

ESIL Prague - Nottingham Symposium: Non-UN Sanctions and International Law

5 May 2017

Ministry of Foreign Affairs of the Czech Republic



The ESIL symposium is co-organized by the Institute of International Relations in Prague, Czech Republic, and the Nottingham International Law and Security Centre, University of Nottingham, United Kingdom. The symposium consists of two one-day events, one organized on 5 May 2017 in Prague, the other on 10 November 2017 in Nottingham. The overall topic of the symposium is Non-UN Sanctions and International Law. The idea is to consider various aspects of sanctions adopted outside the UN context, by individual States, groups of States, regional organizations or other actors.

The Institute of International Relations Prague is an independent public research institution, which conducts scholarly research in the area of international studies. It has been the leading academic institution for the study of international relations in the Czech Republic since 1957. Originally founded by the Ministry of Foreign Affairs, the IIR also provides policy analysis and recommendations.

Nottingham International Law and Security Centre was established in January 2013 in the School of Law, University of Nottingham in order to enhance the existing research capability in Public International Law with a focus on International Law and Security. Its work focuses on both human security and state security.

The European Society of International Law contributes to the rule of law in international relations and promotes the study of public international law. ESIL was established in 2001 as an independent entity and it is based at the European University Institute in Florence.



Programme

5 May 2017

Venue: Černín Palace, Ministry of Foreign Affairs of the Czech Republic, Loretánské nám. 5, Prague

8.30-9.00 Registration of Participants

9.00-9.15 Opening of the Symposium by the representatives of the Ministry of Foreign Affairs of the Czech Republic, the European Society and the Institute of International Relations

Panel I. Legality of Non-UN Sanctions (9.30-11.00)

Chair : **Veronika Bílková** (IIR Prague)

Elena Katselli (University of Newcastle): Countermeasures by Non-Injured States

Martin Dawidowicz (Stockholm University): The Legality and Legitimacy of Third-Party Countermeasures

Tom Cornell (Lund University): Unilateralism vs. Multilateralism in Sanctions Law

11.00-11.30 Coffee Break

Panel II. Conditions of Lawful Non-UN Sanctions (11.30-13.00)

Chair: **Anne van Aaken** (University of St. Gallen)

Laura Magi (University of Florence): The Test of Proportionality of TPCs: Does It Really Matter?

Cécilia Pailhassar (Paris I Sorbonne): The Legitimate Aims Pursued by Non-UN Sanctions under a Non-State Actors Approach

Jessica Howley (Uni Oxford): Can Non-UN Sanctions Targeting Individuals Be Lawful Countermeasures?

13.00-14.00 Lunch

Panel III. Selected Case Studies of Non-UN Sanctions (14.00-15.30)

Chair: **Mary Footer** (University of Nottingham)

Magdalena Matusiak-Frącczak (Uni Lodz) The Crimea crisis and the EU sanctions

Alexandra Hofer (Ghent University): Legitimate enforcement or illegitimate intervention? The UN-debate on non-UN sanctions

Lukasz Gruszczynski, Marcin Menkes (Polis Academy of Sciences): Legality of Trade Sanctions against WTO Member for a Breach of International Peace and Security: A Case Study of the EU Sanctions on Russia

15.30-16.00 Coffee Break

Panel IV. Non-UN Sanctions and Traditional Institutes of International Law (16.00-17.30)

Chair: **Nigel White** (University of Nottingham)

Tom Ruys (Ghent University): Non-UN Sanctions and immunity law – a story untold?

Mirko Sossai (Roma Tre University): To What Extent Can the UN Security Council Impact upon Sanction Power of Regional Organizations?

Marija Đorđeska, Wolfgang Spoerr (George Washington University Law School): Voluntary Settlement Agreements Between OFAC and Foreign Financial Institutions: Negotiated ad hoc Extraterritoriality

17.30-18.00 Conclusion

Panel I. Legality of Non-UN Sanctions

'Critical Reflections on the Right of Non-Injured States to Resort to Countermeasures for Protecting Collective/Community Interests' by Elena Katselli

In light of continuing serious violations of international law in many parts of the world such as war crimes and crimes against humanity through for instance the use of chemical weapons against innocent civilians, and the unlawful use of force against the territorial integrity of other states, the question of the relevance as well as of the effectiveness of countermeasures by non-injured states becomes all the more pressing and significant. This paper will consider specific aspects of the right to resort to so-called solidarity measures in light of some contemporary developments in international law.

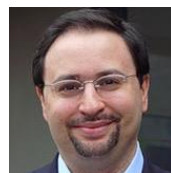


Elena Katselli is Senior Lecturer in Law at Newcastle Law School, Newcastle University. She holds a Bachelor of Laws from the University of Athens, a Master of Laws and a Ph.D. (with full scholarship) from Durham University, UK and is a qualified advocate (Supreme Court of Cyprus). Dr Katselli is author of *The Problem of Enforcement in International Law: Countermeasures, the non-injured state and the idea of international community* published by Routledge, which was nominated for the Paul Guggenheim Prize 2011 (Instituut de Droit, Geneva).

'The Legality and Legitimacy of Third-Party Countermeasures' by Martin Dawidowicz

There is increasingly strong support for the use of third-party countermeasures in international law. Still, the legitimacy of third-party countermeasures as a tool of communitarian law enforcement,

remains controversial based on concerns about a possible erosion of the basic organizing principles of non-use of force, collective security, and non-intervention. These concerns largely explain the normative pull away from the legitimation of third-party countermeasures as a possible means of enforcement for communitarian norms. This presentation will examine whether these concerns are actually borne out by practice. In doing so, it will challenge some widely held assumptions about the likely impact of a regime of third-party countermeasures on international relations.



Martin Dawidowicz was formerly Departmental Lecturer in Public International Law at the University of Oxford, and is currently Visiting Lecturer in Public International Law at the University of Stockholm. He was previously an associate at LALIVE in Geneva, where he practiced public international law and international arbitration, and before that he worked in the UN Office of Legal Affairs in New York.

'Unilateralism vs. Multilateralism in Sanctions Law' by Tom Cornell

The presentation examines the issue of unilateral sanctions in international law, in particular in relation to the principles of non-intervention and territoriality. The aim is to explore the complexity of unilateral sanctions and the different ways in which they potentially engage overarching norms of customary international law.



Tom Cornell has been a qualified solicitor in the UK since 2013, where he has worked for a number of firms. He has been conducting research in the area of sanctions law for several years, mainly in relation to his co-authorship of the forthcoming book *Sanctions Law*, due to be published in November this year. He has been invited to lecture at Lund University on a number of occasions on the subject of challenging economic sanctions. He is currently working as a visiting

professional at the International Criminal Court in The Hague.

Panel II. Conditions of Lawful Non-UN Sanctions

'The Test of Proportionality of TPCs: Does It Really Matter?' by Laura Magi

The principle of proportionality has been considered as “a crucial element in determining the lawfulness of a countermeasure” but as the speaker will try to show it does not seem to work as a limit to the resort to third parties' countermeasures.



Laura Magi is lecturer in international law at University of Florence and Chair of International Law and European Union Law at School of economics and management at the same University.

'The Legitimate Aims Pursued by Non-UN Sanctions under a Non-State Actors Approach' by Cécilia Pailhassar

The aim of this presentation is to investigate the aims pursued by non-UN sanctions. It focuses more precisely on state practice of targeted sanctions in order to compare the aims pursued by unilateral sanctions adopted against states with those pursued by sanctions adopted against non-state actors. It tends to show that secondary aims pursued by traditional unilateral sanctions adopted against states (i.e. punitive and preventive) are becoming primary aims in the context of sanctions adopted against non-state actors, questioning the prevalence of the reparative and coercive aims of non-UN sanctions. It thus raises the issue of the legal characterization of targeted sanctions, and the subsequent question of their regulation in international law.



Cécilia Pailhassar is a PhD candidate at the University Paris 1 Panthéon-Sorbonne (France). Her research focuses on countermeasures and non-state actors and is supervised by Professor Évelyne Lagrange. She holds an LL.M. from McGill University, and a Master in

International Law from Paris 1 University. She also graduated in Economics from the École Normale Supérieure. She is currently teaching assistant in International Public Law, and French Constitutional Law at the University Paris 1.

'Can Non-UN Sanctions Targeting Individuals Be Lawful Countermeasures?' by Jessica Howley

This paper addresses the legality of non-UN sanctions targeting individuals. It considers whether, even where there is a risk that the rights of individuals may be violated, such sanctions may amount to lawful countermeasures.



Jessica Howley is a DPhil Candidate at Magdalen College, University of Oxford. Her research relates to State responsibility in public international law.

Panel III. Selected Case Studies of Non-UN Sanctions

'The Crimea crisis and the EU sanctions' by Magdalena Matusiak-Frącczak

The paper describes the Crimean conflict and the European Union's sanctions applied as a reaction to it. The analysis is multi-dimensional and it focuses on the competence of the EU to impose sanctions relating to this conflict both from the public international law perspective and the EU-law perspective. After the exploration of the legal basis, the examination concentrates on the legality of these measures and the judgments of the Court of Justice of the European Union in that matter. At the end, there is a brief presentation of sanctions adopted by other international actors with regard to the Crimean conflict.

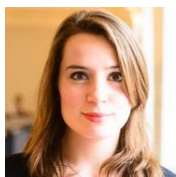


Magdalena Matusiak-Frącczak is an assistant professor at the Faculty of Law and Administration of the University of Lodz, where she made her PhD degree. She is also an advocate and recently chosen member of

the Lodz Local Bar Council. Her scientific fields of interests are: public international law, EU law, human rights, sanctions, fight against terrorism, legal professional privilege.

'Legitimate enforcement or illegitimate intervention? The UN-debate on non-UN sanctions' by Alexandra Hofer

In this presentation, the author discusses the unanswered questions and controversies surrounding the legality and legitimacy of unilateral sanctions in order to enforce international law. The legal complexities that arise from non-forcible self-help measures adopted outside the scope of the UN Security Council are illustrated by examining the American sanctions adopted against Russia (first in 2012 and then in 2014) and the Kremlin's reaction. The author concludes that the legal framework governing non-UN sanctions is messy in practice and that it leads to more open-ended questions than reassuring answers. In the second part, attention is drawn to UNGA resolutions that condemn the adoption of 'unilateral coercive measures'. It is argued that these resolutions are voted by developing countries (through the NAM and G77 plus China) in order to demonstrate their resistance against what they view as an illegitimate practice. Consequently, though increasing (Western) State practice may indicate that such measures are lawful and legitimate, the resistance from a large block of (mainly developing) countries indicates otherwise.



Alexandra Hofer is a PhD researcher at Ghent University, department of public international law. Her research focuses on sanctions and countermeasures adopted by third States and international organizations as a means to enforce international law.

'Legality of Trade Sanctions against WTO Member for a Breach of International Peace and Security: A Case Study of the EU Sanctions on Russia' by Lukasz Gruszczynski & Marcin Menkes

The aim of the paper is to assess the legality of the European Union (EU) sanctions on Russia under WTO law. In this context, the authors

claim that some of the sanctions either fall outside the scope of WTO law or are related to aspects which are not covered by specific commitments made by the EU. Consequently, they cannot be deemed to constitute a breach of the General Agreement on Trade in Services. Those measures which, nevertheless, fall within the scope of WTO law (e.g. bans on sale of dual-use equipment and oil industry technologies) and which may be regarded as incompatible with certain obligations (e.g. prohibition of quantitative restrictions introduced by Art. XI of the General Agreement on Tariffs and Trade), can be still justified under the so-called security exceptions included in respective WTO agreements.



Lukasz Gruszczynski (dr. habil.; Ph.D., European University Institute) is an associate professor of international law at the Institute of Legal Studies of the Polish Academy of Sciences (Warsaw, Poland) and a visiting researcher at the Hungarian Academy of Sciences Centre for Social Sciences Institute for Legal Studies and Pázmány Péter Catholic University, Faculty of Law and Political Sciences (2016-17). He specializes in WTO law, international dispute settlement and regulation of tobacco products. Lukasz is a Managing Co-Editor of the Polish Yearbook of International Law and a correspondent editor of the European Journal of Risk Regulation (CUP).



Marcin Menkes obtained his law degrees from Warsaw University, Université Paul Cézanne Aix-Marseille 3 and Jagiellonian University. He also completed Ph.D. studies in economics at Warsaw School of Economics. He is an author of over eighty publications, mostly in the fields of international economic law and economic governance, including a monograph on "*Economic Sanctions – International Law Analysis*" (Dom Wydawniczy Duet 2011). Dr Menkes currently works as

an assistant professor at the Department of Business Law of Warsaw School of Economics and as a Head of Postgraduate Studies of the Law and Economics of the Capital Market. He is also a co-founder of Law & Economics Advisory Group (LEAG).

Panel IV. Non-UN Sanctions and Traditional Institutes of International Law

'Non-UN Sanctions and immunity law – a story untold?' by Tom Ruys

Although the adoption of 'autonomous' or non-UN sanctions has become a recurring phenomenon in international relations, their legitimacy and legality remains highly contested. Thus, authors have debated the legality of so-called 'secondary' sanctions under the international legal framework governing the exercise of State jurisdiction. In addition, some have tackled the compatibility of economic sanctions with the non-intervention principle or debated whether non-UN sanctions may or may not qualify as permissible 'third-party countermeasures'. A number of scholars have also suggested that non-UN sanctions may be difficult to reconcile with immunity law. In spite of the ostensible incompatibility with international immunity law, this issue has – to the author's knowledge – never come up in proceedings at the national or regional level pertaining to non-UN sanctions. What is more, an in-depth discussion of the compatibility of non-UN sanctions with international immunity regimes is surprisingly lacking in contemporary legal doctrine. The aim of this paper is precisely to address this lacuna. In particular, building i.a. on the work of the ILC pertaining to the immunity regimes of States, foreign officials and diplomatic and consular personnel, the paper seeks to determine whether or not rules pertaining to the immunity of execution (and related rules pertaining to the inviolability) of certain persons and goods also apply to EU restrictive measures and other non-UN sanctions that are imposed outside the context of judicial proceedings.



Tom Ruys is a professor of international law at Ghent University where he founded the Ghent Rolin-Jaequemyns International Law Institute. He was a visiting researcher at Yale Law School (2008) and a visiting fellow at the Cambridge Lauterpacht Centre for International Law (2016). He holds a doctoral degree from the University of Leuven (2009) and is a member of the Brussels bar (of counsel, Stibbe). He is a member of the International Law Association's Study Group on Sanctions and the ILA Committee on the Use of Force. He is co-editor-in-chief of the *Journal on the Use of Force and International Law* (Routledge), vice-director of the *Military Law and Law of War Review* and a member of the editorial board of the *Revue belge de droit international*.

'To What Extent Can the UN Security Council Impact upon the Sanctioning Power of Regional Organisations?' by Mirko Sossai

The paper seeks to clarify whether and how the UN Security Council, through the approval of a binding resolution imposing sanctions, could influence the decision of a regional organisation to adopt non-forcible measures against its members and, even, non-member states.



Mirko Sossai is associate professor of international law at the Law Department of the 'Roma Tre' University, where he teaches international human rights and law of international organisations.

'Voluntary Settlement Agreements Between OFAC and Foreign Financial Institutions: Negotiated ad hoc Extraterritoriality' by Maria Đorđeska & Wolfgang Spoerr

In recent years, the U.S. authorities have imposed heavy penalties on European financial institutions for actions that allegedly breached unilateral U.S. sanctions regulations targeting Iran, Sudan, Cuba and Burma, among others. Foreign financial institutions' voluntary

compliance with U.S. sanctions provides a new *ad hoc* extraterritorial jurisdictional basis allowing U.S.' *de facto* regulation of foreign entities' conduct that occurred outside the U.S.



Marija Đorđeska holds an S.J.D. in international law from The George Washington University Law School. She is currently assisting Marcelo Vazquez-Bermudez, a member of the ILC. Previously, she worked as a Political officer for the European External Action Service at the EU Delegation to Malaysia in Kuala Lumpur (2016-2017), at private law firms in Washington and in Berlin where she advised on economic issues concerning international law, international and domestic economic sanctions and U.S. law. She was a Visiting Scholar at the Max Planck Institute for Comparative Public Law and International Law, in Heidelberg. Marija's scholarship examines primarily the international law-making processes and analyses the international jurisprudence.



Wolfgang Spoerr is a partner at Hengeler Mueller (Berlin office) and an Honorary Professor at the Faculty of Law at Humboldt University in Berlin. Dr. Spoerr specializes in administrative and constitutional law-he regularly advises on highly regulated industry sectors, in particular capital market/banking, health care and telecommunications/media and has contributed to several books and published numerous articles on various topics of both European and German public and constitutional law. He represented clients before the Federal Constitutional Court, the European Court of Justice and the German civil, criminal and administrative courts.

Chairs



Veronika Bílková is an associate professor in International Law at the Faculty of Law of the Charles University in Prague, the Czech Republic. She also coordinates the Centre for International Law at the Institute of International Relations Prague. Since 2010, she has represented the Czech Republic in the Venice Commission of the Council of Europe.



Anne van Aaken (Dr. iur. and MA Economics) is Professor for Law and Economics, Legal Theory, Public International Law and European Law at the University of St. Gallen, Switzerland and has been a guest professor at several universities in the United States, Europe, Latin America, Africa and Asia. She was Vice-President of the European Association of Law and Economics and is Vice-President of the European Society of International Law. She has been an expert consultant for the IBRD, OECD, UNCTAD and GIZ.

