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# **EU Counter-Terrorism Action**

## **A fault line between law and politics?**

**Elsbeth Guild**

**April 2010**

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ISBN 978-92-9079-990-0

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# EU COUNTER-TERRORISM ACTION: A FAULT LINE BETWEEN LAW AND POLITICS?

*CEPS 'LIBERTY AND SECURITY IN EUROPE'/APRIL 2010*

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## Introduction

The dividing line between law and politics is often difficult to determine. While overtly political actors tend to highlight their capacity to make and change laws and thus control the underlying subject matter of the jurists and so tame legal institutions, legal actors tend to downplay the role of politics in their activities. Indeed, in the legal world even the word 'politics' is to be avoided as suggesting that its cherished impartiality and independence is sullied by political considerations. In this contribution I will examine a clash between law and politics that is taking place rather publically regarding the EU's legal reaction to the UN counter-terrorism measure on the freezing of funds.

My contention is that international relations and international law are under increasing pressure from the appearance of the individual as a subject in law and visible in international law and hence international politics. So long as international relations remained exclusively interstate with the occasional intercession of international organisations, the issue of justice towards people as individuals did not arise. Decisions about international politics were the result of negotiations and actions between state authorities (albeit they too are individuals and the sociology of their actions has become increasingly a matter of interest in International Political Sociology – IPS). However, since the end of bipolarity, there has been a temptation among actors in international relations to engage in activities that implicate people as individuals. As political actions, these stand within the interstate system and rules on legality – it is states that negotiate and decide them. But the weight of the political decisions falls directly on individuals in some cases, thus causing a crisis as regards the individual's right to a remedy for incorrect application of the measures, etc. That these tensions manifest themselves in the field of anti-terrorism measures is not surprising. The high political value of such measures is generally used to justify providing them with additional protection against judicial examination. Thus fair trial duties, which political actors would not normally dare to interfere with in other areas of crime, are subject to modification against the accused where terrorism allegations are made (the UK example of the permissible detention before charge of a person suspected of terrorism is only one parochial example). Thus when UN institutions engage in anti-terrorism measures that affect the individual, there are two removes of protection against judicial interference – the supposed invisibility of the individual at the international level and the persuasiveness of the terrorism claim.

Two responses to this change in the way international relations and international law operate are apparent. The first is an attempt to imbue the international institution that makes the decision with a law-making capacity rather than a political persona. In this way the cloak of impartiality claimed by legal institutions is cast over political institutions and their decisions are protected from challenge. The second is comprised of a revolt by legal institutions (supranational and

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national) against what they see as the usurping of their role as practitioners of legal rules which has taken the form of championing the claim of the individual against the international institution's action under the heading of human rights.

To examine this contention, I will take the challenge that the European Court of Justice has thrown down to the UN Security Council in its judgment C-402/05 *Kadi* (3 September 2008) on the legal duty to protect an individual against the Security Council's order of the freezing of his funds and assets on anti-terrorism grounds. This judgment has provoked an enormous amount of legal commentary, much of it still going on. The most populist response was published in the *Wall Street Journal* on 25 November 2008 by Jack Goldsmith and Eric Posner (a law professor at the University of Chicago). Here the authors claim that the *Kadi* judgment shows that "Europe's commitment to international law is largely rhetorical. Like the Bush administration, Europeans obey international law when it advances their interests and discard it when it does not." This reaction represents perhaps the most extreme end of the reactions, one that even the authors would not seek to maintain in a peer-reviewed journal.

At the other end of the spectrum, I have argued that when the monopoly of coercion moves to the international level but is still directed against the individual, the remedies must follow and it is incumbent on courts to ensure that the fair trial remedy, a standard in all human rights instruments, be given effect (Guild, 2008). An increasing number of courts around the world seem to be coming to the same conclusions, notwithstanding somewhat different reasoning. Most recently the UK's Supreme Court handed down judgment on 27 January 2010 striking down UK implementation measures freezing assets of persons on the UN Security Council's suspected terrorist list.<sup>1</sup> To support its decision, the Supreme Court referred to similar judgments in Canada<sup>2</sup> and the US,<sup>3</sup> which follow a similar line, although the reasoning is based more exclusively on national law than international, as the Supreme Court does. But it is time to explain the issue and the problem.

For the moment, the academic community has been divided over its assessment of the European Court of Justice's decision. Jo Murkens in the *Cambridge Yearbook of International Law* takes a robust position on the centrality of the right to remedies of the individual against the hierarchy of application approach (Murkens, 2009). Other authors deplore the EU's lack of obedience to the Security Council (de Burca, 2009; Weiler, 2009). There has been much hand-wringing in EU legal circles about the consequences for the interaction between the UN, EU and Member States as regards what is law and what must be followed (Tridimas, 2009; Kunoy & Dawes, 2009; Griller, 2008). Some academics have focused on the implications for human rights law in the EU (Gearty, 2008; Eeckhout, 2007) but tend to limit their discussion to legal impacts. However, in this substantial array of comment, only Murkens seeks to position the discussion as one in which a political entity seeks to enjoy the last word normally reserved for the judicial.

## The UN Security Council and the Freezing of Terrorist Assets

The starting place of the current conflict is Security Council Resolution 1267 adopted on 15 October 1999. Here the Security Council called upon the Taliban to turn over Osama bin Laden to the appropriate authorities and for all states to:

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<sup>1</sup> *HM Treasury v Ahmed & Ors* [2010] UKSC 2.

<sup>2</sup> *Abdelrazik v The Minister of Foreign Affairs* [2009] FC 580.

<sup>3</sup> *Kindhearts for Charitable Humanitarian Development Inc v Timothy Geithner* Case 3:08c v 02400 18 August 2009.

freeze funds and other financial resources, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any undertaking owned or controlled by the Taliban, as designated by the Committee established by paragraph 6 below, and ensure that neither they nor any other funds or financial resources so designated are made available, by their nationals or by any persons within their territory, to or for the benefit of the Taliban or any undertaking owned or controlled, directly or indirectly, by the Taliban, except as may be authorised by the Committee on a case-by-case basis on the grounds of humanitarian need.

The resolution established a Sanctions Committee responsible for ensuring that states implemented the resolution. This Sanctions Committee was comprised of *all* the members of the Security Council.

The Security Council added another resolution (1333) in 2000 demanding the Taliban to comply with the earlier one and tightening up the freezing of funds provisions. In this new resolution the Security Council called on the Sanctions Committee (in other words itself) to maintain an updated list of the individuals and entities designated as associated with bin Laden (and Al Qaeda). The list was based on information provided by states and regional organisations. It was not until 8 March 2001, that the Sanctions Committee published its first consolidated list of persons and entities that must be subject to the freezing of funds (Committee press release AFG/131 SC/7028). This list included the now famous Mr Kadi, who is at the centre of the challenges before the EU's highest court. The list of persons and entities developed rapidly. It was amended (only with additions as far as one can tell) on an almost monthly basis after 11 September 2001. In January 2002, the Security Council adopted a new resolution (1390) that provided for the continuation of the list which under the terms of the earlier resolution was up for reconsideration. By the end of 2002, the Security Council adopted yet another resolution (1452), which provided for the first time for exceptions and derogations to the freezing of assets of persons on the list on humanitarian grounds and subject to Sanctions Committee consent.

With each resolution, the EU institutions adopted a measure giving effect to the Security Council's orders. There was a symmetry that would warm the heart of any international relations realist concerned about the implementation of Security Council measures at the regional level. This obedience of the EU's institutions is interesting not least because the EU is not a party to the UN Charter and thus is not directly implicated. It was a political choice at the EU level to transpose the Security Council resolutions directly and thus by operation of EU law to bind the Member States to obey under the EU's own doctrine of hierarchy of norms. So what happened was that the resolutions of the Security Council were treated to a status equivalent to law in the EU. The Sanctions Committee's decision to list an individual had an immediate impact not only through the Security Council resolution on states parties to the UN but in the EU through the EU measures. Thus an aggrieved Mr Kadi, whose assets were frozen, would have to fight his way through the EU judicial system rather than seek a remedy at the national level.

The obligation to freeze funds had devastating consequences for many people in the EU. In the case of *Yusuf* – which came before the EU's Court of First Instance (CFI) under the name of *Aden* in an application of emergency hearing<sup>4</sup> – Mr Yusuf, a Swedish national resident in Sweden (with his wife and four children), whose name was on both the Sanctions Committee list and its EU counterpart, was subject to a full funds freezing action by the Swedish Government. The result was that the family literally had no money. All their resources were

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<sup>4</sup> Case T-306/01 R.

frozen and no one was allowed to give them any money as that was also contrary to the provisions.

The CFI inquired how they were surviving and received the following response from the Swedish authorities:

The Stockholm (Spånga-Tensta) municipal authorities decided on 12 February 2002 to deal with an application for social assistance, submitted by Mr Yusuf and his wife jointly under the socialtjänstlagen [Social Services Law], according to the normal procedure, even after the adoption of the contested regulations. Social assistance has been granted to them monthly since November 2001, taking the household's own resources into account; the amount of assistance for needs of the family that was paid in respect of March 2002 amounted to SEK7,936. The social assistance payments have been made by postal orders which Mr Yusuf's wife has cashed at the post office.

In addition, the försäkringskassa (Social Security Office) has been regularly paying family allowances to Mr Yusuf's wife for their four children since 13 November 2001. The försäkringskassa continues to pay her such benefit at the rate of SEK4,814 each month.

On the other hand, the payment of housing benefit that Mr Yusuf had received since February 2002 has been frozen. The document from the försäkringskassa produced by the applicants at the hearing confirms that information. (paras 101-103).<sup>5</sup>

How the family survived until the Swedish authorities found a way of giving them some social benefits is left unanswered. Nonetheless, when the case came before the CFI for a full hearing, it rejected their claim on the basis that the family's name was on the UN Security Council's terrorist list and thus it was to the Security Council that the family must look for the removal of their name and therefore for relief. The problem, however, was that although a de-listing procedure was established (eventually), it only allows petitioners to submit a request to the Sanctions Committee or to their government for removal from the list. The processing of that request, however, is exclusively a matter for intergovernmental consultation. The Sanctions Committee was under not duty to take into account the views of the petitioner. Further, the de-listing procedure did not provide even the most minimal access to information on which the decision was based to include the individual on the list.

The problem had become one of a right to fair procedures. Where the Security Council acted through the Sanctions Committee to place the name of an individual on the list of persons whose funds were to be frozen, was this a political act which had to go through the process of being turned into law at the regional or national level or was this a legal act where no transposition was required. The answer to the question rests on a wider understanding of the rule of law and human rights.

## **The UN Charter and the Duty of Obedience**

The question that appeared instantaneously as soon as the challenges by individuals appeared in respect of the list was the authority for the Security Council's action and its claim to exemption from review. The universal starting point has been Article 1(1) and (3) of the UN Charter, which states "the purposes of the United Nations are inter alia '[t]o maintain international peace and security' and '[t]o achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex,

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<sup>5</sup> T-306/01 *Yusuf* [2005] ECR II-3533.

language, or religion’.” This is the augmented by Article 24(1) and (2) of the Charter which state:

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.
2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

The argument goes that UN Members are under a duty of obedience to the Security Council within its fields of competence as it has primary responsibility for international peace and security. Thus when it passes a resolution this should have an effect equivalent to law. However, the Security Council resembles an executive body more than a legislative one (Gowlland-Debbas, 1994; Akande, 1997). My purpose here is not to enter directly into this much-trodden area from a theoretical perspective but rather to look at the consequences as regards the individuals seeking to construct themselves and what they are entitled to by law. Article 24(2) of the Charter obliged the Security Council to act in accordance with the principles of the Charter itself. To exempt the Security Council from an external review of its compliance with human rights is clearly not consistent with such an approach. The question then arises what body should review action by the Security Council – the traditional German *Kompetenz* argument about constitutionality.

In the abstract, this problem solicits many different answers but the *Kadi* and other cases about the freezing of funds bring the problem back to the concrete. The reason is the existence of individuals who are seeking remedies against the acts of the Security Council which have deprived them of their livelihoods.

### **Human Rights and the Security Council before the ECJ**

In the CFI decision, the court took a rather novel approach to individual rights. Instead of insisting on the invisibility of the individual, it chose to find the action of the Security Council justified: the freezing of funds did not constitute an arbitrary, inappropriate or disproportionate interference with the right to private property of the persons concerned and could not, therefore, be regarded as contrary to *jus cogens*, having regard to the following facts:

- the measures in question pursue an objective of fundamental public interest for the international community, that is to say, the campaign against international terrorism, and the United Nations are entitled to undertake protective action against the activities of terrorist organisations;
- freezing of funds is a temporary precautionary measure which, unlike confiscation, does not affect the very substance of the right of the persons concerned to property in their financial assets but only the use thereof;
- the resolutions of the Security Council at issue provide for a means of reviewing, after certain periods, the overall system of sanctions; and
- those resolutions set up a procedure enabling the persons concerned to present their case at any time to the Sanctions Committee for review, through the Member State of their nationality or that of their residence.

Further the CFI found that as the EU institutions were required to transpose the Security Council and Sanctions Committee measures and those measures did not provide a mechanism for examination or re-examination of individual situations, the matter fell wholly to the Security Council and the Sanctions Committee. In the view of the CFI, the individual remained completely invisible at the EU level as “the Community institutions had no power of investigation, no opportunity to check the matters taken to be facts by the Security Council and the Sanctions committee, no discretion with regard to those matters and no discretion either as to whether it was appropriate to adopt sanctions vis-à-vis the applicants”. (para 262). So much for the individuals – the structure of politics and law at the international level leaves them without voice or visibility.

On appeal to the European Court of Justice the situation is reversed in what is the most important part of the judgment for the purposes of the contention in this article. The ECJ agrees within on the EU finding that respect for human rights is a condition of the lawfulness of EU acts and that measures incompatible with respect for human rights are not acceptable in its legal order (para 283). Thus an international agreement cannot have the effect of prejudicing the EU’s constitutional principles including in respect of fundamental rights. The latter constitutes a condition of lawfulness which it is for the Court to review in the framework of the complete system of legal remedies established in EU law (para 285). Implicit is the finding that the Security Council cannot carry out this fundamental rights review of its own decision to list an individual. The reference to the complete system of legal remedies clearly brings the individual into the light as the holder of a right to a remedy. The Court relies even more heavily on human rights as the basis of its decision – no other provisions of EU law which require compliance with international law can authorize “any derogation from the principles of liberty, democracy and respect for human rights and fundamental freedoms enshrined in Article 6(1) EU as a foundation of the Union “ (para 303). The ECJ then goes through the procedures of the Sanctions Committee against the CFI’s happy assessment and finds that there are profound breaches of human rights and in particular the right to an effective remedy (para 352).

### **Human Rights and the Security Council go National: The UK Supreme Court**

Notwithstanding a substantial body of academic literature criticising the ECJ’s approach to the Security Council as an effective political body against the decisions of which an aggrieved individual is entitled to human rights protections (see de Burca et al. above) in its judgment, the UK’s Supreme Court took a similar line. The facts in these cases indicate the continuing activity of the Sanctions Committee. The first appellant, G was notified on 13 December 2006 by the UK Treasury that his funds would be frozen in accordance with the Sanctions Committee listing. His co-appellants, A, K and M were notified similarly on 2 August 2007. The Supreme Court examines the national implementing legislation which gives effect to the Sanctions Committee list. What is important here is that unlike the EU, the UK is a member of the UN and it is therefore directly obliged to comply with the UN Charter. While the ECJ could move back a step and engage with its internal legal order once it has disengaged the direct link with the Security Council, the UK’s position is somewhat different. Article 25 of the UN Charter states “in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.” Thus an argument about the primacy of human rights in the Charter itself is going to be inevitable in this case.

While some amendments were made to the resolutions to alleviate some of the hardships on spouses and children of freezing orders against principals, the continuing problem is clear from the UK cases. Lord Hope in the lead judgment for the Supreme Court notes: “In the first case,

A, K and M are brothers aged 31, 35 and 36. They are UK citizens and, at the time of their designation, lived in East London with their respective wives and children. A and K no longer live with their families, and their current whereabouts are unknown. Their solicitor, with whom they have not been in contact for a number of months, attributes their disappearance to the damaging effects upon them and their families of the regimes to which they were subjected by the Treasury. It placed an extraordinary burden on their wives, created significant mental health difficulties and led ultimately to the breakdown of their marriages. M's marriage has also broken down, but he has continued to have a close relationship with his children. He lives at his ex-wife's address where his children live also." (para 31). He further notes that A, K and M have never been charged or arrested for terrorism-related offences.

The case of G is even more noteworthy for a different reason. He was notified of the freezing of his funds by letter on 13 December 2006. A few days later he received confirmation that the reason for this was his inclusion on the Sanctions Committee's list which is binding, according to the UK authorities, on all UN Members and must be implemented in UK law. What he was not told until later is that his listing had been at the request of the UK authorities. So effectively what the UK authorities did was avoid freezing G's funds under national law which would have been liable to judicial review. Instead they presented information to the Sanctions Committee under its rather opaque procedures and recommended the listing of G. The Sanctions Committee duly complied whereupon the UK authorities, relying on their interpretation of the status of the Sanctions Committee as a body not subject to judicial oversight as regards a decision in respect of an individual, implemented the Sanctions Committee's listing (para 33). It is not surprising that the UK's Supreme Court found this somewhat hard to stomach. There appears here a transparent use of the Security Council as a venue through which to wash national executive decisions which otherwise would be subject to judicial control of their vulnerability to court supervision in the interests of the individual.

Three issues were identified by the UK court as central, only the latter of which is pertinent here – whether the national implementing measures of the Sanctions Committee's listing were valid in the absence of procedures that enabled designated persons to challenge their designation. Lord Hope spends some time on the *Kadi* decision of the ECJ, not surprisingly. He highlighted the importance to the SCJ judgment of the need for a genuine and effective mechanism of judicial control by an independent tribunal. He noted that had such a remedy been available at the UN level then there would be no need at the EU level – but the failure to have such a remedy was fatal to the Council's case. For support, Lord Hope also took into consideration the decision of a Canadian court on the same issue in *Abdelrazik v Minister for Foreign Affairs* [2009] FC 580. The judge was particularly outspoken:

I add my name to those who view the 1267 Committee regime as a denial of basic legal remedies and as untenable under the principles of international human rights. There is nothing in the listing or de-listing procedure that recognises the principles of natural justice or that provides for basic procedural fairness. ... It can hardly be said that the 1267 Committee process meets the requirement of independence and impartiality when, as appears may be the case involving Mr Abdelrazik, the nation requesting the listing is one of the members of the body that decides whether to list or, equally as important, to de-list a person. The accuser is also the judge. (para 51)

In the Canadian case the judge relied on the Canadian Charter of Rights. US authority also arises in the case, but not as De Burca feared in the form of the problematic *Medellin* decision<sup>6</sup> where the US court refused to take into account a decision of the International Court of Justice

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<sup>6</sup> *Medellin v Texas* 552 UA (2008).



which required states to permit access to diplomatic representatives for individuals in prison (and on the facts facing the death penalty) (de Burca, 2009). Lord Hope refers to a judgment challenging a decision blocking access to assets to pay counsel's fees.<sup>7</sup> However, both these cases were decided on the basis of national law and not on an international human rights instrument as was proposed in the UK's case. The judge found himself between a rock and a hard place, however, because not long before his court had agreed that a Security Council resolution took priority over national law including obligations in respect of human rights.<sup>8</sup> In that case the UK court followed the principle of invisibility of the individual in international law unless the issue was one of *jus cogens* – that is to say preemptory norm that does not require a statute to justify its application. So the UK court has to retreat to national law which requires a fair amount of gymnastics as it must then decide whether the national law creating the system of freezing can be interpreted as excluding a right of review without express wording to that effect in the national measure itself. In order to justify this interpretation of national law, the judge provides a fascinating description of the listing process:

Some further details can be obtained from the Guidelines of the Security Council Committee established pursuant to Resolution 1267(1999) Concerning Al-Qaida and the Taliban and Associated Individuals and Entities of 9 December 2008. They state that the committee is comprised of all the members of the Security Council from time to time, that decisions of the committee are taken by consensus of its members and that a criminal charge or conviction is not necessary for a person's inclusion in the consolidated list that the committee maintains, as the sanctions are intended to be preventative in nature. It would appear that listing may be made on the basis of a reasonable suspicion only. It is also clear that, as the committee works by consensus, the effect of the guidelines is that the United Kingdom is not able unilaterally to procure listing, but it is not able unilaterally to procure de-listing either under the "Focal Point" procedure established under SCR 1730(2006). Although the Security Council has implemented a number of procedural reforms in recent years and has sought improvement in the quality of information provided to the 1267 Committee for the making of listing decisions, the Treasury accepted in its response of 6 October 2009 (Cm 7718) to the House of Lords European Union Committee's Report into Money Laundering and the Financing of Terrorism (19<sup>th</sup> Report, Session 2008-2009, HL Paper 132) that there is scope to further improve the transparency of decisions made by the 1267 Committee and the effectiveness of the de-listing process. On 17 December 2009 the Security Council adopted SCR 1904(2009) which provides in paras 20 and 21 that, when considering de-listing requests, the Committee shall be assisted by an Ombudsperson appointed by the Secretary-General, being an eminent individual of integrity, impartiality and experience, and that the Office of the Ombudsman is to deal with requests for de-listing from individuals and entities in accordance with procedures outlined in an annex to the resolution. While these improvements are to be welcomed, the fact remains that there was not when the designations were made, and still is not, any effective judicial remedy. (para 78).

As is the custom in British Supreme Court judgments, all the judges have a chance to put forward their views. Among the more clear spoken is the decision of Lord Rodger with whom the only woman on the Supreme Court, Lady Hale agreed. Interestingly, Lord Rodger notes that the Security Council Resolution looks more like an international convention than a resolution. He adds that this is not surprising as it is made up of measures that are to be found in the International Convention for the Suppression of the Financing of Terrorism adopted in 1999. But because the convention had only been ratified by few states by 2001 the Security Council

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<sup>7</sup> *Kindhearts for Charitable Humanitarian Development v Timothy Geithner* Case 3.08c v 02400.

<sup>8</sup> *R (Al-Jedda) v Secretary of State for Defence* [2008] AC 332.

Resolution pulled out key elements and adopted them in the form of a resolution (para 161). Here the allegation, albeit never made in these terms, is that the UN institutions themselves were complicit in seeking to short circuit the law-making process at the UN level. Instead of sticking to the convention procedure which permits each state to make a decision whether to accede or not, a resolution was used with much of the same content that did not require signature or ratification. Thus all UN states were immediately bound by a series of obligations that even the UN institutions themselves had originally considered were the proper content of a convention.

One of the issues that divides their Lordships is the standard of proof that is considered necessary before an individual's funds are frozen – suspicion, reasonable suspicion, etc. This debate leads in many directions but strays from my main concern as by the time we begin to assess what the burden of proof should be, we have already accepted the existence of the individual as a subject in law entitled to rights against the acts of the UN Security Council.

## Conclusions

Where is the fault line between law and politics in anti-terrorism measures? Clearly it is at the junction with individual rights. In this paper I have examined the problem from the perspective of how the individual becomes visible as a rights holder and where. At stake is the organising principle of international relations and international law. Both are built on the principle that their subjects and objects are states. It is the job of the state thereafter to engage with the individual, but the individual should not appear over the parapet of international relations or international law as a subject. Only if the individual is wearing the mantle of the state as a diplomat or head of state may he or she appear as a shadow in international relations and international law as a sort of embodiment of the state. There is much to say about the duty of loyalty of the diplomat to the state and to what part of the state but this is not within the remit of this paper.

Instead my interest is in the individual without state authority but nonetheless becoming visible as a rights holder on the international stage. It is not surprising that it is in the politically highly charged environment of anti-terrorism measures that the fault lines are appearing most noticeably. The close link in political imagination between treason and terrorism – the one as political violence against the ruler, the other political violence against any ruler – has led to a similar tendency to take shortcuts in anti-terrorism measures as regards the rights of individuals. There is a relaxation of the burden of proof before coercive measures are adopted; there is a sloppy approach adopted to evidence and intelligence comes to contaminate evidence with supposition and conjecture. In the current case, the central feature of legality – the right to challenge a decision in an impartial tribunal is dispensed with as unnecessary; or, as in the latest round of Security Council changes on the freezing resolution, subject to an ombudsman procedure.

This fault line reveals the political nature of the attempt to call the resolutions a form of legally binding document which does not permit judicial review. It also galvanizes the courts before which the individuals come in search of a remedy to find review mechanisms that raise the individual into a visible actor on the international stage. Even where the court, as in the case of the UK's Supreme Court, limits itself in the end to a particular interpretation of national law which permits it to provide a remedy to the aggrieved individuals, the consequences is an important challenge to the capacity of the Security Council to designate itself a law-making body through the adoption of resolutions alone. This capacity was, in the case that I have examined here, particularly hindered by the deployment of one state party to the Security

Council of the mechanism to make the individual disappear as a rights holder capable of challenging the listing.

The appearance (even if it turns out only to be a guest appearance) of the individual in international relations and international law promises to have important consequences. While it is unwelcome among classic public international lawyers and many legal experts are unhappy about the effects, fearing the arrival of unruly individuals on the well-bordered field of international law, it is the result, to no small extent, of the unwillingness of some states to take seriously fundamental rights as part of the domestic and international legal infrastructure.

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- To carry out state-of-the-art policy research leading to solutions to the challenges facing Europe today.
- To achieve high standards of academic excellence and maintain unqualified independence.
- To provide a forum for discussion among all stakeholders in the European policy process.
- To build collaborative networks of researchers, policy-makers and business representatives across the whole of Europe.
- To disseminate our findings and views through a regular flow of publications and public events.

## Assets

- Complete independence to set its own research priorities and freedom from any outside influence.
- Formation of nine different research networks, comprising research institutes from throughout Europe and beyond, to complement and consolidate CEPS research expertise and to greatly extend its outreach.
- An extensive membership base of some 120 Corporate Members and 130 Institutional Members, which provide expertise and practical experience and act as a sounding board for the utility and feasibility of CEPS policy proposals.

## Programme Structure

CEPS carries out its research via its own in-house research programmes and through collaborative research networks involving the active participation of other highly reputable institutes and specialists.

### Research Programmes

Economic & Social Welfare Policies  
Energy, Climate Change & Sustainable Development  
EU Neighbourhood, Foreign & Security Policy  
Financial Markets & Taxation  
Justice & Home Affairs  
Politics & European Institutions  
Regulatory Affairs  
Trade, Development & Agricultural Policy

### Research Networks/Joint Initiatives

Changing Landscape of Security & Liberty (CHALLENGE)  
European Capital Markets Institute (ECMI)  
European Climate Platform (ECP)  
European Credit Research Institute (ECRI)  
European Network of Agricultural & Rural Policy Research Institutes (ENARPRI)  
European Network for Better Regulation (ENBR)  
European Network of Economic Policy Research Institutes (ENEPRI)  
European Policy Institutes Network (EPIN)  
European Security Forum (ESF)

CEPS also organises a variety of activities and special events, involving its members and other stakeholders in the European policy debate, national and EU-level policy-makers, academics, corporate executives, NGOs and the media. CEPS' funding is obtained from a variety of sources, including membership fees, project research, foundation grants, conferences fees, publication sales and an annual grant from the European Commission.

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