanctions Against Presumed Terrorists", *Journal of International Criminal Justice*, 6/2008, 545.

¹⁷ I. Cameron, "UN Targeted Sanctions, Legal Safeguards, and the European Convention on Human Rights", *Nordic Journal of International Law*, 72/2003, 160.

objections than targeting whole nations by economic sanctions, such objections need to be understood from the perspective of international law.

The shift in targeting from whole nations to individuals meant that the theatre of the sanctions' operations moved in many cases from the purely international law environment to more complex ones, because the targeted individuals very often were nationals of states with strong standards of human rights protection. As a consequence, conflicts have been arising, both in intellectual perception and in the course of practical enforcement, between the UNSC resolutions on targeted sanctions and sovereign supranational and national legal systems required to implement such sanctions.

Besides criticism from the perspective of sovereign legal systems and their human rights protection mechanisms, a wide stream of academic thought declared the targeted sanctions inappropriate at the UN level as well.¹⁸

The core of the arguments pointed to the lack of due process safeguards in the UNSC treatment of individuals.¹⁹ This line of thought is

¹⁸ "The structure and competences of the Security Council, on the basis of the Charter, as well as of the practice, makes it impossible for the Council to deal with specific concrete cases concerning individuals. The Council is too distant from day-to-day reality in the field, and its mandate is essentially to deal with fundamental political choices relating to a situation, to an inter-state scenario; it has to deal with broader general interests and cannot decide over issues concerning one specific individual...", "There is little doubt that the Security Council is entitled and has the ability to take policy decisions which entail more progressive or more restrictive policies concerning fundamental rights – what it cannot and should not do is to engage in actions of concrete and specific balancing of interests (and even less individual rights) in cases concerning individuals – this for two reasons: 1. there are no procedures which allow the Council to gather details about the specificities of each individual case; 2. there is no mechanism whereby individuals can exercise their rights before the Council. Of course, if such mechanisms were to be created the evaluation could be different and the prospects for human rights protection vis-a-vis Security Council measures could improve", S. Zappala, "Reviewing Security Council Measures under International Human rights Principles", *Course on Human Rights Law, Academy of European Law Twentieth Session, 24–25 June 2009, Reading Materials*, 1–4.

¹⁹ I. Cameron, 173; three reports to the UNSC and Assembly General are of particular importance:

i. The European Convention on Human Rights, Due Process and UN Security Council Counter-Terrorism Sanctions, Report prepared by Iain Cameron, Council of Europe, Restricted Document, 6 February 2006;

ii. Targeted Sanctions and Due Process. The responsibility of the UN Security Council to ensure that fair and clear procedures are made available to individuals and entities targeted with sanctions under Chapter VII of the UN Charter, Report by Bardo Fassbender, Institute of Public International Law at the Humboldt University, Berlin, Study commissioned by the United Nations Office of Legal Affairs, 20 March 2006;

iii. Strengthening Targeted Sanctions through Fair and Clear Procedures, White Paper prepared by the Watson Institute Targeted Sanctions Project, Brown University, 30 March 2006, 21; for a detailed outline of academic and international organizations' papers

grounded in the opinion that the UNSC is bound by certain standards of human rights protection that have become part of international law – *jus cogens*, and/or that it is bound by the standards of human rights protection that form part of the “purposes and principles of the United Nations Charter”, since the Charter in Article 24(2) expressly stipulates the obligation of the UNSC to act in accordance with the latter.²⁰ Some authors claim that human rights standards from two UN covenants on human rights limit the UNSC although UN itself is not a party to these covenants, as well as that UNSC is bound by constitutional values and traditions common to UN members.²¹

By the same token, the apex of the criticism is usually aimed at arguing for establishment of an independent administrative mechanism for reviewing both the listing and de-listing decisions made by the UNSC. Certain authors claim even that states exist who have been showing increasing hesitation in co-operating with the *Al Qaeda*/Taliban Sanctions Committee and submitting new names for listing, precisely because of the procedural flaws.²²

calling for the reforms of the system of targeted sanctions in the direction of greater human rights protection see M. Bothe, 546–547; See: M. Kreća, “Apsolutno obavezujuće norme (*Jus cogens*) u međunarodnom javnom pravu”, Beograd 1989; B. M. Rakić, “Fragmentation of International Law and European Law – Something new on the Western front”, *Analiti Pravnog fakulteta u Beogradu* 1/2009, 122–147.

²⁰ An excellent example of this line of approach to interpreting the UN Charter is given by D. Halberstam and E. Stein who, after pointing out to the presence of human rights protection in the purposes and principles of the Charter, admits that “Security Council has considerable leeway under Chapter VII to compromise certain interests generally protected under international law”, but then proceeds to argue in favor of introduction of an evolving approach to the UN Charter: “The UN Charter, which was meant to govern in the wake of the development of stronger international legal regimes, including human rights, must be interpreted with an evolving human rights referent in mind.”, concluding that this means that even though there is some truth in the idea that “peace takes precedence over justice” under the Charter, Chapter VII measures cannot legally disregard the concerns embodied in basic international human rights and humanitarian law.” D. Halberstam, E. Stein, “The United Nations, the European Union, and the King of Sweden: Economic Sanctions and Individual Rights in a Plural World Order”, *Jean Monnet Working Paper* 02/2009, www.jeanmonnet-program.org, last visited 15 October 2009. A similar dynamical view on the Charter is proposed by B. Fassbender: “Following the adoption of the Charter, human rights, which at the international level in 1945 were still moral postulates and political principles only, have become legal obligations of States under international treaty and customary law.” B. Fassbender, “Targeted Sanctions Imposed by the UN Security Council and Due Process Rights”, *International Organizations Law Review*, 3/2006, 472.

²¹ “Arguably, the core contents of the two covenants on human rights are authoritative interpretations of the UNC and are in effect binding on the Security Council as such, but this is naturally open to debate.” I. Cameron, 167.

²² L. Van Den Herik, “The Security Council’s Targeted Sanctions Regimes: In Need of Better Protection of the Individual”, *Leiden Journal of International Law* 20/2007, 804.

A palpable outcome of the plethora of criticisms originating from the human rights perspective was the call to the UNSC, contained in a 2005 General Assembly resolution, “to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them, as well as for granting humanitarian exemptions.”²³ The relative insecurity surrounding the question of what is exactly the content of the human rights standards that bind the UNSC is visible from further developments in connection with the cited General Assembly call. The study commissioned thereupon found that the UNSC should provide for the individuals’ right to be informed, right to be heard, right to an effective remedy and for a periodical review of the sanctions imposed. The Secretary General, in its letter to the UNSC in June 2006, adopted the framework proposed by the study, though considerably weakening its crucial point by replacing the third right by “the right to review by an effective review mechanism”. The UNSC however, in the Presidential Statement of 22 June 2006, simply reiterated the need for “fair and clear procedures.”²⁴

A contrasting view on the matter would be that maintenance of peace is the primary purpose of the UN Charter and the protection of human rights only a secondary one, and that the standards of human rights protection as part of customary international law cannot be deemed as having been accepted by members as subsequent practice amending the Charter.²⁵ This view goes hand in hand with the claim that actions of the UNSC are political in nature, which makes it sufficient that they may be addressed by employing diplomatic remedies before the Sanctions Committee and the UNSC, instead by raising legal remedies that can be brought before the UNSC.²⁶

5. IMPROVEMENTS IN THE PROCEDURAL FRAMEWORK FOR ENACTMENT OF TARGETED SANCTIONS BY THE UN

Several adjustments may be noticed in more recent UNSC resolutions, all leaning towards adoption of recommendations and criticisms coming from the human rights perspective.

²³ World Summit Outcome Document, UN General Assembly Resolution 60/1, paragraph 109

²⁴ B. Fassbender, “Targeted Sanctions Imposed by the UN Security Council and Due Process Rights”, *International Organizations Law Review* 3/2006, 437–438.

²⁵ G. Lysen, “Targeted UN Sanctions: Application of Legal Sources and Procedural Matters”, *Nordic Journal of International Law* 72/2003, 295.

²⁶ G. Lysen, 303.

A specific reference to human rights considerations was first made in Resolution 1456 of 2003, stating that “States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular, international human rights, refugee, and humanitarian law.”

Thereafter a number of resolutions established a method of review of listing decisions, as well as de-listing procedures: Resolution 1617 of 2005, Res. 1730 of 2006 and Res. 1735 of the same year. The Sanctions Committees have elaborated guidelines for such procedures: Guidelines for the Guidelines of the Security Council Committee Established Pursuant to Resolution 1267 (1999) Concerning *Al-Qaida* and the Taliban, adopted on 7 November 2002, as amended; and Guidelines of the Committee Established Pursuant to Resolution 1636 (2005).

The importance of the Resolution 1617 (2005) is that it was the first one that contained criteria on how the term “associated with” (*Al-Qaida*/the Taliban) should be interpreted.

Resolution 1730 (2006), because it obliged the Secretary General to establish a “Focal Point” within the Secretariat – an address to which concerned individuals can direct their request for delisting. Furthermore, Resolution 1735 (2006), among other elaborations of listing and de-listing procedures, required that a state proposing listing of an individual should state the case and provide specific information in what way the concerned individual met the criteria from the Res. 1617.²⁷

6. IMPORTANT RECENT DECISIONS OF THE CFI AND ECJ

By far the most exciting encounter that the UNSC targeted sanctions resolutions experience in the course of their implementation is the one with the legal system of the European Union. Not only is the EU the focal point of the enforcement of the European Human Rights Convention, but it is also a supranational legal system right in the midst of claiming sovereignty in its own right.

Having in mind the two possible structurings of UNSC targeted sanctions that have appeared so far – one with the list of targeted individuals enacted by the UNSC and the open-ended one, which leaves the drawing of the list to member states – two groups of cases appeared on the horizon of the EU courts’ practice.

²⁷ L. van den Herik, “The Security Council’s Targeted Sanctions Regimes: In Need of Better Protection of the Individual”, *Leiden Journal of International Law* 20/2007, 804–805; M. Bothe, 546–547.

A somewhat easier task the European Court of First Instance (hereinafter referred to as “CFI”) faced in cases *Mujaheddeen* and *Sison*²⁸, in which it decided upon claims by the *Mujaheddeen* organization and a Dutch resident of Philippine nationality *Sison* for delisting from lists established by the Council of the European Union pursuant to the open-ended Resolution 1373. The CFI annulled the Council’s acts on grounds of failure to disclose reasons for de-listing, as well as for the deprivation of the right to fair hearing. The EU Council thereafter improved its procedure in line with the court’s opinion and had the same entities listed again.²⁹ Since the disputed listings had been put in place by the EU Council and not the UNSC, the court in these cases was never in position to review a UNSC decision.

Consequently, more complex issues have been faced by the EU courts in two cases which involved individuals listed originally by the UNSC – *Yusuf* and *Kadi*³⁰ – two Swedish nationals who were both placed on the list adopted by UNSC Resolution 1333 (2000) and subsequently on an EU list annexed to Regulation (EC) No 467/2001. The theoretical approaches and actual findings of the CFI and the European Court of Justice (hereinafter referred to as “ECJ”) in these cases crisscrossed each other. While the CFI held that the UNSC is bound human rights standards that form part of *jus cogens*, and that thus review of its decisions on such grounds is possible, it found that no violations of these standards have been committed in the cases at hand. Conversely, the ECJ failed to tackle the question of the enforceability of *jus cogens* either to UNSC resolutions or to EU Council decisions, but held that the EU Council’s decisions, notwithstanding their grounding in UNSC resolutions, were subject to human rights standards of the EU law. Consequently, the ECJ annulled the listings, but left them in force for three additional months so that EU Council would have time to comply with the procedural requirements set forth as grounds for annulment and repeat the listings. The finding of the ECJ was that the EU Council decisions breached certain basic rights of the plaintiffs that form part of basic rights of community law – right to be heard in a fair

²⁸ CFI, *Organisation des Modjahedines du peuple d’Iran v. Council of the European Union*, Case T-228/02, Judgment, 12 December 2006; CFI, *Jose Maria Sison v. Council of the European Union*, Case T-47/03, Judgement, 11 July 2007.

²⁹ L. van den Herik, 803.

³⁰ CFI, *Ahmed Ali Yusuf and Al Barakaat International Foundation v. Council and Commission*, Case T 306/01; *Yassin Abdullah Kadi v. Council and Commission*, Case T 315/01, 21 September 2005; ECJ, *Yassin Abdullah Kadi v. Council*, Appeal against Judgment of the Court of First Instance of 21 September 2005, Case C-402/05 P, 24 November 2005; ECJ, *Yusuf and Al Barakaat International Foundation v. Council and Commission*, Appeal against Judgment of the Court of First Instance of 21 September 2005, Case C-415/05 P, 1 December 2005; R. A. Wessel, “Editorial: The UN, the EU and *Jus Cogens*”, *IOLR* 3/2006, 1.

trial, right to property, principle of proportionality, right to an effective remedy.³¹

7. CONCLUSION

Notwithstanding the first impression that the ECJ in *Kadi* has affirmed the validity of human rights standards in the context of international law and UNSC practice, it may be argued that in fact this decision also reaffirmed the present system by preserving the practice of “indirect review” on EU, or any other sub-UN level for that matter by way of analogy – which was in the case at hand done on the grounds of human rights protection on the EU, at the same time formally leaving the proper UNSC decisions free from review on such grounds.

Such a perspective effectively prolongs the traditional understanding of the role of the UNSC as the political body primarily in charge of maintaining international peace and security, while at the same time it contributes to gradual affirmation of the procedural human rights standards by affirming their applicability even to UNSC-originating acts by way of indirect review on sub-UN levels, as within the legal system of the EU in *Kadi* case.

Moreover, it should be noted that none of the EU courts has at any point implied that substantive review of the EU acts enacted in the course of implementation of UNSC resolutions was imaginable.

Since the standards of human rights protection within the Council of Europe and the EU spearhead the development of this area of law globally, it is inevitable that the adjustments made within EU legal system to UNSC acts in the course of their implementation will have strong bearing on the procedural standards that UNSC will adhere to in the future. The practical implication of such approach, consisting in the need that the UNSC acts comply with basic standards of due process if they are to be

³¹ See more in: B. M. Rakić, “Evropski sud pravde između ljudskih prava i borbe protiv terorizma”, *Anali Pravnog fakulteta u Beogradu* 2/2009, forthcoming; M. T. Karayigit, “The *Yusuf* and *Kadi* Judgments: The Scope of the EC Competences in Respect of Restrictive Measures”, *Legal Issues of Economic Integration* 33(4), *Kluwer Law International*, Leiden 2006, 379–404; M. Bulterman, “Fundamental Rights and the United Nations Financial Sanctions Regime: The *Kadi* and *Yusuf* Judgments of the Court of First Instance of the European Communities”, *Leiden Journal of International Law* 19/2006, 753–772.; E. de Wet, “Holding the United Nations Security Council Accountable for Human Rights violations through Domestic and Regional Courts: A Case of “Be careful What You Wish For?”, expert lecture on invitation of the University of Oxford Public International Law Discussion Group, 24 April 2008, Oxford; A. Ciampi, “Individual remedies Against Security Council Targeted Sanctions”, *Italian Yearbook of International Law* 2008, 55–77.

implemented within legal systems with reliable human rights safeguards, can only be beneficial for the growth of scope, efficiency and acceptance of future UNSC targeted sanctions aimed at eradicating international terrorism, proliferation of weapons of mass destruction and other threats to world peace and security.

In other words, the probable influence of the EU position on the need to have procedural human rights safeguards in place when issuing targeted sanctions, coupled with already undertaken improvements of listing and delisting procedures, shall probably lead to a system that with the same level efficiency in combating global threats, but with increased transparency, accountability and compliance with human rights standards that form part of customary international law.