



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

**The UN and EU legal systems after the Kadi judgement:
Assessment and way forward**

Opening statement

by

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1 November 2013
Delegation of the European Union to the United Nations

Excellencies,
Dear colleagues and friends,

I am honoured to join my distinguished colleagues on this panel on "the UN and the EU legal systems after the Kadi Judgment"

At the outset, I wish to note that the UN Secretariat is not in a position to express any views on the transposition of Security Council decisions into national or regional laws. Let me also, at this point, make it very clear that the Secretariat respects the clear prerogative of the Security Council to take the actions it deems appropriate.

As both the General Assembly and the Security Council have stated on various occasions, sanctions are an important tool under the UN Charter in the maintenance and restoration of international peace and security. The purpose of targeted sanctions is to induce a change of behaviour in the designated individual or entities and primarily to prevent them from committing further violations of the sanctions regimes.

In the outcome document of the 2005 World Summit, the General Assembly at the level of Heads of State and Government, resolved to ensure that sanctions are carefully targeted in support of clear objectives, to comply with sanctions established by the Security Council and to ensure that sanctions

are implemented in ways that balance effectiveness to achieve the desired results against the possible adverse consequences (paragraph 106).

The world summit also called “upon the Security Council, with the support of the Secretary-General, 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” (paragraph 109).

Largely on the basis of the 2005 World Summit outcome document, the former Secretary-General set out his views concerning the listing and delisting of individuals and entities under the sanctions regimes. He opined that the legitimacy and credibility of these regimes will depend, in large part, on procedural fairness vis-à-vis individuals and entities, and the existence of an effective remedy. He submitted to the Council that the minimum standards required to ensure that the procedures are fair and transparent would include the following four basic elements:

- the right to be informed of those measures and to know the case against him or her as soon as and to the extent possible. This requires clear criteria for listing and a statement of the case as well as information on available review and exemptions;
- the right to be heard, via submissions in writing, within a reasonable time include the ability to directly access the decision making body, possibly through a focal point;
- the right to be assisted or represented by counsel;
- the right to review by an effective review mechanism. The effectiveness of that mechanism will depend on its impartiality, degree of independence and ability to provide an effective remedy, including the lifting of the measure.

It is also important to recall that both in the United Nations Global Counter-Terrorism Strategy and in Security Council resolution 1904 (2009), the General Assembly and later the Security Council have stressed the need to combat international terrorism by all means, in accordance with the UN Charter and international law, including applicable international human rights, refugee and humanitarian law.

The fact is the Security Council has taken a great number of measures to enhance the fairness and transparency of the 1267/1989 sanctions regime including by requiring objective listing criteria and more detailed statements of case as well as by providing greater standing to states of residence, nationality, location and/or incorporation as well as States of transit and destination in connection with requests for exemption and delisting.

Above all, the Security Council has established and increasingly empowered the Office of the Ombudsperson in no small part thanks to Ms. Prost's excellent and effective implementation of her mandate. Of most significant effect is the fact that pursuant to paragraph 23 of resolution 1989 (2011), the Ombudsperson may now make recommendations to the Committee to consider delisting which, unless the Committee decides otherwise by consensus before the end of that 60 day period or the matter is referred to the Security Council, the measures against the individual, group, undertaking, or entity concerned are lifted. This is not to say that the Council has completed the evolution of the sanctions regimes. Quite the contrary, the Council has recognized that it needs to do more and has explicitly and consistently expressed "its intent to continue efforts to ensure that procedures are fair and clear".

While recognizing these developments, the Kadi II judgment concluded that they do not amount to effective judicial protection confirming a trend in both regional and national courts favouring strict judicial scrutiny of the various sanctions regimes which render those regimes vulnerable to further challenge from the human rights perspective. In very real terms, however, the Kadi II judgment can be seen as upholding the authority of the UN sanctions regime in that it did not call into question the binding nature of the UN sanctions but rather left it to Member States to ensure respect for their human rights obligations while fulfilling their Chapter VII obligations.

It thus appears that we all have more work to do: the Security Council and Member States alike.

Ultimately, it is for Member States and in particular those in the Security Council to ensure respect not only for the mandatory measures and binding obligations under Chapter VII but also, consistent with the relevant Security Council resolutions and the UN Global Counter-Terrorism Strategy, to ensure respect for international human rights and humanitarian law in their efforts to combat terrorism and to maintain international peace and security.

I am confident that the two objectives are mutually reinforcing and that Member States will continue to work, both inside and outside the Security Council, to avoid any conflict between their obligations under international and regional human rights instruments and their obligations under Chapter VII of the Charter of the United Nations.

In this regard, I took particular note of paragraph 125 of the Kadi II judgment which recognizes the crux of the problem and that is how to balance the demands of national security and international relations which may preclude

the disclosure of certain information or evidence to the person concerned with that person's human rights namely "the need sufficiently to guarantee to an individual respect for his [or her] procedural rights, such as the right to be heard and the requirement for an adversarial process". I look forward to hearing more from our EU colleagues about what mechanisms and procedures which are available within EU institutions to carry out this fundamental albeit difficult balancing role.