Provisional text

JUDGMENT OF THE COURT (Grand Chamber)
14 March 2017 (*)

(Reference for a preliminary ruling — Common Foreign and Security Policy (CFSP) — Specific restrictive measures directed against certain persons and entities with a view to combating terrorism — Common Position 2001/931/CFSP — Framework Decision 2002/475/JHA — Regulation (EC) No 2580/2001 — Article 2(3) — Inclusion of the 'Liberation Tigers of Tamil Eelam (LTTE)' on the list of persons, groups and entities involved in terrorist acts — Question referred for a preliminary ruling concerning the validity of that inclusion — Compliance with international humanitarian law — Concept of 'terrorist act' — Actions by armed forces during periods of armed conflict)

In Case C-158/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Raad van State (Council of State, Netherlands), made by decision of 2 April 2014, received at the Court on 4 April 2014, in the proceedings

A,
B,
C,
D

v

Minister van Buitenlandse Zaken,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, M. Ilešič, L. Bay Larsen, E. Juhász and M. Vilaras, Presidents of Chambers, A. Rosas (Rapporteur), A. Borg Barthet, J. Malenovský, E. Levits, F. Biltgen and C. Lycourgos, Judges,
Advocate General: E. Sharpston,
Registrar: M. Ferreira, Principal Administrator,
having regard to the written procedure and further to the hearing on 8 March 2016,
after considering the observations submitted on behalf of:
A and B, by A.M. van Eik, A. Eikelboom and T. Buruma, advocaten,
C and D, by H. Seton and X.B. Sijmons, advocaten,
the Netherlands Government, by M.K. Bulterman and J. Langer, acting as Agents,
the Spanish Government, by M.A. Sampol Pucurull, L. Banciella Rodríguez-Miñón and M.J. García-Valdecasas Dorrego, acting as Agents,
the United Kingdom Government, by S. Brandon, L. Christie and V. Kaye, acting as Agents, and by M. Lester, Barrister,
the Council of the European Union, by F. Naert and G. Étienne, acting as Agents,
the European Commission, by F. Castillo de la Torre, F. Ronkes Agerbeek and P. Van Nuffel, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 29 September 2016,
gives the following

Judgment

This request for a preliminary ruling concerns, first, the interpretation of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ 2002 L 164, p. 3), as amended by Council Framework Decision 2008/919/JHA of 28 November 2008 (OJ 2008 L 330, p. 21) ('Framework Decision 2002/475'), Council Common Position 2001/931/CFSP of 27 December

2001 on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93) and Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70, and corrigendum OJ 2010 L 52, p. 58), and, second, the validity of Council Implementing Regulation (EU) No 610/2010 of 12 July 2010 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation (EU) No 1285/2009 (OJ 2010 L 178, p. 1), in so far as it maintains the 'Liberation Tigers of Tamil Eelam (LTTE)' ('the LTTE') on the list of groups and entities referred to in Article 2(3) of Regulation No 2580/2001 ('the list of those whose funds are to be frozen').

The request has been made in the context of disputes between A, B, C and D (collectively, 'A and Others') and the minister van Buitenlandse Zaken (Netherlands Minister for Foreign Affairs) ('the Minister'), concerning the imposing on those persons of restrictive measures under the Netherlands national legislation for the suppression of terrorist acts.

Legal context

International law

Resolution 1373 (2001) of the United Nations Security Council

Following the terrorist attacks that took place on 11 September 2001 in New York, Washington and Pennsylvania (United States), on 28 September 2001 the United Nations Security Council adopted Resolution 1373 (2001).

The preamble to that resolution reaffirms, in particular, 'the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts'. It also emphasises the obligation for States 'to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism'.

Under point 1 of the resolution, the United Nations Security Council:

'Decides that all States shall:

(a) Prevent and suppress the financing of terrorist acts;

(b) Criminalise the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

...

(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

...'

The four Geneva Conventions of 12 August 1949 and their additional protocols

Article 2 common to the four Geneva Conventions of 12 August 1949, namely the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (*United Nations Treaty Series*, Volume 75, p. 31) ('the First Geneva Convention'), the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (*United Nations Treaty Series*, Volume 75, p. 85) ('the Second Geneva Convention'), the Convention relative to the Treatment of Prisoners of War (*United Nations Treaty Series*, Volume 75, p. 135) ('the Third Geneva Convention'), and the Convention relative to the Protection of Civilian Persons in Time of War (*United Nations Treaty Series*, Volume 75, p. 287) ('the Fourth Geneva Convention') (collectively, 'the four Geneva Conventions'), stipulates:

'In addition to the provisions which shall be implemented in peacetime, the present convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them.

The convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

...'

According to Article 33 of the Fourth Geneva Convention:

'No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. ...'

The four Geneva Conventions have been the subject of several additional protocols: the Protocol Additional to the four Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977 (*United Nations Treaty Series*, Volume 1125, p. 3), the Protocol Additional to the four Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977 (*United Nations Treaty Series*, Volume 1125, p. 609), and the Protocol Additional to the four Geneva Conventions and relating to the Adoption of an Additional Distinctive Emblem (Protocol III) of 8 December 2005 (*United Nations Treaty Series*, Volume 2404, p. 261), (collectively, 'the additional protocols').

Under Article 1(3) and (4) of Protocol I:

This protocol, which supplements [the four Geneva Conventions], shall apply in the situations referred to in Article 2 common to those conventions.

The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.'

Article 51(2) of that protocol is worded as follows:

'The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.'

Under Article 1 of Protocol II:

This protocol, which develops and supplements Article 3 common to [the four Geneva Conventions] without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of [Protocol I] and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organised armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this protocol.

This protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.'

The wording of Article 4(1) and (2) of that protocol is as follows:

All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.

Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

acts of terrorism;

threats to commit any of the foregoing acts.'

Article 6 of that protocol states:

This article applies to the prosecution and punishment of criminal offences related to the armed conflict.

At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.'

Article 13(2) of that protocol is worded as follows:

'The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.'

The European Union is not a party to the four Geneva Conventions or to the additional protocols. However, all the Member States are parties thereto.

The International Convention for the Suppression of Terrorist Bombings

The final recital of the International Convention for the Suppression of Terrorist Bombings, signed in New York on 15 December 1997 (*United Nations Treaty Series*, Volume 2149, p. 256), reads as follows:

'Noting that the activities of military forces of States are governed by rules of international law outside the framework of this convention and that the exclusion of certain actions from the coverage of this convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws,
...'

Article 19(2) of that convention states:

'The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this convention.'

The European Union is not a party to that convention. However, all the Member States are parties thereto.

The International Convention for the Suppression of the Financing of Terrorism

Article 2(1) of the International Convention for the Suppression of the Financing of Terrorism, signed in New York on 9 December 1999 (*United Nations Treaty Series*, Volume 2178, p. 197), provides:

'Any person commits an offence within the meaning of this convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

...

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act.'

Under Article 8(1) of that convention, the State Parties must adopt the appropriate measures, in accordance with their domestic legal principles, for identifying, detecting and freezing or seizing any funds used or allocated for the purpose of committing the offences referred to in Article 2 of that convention, together with the proceeds derived from such offences, for purposes of possible forfeiture.

According to Article 21 of that convention:

'Nothing in this convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.'

The European Union is not a party to the International Convention for the Suppression of the Financing of Terrorism. However, all the Member States are parties thereto.

The International Convention for the Suppression of Acts of Nuclear Terrorism

Article 4(2) of the International Convention for the Suppression of Acts of Nuclear Terrorism, signed in New York on 13 April 2005 (*United Nations Treaty Series*, Volume 2445, p. 89), is worded as follows:

'The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this convention.'

The European Union is not a party to that convention. However, a large majority of the Member States are parties thereto.

The Council of Europe Convention on the Prevention of Terrorism

Article 26(5) of the Council of Europe Convention on the Prevention of Terrorism, signed in Warsaw on 16 May 2005 (*Council of Europe Treaty Series* No 196), is worded as follows:

'The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this convention, and the activities undertaken by military forces of a Party in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this convention.'

Under Council Decision (EU) 2015/1913 of 18 September 2015 on the signing, on behalf of the European Union, of the Council of Europe Convention on the Prevention of Terrorism (OJ 2015 L 280, p. 22), the European Union signed that convention as regards matters falling within its competence. The majority of the Member States also signed and ratified that convention.

European Union law

Common Position 2001/931

As is apparent from its recitals, the purpose of Common Position 2001/931 is to implement, by means of actions carried out both at EU level and at the level of the Member States, Resolution 1373 (2001), by which the United Nations Security Council decides that all States are to prevent and suppress the financing of terrorist acts.

Article 1 of that Common Position states:

'1. This Common Position applies in accordance with the provisions of the following Articles to persons, groups and entities involved in terrorist acts and listed in the Annex.

2. For the purposes of this Common Position, "persons, groups and entities involved in terrorist acts" shall mean:

persons who commit, or attempt to commit, terrorist acts or who participate in, or facilitate, the commission of terrorist acts,

groups and entities owned or controlled directly or indirectly by such persons; and persons, groups and entities acting on behalf of, or under the direction of, such persons, groups and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons, groups and entities.

3. For the purposes of this Common Position, "terrorist act" shall mean one of the following intentional acts, which, given its nature or its context, may seriously damage a country or an international organisation, as defined as an offence under national law, where committed with the aim of:

seriously intimidating a population, or

unduly compelling a Government or an international organisation to perform or abstain from performing any act, or

seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation:

attacks upon a person's life which may cause death;

attacks upon the physical integrity of a person;

kidnapping or hostage taking;

causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss;

seizure of aircraft, ships or other means of public or goods transport;

manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;

release of dangerous substances, or causing fires, explosions or floods the effect of which is to endanger human life;

interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;

threatening to commit any of the acts listed under (a) to (h);

directing a terrorist group;

participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the group.

For the purposes of this paragraph, "terrorist group" shall mean a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist acts. "Structured group" means a group that is not randomly formed for the immediate commission of a terrorist act and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

4. The list in the Annex shall be drawn up on the basis of precise information or material in the relevant file which indicates that a decision has been taken by a competent authority in respect of the persons, groups and entities concerned, irrespective of whether it concerns the instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or clues, or condemnation for such deeds. ...

...'

Regulation No 2580/2001

Under Article 1(4) of Regulation No 2580/2001, the definition of 'terrorist act' for the purposes of that regulation is to be the one contained in Article 1(3) of Common Position 2001/931.

Article 2 of that regulation states:

'1. Except as permitted under Articles 5 and 6:

all funds, other financial assets and economic resources belonging to, or owned or held by, a natural or legal person, group or entity included in the list referred to in paragraph 3 shall be frozen;

2. Except as permitted under Articles 5 and 6, it shall be prohibited to provide financial services to, or for the benefit of, a natural or legal person, group or entity included in the list referred to in paragraph 3.

3. The Council, acting by unanimity, shall establish, review and amend the list of persons, groups and entities to which this Regulation applies, in accordance with the provisions laid down in Article 1(4), (5) and (6) of Common Position [2001/931]; such list shall consist of:

natural persons committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism;

legal persons, groups or entities committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism;

Under Article 3(1) of that regulation, the participation, knowingly and intentionally, in activities, the object or effect of which is, directly or indirectly, to circumvent Article 2 thereof is to be prohibited.

Article 9 of Regulation No 2580/2001 is worded as follows:

'Each Member State shall determine the sanctions to be imposed where the provisions of this Regulation are infringed. Such sanctions shall be effective, proportionate and dissuasive.'

Framework Decision 2002/475

As is apparent from recitals 6 and 7 thereof, the purpose of Framework Decision 2002/475 is, inter alia, to approximate the definition of terrorist offences in all Member States, to provide penalties and sanctions which reflect the seriousness of such offences, and to establish jurisdictional rules to ensure that terrorist offences may be effectively prosecuted.

Recital 11 of that framework decision states:

'Actions by armed forces during periods of armed conflict, which are governed by international humanitarian law within the meaning of these terms under that law, and, inasmuch as they are governed by other rules of international law, actions by the armed forces of a State in the exercise of their official duties are not governed by this Framework Decision,

...'

Article 1(1) of that framework decision, entitled 'Terrorist offences and fundamental rights and principles', states:

'Each Member State shall take the necessary measures to ensure that the intentional acts referred to below in points (a) to (i), as defined as offences under national law, which, given their nature or context, may seriously damage a country or an international organisation where committed with the aim of:

eriously intimidating a population, or

nduly compelling a Government or international organisation to perform or abstain from performing any act, or

eriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation,

shall be deemed to be terrorist offences:

attacks upon a person's life which may cause death;

attacks upon the physical integrity of a person;

kidnapping or hostage taking;

causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;

seizure of aircraft, ships or other means of public or goods transport;

manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;

release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;

interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;

threatening to commit any of the acts listed in (a) to (h).'

Article 2 of that framework decision, entitled 'Offences relating to a terrorist group', is worded as follows:

'1. For the purposes of this Framework Decision, "terrorist group" shall mean: a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist offences. "Structured group" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

2. Each Member State shall take the necessary measures to ensure that the following intentional acts are punishable:

directing a terrorist group;

participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group.'

Decisions 2001/927/EC and 2006/379/EC

Council Decision 2001/927/EC of 27 December 2001 establishing the list provided for in Article 2(3) of Regulation No 2580/2001 (OJ 2001 L 344, p. 83) established an initial list of persons, groups and entities to which that regulation applies.

By Decision 2006/379/EC of 29 May 2006 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2005/930/EC (OJ 2006 L 144, p. 21), the Council included the LTTE on that list. Subsequently, that entity remained included on that list under the successive decisions and implementing regulations replacing that list with a new list and repealing the previous decision or implementing regulation. The LTTE was thus included on the list of those whose funds are to be frozen appended to Implementing Regulation No 610/2010.

Netherlands law

Under Article 2(1) of the Sanctieregeling terrorisme 2007-II (Regulation on sanctions for the suppression of terrorism 2007-II) ('the Sanctieregeling'), if, in his opinion, persons or organisations belong to the circle of persons or organisations referred to in Resolution 1373 (2001), the Minister may adopt a 'designation order' in respect of such persons or organisations.

Under Article 2(2) of that regulation, all resources belonging to the persons and organisations referred to in Article 2(1) thereof are to be frozen.

Article 2(3) of that regulation prohibits the providing of financial services to, or for the benefit of, the persons and organisations referred to in Article 2(1) thereof.

Under Article 2(4) of the Sanctieregeling, it is prohibited to make resources available, directly or indirectly, to the persons and organisations referred to in Article 2(1) thereof.

The dispute in the main proceedings and the questions referred for a preliminary ruling

It is apparent from the information provided by the referring court that, on 8 June 2010, the Minister adopted designation orders in respect of A and Others on the basis of the Sanctieregeling ('the orders of 8 June 2010'), resulting in the freezing of their respective financial resources. By decisions of 10 January 2011, 8 December 2010 and 25 November 2010 respectively, the Minister rejected the complaints that those persons had brought against the orders of 8 June 2010. He based the rejection of those complaints on the fact that A and Others all belonged, in his opinion, to the circle of persons and organisations targeted by Resolution 1373 (2001). In addition, the Minister took into consideration an official memorandum of the Algemene Inlichtingen- en Veiligheidsdienst (Netherlands General Intelligence and Security Service) of 14 October 2008, according to which those persons had been involved in raising funds for the LTTE. The Minister also took into account the inclusion of that entity on the list of those whose funds are to be frozen. In addition, he relied on the fact that the public

prosecution service had brought criminal proceedings against A and Others on grounds of participation in a terrorist organisation within the meaning of the Netherlands Criminal Code and of infringement, for the benefit of the LTTE, of the prohibitions set out in Article 2(1) and (2) and Article 3 of Regulation No 2580/2001.

By judgments of 20 December 2011, 18 January 2012 and 30 August 2012 respectively, the administrative law sections of the rechtbank Zwolle-Lelystad (District Court, Zwolle-Lelystad, Netherlands), the rechtbank 's Gravenhage (District Court, The Hague, Netherlands) and the rechtbank Alkmaar (District Court, Alkmaar, Netherlands) declared that the actions brought by A and Others against the decisions of the Minister to maintain the orders of 8 June 2010 were unfounded. Those persons have brought appeals against those judgments before the referring court, the Raad van State (Council of State, Netherlands).

In those appeals, A and Others argue, inter alia, that the LTTE is not a terrorist organisation because the conflict between that entity and the Sri Lankan Government must be regarded as an armed conflict within the meaning of international humanitarian law. They assert that the inclusion of that entity on the list of those whose funds are to be frozen is, accordingly, unlawful.

In the first place, the referring court observes that Article 2 of the Sanctieregeling is intended to implement Resolution 1373 (2001) and that that provision refers neither to Regulation No 2580/2001 nor to Common Position 2001/931. However, that court considers that, inasmuch as the Minister expressly based his opinion that the LTTE is a terrorist organisation on that entity's inclusion on the list of those whose funds are to be frozen, that inclusion constitutes the basis of the orders of 8 June 2010. According to the referring court, given that Common Position 2001/931 and Regulation No 2580/2001 refer to Resolution 1373 (2001), the Minister was required, in line with the principle of sincere cooperation laid down in Article 4(3) TEU, to consider that the entities included on that list are terrorist organisations. However, that court considers that it is permissible, in the light of the arguments put forward by A and Others, to question both the lawfulness of the acts of the Council of the European Union whereby it maintained the LTTE on the list of those whose funds are to be frozen that was in force at the time the orders of 8 June 2010 were adopted, and the validity of the subsequent acts of that institution by which it maintained the LTTE on that list.

In the second place, taking into consideration the judgments of 9 March 1994, *TWD Textilwerke Deggendorf* (C-188/92, EU:C:1994:90), and of 15 February 2001, *Nachi Europe* (C-239/99, EU:C:2001:101), the referring court questions whether it is appropriate to recognise the right of A and Others to plead the unlawfulness of those acts before it, given that those persons have not requested the annulment of those acts before the Courts of the European Union. According to that court, A and Others are in a factual situation similar to that of the persons accused of being members of the Devrimci Halk Kurtulus Partisi-Cephesi (DHKP-C) in the case which gave rise to the judgment of 29 June 2010, *E and F* (C-550/09, EU:C:2010:382), by which the Court of Justice held, in essence, that those persons did not unquestionably have standing to bring an action for annulment, on the basis of Article 230 EC, against the DHKP-C's inclusion on the list referred to in Article 2(3) of Regulation No 2580/2001. The referring court raises the question whether the solution arrived at in that judgment may be applied by analogy under Article 263 TFEU, given that that provision has expanded the possibility for individuals to contest the legality of acts of the European Union. It observes, inter alia, that, if it were to be concluded that, having regard to Article 263 TFEU, persons in a situation such as that of A and Others may not plead, before national courts, that the inclusion of an organisation on the list of those whose funds are to be frozen referred to in Article 2(3) of Regulation No 2580/2001 is unlawful, any persons who fear that a national authority is taking anti-terrorist measures against them owing to their involvement, whether actual or suspected, in an organisation included on that list should bring actions against the inclusion of that organisation on that list as a precautionary measure. However, according to the referring court, such a situation would be incompatible with the right not to self-incriminate.

In the third place, in the event that the Court of Justice were to decide that an action for annulment of Implementing Regulation No 610/2010, brought by A and Others, would not unquestionably be admissible, the referring court questions whether the inclusion of the LTTE on the list of those whose funds are to be frozen is valid. First, it considers that, despite the wording of recital 11 of Framework Decision 2002/475, it is not inconceivable that actions by an armed force during periods of armed conflict, within the meaning of international humanitarian law, may be regarded as terrorist offences. However, in view of the discretion which appears to be granted by the definition of 'terrorist offences' laid down in Article 1(1) of that framework decision, it is possible, according to the referring court, to take into account, when determining whether it is appropriate to classify the activities engaged in by the LTTE as 'terrorist offences', the fact that that entity was acting as an armed force engaged in an armed conflict.

Secondly, that court notes that neither Common Position 2001/931 nor Regulation No 2580/2001 specifies whether it is necessary to have regard to the fact that the acts or offences which they mention have been committed by armed forces during periods of armed conflict within the meaning of international humanitarian law. It considers, however, that, in view of the fact that the definitions of 'terrorist acts' referred to in Article 1(3) of Common Position 2001/931 and 'terrorist offences' contained in Article 1(1) of Framework Decision 2002/475 coincide, if actions by armed forces during periods of armed conflict were to be regarded as falling outside the concept of 'terrorist offences' within the meaning of that framework decision, they could not then constitute 'terrorist acts' within the meaning of Common Position 2001/931 and Regulation No 2580/2001.

Thirdly, making reference to the four Geneva Conventions of 1949 and the additional protocols, Article 19(2) of the International Convention for the Suppression of Terrorist Bombings, Article 4(2) of the International Convention for the Suppression of Acts of Nuclear Terrorism, Article 26(5) of the Council of Europe Convention on the Prevention of Terrorism, and Article 12 of the International Convention Against the Taking of Hostages, the referring court finds that those international conventions on terrorism exclude actions by armed forces during periods of armed conflict from their scope, which would seem to indicate

that there is an international consensus regarding the fact that actions by armed forces during periods of armed conflict, within the meaning of international humanitarian law, are not to be regarded as terrorist activities. However, the referring court also makes reference to Article 2(1)(b) of the International Convention for the Suppression of the Financing of Terrorism, Article 33 of the Fourth Geneva Convention and Article 4(2)(d) of Protocol II and notes that, according to those conventions, such actions should not be regarded as terrorist activities so long as they do not target civilians or other persons who do not take a direct part in hostilities.

Fourthly, the referring court finds that the Council provided reasons for the inclusion of the LTTE on the list of those whose funds are to be frozen by mentioning a series of attacks which that entity had carried out in Sri Lanka during the period from 12 August 2005 to 12 April 2009 and which, accordingly, had a connection with the conflict between that organisation and the Sri Lankan Government. In addition, it explains that the Minister considered, in a memorandum of August 2009, on the basis of the criteria set out in Article 1 of Protocol II, that, until 18 May 2009, that conflict was a non-international armed conflict. Furthermore, until July 2009, the United Nations High Commissioner for Refugees had classified that conflict as an 'armed conflict'. Lastly, the referring court emphasises the importance, in its view, of determining whether the armed conflict is non-international within the meaning of international humanitarian law.

In those circumstances the Raad van State (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

Having regard to, inter alia, Article 47 of the [Charter], would an action for the annulment of Implementing Regulation No 610/2010, in so far as that regulation included the LTTE on the list [of those whose funds are to be frozen], brought before the General Court by [A and Others] in their own name on the basis of Article 263 TFEU, [unquestionably] have been admissible?

Having regard to, inter alia, recital 11 [of Framework Decision 2002/475], can actions by armed forces during periods of armed conflict, within the meaning of international humanitarian law, be terrorist offences within the meaning of that Framework Decision?

If the answer to Question 2(a) is in the affirmative, can actions by armed forces during periods of armed conflict, within the meaning of international humanitarian law, be terrorist acts within the meaning of Common Position [2001/931] and of Regulation No 2580/2001?

Are the actions which formed the basis of Implementing Regulation No 610/2010, in so far as it included the LTTE on the list [of those whose funds are to be frozen], actions by armed forces during periods of armed conflict within the meaning of international humanitarian law?

Having regard to, inter alia, the answers to Questions 1, 2(a), 2(b) and 3, is Implementing Regulation No 610/2010 [invalid], in so far as the LTTE was thereby included on the list [of those whose funds are to be frozen]?

If the answer to Question 4 is in the affirmative, does that invalidity then also apply to the earlier and later Council decisions updating the list [of those whose funds are to be frozen], in so far as those decisions resulted in the inclusion of the LTTE on that list?'

Preliminary remarks

By actions brought before the General Court of the European Union on 11 April 2011 (Case T-208/11) and 28 September 2011 (Case T-508/11), the LTTE requested the annulment of two implementing regulations in so far as those acts concern it by having included it on the list of those whose funds are to be frozen referred to in Article 2(3) of Regulation No 2580/2001. During the proceedings before the General Court, that entity modified its heads of claim by requesting the annulment of the implementing regulations concerning it, adopted after the actions were brought, which maintained its inclusion on that list.

By judgment of 16 October 2014, *LTTE* v *Council* (T-208/11 and T-508/11, EU:T:2014:885), the General Court rejected the LTTE's first plea in law, based on the contention that Regulation No 2580/2001 was not applicable to the conflict between the LTTE and the Sri Lankan Government, by which that entity argued that that regulation did not apply to situations of armed conflict because such situations could be governed only by international humanitarian law.

However, the General Court upheld some of the LTTE's pleas in law, considering that the Council had infringed Article 1 of Common Position 2001/931 and, given that there was no reference in the grounds of those regulations to decisions of competent authorities concerning the acts imputed to that entity, had failed to fulfil its duty to provide a statement of reasons in respect of acts of the European Union. Consequently, the Court annulled the contested regulations in so far as they concern that entity.

By application lodged on 19 December 2014, the Council brought an appeal before the Court of Justice against the judgment of the General Court of 16 October 2014, *LTTE* v *Council* (T-208/11 and T-508/11, EU:T:2014:885).

In that regard, it should be noted that the present case relates to acts of the European Union, adopted between 2006 and 2010, which included the LTTE on the list of those whose funds are to be frozen, an inclusion which was based, as is apparent from paragraph 51 above, on a series of attacks carried out by that entity during the period from 12 August 2005 to 12 April 2009. By contrast, Case C-599/14 P, relating to the Council's appeal referred to in the preceding paragraph, relates to acts of the European Union adopted after 2010 which maintained the inclusion of that entity on the list of those whose funds are to be frozen.

In those circumstances, it is necessary to dismiss the Netherlands Government's claim that the present case should be stayed pending the judgment of the Court in Case C-599/14 P.

Consideration of the questions referred

Question 1

By its first question, the referring court asks, in essence, whether it is obvious, within the meaning of the case-law based on the judgments of 9 March 1994, *TWD Textilwerke Deggendorf* (C-188/92, EU:C:1994:90), and of 15 February 2001, *Nachi Europe* (C-239/99, EU:C:2001:101), that actions for annulment of Implementing Regulation No 610/2010 relating to the inclusion of the LTTE on the list of those whose funds are to be frozen, brought before the General Court by persons in a situation such as that of the appellants in the main proceedings, would have been admissible.

It should be noted at the outset that both the facts of the case in the main proceedings and the orders of 8 June 2010 predate the entry into force of Implementing Regulation No 610/2010. It is therefore appropriate to consider that the question concerns not only that implementing regulation but also the acts preceding it which included and then maintained the LTTE on the list of those whose funds are to be frozen.

It is apparent from the order for reference that the Raad van State is raising the question whether the case-law which emerges from the judgments of 9 March 1994, *TWD Textilwerke Deggendorf* (C-188/92, EU:C:1994:90), and of 15 February 2001, *Nachi Europe* (C-239/99, EU:C:2001:101), may be applied by analogy to a case such as the one in the main proceedings.

In the case which gave rise to the judgment of 9 March 1994, *TWD Textilwerke Deggendorf* (C-188/92, EU:C:1994:90), a national court had, by a request for a preliminary ruling submitted in 1992, put a question to the Court concerning the validity of a decision of the European Commission adopted in 1986 regarding State aid. That decision of the Commission had not been contested by the company receiving the aid concerned by that decision, although a copy thereof had been communicated to that company by the competent national authority and the latter had expressly informed the former that it was entitled to bring an action before the Court of Justice of the European Union against the Commission's decision.

In the light of those circumstances, the Court held that it follows from the requirements of legal certainty that it is not possible for a recipient of aid, who could have contested the Commission's decision relating to that aid and who has allowed the mandatory time limit laid down in that regard by the provisions of the Treaty to expire, to call in question the lawfulness of that decision before the national courts in an action brought against the measures taken by the national authorities to implement that decision (see, to that effect, judgment of 9 March 1994, *TWD Textilwerke Deggendorf*, C-188/92, EU:C:1994:90, paragraphs 12 and 17).

In the case which gave rise to the judgment of 15 February 2001, *Nachi Europe* (C-239/99, EU:C:2001:101), the Court of Justice had, in 1999, received a request for a preliminary ruling concerning the validity of an anti-dumping regulation which had been adopted in 1992 and successfully contested by an action for annulment giving rise to the judgment of the General Court of 2 May 1995, *NTN Corporation and Koyo Seiko* v *Council* (T-163/94 and T-165/94, EU:T:1995:83), confirmed by the judgment of the Court of Justice of 10 February 1998, *Commission* v *NTN and Koyo Seiko* (C-245/95 P, EU:C:1998:46), that action for annulment having been brought by a number of the manufacturers concerned by that anti-dumping regulation but not by Nachi Fujikoshi, the parent company of the applicant in the main proceedings in the case which gave rise to the judgment of 15 February 2001, *Nachi Europe* (C-239/99, EU:C:2001:101), namely Nachi Europe.

Having found, in paragraph 39 of the judgment of 15 February 2001, *Nachi Europe* (C-239/99, EU:C:2001:101), that Nachi Europe could be regarded as being directly and individually concerned by the provisions of that regulation, which imposed a specific anti-dumping duty concerning the goods manufactured by Nachi Fujikoshi, the Court of Justice held, in paragraph 40 of that judgment, that an importer of the goods covered by that regulation, such as Nachi Europe, which unquestionably had a right of action before the General Court to seek the annulment of the anti-dumping duty imposed on those goods, but which had not exercised that right, could not, subsequently, plead the invalidity of that anti-dumping duty before a national court.

As the Court has emphasised on several occasions, to accept that a person who would unquestionably have had standing to bring proceedings under the fourth paragraph of Article 263 TFEU for the annulment of an act of the European Union could, after the expiry of the time limit for bringing proceedings laid down in the sixth paragraph of Article 263 TFEU, contest the validity of that act before the national courts, would amount to enabling the person concerned to circumvent the fact that that act is final as against him once the time limit for his bringing an action has expired (see, to that effect, judgments of 9 March 1994, *TWD Textilwerke Deggendorf*, C-188/92, EU:C:1994:90, paragraph 18; of 15 February 2001, *Nachi Europe*, C-239/99, EU:C:2001:101, paragraph 30; of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 41; and of 5 March 2015, *Banco Privado Português and Massa Insolvente do Banco Privado Português*, C-667/13, EU:C:2015:151, paragraph 28).

However, it is only in circumstances where the action for annulment would unquestionably have been admissible that the Court has held that a person may not plead the invalidity of an act of the European Union before a national court (see, to that effect, judgments of 9 March 1994, *TWD Textilwerke Deggendorf*, C-188/92, EU:C:1994:90, paragraphs 17 to 25; of 30 January 1997, *Wiljo*, C-178/95, EU:C:1997:46, paragraphs 15 to 25; of 15 February 2001, *Nachi Europe*, C-239/99, EU:C:2001:101, paragraphs 29 to 40; and of 22 October 2002, *National Farmers' Union*, C-241/01, EU:C:2002:604, paragraphs 34 to 39). In numerous other cases, the Court has held that it was not established that the action would unquestionably have been admissible (see, inter alia, to that effect,

judgments of 23 February 2006, *Atzeni and Others*, C-346/03 and C-529/03, EU:C:2006:130, paragraphs 30 to 34; of 8 March 2007, *Roquette Frères*, C-441/05, EU:C:2007:150, paragraphs 35 to 48; of 29 June 2010, *E and F*, C-550/09, EU:C:2010:382, paragraphs 37 to 52; of 18 September 2014, *Valimar*, C-374/12, EU:C:2014:2231, paragraphs 24 to 38; and of 5 March 2015, *Banco Privado Português and Massa Insolvente do Banco Privado Português*, C-667/13, EU:C:2015:151, paragraphs 27 to 32).

It is true that, in order to strengthen the judicial protection of natural or legal persons with regard to acts of the European Union, the Treaty of Lisbon broadened the conditions of admissibility of an action for annulment, through the adoption of the fourth paragraph of Article 263 TFEU, which authorises such an action against a regulatory act which directly concerns such a person and does not entail implementing measures.

However, that broadening of the conditions of admissibility of an action for annulment is not accompanied by any corresponding bar to calling in question, before a national court, the validity of an act of the European Union, where an action for annulment brought before the General Court by one of the parties to the dispute would not unquestionably have been admissible (see, to that effect, judgment of 9 June 2011, *Comitato 'Venezia vuole vivere' and Others* v *Commission*, C-71/09 P, C-73/09 P and C-76/09 P, EU:C:2011:368, paragraph 57).

It follows that a request for a preliminary ruling concerning the validity of an act of the European Union can be dismissed only in the event that, although the action for annulment of an act of the European Union would unquestionably have been admissible, the natural or legal person capable of bringing such an action abstained from doing so within the prescribed period and is pleading the unlawfulness of that act in national proceedings in order to encourage the national court to submit a request for a preliminary ruling to the Court of Justice concerning the validity of that act, thereby circumventing the fact that that act is final as against him once the time limit for his bringing an action has expired (see, to that effect, judgments of 9 March 1994, *TWD Textilwerke Deggendorf*, C-188/92, EU:C:1994:90, paragraph 18, and of 15 February 2001, *Nachi Europe*, C-239/99, EU:C:2001:101, paragraph 30).

That is not the situation in the present case.

First of all, the appellants in the main proceedings were not themselves included on the list of those whose funds are to be frozen.

Next, it is not obvious that they were 'individually' concerned by those acts for the purposes of the fourth paragraph of Article 263 TFEU. Indeed, the inclusion of the LTTE on the list of those whose funds are to be frozen is of general application with regard to persons other than that entity, in that it serves to impose on an indeterminate number of persons an obligation to comply with specific restrictive measures against that entity (see, to that effect, judgments of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraphs 241 to 244; of 29 June 2010, *E and F*, C-550/09, EU:C:2010:382, paragraph 51; and of 23 April 2013, *Gbagbo and Others* v *Council*, C-478/11 P to C-482/11 P, EU:C:2013:258, paragraph 56).

Lastly, the situation of the appellants in the main proceedings was directly affected, not by the acts of the European Union relating to that inclusion, but by the imposing of sanctions based solely on Netherlands law, which took into account, among other factors, that inclusion.

Consequently, the answer to the first question is that it is not obvious, within the meaning of the case-law based on the judgments of 9 March 1994, *TWD Textilwerke Deggendorf* (C-188/92, EU:C:1994:90), and of 15 February 2001, *Nachi Europe* (C-239/99, EU:C:2001:101), that actions for annulment of Implementing Regulation No 610/2010 or the acts of the European Union preceding that implementing regulation and relating to the inclusion of the LTTE on the list of those whose funds are to be frozen, brought before the General Court by persons in a situation such as that of the appellants in the main proceedings, would have been admissible.

Questions 2 to 4

As a preliminary point, regarding the third question, which seeks, in essence, to ascertain whether the activities which were the reason for the inclusion and the maintenance, from 2006 to 2010, of the LTTE on the list of those whose funds are to be frozen constitute 'actions by armed forces during periods of armed conflict' within the meaning of international humanitarian law, it should be noted that, in the present case, the Court does not have sufficient information to enable it to give a ruling on that question.

By its second and fourth questions, which must be examined together, the Raad van State asks the Court, in essence, whether the inclusion, by Implementing Regulation No 610/2010 and the acts of the European Union preceding that implementing regulation, of the LTTE on the list of those whose funds are to be frozen is valid. It seeks to ascertain, in particular, whether actions by armed forces during periods of armed conflict, within the meaning of international humanitarian law, may constitute 'terrorist offences' for the purposes of Framework Decision 2002/475 or 'terrorist acts' for the purposes of Common Position 2001/931 and Regulation No 2580/2001.

The referring court questions, in that regard, whether it is possible to regard the activities of the LTTE which were the reason for its inclusion on the list of those whose funds are to be frozen as terrorist activities for the purposes of Common Position 2001/931 and Regulation No 2580/2001, when those acts should be read in conjunction with Framework Decision 2002/475, recital 11 of which specifies that it does not govern actions by armed forces during periods of armed conflict.

According to the case-law of the Court, a regulation providing for restrictive measures, such as Implementing Regulation No 610/2010 and the acts of the European Union preceding that implementing regulation and relating to the inclusion of the LTTE on the list of those whose funds are to be frozen, must be interpreted in the light not only of the decision adopted in the framework of the Common Foreign and Security Policy referred to in Article 215(2) TFEU, but also of the historical context in which the provisions were adopted by the European Union, that regulation being one such provision (judgment of 1 March 2016, *National Iranian Oil Company* v *Council*, C-440/14 P, EU:C:2016:128, paragraph 78 and the case-law cited).

In that regard, it is necessary to distinguish the acts of the European Union concerned by Question 2(a) and Question 2(b) respectively, namely Framework Decision 2002/475 on the one hand and Common Position 2001/931 and Regulation No 2580/2001 on the other. Accordingly, it is not so much the concepts of 'terrorist offences' as referred to in Framework Decision 2002/475 and 'terrorist acts' as referred to in Common Position 2001/931 and Regulation No 2580/2001 that must be examined and compared, but rather the objectives of Framework Decision 2002/475, which falls within the sphere of Justice and Home Affairs (JHA), and those of Common Position 2001/931 and Regulation No 2580/2001, which essentially fall under the Common Foreign and Security Policy (CFSP).

The purpose of Framework Decision 2002/475 is, inter alia, to approximate the definition of terrorist offences in all Member States, to lay down penalties and sanctions which reflect the seriousness of such offences, and to establish jurisdictional rules to ensure that terrorist offences may be effectively prosecuted.

That body of legal rules imposing penalties for past conduct includes recital 11 to Framework Decision 2002/475, pursuant to which that framework decision does not govern actions by armed forces during periods of armed conflict, which are instead governed by international humanitarian law in accordance with the definition of those terms under that law; nor does it govern actions by the armed forces of a State in the exercise of their official duties which are governed by other rules of international law.

By contrast, the purpose of Common Position 2001/931 and Regulation No 2580/2001 is the implementation of Resolution 1373 (2001), adopted following the terrorist attacks carried out in the United States on 11 September 2001, and they mainly concern the prevention of terrorist acts by means of the adoption of measures for the freezing of funds in order to hinder acts preparatory to such acts, such as the financing of persons or entities liable to carry out terrorist acts.

In that context, the designation of the persons and entities who are to be included on the list referred to in Article 2(3) of Regulation No 2580/2001 does not constitute a sanction, but rather a preventative measure adopted according to a system operating on two levels, in the sense that, according to Article 1(4) of Common Position 2001/931, the Council may include on that list only persons and entities in respect of which a decision taken by a competent authority exists, whether it be a decision to proceed with an investigation or prosecution, based on serious and credible evidence or clues, relating to the perpetration, attempt to perpetrate, participation in or facilitation of a terrorist act, or a decision to convict someone of such offences.

It follows from the foregoing that recital 11 of Framework Decision 2002/475, the sole objective of which is, as was emphasised by the Commission, to clarify the boundaries of the scope of that framework decision, is irrelevant for the purposes of interpreting the concept of 'terrorist acts' as referred to in Common Position 2001/931 and Regulation No 2580/2001.

The referring court considers that various international conventions could be interpreted as meaning that actions by armed forces during periods of armed conflict, within the meaning of international humanitarian law, are not to be regarded as terrorist activities. As a result, it expresses doubts regarding the classification to be applied to the activities engaged in by the LTTE which, according to the Council, justified the acts of the European Union that were adopted between 2006 and 2010 and relate to the inclusion of that entity on the list of those whose funds are to be frozen.

It should, however, be pointed out that the European Union is not a party to those international conventions and that, in any event, those conventions do not prevent actions by armed forces during periods of armed conflict from constituting 'terrorist acts' for the purposes of Common Position 2001/931 and Regulation No 2580/2001, without there being any indication that those conventions contradict any rules of customary international law which are binding on the European Union.

First of all, regarding international humanitarian law, it should be pointed out that Article 33 of the Fourth Geneva Convention provides for the prohibition of any measure of intimidation or terrorism. Similarly, Article 51(2) of Protocol I and Article 13(2) of Protocol II state that acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited. Moreover, Article 4(2) of Protocol II provides that acts of terrorism against persons who do not take a direct part or who have ceased to take part in hostilities are prohibited at any time and in any place whatsoever.

It should also be emphasised that international humanitarian law pursues different aims from Common Position 2001/931 and Regulation No 2580/2001 and that it introduces different mechanisms.

In addition, as the Advocate General noted in points 107 to 109 of her Opinion, the rules laid down by international humanitarian law do not prohibit the adoption, outside the framework established by that law, of preventative measures such as those to which the LTTE has been subjected.

In those circumstances, the fact, even supposing that it were to be established, that some of the activities referred to in paragraph 86 above are not prohibited by international humanitarian law could not be decisive in any event, inasmuch as the application of Common Position 2001/931 and Regulation No 2580/2001 does not depend on classifications stemming from international humanitarian law (see, by analogy, judgment of 30 January 2014, *Diakité*, C-285/12, EU:C:2014:39, paragraphs 24 to 26).

Next, regarding international law relating to terrorism, it should be pointed out that Article 2(1)(b) of the International Convention for the Suppression of the Financing of Terrorism provides for the criminalisation of 'any ... act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act'.

In addition, Article 8(1) of that convention lays down the obligation to adopt measures for the freezing of funds used for the purpose of committing the offences referred to in Article 2 thereof and does not prohibit the putting in place of measures for the freezing of funds concerning other terrorist offences.

It should also be noted that, under the final recital of the International Convention for the Suppression of Terrorist Bombings, the exclusion of actions by armed forces during periods of armed conflict from the scope of that convention 'does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws'. Accordingly, the fact that such actions do not fall within the scope of that convention does not prevent them from being regarded as unlawful acts liable to prosecution, such as 'terrorist acts' as referred to in Common Position 2001/931 and Regulation No 2580/2001.

Lastly, although some of the international conventions to which the Raad van State makes reference exclude from their scope actions by armed forces during periods of armed conflict within the meaning of international humanitarian law, they neither prohibit the State Parties from classifying some of those actions as 'terrorist acts' nor preclude them from taking steps to prevent the commission of such acts.

It should be borne in mind in that regard that the purpose of Common Position 2001/931 and Regulation No 2580/2001 is not to punish terrorist acts, but to combat terrorism by preventing the financing of acts of terrorism, as recommended by the United Nations Security Council in Resolution 1373 (2001).

It follows from all of the foregoing that Common Position 2001/931 and Regulation No 2580/2001 must be interpreted as meaning that actions by armed forces during periods of armed conflict, within the meaning of international humanitarian law, may constitute 'terrorist acts' for the purposes of those acts of the European Union.

In those circumstances, the answer to the second and fourth questions is that, as neither Common Position 2001/931 nor Regulation No 2580/2001 precludes actions by armed forces during periods of armed conflict, within the meaning of international humanitarian law, from constituting 'terrorist acts' for the purposes of those acts of the European Union, the fact that the activities of the LTTE may constitute such actions does not affect the validity of Implementing Regulation No 610/2010 or that of the acts of the European Union preceding that implementing regulation and relating to the inclusion of the LTTE on the list of those whose funds are to be frozen.

As the fifth question has been asked in the event that the acts referred to in the preceding paragraph are found to be invalid, there is no need to answer it.

Costs

Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

It is not obvious, within the meaning of the case-law based on the judgments of 9 March 1994, *TWD Textilwerke Deggendorf* (C-188/92, EU:C:1994:90), and of 15 February 2001, *Nachi Europe* (C-239/99, EU:C:2001:101), that actions for annulment of Council Implementing Regulation (EU) No 610/2010 of 12 July 2010 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation (EU) No 1285/2009 or the acts of the European Union preceding that implementing regulation and relating to the inclusion of the 'Liberation Tigers of Tamil Eelam (LTTE)' on the list referred to in Article 2(3) of Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, brought before the General Court of the European Union by persons in a situation such as that of the appellants in the main proceedings, would have been admissible.

As neither Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism nor Regulation No 2580/2001 precludes actions by armed forces during periods of armed conflict, within the meaning of international humanitarian law, from constituting 'terrorist acts' for the purposes of those acts of the European Union, the fact that the activities of the 'Liberation Tigers of Tamil Eelam (LTTE)' may constitute such actions does not affect the validity of Implementing Regulation No 610/2010 or that of the acts of the European Union preceding that implementing regulation and relating to the inclusion referred to in point 1 of the present operative part.

[Signatures]

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* Language of the case: Dutch.