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## Coercive Diplomacy, Sanctions and International Law

by Chiara Franco

### ABSTRACT

The role of sanctions as instruments of coercive diplomacy has undergone fundamental changes in the aftermath of the Cold War. Not only have States made larger recourse to such measures, but new regimes of “smart” and “targeted” sanctions have been developed. On 13 February 2015, the Istituto Affari Internazionali (IAI) organised an international conference in Rome on this issue, with the support of Eni and Friedrich-Ebert-Stiftung. The questions addressed throughout the conference were manifold. They included the role of sanctions as instruments of coercive diplomacy; the compatibility and legitimacy of sanctions imposed by States and international and regional organisations; the connection between sanctions and individual rights; the impact of sanctions on existing treaties and contracts; the impact of sanctions on non-State actors; the practice of the European Union; the extraterritorial effects of national legislation implementing sanctions; and the effectiveness of sanctions in contributing to the maintenance of international peace and security. The debate delved into a number of theoretical arguments and combined different perspectives from international law and international relations scholars. The conference thus managed to illustrate the current state of the academic debate over sanctions and confirmed the evolving nature of the practice in this field, offering an interesting overview for public and private stakeholders, academics and practitioners alike.

*Sanctions | International law | Human rights | Treaties | European Union | Iran | Russia | Non-state actors*



## Coercive Diplomacy, Sanctions and International Law

by Chiara Franco\*

### Introduction

The Istituto Affari Internazionali (IAI) organised an international conference on “Coercive Diplomacy, Sanctions and International Law,” under the scientific supervision of Professor Natalino Ronzitti and with the sponsorship of Eni and Friedrich-Ebert-Stiftung. The conference was held in Rome at Palazzo Rondinini on 13 February 2015 and brought together renowned experts, specialists and academics from European and extra-European institutions.

The conference was part of a project that has been launched by IAI in cooperation with the Institute for Security Policy at Kiel University (ISPK), and was designed to trigger a debate on the role of sanctions as instruments of coercive diplomacy. The conference was articulated in four sessions. The first session focused on sanctions as instruments of coercive diplomacy: after a distinction between different forms of coercion under the perspective of international law, the compatibility and legitimacy of sanctions regimes were investigated. The second session provided an analysis of the different actors of international sanctions regimes, touching upon sanctions imposed by the European Union, the extraterritorial effects of national legislation, and sanctions against non-State actors. The third session dealt with the issue of sanctions and the protection of human rights, including references to sanctions and *erga omnes* obligations, the role of sanctions committees, and the possible conflict between the Security Council’s decisions and human rights obligations. Finally, the fourth session examined the implementation of sanctions and the principle of proportionality, the impact of sanctions on treaties of commerce and contracts, the effectiveness of sanctions, and political sanctions as instruments of strategic competition.

\* Chiara Franco is a research intern at the Istituto Affari Internazionali (IAI).

· Report of the international conference on “Coercive Diplomacy, Sanctions and International Law” organised in Rome on 13 February 2015 by the Istituto Affari Internazionali (IAI), within the framework of the project “Coercive Diplomacy in Global Governance: The Role of Sanctions”.

As stressed by the Director of IAI **Ettore Greco** during his welcome address, the aim of the project is to examine the role of sanctions in the wider context of international efforts to maintain peace and security: a subject matter of ever-increasing relevance. In particular, a key objective is to discuss the positive and negative aspects of sanctions if compared to other coercive instruments, and to assess their usefulness as diplomatic and crisis-management tools. Due to the



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growing recourse to sanctions during the last two decades, it is now possible to draw lessons from a broad range of case studies. It emerges that there are still many questions to be addressed, including how to ensure the implementation of sanctions regimes, how to guarantee that they do not violate human rights, whether they are effective in preventing escalation and how they can be linked to broader diplomatic efforts. In recognising the multi-dimensional character of the subject, the conference attempted to adopt a comprehensive approach that may offer different perspectives and points of view. With this purpose, the international law framework was enriched by contribution from political scientists. Moreover, the project aims at combining an academic and policy-oriented attitude.

What follows is a summary of the main points that emerged during the conference, including both the issues raised by the presentors and the discussion triggered by the presentations. The papers that were presented are still works-in-progress, and their final drafts will be collected in a single volume for publication and circulated among interested stakeholders with a view to advancing knowledge, policy and the practice of sanctions regimes.

### 1. Sanctions as instruments of coercive diplomacy

A comprehensive overview of the role of sanctions as instruments of coercive diplomacy was given by Professor **Natalino Ronzitti**. He offered a theoretical picture of the issue of coercion, with a distinction between its military, economic and political forms. Moving from the assumption that military coercion is now strictly prohibited under international law, the legitimacy of economic and political coercion remains to be investigated. After acknowledging that these two forms of coercion do not have a clear and uncontroversial definition, Professor Ronzitti claimed that they are in principle not prohibited under international customary law, unless they are dictatorial. However, the question must be linked to the problem of "intervention:" indeed, international customary law does prohibit intervention, as stressed by several treaties, General Assembly resolutions and other instruments



From left to right: Marina Mancini, Natalino Ronzitti, Ettore Greco

of soft-law. Since the threat or use of military force has been definitely outlawed, the practical relevance of the principle of non-intervention must be *vis-à-vis* the other forms of coercion. As for the case law of the ICJ on intervention, three relevant cases are recalled: the Corfu Channel Case, Nicaragua v. United States and DRC v. Uganda. In such cases, the Court found that in some instances there is an overlapping of the principle prohibiting the use of force and the principle prohibiting intervention, yet they remain separate principles.

After having analysed the principle of non-intervention, Professor Ronzitti dealt more specifically with the issue of sanctions. He argued that the term “sanctions” is currently employed to indicate those measures taken by the Security Council (SC) under Article 41 of the United Nations Charter. According to this meaning, sanctions are decided by the SC in response to a threat to peace, a violation of peace or an act of aggression; thus, they do not necessarily imply that the target State has committed an international wrong. UN Member States are normally obliged to implement the sanctions, unless the SC decides to merely “recommend” them. Sanctions, as such, can be taken only by the SC. States acting unilaterally, as well as a coalition of States, can rather take different forms of international coercion, namely countermeasures. Countermeasures differ from sanctions because they can only be resorted to if the targeted State has committed an international wrongful act. It is also possible that States, in implementing sanctions decided by the SC, go beyond the decision and adopt additional measures. Also in this case, such additional measures are legitimate only if they amount to countermeasures. Moreover, States can always take “retorsions,” which, unlike countermeasures, are merely unfriendly acts that are not “inconsistent with any international obligation of the State engaging in it even though it may be a response to an internationally wrongful act,” as affirmed by the International Law Commission in its Commentary.<sup>1</sup> As for regional organisations, they do not need any authorisation by the SC in order to take up sanctions against their own members – as long as the possibility to take such restrictive measures is contemplated in the organisation’s constitutive instrument – while they can only take countermeasures or retorsions against third States.

<sup>1</sup> UN International Law Commission (ILC), *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, in *Report of the International Law Commission, Fifty-third session, 23 April-1 June and 2 July-10 August 2001 (A/56/10)*, p. 325, <http://www.un.org/documents/ga/docs/56/a5610.pdf>.

The distinction between sanctions and countermeasures leads back to the problem of economic coercion: in particular, the two main questions raised are, on the one hand, to what extent economic coercion is permissible, and, on the other hand, what are the possible reactions against impermissible forms of coercion? These two questions raise several others in turn: Can sanctions trigger the right of self-defence by the target State? Does sovereign immunity pose a limit to the admissibility of sanctions? Do multilateral trade agreements constitute an impediment to the adoption of economic sanctions? Which obligations must be respected by the State resorting to countermeasures? Can countermeasures be taken by a State ("third State") not directly injured by the wrongdoer? Is a State entitled to react with "countersanctions" to restrictive measures imposed against it? The paper attempts to deal with all these questions.

The conclusion offered by Professor Ronzitti was that, while the unlawfulness of military coercion is not debatable, the admissibility of economic coercion is more nuanced: economic pressures do not necessarily violate international law, and they do not trigger responsibility if they do not infringe customary or conventional norms. Sanctions represent a kind of economic coercion that can be decided upon or recommended by the SC, while States may impose autonomous restrictive measures only in the form of retorsions or countermeasures. While retorsions are always admissible since they do not constitute a violation of international law, countermeasures are admissible only when a previous international wrong has been committed by the target State. The same can be said for regional organisations: they can impose autonomous measures not amounting to countermeasures only against Member States, and only if their constitutive instrument envisages such possibility. Countermeasures must also respect the limits imposed by customary international law. It is controversial whether third States may resort to countermeasures in case of a violation of *erga omnes* obligation: Professor Ronzitti argued that this is admissible only when the violation is of particular gravity. Finally, if the countermeasures are illegitimate – for instance, because the target State has not committed any wrongful act – the target State can react with restrictive measures, that in this case are sometimes referred to as "countersanctions."

But the issue of sanctions as instruments of coercive diplomacy needs further investigation. In particular, the term "sanction" can be used in a broader sense than the one given by Article 41 of the UN Charter. Professor **Michael Bothe** proposed the definition of sanctions as measures taken by an international actor (the "sanctioner," which may be a State or an international organisation) in reaction to the undesirable and allegedly illegal behaviour of another actor (the "sanctionee") for the purpose of making the sanctionee desist from such behaviour. If sanctions are meant as such, they include both enforcement measures imposed by the SC and autonomous sanctions decided by individual States, groups of States or regional organisations. Under this definition, autonomous sanctions are not necessarily unlawful, even without relying on the general rules regarding countermeasures. On the contrary, their compatibility with international law must be assessed on a case-by-case basis, depending on the type of measure taken. In each case, one must consider whether the sanctioner, in denying or withdrawing certain expected

advantages to the sanctionee, violates any specific legal regime. As a consequence, the questions to be answered are: (1) Does the sanctionee have any right to expect, or is it even entitled to, certain advantages of which it is deprived? (2) If it is admitted that it is allowed to such advantages, is there any rule allowing for exception?

The categories of sanctions examined by Professor Bothe included (1) bans or restrictions on imports and exports; (2) restrictions to financial transactions and freezing of assets; and (3) limitations to the freedom of movement of persons.

As for the first category, bans or restrictions on imports and exports are not in principle prohibited under general customary law. Yet they could violate treaty law, for example under the multilateral trade regime established by the General Agreement on Tariffs and Trade (GATT). Namely, sanctions banning or restricting trade in goods would violate both the Most Favoured Nation (MFN) rule and the prohibition of quantitative restrictions (Article XI).<sup>2</sup> Such violations of GATT are allowed if they fall under the “security exception” provided for in Article XXI, which applies to cases in which the State needs to protect its essential security interests. Moreover, with regards to the GATT, this type of sanction could represent a violation of bilateral treaties, the typical example being a Treaty on Friendship, Commerce and Navigation (FCN), which normally contain a clause on freedom of commerce between the parties. However, FCNs normally provide the parties with a clause similar to the “security exception” included in the GATT, allowing them to take measures to safeguard their essential security interests.

Regarding restrictions to financial transactions and freezing of assets, again there is no overall prohibition of such measures under international customary law. Financial services fall under the General Agreement on Trade in Services (GATS), which, along with the GATT, contains an MFN provision: however, the GATS also provides for exceptions for security reasons (Article XIV*bis*). In addition to the GATS, some financial sanctions could raise human rights problems, since they infringe upon private property rights. While there is no universally recognised right to the protection of private property, it is nevertheless included in the Additional Protocol to the European Convention on Human Rights (ECHR), as well as in a number of bilateral investment treaties or FCNs.



From left to right: Ettore Greco, Michael Bothe, Marco Roscini

<sup>2</sup> Text of GATT 1947: [https://www.wto.org/English/docs\\_e/legal\\_e/gatt47\\_01\\_e.htm](https://www.wto.org/English/docs_e/legal_e/gatt47_01_e.htm).

Finally, Professor Bothe considered limitations to the freedom of movement of persons. While there is a human right to leave a country, there is no corresponding general right to enter a foreign country (except under refugee law for the principle of non-refoulement, which is not relevant in the context considered). As a consequence, in principle there is no need to rely on countermeasures in order to adopt such restrictions. The situation is obviously different in the case of there being a bilateral investment treaty or commercial treaty providing for such right.

The conclusion drawn by Professor Bothe was that the legal restraints on the admissibility of sanctions as a means of coercive diplomacy depend on the nature of each sanctions regime. Under several legal regimes, sanctions are lawful even without relying on the general rules regarding countermeasures. It is debatable whether the principle of non-intervention, already introduced by Professor Ronzitti, imposes additional restraints on the freedom to adopt sanctions.

In the discussion, Professor Marco Roscini further elaborated on the key element of coercion and the principle of non-intervention. He presented the case of economic coercion that is used to influence a State's behaviour in a matter in which it would be entitled to decide freely under the principle of State sovereignty. If the principle of non-intervention does not apply in this case, he argued, it is hard to understand the rationale of the principle at all. Indeed, as already stressed by Professor Ronzitti, the ICJ, while acknowledging some overlapping between the prohibition of the use of force and the principle of non-intervention, kept distinguishing the two from one another. Consequently, the principle must have some application beyond the prohibition of the use of force. In particular nowadays, considering that the international community is based upon a system of interconnected economies, cases of economic coercion can be even more "coercive" than certain "surgical" uses of force.

Professor Roscini then referred to an example presented by Professor Ronzitti in dealing with economic coercion: the case of cyber-attacks. He shared the opinion that cyber-attacks may, in certain occasions, represent cases of economic coercion comparable to sanctions. As an example, he proposed the case in which a State cuts off another State's access to cloud services based in its country. However, according to Professor Roscini's argument, cyber-attacks can even fall under the provision of Article 2.4 of the UN Charter. The case of a cyber-attack that destroys a State's stock exchange or banking system must be compared to the case in which such facilities are bombed kinetically. As a consequence, this type of cyber-attack would resemble a surgical kinetic attack more than it did a case of economic coercion, such as an oil embargo.

Regarding the possibility that States, in implementing sanctions imposed by the SC, may impose additional measures, Professor Ronzitti argued that this is admissible, provided that such measures meet the requirements of the norms on countermeasures. Otherwise, States would be deprived of the right to take countermeasures. Professor Roscini raised the question of whether the Security Council's decision could suspend such a right on the part of the Member States.

He suggested that the answer is negative: indeed, Article 41 does not contain a clause comparable to that of Article 51 on self-defence, which allows self-defence only “until the Security Council has taken the measures necessary to maintain international peace and security.” The problem is rather how to ensure that, in the absence of coordination among the States, the cumulative effect of the reaction is not disproportionate.

Additional remarks were made by Professor Roscini on the overlooked problem of evidentiary standards. He raised the question of whether the State that adopts countermeasures against another State has to meet any evidentiary standard in order to prove that the target has actually committed an international wrong. The point is that, while in some cases this is self-evident – as in the case of the Russian annexation of Crimea, Professor Roscini argued – in other cases it is not. For instance,



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the international wrong is not self-evident in cases concerning the arming and funding of rebels, as in the case of the Iranian nuclear programme. As a recent example, one could think of the US announcement on the imposition of additional sanctions on the Democratic People’s Republic of Korea (DPRK) as a consequence of the cyber-attack against Sony. The claim that the DPRK has committed an international wrong was based upon a report by the FBI that was kept secret due to security reasons. The main problem is that there is no international law of evidence, as there is especially in common law countries. On evidentiary standard, Professor Bothe pointed out that international law is still a system of decentralised interpretation and application. This necessarily includes a decentralised judgment, subject to judicial review if it exists, on the allegedly wrongful act or the allegedly disproportionate countermeasures. Such measures are then dealt with through an international discourse; it is within this discourse that evidence does matter. Nonetheless, such discourse does not follow precise rules of evidence: that is why all that matters is whether an actor manages to be convincing or not.

Final remarks on autonomous sanctions were proposed by Professor Marina Mancini. She recalled that, notwithstanding the increasing recourse to such measure by both individual States and regional organisations, especially the European Union, the practice remains controversial. On the occasion of the Security Council’s open debate last November on sanctions, which was organised under the presidency of Australia, both China and Russia reiterated their strong opposition to the practice of unilateral sanctions. Their argument was based on the assertion that it contravenes the principle of sovereign equality of Member States, undermines the authority of SC sanctions and is counterproductive to crisis resolution. Yet the opinion expressed by Professor Mancini was in line with



what had already been claimed by Professor Ronzitti and Professor Bothe, namely, that from a legal point of view, sanctions are mere “unfriendly acts” (retorsions) and are always admissible when they do not imply any violation of international obligations. In contrast, sanctions that do violate international obligations must be justified as countermeasures. In this regard, Professor Mancini offered the example of the sanctions that the EU imposed on Iran in 2012, namely the oil embargo and the prohibition of investment in the petrochemical industry. Their implementation by Italy appears to imply the non-performance of international obligations owed by this country to Iran under the bilateral investment treaty of 1999.

Professor Mancini also went back to the question of whether countermeasures taken by third States are admissible. She claimed that the ILC’s Articles on Responsibility of States for Internationally Wrongful Acts (“Draft Articles”) offer no guidance. Article 54 of the Draft Articles does not prejudice the right of third States, but merely contains a saving clause that reserves the position and leaves the resolution of the matter to further developments of international law. For this reason, Professor Ronzitti added that Article 54 can be defined an example of “constructive ambiguity.” Therefore, one should wonder whether the situation has evolved since 2001: at the time of the drafting of the Articles, States’ practice was scarce, while there are currently several cases of reactions to breaches of *erga omnes* obligations. This evolution of the practice led Professor Mancini to share Professor Ronzitti’s opinion that recourse to countermeasures by third States can now be considered admissible at least in reaction to grave breaches of *erga omnes* obligations.

Some questions and remarks were also raised by the public. A comment was made about the illegitimacy of States’ unilateral decisions to impose sanctions that go beyond those decided by the Security Council. If the SC exists and if it has such a mandate, it was claimed, it is because it is necessary to guarantee that sanctions are always the result of a balanced compromise between the different interests of States in the international community. Such delicate compromise can therefore be endangered by any unilateral action. Professor Bothe replied that, while the search for compromise is certainly wise from the point of view of the functioning of the international system, from a strictly legal point of view the matter must be dealt with in terms of interpretation of the UN Charter. The question to be asked, therefore, is whether the Security Council’s decision is meant to be final and comprehensive, that is to say whether it excludes any other action, or whether the SC, while deciding a line of action, does not prohibit other, obviously not conflicting actions. An analogy can be drawn with the legal system of federal States: in this case, it must be assessed whether a federal regulation is comprehensive and covers a specific field, or whether it can be complemented by State law. Following this line of thought, Professor Bothe concluded that it is not possible to argue that SC resolutions exclude any additional action. Professor Ronzitti reiterated that, considering the decentralised nature of the international system, and considering also that the SC remains a political organ, States cannot be deprived of the right to take countermeasures, provided that they are in accordance with international law.



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Finally, a point was raised on the changing nature of coercive measures. Professor Bothe argued that the international community in the past fifty years has gone through a continuous learning process that has resulted in the overcoming of the simplistic formulation of Article 41. As a consequence, there is now increasing reliance on “smart” and “targeted” sanctions, which address different actors if compared to the traditional regimes. This issue was scrutinised more in depth during the second session.

## 2. The actors of international sanctions regimes

Alongside the Security Council, other actors have progressively made increasing recourse to the instrument of sanctions. Nowadays, sanctions are often imposed not only by the Security Council, but also by individual States and regional organisations. Moreover, sanctions are no longer imposed only against States: they may also target non-State actors. This is certainly an expression of the changing nature of the international system.

The European Union (EU) has become one of the undisputed protagonists of sanctions regimes, and it may contribute to the development of international law in this domain. As a consequence, the EU practice needs to be investigated. A comprehensive overview of EU sanctions was offered by Professor **Marco Gestri**. To begin with, the EU has made increasing recourse to sanctions – or “restrictive measures,” as they are defined under EU law – since the 1980s, and especially since the Maastricht Treaty, which put sanctions under the umbrella of the newly-established Common Foreign and Security Policy (CFSP). Currently, there are more than thirty regimes of EU restrictive measures in force: some of them implement the Security Council’s decisions, while some others have been decided autonomously.<sup>3</sup>

The peculiarity of EU sanctions regimes, Professor Gestri immediately pointed out, is that many competences are shared by EU institutions and EU Member States. The EU general policy framework concerning restrictive measures is based upon three main documents: (1) the *Basic Principles on the Use of Restrictive Measures (Sanctions)*,<sup>4</sup> (2) the *EU Best Practices for the effective implementation of restrictive*

<sup>3</sup> See EEAS, *Restrictive measures in force*: [http://eeas.europa.eu/cfsp/sanctions/index\\_en.htm](http://eeas.europa.eu/cfsp/sanctions/index_en.htm).

<sup>4</sup> Council of the European Union, *Basic Principles on the Use of Restrictive Measures (Sanctions)* (10198/1/04 REV 1), 7 June 2014, <http://register.consilium.europa.eu/pdf/en/04/st10/st10198-re01>.



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measures,<sup>5</sup> and (3) the *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy*.<sup>6</sup> An interesting aspect of EU sanctions is that they are frequently aligned with by third States, namely EU candidates, potential candidates, members of the European Economic Area (EEA) and some European Neighbourhood Policy (ENP) partners. This means that, while the Guidelines condemn extraterritoriality when it is in breach of international law, and while restrictive measures do not envisage aggressive extraterritorial measures, in practice the EU is often successful in obtaining compliance with its measures from certain categories of third States. From a legal point of view, the situation

of candidate countries might be debated: the problem might even arise of whether they are under any legal obligation to align with the EU's restrictive measures (for instance, the problem has been posed with reference to Turkey's and Serbia's refusal to align with sanctions against Russia).

Professor Gestri addressed two main issues: (1) the EU's decision-making procedure for the imposition of sanctions under the CFSP framework, and (2) the role of Member States in the implementation of EU sanctions.

The adoption of "restrictive measures" by the EU is governed by a complex procedure, regulated by both the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). It requires, as a first step, a decision by the Council adopted under Article 19 TEU, in accordance with the procedure envisaged by Article 30 and Article 31. Obviously, such a formal step is normally underpinned by a political decision previously taken by the European Council. The sanction proposal may come from any Member State, as well as from the High Representative of the Union for Foreign Affairs and Security Policy (HR). While unanimity is required as a general rule, some derogations are envisaged: for example, the mechanism of "constructive abstention" is incorporated into Article 31, providing for the possibility for Member States to abstain without preventing the adoption of the decision. Moreover, Member States can also qualify their abstention through a formal declaration: in this case, while they accept that the

en04.pdf.

<sup>5</sup> Council of the European Union, *EU Best Practices for the effective implementation of restrictive measures* (11679/07), 9 July 2007, <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST-11679-2007-INIT>.

<sup>6</sup> Council of the European Union, *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy* (11205/12), 15 June 2012, <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST-11205-2012-INIT>.

EU is committed to the decision adopted, they are not obliged to apply it (but they must “refrain from any action likely to conflict with or impede Union action based on that decision”). This possibility should be further explored, Professor Gestri suggested, regarding the current allegations that the new Greek government could shift the country’s attitude *vis-à-vis* restrictive measures against Russia.

Decisions taken by the Council on restrictive measures may be implemented through two different tracks: (1) in some cases, the EU has no competence to adopt the measure – e.g. travel bans, arms embargoes – thus they are directly adopted by Member States; (2) more frequently – in almost all cases apart from travel bans and arms embargoes – the decision of the Council is applied by means of further EU legislation adopted under Article 215 TFEU. If the EU legislation is adopted in the form of a regulation, as is often the case, this becomes directly applicable within Member States: as a consequence, it should not require further legislative action on their part. However, in practice, further domestic legislation is needed at least in order to determine the penalties to be imposed for the violation of the sanctions by private individuals – such penalties are often called “secondary sanctions.” States do not enjoy complete discretion in the determination of penalties: for instance, Regulation 267/2012 concerning sanctions on Iran states that secondary sanctions should be “effective, proportionate and dissuasive.”<sup>7</sup> In addition to imposing secondary sanctions, Member States have important administrative tasks in the implementation phase, since they have a general competence to monitor the application of sanctions and to enforce violations. Furthermore, they are competent for the granting of exemptions.

This procedure, which delegates crucial aspects of the implementation of sanctions to the authorities of the twenty-eight Member States, raises the problem of how to ensure coordination and uniformity. This is particularly problematic given the fact that possible inconsistencies in the concrete implementation of EU sanctions carry negative implications for the major economic operators, such as those who must apply for licences for derogations to the twenty-eight domestic authorities. Professor Gestri advanced possible solutions to the problem. Firstly, he suggested easing the functioning of the EU regime with the adoption of legislation on secondary sanctions at the EU level, instead of delegating it to single Member States. Secondly, he put forward the proposal for the establishment of a centralised EU agency with a general competence to grant exceptions.

Dr. Giuseppe Maresca acknowledged that sanctions are an important tool in EU external action, considering that the EU is undeniably an economic superpower. Yet, EU sanctions are generally adopted either in implementing regimes already agreed upon in the UN system or in coordination with its Atlantic partner; very rarely does the EU take a completely autonomous action. The reason for that is that differences among EU Member States persist, and it is not always easy to find agreement on

<sup>7</sup> Article 47 of the Council Regulation (EU) No 267/2012 concerning restrictive measures against Iran ..., 23 March 2012, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32012R0267>.

the adoption of restrictive measures. Concerning the procedure through which sanctions are implemented, Dr. Maresca stressed that there are two reasons why it is often done by means of regulation. The first reason is timing: regulations, with their direct applicability, are the only way to ensure that sanctions are adopted at the same time in all Member States. If the adoption was instead left to each of them, significant differences in timing would emerge. Secondly, divergences of views among Member States are generally settled in the previous stage, when the adoption of sanctions is negotiated. With reference to Professor Gestri's proposal of creating a centralised EU agency to attain greater uniformity in implementation, Dr. Maresca argued that, while it could be useful, it would not be a viable solution in the short run. For the time being, a certain discretion left to Member States is the unavoidable compromise needed to compensate for remaining national divergences.



Giuseppe Maresca

Moving to another category of actors in sanctions regimes, Professor Ronzitti presented the paper written by Dr. **Charlotte Beaucillon**. The paper shifts the focus towards sanctions imposed by individual States, with a particular attention devoted to the United States' practice. Dr. Beaucillon recalls that the entry into force of the UN Charter has significantly limited States' unilateral coercive action, formally prohibiting the use of military force. While States have retained certain discretion on the use of peaceful coercive measures, in this case their actions are still limited by principles of both general and special international law.

The issue of the admissibility of States' unilateral coercive measures becomes all the more complex as States may seek the multilateralisation of such unilateral sanctions, posing the question of extraterritorial legislation. Extraterritoriality intervenes when the sanctioner not only seeks the voluntary participation of third States to implement measures against the sanctionee, but attempts to impose an obligation on the States to abide by the unilateral sanctions it has decided. Dr. Beaucillon examines the question of extraterritoriality under three different perspectives: (1) general international law and the theory of jurisdiction; (2) international economic law and informal settlements; and (3) more recent evolutions of international law and practice.

Firstly, international law draws a distinction between jurisdiction to prescribe and jurisdiction to enforce. The latter, which may eventually include the use of coercion, cannot be exercised outside the territory of the State without the permission of the third State in which the coercive act occurs. After the "permissive interpretation," as Dr. Beaucillon defines it, of the Permanent Court of International Justice (PCIJ) in the *Lotus* case, international courts have reaffirmed the precedence of the territorial

principle. However, States adopting extraterritorial legislation have constantly invoked recognised competences under international law. One of the grounds of competence that are generally invoked, especially in the practice of the US, is the extension of the personality principle through the control theory. The theory allows for the extension of US legislation over companies detained or controlled by a US national as well as companies incorporated under US law. The control theory has generally been rejected by a number of domestic tribunals, including the Paris Court of Appeal and the Hague district Court: in their decisions, the two Courts did not apply the restrictions imposed by US legislation because they were not dictated by French and Dutch law, respectively. Moreover, in the case before the Hague district Court, the UK raised the issue of the unlawfulness of US legislation under international public law. The European Economic Community (EEC) shared the same opinion in its 1982 Memorandum addressed to the US and referring to the ICJ *Barcelona Traction* case. As a consequence of such reactions, the US attenuated extraterritorial legislation in the case of sanctions decided against Libya and South Africa in 1986. Moreover, the American Law Institute also demonstrated a shift of attitude in the Third Restatement of the Foreign Relations Law of the United States.

However, as Dr. Maresca argued, it seems that more recently the US is broadly resuming the practice of extraterritoriality, by imposing sanctions on persons and entities that do not respect US law in foreign countries. Dr. Maresca cited the case of the 1996 Iran and Libya Sanctions Act. The Act contained an element of extraterritoriality since it could be enforced against all the subjects – both US and foreign nationals – that did not apply the sanctions: in practical terms, if a EU company does not implement the US sanctions, this company can be listed and basically prevented from operating with US and other international operators. To this regard, the EU adopted regulation 2271/1996, which aimed at protecting the economic and financial interests of natural and legal persons against the effects of the extraterritorial application of legislation.<sup>8</sup> This shows that the practice of extraterritoriality can create a number of tensions, especially when US sanctions do not coincide with those of the EU.

As it is argued by Dr. Beaucillon, the issue should be regulated at the international level, instead of being left to domestic legislation. However, the project of resolution that was proposed by the Institut de Droit International (IDI) in 2001 did not succeed. More recently, in 2006, the ILC stressed that extraterritorial legislation is a matter of growing concern; yet it remains controversial.

In conclusion, Dr. Beaucillon shows that a clear solution to the problem of extraterritoriality in international law has not been envisaged yet. In principle, however, it can be argued that unilateral sanctions with extraterritorial effects

<sup>8</sup> Council Regulation (EC) No 2271/96 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, 22 November 1996, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:31996R2271>.

are contrary to international law because they infringe upon the principle of non-intervention in the internal affairs of third States. States may suffer from the application of extraterritorial legislation when their nationals are sanctioned on the basis of such legislation. In this case, the possible remedies include the non-recognition of foreign legislation with extraterritorial effects, the non-recognition of foreign orders or judicial decisions implementing such legislation, and diplomatic representations. These remedies clearly appear insufficient, since the issue is still left to the balance of power between the leading global economies and the provisions of private international law.

When dealing with the actors of international sanctions regimes, one should address not only the actors who impose sanctions, but also those who are targeted by them. Thus, Professor **Nigel D. White** addressed another category of actors that are involved, as targets, in the implementation of sanctions regimes: non-State actors (NSAs). The increasing relevance of non-State actors in sanctions regimes is inherently linked to the move towards "smart" sanctions against individuals or entities deemed responsible for breaches of international law or threats to international peace and security. This move supplements, without replacing, State responsibility with individual responsibility. Professor White's paper identifies the legal nature and the legal bases of sanctions against NSAs; then, it addresses the legal obligations imposed by them and their legal effects; finally, it assesses their legal limitations.



Nigel D. White and Marco Gestri

The distinction between State and non-State actors, Professor White argued, is not always straightforward. Arguably, the move towards smart or targeted sanctions was preceded by the development of what are defined as "more precise" or "more surgical" measures against State leaders and elites within States. In a sense, such measures resembled sanctions against States more than sanctions against NSAs, and they might appear as "mixed regimes" that combine features of the two. The reason is that sanctions against State leaders and State elites do not put into question the inter-State paradigm, while sanctions against NSAs are an expression of the post-Cold War move towards increasing recognition of individual responsibility. The "first generation" of smart sanctions were directed against either *de facto* governments (e.g. the Taliban) or rebel groups with *de facto* belligerent status (e.g. UNITA). Therefore, the target of sanctions was still inherently linked to the territory of a State. The real shift towards sanctions against NSAs occurred only when the sanctions regime against Al Qaida was separated from the regime against the Taliban: in doing so, the link between Al Qaida and the territory of Afghanistan was removed.

Concerning the nature of sanctions against NSAs, Professor White made reference to a terminological problem. The problem originates from the fact that the term “sanctions,” in its application to the domestic legal order, refers to coercive reactions against violations of the law: however, such a definition cannot be entirely applied to the international legal order. The reason, as had already been stressed by previous speakers, is that from an international law perspective sanctions are not always triggered by an unlawful act. Indeed, they can also originate from ruptures, or threatened ruptures, of the peace, irrespective of whether they constitute violations of the law. The same dichotomy between sanctions aimed at preventing and sanctions aimed at punishing, Professor White argued, can be found when examining regimes imposed against NSAs.

Obviously, it is necessary, again, to distinguish between sanctions imposed by the SC and autonomous sanctions: while the former are generally focused on threats to the peace, the latter are often aimed, at least in part, at responding to breaches of international law. Professor White suggests that their different nature may be made more explicit by referring to the former as coercive non-forcible measures, while the latter are unilateral punitive measures. As a case study, the example was presented of sanctions against the Angolan rebel group, UNITA, starting in 1993. These sanctions were imposed by the SC with the primary aim of addressing a threat to the peace and not to enforce the law. Another case study, that of measures against the Bosnian Serbs in the 1990s, shows that the distinction between measures aimed at confronting threats to the peace and measures aimed at sanctioning violations of the law can be difficult to determine: in this case, the two types of measures were combined.

The legal effects of sanctions against NSAs depend on the actor who imposes them. When they are imposed by the UN or by a regional organisation, the Member States may be obliged – according to the provisions of the constitutive treaty – to implement them. However, the EU is the only case in which sanctions can have a direct effect in the Member States’ legislation – even though Professor Gestri showed that States retain a certain discretion regarding secondary sanctions and the granting of exceptions – while, in all other cases, States are responsible to implement sanctions within their legal order. This shows that the obligations can never be put directly upon the NSAs: the immediate impact of sanctions is always on States. Only at a second stage is the impact on other economic actors (e.g. banks), which are required to adopt certain behaviour towards the target NSAs. This reflects the general difficulty of making international law directly applicable to subjects other than the States. It also shows another terminological problem: not only is it questionable whether we are talking about “sanctions,” but one could also wonder whether they are “against NSAs” – while it would be more correct to state that they are non-forcible measures that place duties upon States to take measures against NSAs.



In conclusion, Professor White introduced another issue related to implementation of sanctions against NSAs, namely the procedure of listing and delisting and the role of the sanctions committee. In particular, he presented the issues arising from SC resolution 1373 (2001), which provides a system of auto-interpretation of targeted measures.<sup>9</sup> This system legitimises States to develop their own list of terrorists, creating the risk that individuals will be listed for reasons other than threat to peace and security.

Dr. Maresca agreed that such a system may open the way for arbitrary decisions. However, he also stressed that the 1373 regime is a useful and practical tool that – considering the rising threats coming from NSAs, e.g. ISIS – is likely to be further used in the coming years, although in a refined way. The issues of listing and delisting were developed in the following session.

### 3. Sanctions and the protection of human rights

Under international law, there are a number of interconnections between sanctions and the protection of human rights. Firstly, a possible link is that sanctions may be adopted after violations of human rights obligations. The question may also be raised whether the violation of human rights obligations applicable *erga omnes* may give States that are not directly affected the right to adopt sanctions in the form of countermeasures. Secondly, economic sanctions raise human rights concerns because of the humanitarian impact they have upon the civilian population of target States. Finally, targeted sanctions, which were developed as a consequence of such concerns, themselves raise a new set of issues concerning possible violations of individual rights. In the third session, such issues were addressed.

Professor **Kyoji Kawasaki** dealt with sanctions with regards to *erga omnes* obligations. His presentation focused on five issues: (1) the notion of *erga omnes* obligations; (2) *erga omnes* obligations in the context of protection of human rights; (3) countermeasures taken by States not directly affected by the violation ("third States"); (4) the relation between UN sanctions regimes and autonomous measures; and (5) non-recognition as a sanction under international law.

Article 48 of the ILC's Draft Articles states that "any State other than an injured State is entitled to invoke the responsibility of another State [...] if [...] the obligation breached is owed to the international community as a whole."<sup>10</sup> Similarly, the 2005 resolution of the Institut de Droit International on "Obligations *erga omnes* in international law" states in Article 1 that obligations under general international law may be due "to the international community" and obligations under a multilateral

<sup>9</sup> UN Security Council resolution 1373 (S/RES/1373), 28 September 2001, [http://undocs.org/S/RES/1373\(2001\)](http://undocs.org/S/RES/1373(2001)).

<sup>10</sup> Article 48(b). See UN International Law Commission (ILC), *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, cit.

treaty may be due “to all other the States parties [...] so that a breach of that obligation enables all these States to take action.”<sup>11</sup> Finally, Article 6 of the ILC “Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations” states that unilateral declarations may be addressed “to the international community as a whole,”<sup>12</sup> thus creating an *erga omnes* obligation for the State that makes the declaration.

Professor Kawasaki argued that human rights obligations are aimed at protecting collective or “extra-State” interests. Thus, they are in themselves owed not to a single State but to all other States. This has been acknowledged on several occasions. Firstly, in 2004 the Human Rights Committee of the Civil and Political Rights Covenant in General Comment 31 explicitly referred to *erga omnes* obligations, stating that “every State Party has a legal interest in the performance by every other State Party of its obligations.”<sup>13</sup> This follows from the fact that the “rules concerning the basic rights of the human person’ are *erga omnes* obligations.” More recently, in 2012 the ICJ ruled that the obligations under the Convention against torture “may be defined as ‘obligations *erga omnes partes*’ in the sense that each State party has an interest in compliance with them in any given case”<sup>14</sup>.

The issue of countermeasures taken by third States had already been addressed during previous sessions. Professor Kawasaki shared Professor Ronzitti’s remarks, emphasising that the ILC, in its 2001 Draft Articles, has been reluctant to recognise such a possibility. Yet the possibility that third States may be entitled to non-forcible countermeasures is envisaged in the 2005 IDI resolution “should a widely acknowledged grave breach of an *erga omnes* obligation occur.”<sup>15</sup> Recent practice shows that States continue to take countermeasures against violations of human rights obligations. Thus, in spite of the reticence of the ILC, the interpretation of the IDI can be endorsed.



Kyoji Kawasaki

<sup>11</sup> IDI Resolution, Krakow, 27 August 2005, [http://www.idi-iil.org/idiE/resolutionsE/2005\\_kra\\_01\\_en.pdf](http://www.idi-iil.org/idiE/resolutionsE/2005_kra_01_en.pdf).

<sup>12</sup> UN International Law Commission, *Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations*, 2006, [http://legal.un.org/ilc/texts/9\\_9.htm](http://legal.un.org/ilc/texts/9_9.htm).

<sup>13</sup> UN Human Rights Committee, *General Comment 31: Nature of the General Legal Obligation on States Parties to the Covenant* (CCPR/C/21/Rev.1/Add.13), 26 May 2004, Article 2, , <http://undocs.org/CCPR/C/21/Rev.1/Add.13>.

<sup>14</sup> International Court of Justice (ICJ), *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, 20 July 2012, <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&case=144>.

<sup>15</sup> Article 5 of the IDI Resolution, Krakow, 27 August 2005, cit.

Professor Kawasaki proposed also the argument that the distinction between sanctions adopted by the SC and countermeasures adopted unilaterally is not as clear as it may appear. This is because UN measures are, in essence, taken and implemented by individual Member States. Resolutions adopted under Article 41 are normative resolutions: therefore, the SC simply asks Member States to do or not to do something. UN sanctions thus constitute a “sub-system” that is not “self-contained,” insofar as Member States may take countermeasures even without the SC’s authorisation. Examples of self-contained systems, argued Professor Kawasaki, can be found in the WTO, where a compulsory dispute-settlement mechanism exists, and in the EU. In such systems, States cannot take unilateral countermeasures against another Member State: in this sense, these systems are much more developed than the UN. On the contrary, since the UN system is not self-contained, when the SC imposes certain measures the possibility that States will also take additional measures cannot be ruled out.

Finally, Article 41 of the Draft Articles establishes that States must refrain from recognising as lawful a situation created by a serious breach of an obligation arising under a peremptory norm of international law. Accordingly, the SC adopted several resolutions in which it called upon Member States not to recognise certain situations. The question remains whether it can be said that States have a positive obligation – and what is its precise content – not to recognise situations arising from violations of *erga omnes* obligations.

Professor Bothe added that, alongside the human rights regime, there is another regime in which the right of third States to ensure respect of the norms has long been invoked: international humanitarian law. The common Article 1 of the four Geneva Conventions states that it is not only a right, but a duty for third States to ensure respect for the Conventions. The same problem emerging from the interpretation of Article 54 of the ILC Draft articles can be posed here: what are the limits of such a right and duty? Another element of the Geneva Conventions allowing third States to take measures against a State breaching its obligations is the principle of universal jurisdiction in relation to war crimes, established also under customary law. However, Professor Bothe argued, this principle has long been neglected by States, which have paid increasing attention to it only in the last two decades. Therefore, there is a lot still to be done in order to make the principle more effective.

Dr. **Ignaz Stegmiller** then presented the paper written with Professor **Thilo Marauhn** on the role of sanctions committees. To begin with, the authors address the institutional setting of the committees, focusing on their legal basis, their composition and their mandate. Then, they review their human rights-related practice.

Sanctions committees are tailor-made subsidiary bodies of the SC, and each of them serves a particular sanctions regime. Over the years, they have undergone two major changes: firstly, their role has shifted from handling economic sanctions imposed against States to administering regimes of targeted or smart sanctions; secondly,

the growing concern about human rights implications of targeted and smart sanctions has promoted a move from effectiveness to fairness, that is to say, from mere administration to rule of law-based governance.

Following the establishment of the first two sanctions committees – for the management of the sanctions regimes against Southern Rhodesia and South Africa – their number kept increasing as the SC made increasing recourse to sanctions. Articles 29 and 41 of the UN Charter constitute their legal bases, and the establishment of the committee is usually included in the resolution that adopts sanctions. Occasionally, the decision establishing the committee can also be issued through a separate subsequent resolution. Apart from the very first committee – the one administering sanctions against Southern Rhodesia – their composition has always been identical to the composition of the SC. The chair is appointed through a rotating system on the basis of informal elections; however, permanent members are excluded from the roles of chair and vice-chair.



Ignaz Stegmüller

Due to the ad-hoc nature of the committees, the primary source for identifying their mandate is the initial resolution that sets up the sanctions regime. However, as both the sanctions regimes and the committees often evolve over time, subsequent resolution may modify the mandate. The committees remain entirely dependent upon the SC: for instance, their guidelines normally provide that, in case no agreement is reached on a specific matter within the committee itself, such a matter is referred to the SC. While each committee may have distinctive features, they share tasks including reporting, handling exemptions, sanctions monitoring and administration of targeted sanctions.

As far as their human rights-related practice is concerned, regimes imposing targeted sanctions have been criticised for their negative implications concerning possible violations of human rights, especially due process rights. As a response to such criticism, the initial focus has been put on developing delisting procedures and some form of “checks and balances” mechanisms. Starting in 2005, several resolutions imposing targeted sanctions have included procedural safeguards, and, gradually, the sanctions committees have been given the role of implementing them. The development of these new rules can be examined in the case of the 1267 Committee concerning Al Qaeda and associated individuals and entities. Now, the proposals made by States on the listing of individuals must be motivated, and the committee is in charge of deciding upon the appropriateness of such a proposal. A third-party review was then introduced with the establishment of an Office of the Ombudsperson in 2009. Accordingly, individuals and entities targeted by the sanctions can now submit requests for delisting to such an authority, which,

in response, can propose delisting to the committee. The Ombudsperson's recommendation is not binding and, in case the committee does not agree with it, can be referred to the SC, which is then in charge of the final decision.

In conclusion, it was argued that sanctions committees have progressively been granted a more powerful role in the administration of sanctions regimes. While enhancing both the effectiveness and the fairness of sanctions regimes, they remain fundamentally political bodies, and thus cannot serve as review mechanisms in light of human rights standards. The establishment of an Ombudsperson has proven to be the best protection against wrong listings, and it will be able to safeguard minimum standards in the protection of human rights. However, it cannot be equated to judicial review.

This issue was further elaborated by Professor **Monica Lugato**, who began from the assumption that the impact of targeted sanctions is generally recognised as severe, while the remedies offered by the UN are deemed insufficient. The adverse impact of restrictive measures has thus become an issue, and it has raised a number of related questions, in particular regarding the legal accommodation of the interests at stake. Therefore, she addressed two main questions: (1) Are targeted individuals and entities entitled to individual rights protection? (2) Which is the applicable legal framework under international law?

The existing case law has recognised that targeted individuals and entities are entitled to individual rights protection, and it has addressed in particular the right to effective judicial protection – with its corollaries – but also the freedom of movement, the right to respect for personal and family life, the right to personal freedom, the right to property and proportionality. The individual right to compensation for harm suffered as a consequence of listing is also an issue addressed in the relevant case-law. However, cases concerning other rights may emerge in the future: for instance, the impact of sanctions upon the right to life (e.g. *vis-à-vis* restrictions on the payment of ransoms) and upon freedom of expression.

Courts dealing with such cases have made reference to human rights obligations under international, regional and national law. The most complex issues have arisen with respect to sanctions decided by the SC. The complexity is a consequence of two elements: firstly, the scope of human rights standards enshrined in the UN Charter or applicable to the UN is relatively vague and disputed; secondly, the resolutions adopted by the SC are under a special regime by reason of Article 103 of the Charter.

As for the human rights obligations to which the UN is bound, Article 1.3 and Article 55 must first of all be considered. The two articles suggest that the UN and its organs, in performing the tasks assigned to them by the Charter, are bound by a general principle to respect human rights. These provisions, which constitute a sufficient legal basis to argue that the UN cannot disregard human rights, have further been developed by the subsequent practice of the Organisation. In the domain of counter-terrorism, several UN documents can be found that recognise that the fight against terrorism must be conducted while abiding by international

law, including human rights law: starting from resolution 1267 (1999),<sup>16</sup> the SC has routinely called upon States, in its resolutions imposing targeted sanctions, to strengthen international cooperation while ensuring respect for human rights.<sup>17</sup>

As for the priority of UN decisions under article 103, the question must be raised of whether it also displaces human rights obligations. During the first years of implementation of targeted sanctions, a number of courts have given an affirmative answer: they claimed that no scrutiny over the legitimacy of SC sanctions could be exercised at the national level. However, this approach changed over time. More recently, courts have largely preferred to make recourse to a "*technique d'évitement de l'article 103*." In so doing, they have refrained from reviewing SC decisions, thus avoiding the issue of their priority under Article 103, yet they have rather reviewed the national acts that judicially implement such decisions for compliance with human rights. As a consequence, the question of the relationship between human rights obligations and obligations to carry out SC resolutions, under Article 103, has been left unsolved.



Monica Lugato

Among scholars, the opinion that, under Article 103, the obligation to carry out SC resolutions has priority over human rights obligations is still prevailing. While acknowledging that this seems not to be entirely satisfactory, many claim that both the text of the Charter and States' practice allow for no other interpretation. However, Professor Lugato argued instead that such a view does not stand closer scrutiny. She gave three reasons for that. Firstly, this approach results from an "absolutist" interpretation of Article 103 that leads to the absurd conclusion that the SC is *legibus solutus*. Moreover, Article 32 of the Vienna Convention on the Law of Treaties (VCLT) states that – in case the interpretation resulting from the application of Article 31 "leaves the meaning ambiguous or obscure" or "leads to a result which is manifestly absurd or unreasonable" – supplementary means of interpretation may be used. As a consequence, the most common interpretation of Article 103 cannot be deemed "inevitable." Secondly, this criticised reading disregards the fact that, as already stressed, the SC itself has constantly called upon States to respect human rights obligations while implementing its counter-terrorism sanctions. Thirdly, both case law and practice can be used to support a different interpretation

<sup>16</sup> UN Security Council resolution 1267 (S/RES/1267), 15 October 1999, [http://undocs.org/S/RES/1267\(1999\)](http://undocs.org/S/RES/1267(1999)).

<sup>17</sup> See, *ex multae*, UN Security Council resolution 1456 (S/RES/1456), 20 January 2003, [http://undocs.org/S/RES/1456\(2003\)](http://undocs.org/S/RES/1456(2003)). See also UN General Assembly resolution 68/276 (A/RES/68/276), 24 June 2014, <http://undocs.org/A/RES/68/276>.

of Article 103. Indeed, the majority of States and international institutions have committed to conduct the fight against terrorism within the limits imposed by human rights obligations, and no State has officially raised a claim – based on Article 103 – against judgments annulling listings by reason of violations of such obligations. All these elements seem to suggest that the argument that under Article 103 SC Chapter VII resolutions simply prevail over human rights obligations is far too simplistic.

Professor Roscini raised the question of whether – following Professor Lugato’s interpretation – one could even argue that a customary interpretation of Article 103 has emerged. In doing so, he referred to the example of the customary interpretation established *vis-à-vis* Article 27 of the UN Charter, concerning the Security Council’s voting system. Professor Lugato answered that a cautious approach is needed in this regard because courts have largely avoided the question of interpretation of Article 103: as a consequence, a possible “new” interpretation of Article 103 has not been stated explicitly, and the practice and *opinio juris* can only be inferred.

Professor Bothe noted that there are rules that must be respected by any entity exercising public authority upon individuals. Nowadays, we are witnessing a new phenomenon in the international system: the exercise of such authority by the Security Council. As a consequence, the SC must certainly be bound by the same principle of the rule of law that applies to the other entities. This is a fundamental requirement for the legitimacy of the UN and, in the last resort, for its effectiveness. Professor Bothe agreed with the previous speakers that so far the establishment of the Focal Point for De-Listing as well as the Office of the Ombudsperson has not constituted an effective remedy against possible violations of the rights of listed individuals; thus, further progress is needed.

Finally, Professor Roscini wondered whether “the best can be enemy of the good,” making reference to the tendency to neglect the progress made through the establishment of the Focal Point and the Ombudsperson. This tendency has been found especially in the ECJ’s judgments, which seem to consider that nothing less than a judicial review can be deemed a sufficient standard of protection of human rights. But one must recall that the SC remains a political organ that takes political decisions. The ECJ’s approach could even be counterproductive in the long term, since it does not create incentives for the SC to extend the Ombudsperson’s mandate to other sanctions regimes, nor to make it permanent. Furthermore, one must be aware of the risk that increasing criticism against smart sanctions could push the SC towards a regression to less targeted regimes.

#### 4. The implementation of sanctions

The final session addressed the issue of the implementation of sanctions under different perspectives, namely their legal limitation and the concept of proportionality, their consequences upon existing treaties and contracts, their effectiveness, and their strategic implications.

Professor **Daniel H. Joyner** addressed the issue of legal limitations to the imposition of international sanctions, with a specific focus on sanctions with counter-proliferation aims. Firstly, he dealt with the effectiveness of such sanctions in accomplishing their stated policy ends. Then, he focused on the legality of economic coercion, arguing that there are at least three sources of international legal obligations that impose limits on it: (1) the general international principle of non-coercion; (2) the law of countermeasures; and (3) human rights law.



From left to right: Stefano Silvestri, Daniel H. Joyner, Maria Beatrice Deli

When dealing with sanctions aimed at halting the proliferation of weapons of mass destruction (WMD), Professor Joyner argued that the main case study used to be that of sanctions against the Democratic People's Republic of Korea (DPRK), while now it is that of Iran. The sanctions regime against Iran has evolved over time to include a range of different measures: currently, it is fairly comprehensive and encompasses autonomous US and EU measures in addition to those imposed by the SC. Literature on the topic shows that the success of the sanctions regime in changing the Iranian government's behaviour has been extremely low: the empirical evidence in the case of Iran has thus been used to argue that sanctions imposed against a State embarked on a proliferation programme are extremely unlikely to change its policies. Rather, sanctions seem to be very effective in causing severe suffering among the population. Such a collateral effect may render a diplomatic solution to the crisis more difficult to achieve: this is why Professor Joyner argued that counter-proliferation sanctions generally are not only unsuccessful, but may even be counterproductive.

Apart from the issue of effectiveness, one should address the legality of such measures. There are a number of international obligations that circumscribe the discretion of States and international organisations to impose international economic sanctions.



Firstly, the main applicable legal source is the general international law principle of non-intervention, already extensively addressed by Professor Ronzitti during the first session. According to Professor Joyner, this principle can be deemed a customary norm due to the number of General Assembly resolutions in which it has been included and the overwhelming majorities by which these resolutions have been adopted. Accordingly, international sanctions aimed at changing a State's behaviour in a domain in which it has a sovereign right to decide freely certainly represent a violation of the customary norm of non-intervention. A distinction may be drawn between SC sanctions and autonomous measures, as the UN Charter explicitly gives the SC the mandate to impose economic sanctions in response to threats to the peace, breaches of the peace or acts of aggression. Yet the extent to which the SC can violate the general principle on non-intervention may be debated. In this regard, Professor Joyner argued that Article 103 of the UN Charter should be interpreted narrowly, with respect to the priority of the Security Council's decisions over other treaty provisions, but not over principles of general or customary international law. Under this interpretation, the SC would still be bound by customary law, including human rights law.

Secondly, when dealing with autonomous sanctions, additional limitations are imposed by the norms on countermeasures, which, as already stated, can be found in the ILC Draft Articles. It was argued that in the case of countermeasures adopted for counter-proliferation purposes, it is difficult to respect the criteria for the lawfulness of countermeasures. If such criteria are not respected, the State adopting the measures incurs international responsibility, and the target State may potentially apply lawful countermeasures itself.

Thirdly, another set of limits is determined by human rights law. According to Professor Joyner, whether States have human rights obligations *vis-à-vis* persons not in their territory or under their effective control is still controversial. However, he argued that the most recent scholarship and case law seems to acknowledge that human rights law has an extraterritorial application by reason of the fact that human rights obligations follow a State's conduct, irrespective of the territory. Thus, when a State engages in economic warfare, it is still responsible for the human rights violations it may cause in the territory of another State. Concerning the SC, another question may be raised, as already stressed by Professor Lugato, of whether it is also bound by international human rights obligations. According to Professor Joyner, the answer is to be found in Articles 24 and 25 of the UN Charter: Article 24 provides that the SC must exercise its powers "in accordance with the purposes and principles of the United Nations;" similarly, Article 25 states that Member States are obliged to carry out the decisions of the SC "in accordance with the present Charter." Yet some scholars seem to argue that when the SC acts under Chapter VII, it implicitly shows its intention to derogate from normally applicable human rights law. Professor Joyner claimed that, if one accepts this argument, one should also consider that the principle of proportionality must be applied to derogations from human rights obligations. Thus, in order for the SC to lawfully derogate from such obligations, the sanctions regime that is approved should be in compliance with the principle of proportionality. In this case, one should also

apply the principle of the prohibition of collective punishment, which is essentially a manifestation of the principle of proportionality. Such principle is generally violated by international sanctions regimes, especially in the cases of the counter-proliferation regimes against DPRK and Iran, where sanctions have caused serious and widespread suffering among the civilian population.

In conclusion, the lawfulness of economic and financial sanctions imposed by both States and international organisations, including the UN, is limited by a number of positive sources of international law. In the case of counter-proliferation sanctions regimes, Professor Joyner assessed, the limits for the lawfulness of such measures have often been disregarded.



Maria Beatrice Deli

When examining the issue of implementation and effectiveness of sanctions, one should also address the impact of international sanctions – both those imposed by the SC and those decided by the EU – on existing treaties and contracts. Professor **Maria Beatrice Deli** dealt with this issue in presenting the paper she wrote with Professor **Andrea Atteritano**. They emphasise that the implications of international sanctions must be analysed from both an international and a national

perspective, since sanctions also have an impact upon the domestic legal systems: for instance, they impact the effectiveness of existing contracts, which are regulated under national law.

Concerning the impact of international sanctions on treaties, the focus is put on two types of treaties: Bilateral Investment Treaties (BITs) and Treaties of Friendship, Commerce and Navigation (FCNs). BITs are international agreements establishing the terms and conditions for private investment between two countries. FCNs – while not focusing specifically on investments – are at times considered the first generation of modern BITs, since the US gradually shifted from FCNs to BITs in the early 1980s. Another reason why FCNs may be considered the predecessors of BITs is that FCNs already contain the three main components of BITs, namely (1) treatment provisions, (2) expropriation and (3) exchange control. Currently, it is estimated that there are around 2,600 BITs in force all over the world.

Professor Deli and Professor Atteritano considered the interactions between the obligations contained in BITs and the obligations imposed by international sanctions, finding that such obligations interact in extremely complex ways. Possible conflicts between the two sets of obligations may emerge both with regards to traditional “comprehensive” economic sanctions and with regards to targeted sanctions. However, the consequences of sanctions on international

treaties vary depending on whether the sanctions have been imposed by the SC or autonomously by the EU.

In the case of sanctions imposed by the SC, the problem of conflicting obligations can find an easier solution thanks to the provision of Article 103. Some scholars claim that, by reason of the article, treaties at odds with the Security Council's decisions – including those imposing sanctions – are automatically terminated according to the provisions of Article 64 of the VCLT, which makes reference to the emergence of new "peremptory norms" of general international law. Professor Atteritano and Professor Deli reject this opinion, by reason of the fact that sanctions imposed by the UN are decided on the basis of a treaty provision which, by definition, cannot be considered a *jus cogens* rule. Rather, they claim that treaties conflicting with UN sanctions are automatically suspended. This opinion was endorsed by Italy in 2011, when sanctions were adopted against Libya: on that occasion, the then-Italian Minister of Foreign Affairs Franco Frattini claimed that sanctions had caused not only a *de facto* suspension of the existing Italo-Libyan BIT, but its legal and automatic suspension.

Yet in the case of EU sanctions, Member States cannot rely on Article 103 to escape treaty obligations and the responsibility attached to them. Thus, the solution to the problem of conflicting obligations must be searched for elsewhere. The authors examine the possibility of making recourse to Article 61 and Article 62 of the VCLT. Article 61 provides the possibility for a party to terminate a treaty or withdraw from it by reason of its "impossibility of performing" the obligations, which must result from "the permanent disappearance or destruction of an object indispensable for the execution of the treaty," and provided that the impossibility is not "the result of a breach" by the party that invokes the termination or withdrawal. As a consequence, it results that the suspension or termination of the BIT could arguably be invoked only by the sanctioned State. However, it may have no interest in doing so, as it is likely to have an interest in claiming compensation. Article 62 establishes as a ground for termination or withdrawal from the treaty "a fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties." Thus, the sanctioner could claim that the crisis situation that has triggered the adoption of sanctions is to be regarded as a "fundamental change of circumstances." In this case, the BIT would be made ineffective and no breach would be attributable to the State imposing sanctions. However, in no case would the termination or suspension of the treaty be automatic – unlike the suspension deriving from UN sanctions – and the arbitration clause contained in the BIT would continue to be binding.

Concerning the impact of sanctions on contracts, the level of analysis must shift towards the national level, as it is domestic law that becomes the applicable legal framework. The analysis of Professor Atteritano and Professor Deli focuses on the Italian legal system. They argue that Italian law provides a number of contractual remedies that the parties may trigger in case of breach of a contract. Yet not all these remedies would be viable in the case of contracts affected by the implementation of sanctions. For instance, the possibility of filing a claim to seek performance of the

relevant contractual obligation would not be viable because the party would be in a position in which it cannot perform the obligation due to the sanctions constraint. Thus, one should rather consider which are the possible remedies, provided by the Italian law, in order to seek compensation and to unilaterally terminate the contract. Contract termination may be triggered (1) when the counterparty has seriously breached the agreement; (2) in case of an extraordinary and unforeseeable event that makes the performance of the obligation excessively onerous; or (3) in case of supervened impossibility of implementing the obligation. While damage compensation may be sought in the case of serious breach of the contract, this is not foreseen in case of supervened impossibility. In conclusion, the authors suggest that it would be recommendable to include in international contracts specific clauses that clearly define the consequences of targeted sanctions on the fate of the contract itself.

Professor **Francesco Giumelli** scrutinised more in depth the issue of the effectiveness of sanctions. In arguing that the debate on this subject is far from reaching a final judgment on whether sanctions “work,” he contributed to the debate by proposing a four-step methodology to assess the results sanctions may achieve. Such methodology was tested with reference to the case of sanctions imposed by the EU against Russia in the context of the Ukrainian crisis.



Francesco Giumelli and Joachim Krause

Most scholars attempt to measure the effectiveness of sanctions by looking at their capacity to change the behaviour of the target. Such method has for a long time led to the conclusion that sanctions are to a very large extent ineffective. Yet this raises the question of how to explain why States have not abandoned the instrument of sanctions, but have rather made increasing recourse to it. Professor Giumelli argued that the method through which we have come to the conclusion that sanctions are ineffective is misleading. Indeed, changing the behaviour of the target is not the only purpose of sanctions: this is why their effectiveness cannot be tested only against this specific aim. Rather, he proposed to assess their effectiveness through a more comprehensive procedure that includes four different steps.

As a first step, one should place sanctions within the larger context of the foreign policy strategy. Since sanctions are never imposed in isolation from other foreign policy instruments, one should determine on a case-by-case basis whether they play a central or only marginal role in the overall strategy pursued by an actor. The two cases of Iran and Syria can be compared: while in the former sanctions are the core of the US's and EU's strategies, in the latter they play a much more marginal role.

As a second step, it is necessary to define the logic of sanctions. Not all sanctions regimes follow a coercive logic, as they may also follow a constraining or signalling one. While coercive sanctions aim at persuading the target to do something, signalling and constraining sanctions have different purposes. Signalling sanctions aim at sending signals not only to the target, but potentially to other actors as well (the "audience"). The example was proposed of sanctions imposed against human rights violations even when the sanctioner knows that the target is not going to change its behaviour; yet the sanctioner might still want to send a message to the international community. Constraining sanctions aim at undermining the target's capability of pursuing certain policy options. The sanctions imposed against Iraq during the 1990s are an example of such sanctions. While the sanctions were not effective in promoting regime change, they were successful in preventing the government from pursuing a proliferation programme.

As a third step, the cost and the political consequences of sanctions must be evaluated. The cost is extremely difficult to calculate, and there are usually perverse effects to be taken into account. Moreover, one must consider not only the costs imposed on the target, but also the costs that the sanctioner bears. As for the political consequences, they can also have a negative side. For example, as the target becomes isolated, it might be pushed to establish other connections, and the sanctions might end up strengthening certain alliances that the sanctioner would prefer to weaken – as in the cases of Russia and Iran or Iran and Syria.

Finally, as a fourth step, the comparative utility of sanctions must be taken into consideration. The argument is that everything can be deemed good or bad with respect to its alternatives. When an international crisis occurs, Professor Giumelli argued, policy-makers are faced with four possible alternatives they can choose among: (1) diplomacy; (2) economic assistance; (3) war; (4) sanctions. The effectiveness of any foreign policy action can thus be assessed only with respect to the other viable options.

In conclusion, Professor Giumelli attempted to apply the four-steps methodology to the case of the EU sanctions imposed against Russia. Firstly, if considering the overall EU strategy *vis-à-vis* Russia in the context of the Ukrainian crisis, it is evident that sanctions are not the only instrument but are rather a tool used alongside others, such as diplomatic pressures, mobilisation of NATO and economic aid provided to the Ukrainian government. Secondly, the sanctions do not exclusively follow the coercive logic. While there certainly is some attempt to change the behaviour of the target – for instance, sanctions directed against Russian individuals and entities aim at preventing them from supporting the separatists in Eastern Ukraine – elements of the constraining and signalling logic can also be assessed. The constraining logic operates in the case of sanctions aimed at de-legitimising economic operators in Crimea, while the signalling element is found in the message sent that no violation of a State's territorial integrity can be tolerated. Thirdly, it is undeniable that sanctions have a certain economic cost for European States, but such cost is inferior to the cost paid by Russia: the sanctions,

coupled with the fall in oil prices, are having a multiplier effect on the Russian economy. Finally, there are arguably no alternatives, since European States are not willing to use military means.

Professor Joyner, however, partly dismissed this argument, claiming that this perception is based on the illusion that we must necessarily “do something” in any occasion. In some cases, he stressed, it would be better not to intervene. The reason why governments often decide to adopt sanctions is because of the pressures coming from their domestic audiences.

Professor **Joachim Krause** shared Professor Giumelli’s opinion that the effectiveness of sanctions cannot be tested only against their stated policy goal. Instead, he argued, it must be measured also in the context of strategic competition. Sanctions as instruments of strategic competition must be assessed along three different dimensions. Firstly, as already stated, their effectiveness cannot be measured exclusively on the basis of whether a certain policy goal has been achieved; one needs



Joachim Krause

to also take into account the extent to which they contribute to weakening the strategic competitor and, as a consequence, the extent to which they are effective in preventing military confrontation. Secondly, in the long run the management of consequentiality must be considered. This means that sanctions must have clear and coherent objectives in the medium and in the long run, and they must be able to maintain the pressure upon the target throughout the time needed, even if the target retains a recalcitrant attitude. Public opinion is important in this regard because, should it become critical towards the sanctions policy, the government could lose its ability to manage consequentiality. Thirdly, sanctions must be assessed as a substitute for other foreign policy instruments. In particular, they are at times seen as the only alternative to the use of military force, which has largely been dismissed by European States.

Next, Professor Krause examined sanctions as instruments of strategic competition in the specific case of the current sanctions regime imposed by the EU against Russia. He raised a set of questions that must be asked regarding the case study: how effective are the sanctions? Will they make the Russian economy collapse? Will they prevent military escalation or will they rather favour it? Professor Krause argued that European sanctions have been implemented without any clear conditionality and in a situation in which divergences between EU Member States themselves persist. Overall, the effectiveness of sanctions is likely to be limited. Yet the combination of sanctions with both the decline of oil prices and the massive withdrawal of international capital from Russia (due to the loss of confidence by investors) has

already shown certain effects. However, should the Russian economy collapse, this would still be the result of domestic problems and structural weaknesses more than of international sanctions. Finally, it seems more likely that sanctions may drive Russia towards resorting to military means rather than the opposite. While the main logic behind the EU's preference for sanctions is its willingness to avoid the use of military force, the outcome could turn out to be a military escalation. Russia has already shown that it does not rule out the use of such means, and the deterioration of the economic situation could make this option more attractive to the Russian government. Thus, the hope for de-escalation through the use of economic coercion may be disillusioned.

In conclusion, Professor Krause argued that this could be the most important foreign policy test since the Yugoslav crisis for NATO and the EU. So far, the EU has imposed sanctions that are largely symbolic, the limited results of which – strengthened by the structural weaknesses of the Russian economy – could be significant only in the long run. Moreover, the EU does not have a clear management of consequentiality due to the persisting and public divergences among its members. Overall, the EU strategy is risky because it does not prevent military escalation, and it might even favour it.

Dr. Mark Entin argued that Russia considers the EU a strategic partner more than a strategic competitor. He stressed the common religious and cultural heritage of the two actors and the common strategic value they can gain from cooperation, which is needed to deal with the problems of today's globalised world. He also claimed that the argument according to which autonomous sanctions are needed in order to overcome the Security Council's inability to act in certain situations must be rejected.



Mojtaba Kazazi and Mark Entin

Indeed, the procedural mechanism that is set for decisions within the SC is the only way to guarantee compromise between the different international actors: when such compromise cannot be reached, it means that the situation is too complex to be left to unilateral decisions.

In the debate on the effectiveness of sanctions, Dr. Mojtaba Kazazi shared Professor Joyner's opinion that the success rate of sanctions regimes is extremely low. Thus, he argued that the opinion that sanctions may be an effective method to build global stability must be dismissed. In terms of the costs and effects of sanctions, he mentioned as examples the steep rise in the price of some medicines in Iran – making them unaffordable for a large part of the population that needs them – and the slowing down of the process of development of a whole country. He also pointed out that other forms of coercion are subjected to fixed rules under international

law: this is the case for war, which is regulated by international humanitarian law. The same cannot be said for the implementation of sanctions, to which the law of armed conflicts does not apply. He emphasised the need for a standard of proof in order to avoid imposing international sanctions based on disputed facts. Finally, he recalled Resolution 27/21 of the Human Rights Council, which calls upon States to refrain from adopting or implementing “unilateral coercive measures not in accordance with international law, international humanitarian law, the Charter of the United Nations and the norms and principles governing peaceful relations among States.”<sup>18</sup>

### Concluding remarks

The concluding remarks were given by Professor Ronzitti. It was highlighted that the papers presented throughout the four sessions succeeded in delving into a number of theoretical arguments. An important added value had been given by the interaction between international law and international relations scholars and practitioners: this had shown that there are a number of possible points of contact between the two disciplines, and it had thus opened the way to a prolific debate. Several controversial issues were touched upon, and different opinions were proposed and discussed. Some indications can be drawn.

Firstly, sanctions are an instrument of international coercion that has evolved over time and has acquired increasing relevance. While military coercion, following the adoption of the UN Charter, has been definitely outlawed in the international system, the admissibility of other forms of coercion, including sanctions, remains more debated. Economic coercion is in principle not prohibited under international customary law, but the limits posed by the principle of non-intervention must be investigated. Apart from the general principle of non-intervention, limits to the admissibility of sanctions may derive from other customary as well as conventional norms.

The Security Council has an explicit competence to take sanctions according to Article 41 of the UN Charter. However, there is a broadly shared opinion that such competence is not exclusive. Indeed, States and regional organisations can also take autonomous measures, provided that they respect certain limits. First of all, autonomous measures are admissible when they are merely unfriendly acts that do not violate any international norm and thus qualify as “retorsions.” Secondly, even when they do violate certain norms, they may be admissible if they qualify as countermeasures. Unlike sanctions adopted by the SC, countermeasures necessarily presuppose that the target State has committed an international wrong. Regional organisation can also take autonomous measures against their own members when this is provided for in their constitutive instruments.

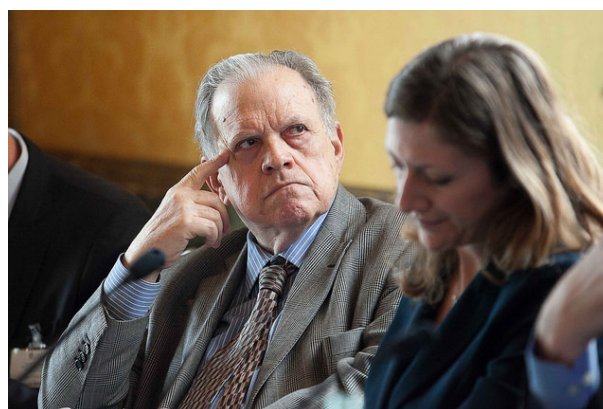
<sup>18</sup> UN Human Rights Council, *Human rights and unilateral coercive measures* (A/HRC/27/L.2), 18 September 2014, para. 1, <http://undocs.org/A/HRC/27/L.2>.



The problem of evidentiary standards remains to be solved. Sanctions are often unilateral measures taken on the basis of a previous allegedly wrongful act; however, no general mechanism is set to test the validity of the allegation and, as a consequence, the lawfulness of the countermeasures. The possibility for a judicial review is provided for only in self-contained regimes or when there is a BIT in force that contains an arbitration clause. Yet full judicial review of autonomous sanctions remains highly unlikely.

The possibility for States not directly injured ("third States") to take countermeasures remains debated, and different readings of Article 54 of the ILC Draft Articles exist. However, the current practice of States seems to suggest that countermeasures by third States are admitted at least in reaction to serious breaches of *erga omnes* obligations.

In the last decades, the EU has made increasing resort to sanctions. However, the implementation of sanctions by the EU needs to be improved. While EU sanctions are generally adopted by means of regulations, which are directly applicable within Member States, crucial aspects of the implementation – including the determination of both penalties and exemptions – remain in the hands of the different national authorities. This raises the problem of how to ensure coordination and uniformity. Yet an easy solution to the problem is not foreseeable in the short run, since a certain discretion left to Member States is needed to compensate for the persisting divergences among them.



Natalino Ronzitti and Nicoletta Pirozzi

The issue of extraterritorial legislation, while not being new in international law, has become more relevant in recent times, mostly due to US practice. Indeed, the US often attempts to impose an obligation on third States to abide by the unilateral sanctions it has decided. This creates tensions between the US and the EU when the respective sanctions imposed by them do not coincide. As a consequence, an effort should be made to regulate the issue at the international level.

The shift to smart and targeted sanctions was mostly due to human rights concerns *vis-à-vis* economic sanctions regimes, which may cause serious and widespread harm among the civilian population. However, the new type of sanctions has raised its own set of questions concerning the possible violation of individual rights: in particular, the system of listing is susceptible to violating not only the right to effective judicial protection, but also other rights including the right to respect for personal and family life and the right to property. It is generally held

that not only States but also the SC is bound by certain human rights obligations. However, when claims of human rights violations by SC sanctions were first raised, courts held that no scrutiny over the legitimacy of SC decisions could be exercised by reason of Article 103 of the Charter. More recently, the European Court of Justice has rather made recourse to a "*technique d'évitement de l'article 103*" by reviewing national acts implementing sanctions. Consequently, the question of whether, under Article 103, the obligation to carry out SC resolutions has priority over human rights obligations has been left unsolved.

The SC has recently responded to criticisms by creating new mechanisms such as the Focal Point for Delisting and the Office of the Ombudsperson. Moreover, the mandate of sanctions committees has progressively undergone a shift from mere administration to rule of law-based governance. While commendable, these improvements cannot be equated to actual judicial remedies.

International sanctions impact existing treaties and contracts. Regarding treaties, the problem of conflicting obligations finds an easier solution in the case of sanctions imposed by the SC, since they prevail over treaty obligations by reason of Article 103. As a consequence, treaties that conflict with the sanctions regime are automatically suspended. In the case of autonomous sanctions, it has been argued that possible grounds for termination of conflicting treaty obligations may be offered by Article 61 and Article 62 of the VCLT. As for the impact of sanctions on existing contracts, this must be investigated under domestic law, which may provide remedies in order to trigger contract termination.

Finally, the effectiveness of sanctions is highly controversial. Some claim that only in very few cases have sanctions regimes been effective in changing the behaviour of the target, while others argue that the effectiveness of sanctions cannot be tested solely against their stated policy goals, since sanctions may serve different purposes. Whether sanctions can prevent military escalation is also debated.

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## Conference Programme

Rome, 13 February 2015, Palazzo Rondinini

### First Session

#### *Sanctions as Instruments of Coercive Diplomacy*

- Chair           **Ettore Greco**, Istituto Affari Internazionali (IAI), Rome
- Paper-givers   **Natalino Ronzitti**, LUISS University and Istituto Affari Internazionali (IAI), Rome  
*Sanctions as instruments of coercive diplomacy: an international law perspective*  
**Michael Bothe**, University of Frankfurt  
*Compatibility and legitimacy of sanctions regimes*
- Discussants   **Marco Roscini**, University of Westminster  
**Marina Mancini**, LUISS University, Rome, and Mediterranean University of Reggio Calabria

### Second Session

#### *The Actors of International Sanctions Regimes*

- Chair           **Nicoletta Pirozzi**, Istituto Affari Internazionali (IAI), Rome
- Paper-givers   **Marco Gestri**, University of Modena and Reggio Emilia and Johns Hopkins University (SAIS Europe)  
*Sanctions imposed by the European Union: legal and institutional aspects*  
**Charlotte Beaucillon**, Université Paris I  
*Individual States, sanctions and the extraterritorial effects of national legislation*  
**Nigel D. White**, University of Nottingham  
*Sanctions against non-State actors*
- Discussant     **Giuseppe Maresca**, Italian Ministry of Economy, Rome

**Third Session**

*Sanctions and the Protection of Human Rights*

Chair **Marco Gestri**, University of Modena and Reggio Emilia and Johns Hopkins University (SAIS Europe)

Paper-givers **Kyoji Kawasaki**, Hitotsubashi University, Tokyo

*Sanctions and erga omnes obligations*

**Thilo Marauhn & Ignaz Stegmiller**, Justus-Liebig-Universität Giessen

*The role of sanctions committees*

**Monica Lugato**, LUMSA University, Rome

*Sanctions and individual rights*

Discussants **Marco Roscini**, University of Westminster

**Michael Bothe**, University of Frankfurt

**Fourth Session**

*The Implementation of Sanctions*

Chair **Stefano Silvestri**, Istituto Affari Internazionali (IAI), Rome

Paper-givers **Daniel H. Joyner**, University of Alabama-School of Law, Tuscaloosa

*Sanctions and the principle of proportionality*

**Andrea Atteritano**, LUISS University, and Hogan Lovells International Law Firm, Rome / **Maria Beatrice Deli**, LUISS University, and International Chamber of Commerce, Rome

*The impact of international sanctions on treaties and contracts*

**Francesco Giumelli**, University of Groningen

*The effectiveness of sanctions: the case of the European Union*

**Joachim Krause**, Kiel University

*Western economic and political sanctions as instruments of strategic competition with Russia: opportunities and risks*

Discussants **Mojtaba Kazazi**, International law practitioner; Former Executive Head, United Nations Compensation Commission, Geneva

**Mark Entin**, Russian Association of International Law, Moscow

**Nicoletta Pirozzi**, Istituto Affari Internazionali (IAI), Rome

**Conclusions** **Natalino Ronzitti**, LUISS University and Istituto Affari Internazionali (IAI), Rome

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Via Angelo Brunetti, 9 - I-00186 Rome, Italy

T +39 06 3224360

F + 39 06 3224363

[iai@iai.it](mailto:iai@iai.it)

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