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Help

To understand better the role of these conditions of admissibility, consider the communication (/c4x/LouvainX/Louv2.01x/asset/_Materials__Sayadi_and_Vincke_v_Belgium.pdf) filed in March 2006 with the Human Rights Committee by Nabil Sayadi and Patricia Vinck. The authors were subjected to a criminal investigation initiated on 3 September 2002 at the request of the Belgian Public Prosecutor's Office. The investigation was based, *inter alia*, on Council Regulation (EC) No. 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban. This regulation was adopted to implement United Nations Security Council Resolution 1390 (2002) into the legal order of the European Union. In accordance with this regulation, on 19 November 2002, the Belgian authorities informed the Sanctions Committee established by the UN Security Council that the authors were, respectively, the director (N. Sayadi) and secretary (P. Vinck) of Fondation Secours International, reportedly the European branch of the Global Relief Foundation, an American association that had been on the sanctions list since 22 October 2002. The authors' names were therefore placed on the lists of persons suspected of collaborating with terrorist organisations. Although they had not been convicted or prosecuted and have a clean judicial record, this listing resulted in the freezing of their financial assets, thus preventing them from working, travelling, moving funds and defraying family expenses. But could they file a communication against Belgium in such circumstances? Consider the decision adopted on 22 October 2008. Since it's a long decision, focus only on the part of the decision in which the Human Rights Committee expresses its views about the admissibility of the communication, in paragraphs 7.1 to 7.5. Then try to answer the following questions:

CONDITIONS OF ADMISSIBILITY - JURISDICTION - EXERCISE (1/1 point)

1. Article 1 of the Optional Protocol to the ICCPR, which recognizes the competence of the Committee to receive and rule on communications from individuals who claim to be victims of a violation of any of the rights set forth in the Covenant, provides this possibility for the benefit of individuals who are *subject to the jurisdiction* of a State party. Belgium stated that this condition was not fulfilled, since Sayadi and Vinck in fact were challenging a resolution adopted by the UN Security Council, which it was merely implementing without having any margin of appreciation to exercise. What does the Human Rights Committee answer to this argument?

- ☐ The Committee asserts that the UN Security Council is not above human rights, and that it may therefore review also acts adopted by the Security Council;
- ☒ The Committee asserts that it can assess all acts adopted by States parties to the ICCPR that may infringe the rights of the Covenant, regardless of whether those acts are imposed on the State under other international instruments or are adopted by the State at its own motion; or, ✓
- ☐ The Committee asserts that it may base its findings on the UN Charter, which refers to human rights, and which therefore prohibits the UN Security Council from acting in violation of the requirements of the Charter.

EXPLANATION

The second answer is the correct one. Note that this choice was not unanimously agreed to by the members of the Committee. Ivan Shearer, from Australia, dissented, taking the view that: 'The State party was under an obligation to carry out the decisions of the United Nations Security Council by reason of article 25 of the Charter of the United Nations. Obligations under the Charter have priority over all other obligations by reason of Article 103 of the Charter.' Another member of the Committee (Mr. Yuji Iwasawa, from Japan), while concurring with the majority, considered that the Committee should have addressed the argument based on Article 103 of the UN Charter: 'Article 103 of the Charter of the United Nations provides that "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". The State party argued that the rules on communications prevent the authors from challenging measures taken by the State party to implement its obligations under the Charter, and that Article 103 of the Charter absolves States of responsibility for failure to fulfil a low-ranking obligation. The majority's Views dismiss the State party's arguments, stating merely that "the Committee considers that, whatever the argument, it is competent to consider the compatibility with the Covenant of the national measures taken to implement a resolution of the United Nations Security Council" (para. 10.6, emphasis added).' In Mr Iwasawa's view however, since the Charter refers to the duty of all States to cooperate towards the fulfilment of human rights and fundamental freedoms, which is one of the purposes of the United Nations, Belgium would have not been acting in violation of Article 103 of the Charter if it had decided not to communicate the names of Sayadi and Vincke, leading to sanctions being on them.

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