The purpose of this paper is to analyse some of the implications of the Security Council’s (SC) recent practice of targeting individuals as part of its function of maintaining and restoring international peace and security, and, in particular, the possible remedies for individuals whose legal position has been affected by SC resolutions. Reflection on this topic, which ultimately prompted the paper, originated from the reading of two recent judgments of the Court of First Instance of the EC (CFI), which addressed the issue of the domestic judicial remedies available to individuals targeted by sanctions decided at the SC level and implemented by the EC.¹

The Court of First Instance, a Tribunal having, inter alia, the competence to review the validity of EC decisions affecting the legal position of individuals, was asked to annul restrictive measures enacted by the Community in order to implement SC resolutions that imposed sanctions against individuals suspected of having links with terrorist groups.² Among other complaints, the appellants asked the Court to find that the EC measures were in breach of human rights guaranteed to individuals under international and EC law. In particular, they


² For a more detailed account of the facts, see paras. 10 ff. of the two decisions.
complained that their right to property and their right to a fair trial had been infringed.\(^3\)

In order to answer that question, the CFI had to deal with questions that are still highly controversial: the existence of legal constraints on SC resolutions; the existence of legal remedies available at the international level to individuals affected by SC sanctions; the competence of domestic courts to judicially review SC resolutions. Beyond their indisputable technical dimension, these questions have a more general relevance, as they are situated at the point of intersection of fundamental issues of contemporary international law, such as the role of the Security Council and its relations with domestic orders based on principles of constitutionalism and the rule of law.

Not all these questions will be dealt with in the current study, which represents rather only an attempt – and a very imperfect one at that – to analyse the legal basis and the standard of judicial review of SC resolutions by domestic courts, and to show the advantages and the shortcomings of such a review.

This quite narrow purpose will also dictate the otherwise unusual architecture of the paper.

The first section contains a brief survey of the question of the competence of the ICJ to review the legality of the SC resolutions. In the second section, the efficiency of judicial forms of control hinged on inter-state dispute settlement mechanisms will be assessed against the recent practice of the SC targeting individuals. The analysis of the two decisions of the CFI, mentioned above, will then open the part of the paper devoted to exploring the legal basis, the standard and the effect of domestic decisions on the legality of SC resolutions. Particular attention will be devoted to the question of the interaction between domestic and international legal standards in protecting fundamental individual rights. I will argue that these standards, although not co-extensive, tend to overlap, and this overlap helps to limit the risk that judicial oversight by domestic courts might bring about a “nationalization” of the protection of individual rights against SC resolutions.

In its final part, the paper will then explore the implications of this form of judicial review and its possible impact on the future evolution of the UN

\(^3\) In the EC legal order, fundamental human rights are peacefully recognised as enshrined in general principles of Community law. The right to a fair trial, which proved to the essential yardstick for assessing the legality of the contested measures, has received substantive elaboration by the ECJ starting with Case C-222/84, Johnston / Chief Constable of the Royal Ulster Constabulary [1986], ECR I-1651, paras. 21-22. On the conventional international level, it is guaranteed by Art. 13 of the ECHR and by Art. 14 of the ICCPR. See also Art. 25 AmCHR, and Art. 7 of the AfCHPR.