



September 2012

## UNITED STATES

**1. Which are the procedures for the incorporation of Security Council Resolutions imposing sanctions in to 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 United States implements UN sanctions domestically in various ways depending on the specific type of sanction that the UN Security Council mandates.

Financial Sanctions: To implement UNSC-mandated financial sanctions (such as assets freezes), the President issues an Executive Order to give the U.S. government the necessary legal authority to ensure that relevant funds and financial or other economic resources are blocked. Specific designations are either included in the Executive Order by the President or subsequently made at the agency level as authorized in the Executive Order. The United States administers such sanctions through the Department of the Treasury's Office of Foreign Assets Control.

Travel Restrictions: The United States implements UNSC-mandated travel restrictions in various ways. In some cases, the President may issue a Proclamation under section 212(f) of the Immigration and Nationality Act to suspend the entry of an identified class of aliens. In other cases, travel sanctions are imposed against certain identified aliens by revoking any existing visas and using the most appropriate legally available ground of denial, including foreign policy when no other ground is available, should a targeted alien apply for a visa.

Arms Embargos: The United States implements UNSC-mandated arms embargos through the munitions export control system administered by the State Department's Directorate of Defense Trade Controls. The system employs a series of regulatory tools specifically designed to deny specified parties access to U.S. defense articles and services.

Several individuals and entities have brought legal actions challenging U.S. domestic action implementing listing by UN sanctions committees. See, for example, *Global Relief Foundation v. O'Neill*, 207 F. Supp. 2d 779 (N.D. Ill. 2002), *aff'd*, 315 F.3d 748 (7th Cir.), *cert. denied*, 540 U.S. 1003 (2003).

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

Yes, the means of implementation depends on the nature of the obligation. See answer to question 1, above.

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**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 means of U.S. domestic implementation of UN sanctions depends on the specific type of UNSC-mandated sanction, the means of repeal of such sanctions also depends on the type of sanction, though typically a further action is required to lift sanctions as a matter of domestic law.

For example, with respect to financial sanctions, the relevant Executive Order or section thereof would likely have to be revoked. With respect to travel restrictions, 212(f) proclamations generally contain a provision providing for termination by the Secretary of State. With respect to arms embargos, the State Department's Directorate of Defense Trade Controls would have to issue a notice informing the public that the embargo has been revised or is no longer in effect.

**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?**

As discussed above in the answer to question 1, with respect to arms embargos, the United States implements UNSC-mandated arms embargos by using the munitions export control system administered by the State Department's Directorate of Defense Trade Controls, and, in general, it retains authority to issue licenses where it is appropriate to grant an exception.

Other types of embargos mandated by a Security Council Resolution would generally be implemented by Executive Order. The Office of Foreign Assets Control ("OFAC") at the Department of the Treasury would administer the embargo, and may issue regulations. In general, OFAC retains the authority to issue licenses where it is appropriate to grant an exception to the relevant embargo.

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

Such decisions may be incorporated in a variety of ways. For example, if a Sanctions Committee includes an entity on its list of those against whom financial sanctions are mandated, the United States will take appropriate steps domestically to allow the Office of Foreign Assets Control to add the name of that entity to its list of Specially Designated Nationals (available on the OFAC website).

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**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? – N/A]**

**b. if implemented directly at national level?**

As noted above, individuals and entities have brought legal actions challenging U.S. domestic action implementing listing by UN sanctions committees. U.S. federal courts have assumed jurisdiction in such cases. See, for example, *Global Relief Foundation v. O'Neill*, 207 F. Supp. 2d 779 (N.D. Ill. 2002), *aff'd*, 315 F.3d 748 (7th Cir.), *cert. denied*, 540 U.S. 1003 (2003).

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

Human rights considerations are generally litigated by means of constitutional claims. Courts have rejected constitutional claims against these designations, finding no violation of due process rights. In the challenge brought by the Global Relief Foundation, the courts found that the Global Relief Foundation was not entitled to notice or a pre-deprivation hearing in advance of its designation by the U.S. government, following GRF's inclusion on the UN 1267 Sanctions Committee's list. See *Global Relief Foundation v. O'Neill*, 207 F. Supp. 2d 779 (N.D. Ill. 2002), *aff'd*, 315 F.3d 748 (7th Cir.), *cert. denied*, 540 U.S. 1003 (2003).

Other U.S. courts have reached the same conclusion and have similarly dismissed constitutional claims brought against U.S. government designations, though the designated entities bringing these challenges had not also been included on a UN sanctions committee's list. See *Holy Land Foundation for Relief & Development v. Ashcroft*, 219 F. Supp. 2d 57 (D.D.C. 2002), *aff'd*, 333 F.3d 156 (D.C. Cir. 2003), *cert. denied*, 540 U.S. 1218 (2004); *Islamic American Relief Agency v. Unidentified FBI Agents*, 394 F. Supp. 2d 34 (D.D.C. 2005), *appeal docketed*, No. 05-5447 (D.C. Cir. Nov. 8, 2005).

### **Updates of September 2012:**

Two more recent cases may be of interest to CAHDI members and observers. In the first case, Mr Kadi, a Saudi resident, who had also lodged appeals with the courts of the European Union, initiated proceedings in federal district court against the US Office of Foreign Assets Control (OFAC) under the Administrative Procedure Act, the International Emergency Economic Powers Act and the First, Fourth and Fifth Amendments of the US Constitution. Mr Kadi disputed the lawfulness of his designation by the United States as a "specially designated global terrorist", which had led to the freezing of his assets, as confirmed in 2004 by the Office of Foreign Assets Control. Mr Kadi had been designated by the United States on the basis not only of his links to Al-Qaida, but also his connections to Hamas, an entity which is not designated by the relevant UN Security Council Sanctions Committee. The federal district court examined the question of whether there was enough evidence to justify OFAC's 2004 decision to maintain Mr. Kadi's listing, relying on confidential and non-confidential information. It found that this information supported the action taken by the Office of Foreign Assets Control as there was substantial evidence in the file held by the Office to prove that Mr Kadi had been involved in providing financial support to terrorists and rejected his constitutional claims. Mr. Kadi appealed the Court's decision to the United States Court of Appeals for the District of Columbia Circuit (an intermediate appellate court), but has since voluntarily dismissed the appeal. Rather than pursue the appeal, Mr. Kadi may submit a new request for administrative reconsideration of his listing to OFAC, but has not done so yet.

The second case, *Al Haramain Islamic Foundation, Inc., et al., v. U.S. Department of Treasury, et al*, was decided by the 9<sup>th</sup> Circuit Court of Appeals on September 23, 2011 (660 F.3d 1019) and is inconsistent with the holdings of other circuit courts. This case involved a challenge to the designation of Al Haramain Islamic Foundation, Inc. ("AHIF") as a Specially Designated Global Terrorist ("SDGT") pursuant to Executive Order 13224 ("EO 13224"), based on AHIF's support of a variety of terrorist groups including Al Qaeda. As a result of the designation, AHIF's assets were blocked, and AHIF sued. The case was dismissed at the district court level. On appeal, the Treasury Department's designation of AHIF as an SDGT was upheld, but the Court held that the government violated AHIF's Fourth Amendment rights by failing to obtain a warrant before it blocked AHIF's property. The court also found that the government violated AHIF's Fifth Amendment due process rights by failing to provide adequate notice and opportunity for AHIF to challenge its designation. The Court held, however, that the both the Fourth Amendment and Fifth Amendment violations amounted to harmless error. Finally, the court also ruled that plaintiff Multicultural Association of Southern Oregon (MCASO) had a First Amendment right to coordinate its outreach to the press with AHIF, even though AHIF remained designated as a SDGT. Since the appellate court's decision, AHIF has filed a petition for reconsideration with OFAC, seeking to be delisted. AHIF has also filed a remedy brief with the district court in which it seeks additional due process guarantees related to its reconsideration petition; AHIF conceded in its remedy brief that it is not entitled to a remedy for the Fourth Amendment violation. (Note: Soliman Al-Buthe, listed by the 1267/1989 Committee, was a founding member of AHIF-USA's Board of Directors; Aqeel Abdulaziz Aqeel al-Aqeel is also listed by the 1267/1989 Committee because of his role as founder and former leader of AHIF).