

Report of EUIJ Academic Seminar Series

Series No.	130
Date	10 November 2010
Venue	Kobe University
Speaker	Prof. Piet Eeckhout (Professor of European Law / Director, Centre of European Law School of Law, King' s College London)
Topic	EU' s Implementation of UN Security Council Resolutions
Objective	To discuss the EU's implementation of the UN Security Council Resolutions in the context of targeted sanctions against individuals and groups alleged to be associated with terrorist organizations. To analyze the court cases brought before the European Court of Justice against the Council by an individual affected by the Regulation implementing UN Security Council Resolutions.
Conclusion	<p>[Structure of the lecture]</p> <p>Prof. Eeckhout, Professor of European law, King' s College London, started his lecture by giving the background information on the general relationship between the EU and the UN, in particular, the UN sanctions in which the EU has been most involved. He proceeded to explain about a well-known cases of the European Court of Justice (hereinafter ECJ), the Kadi cases [Joined Cases C-402/05 P and C-415/05 P Kadi and Al Barakaat v Council and Commission[2008] ECR I-6351], in details, in which the speaker himself is also professionally involved. After the presentation, he had answered the questions from the floor.</p> <p>[Background discussions]</p> <p>The EU involvement has started with trade embargoes within EU' s exclusive competence. When the EU was set up in 1950' s in its original form, there was little that was going on between the EU and the UN, for the EU (then the EC) was an economical entity whose purpose was to establish common markets among member states. However, because of its competence in economic activities of the member states including trade matters, the EU became a principal actor in trade sanctions and embargoes when they were required by United Nations Security Council (hereinafter the UNSC) resolutions. In particular, in 1990' s, the EU became quite active in adopting trade sanctions and embargoes in order to implement UNSC resolutions that required such measures against Serbia, Iraq, etc. On one hand, with regard to the legal aspects of such measures, the ECJ has already clearly pronounced in 1970' s that basically member states of the EC have no competence, no powers of their own on the trade issues. According to the exclusive competence of the EC, the decision concerning trade embargoes for the sake of international peace and security were to be made by the EC, and not by the member states. Today, there is an article in the Maastricht Treaty (1993) that provides for the legal basis for interrupting or reducing economic relations with third countries. The same provision could be a basis not only for trade sanctions but also for measures such as travel bans or restriction on financial transactions between a member state of the EU and a target country. On the other hand, regarding the practical impact of the sanctions under the UNSC resolutions, whether these general embargoes against target countries are effective enough to bring a change is uncertain. Examples include Iraq, where the population had suffered the consequence of the measures much more than the leadership, or in other words, the regime itself. Given this uncertainty, the UN and the EU practice started focusing on targeting regimes rather than the entire country. Sanctions under such a policy are known as "Smart Sanctions". The UN had adopted resolutions which required its member states to freeze the assets, bank accounts etc., of the identified targets. The speaker emphasized that this change in the target of the sanctions adopted by the UNSC is a very important development.</p> <p>[Main discussions]</p> <p>After 9/11, the UNSC adopted a resolution that required the UN member states to, inter alia, freeze the assets of terrorist supporters. The names of the alleged terrorist supporters were provided by the Security Council but there was no transparency in how the Security Council had ended up with the particular list of individuals and groups. There was, at that time, no review mechanism even if these individuals had complaints. This UNSC resolution, together with the relevant subsequent resolutions, were quickly implemented by the EU. However, various legal issues of various levels have emerged. First, there were questions of "constitutionality" of the EU Regulations in this case. Second, given the UNSC resolutions' binding force under international law (Arts. 25 and 103 of the UN Charter), since all members of the EU are also members of the UN, the EU member states face a situation of conflict between the EU law and the UN Charter in the event that the EU disagrees with these resolutions on the basis of the EU law. Third, no 'due process' existed at UN level for the individuals who were listed as people having connection with the terrorist organizations.(The "focal point" was established only later, to process the individual complaints, and the system was somewhat reinforced by introducing an Ombudsman for this purpose.) Fourth, the EU has developed its own human rights standards, and it is founded on respect for human rights and fundamental freedom.</p> <p>These were in fact some of the issues that the ECJ had to deal with when the case was first brought to the Court of First</p>

	<p>Instance (now the General Court) by Mr. Kadi in 2001. Mr. Kadi is a Saudi-Arabian businessman and tried to fight against sanctions being listed on Oct. 2001.</p> <p>After 9/11, first the United States froze his assets, then the UN and the EU followed the US example. No reasons were given by the UN for having listed his name in the sanctions list. He was also listed in the EU regulations that implemented the relevant UNSC resolutions.</p> <p>The Court of First Instance, while recognizing that the EU has never signed the UN Charter, nevertheless observed that all member states of the EU are also members of the UN. Thus, according to the Court, the EU must respect the UN Charter and the UN law had primacy so to speak. This meant that there could be no review of the UN actions on grounds of general principles of the EU law (i.e., human rights). The Court also concluded that despite the importance of human rights in the EU law, they did not have a place in this case because it would constitute indirect review of the UN resolutions. Having lost his case, Mr. Kadi brought an appeal before the Appeal Court of Justice. This time, the ECJ made use of different arguments and came to different conclusions: First, the EU is based on the principle of rule of law, and all acts of EU institutions are subject to judicial review. Second, the EU must respect its standards of human rights for its acts to be lawful. Third, the EU law has its autonomy, and is an order which is distinct from international law, described as a “new legal order” in the case-law. Fourth, while the EU respects the role of the UN, that does not exclude judicial review by the EU institutions such as this one. Fifth, the Court confirmed that human rights were a foundation of the EU, which is confirmed by the case-law of the European Court of Human Rights, too. Sixth, UN procedures do not guarantee adequate judicial protection.</p> <p>Upon these observations, the Court proceeded to the judicial review of the case and established a breach of principle of effective judicial protection and right to property. Finally, no evidence was revealed to prove that Mr. Kadi was associated with terrorist organizations, so the EU Regulation in question was annulled. At the same time, nothing in the case established that Mr. Kadi was not associated with terrorism and Mr. Kadi is still on the list of individuals whose assets are frozen today. In the Kadi II case in 2010, given this fact, the General Court stated that human rights were still not respected.</p> <p>At the end of the presentation, the speaker highlighted a number of general legal issues with regard to the EU’s implementation of UNSC resolutions in this context. These include the following topics: Is the UNSC bound by human rights?; could the actions by the ECJ considered as a de-centralized review of UN resolutions?</p> <p>Before concluding the seminar, the speaker answered a number of questions, which were about “smart sanctions”, the nature of administrative measures that last for a very long period of time, and the possibility of Mr. Kadi’s lawsuits in Saudi Arabia as well as the Saudi-Arabian government’s actions concerning this case within the UN. The speaker had previously published “Community Terrorism Listings, Fundamental Rights, and UN Security Council Resolutions: In Search of the Right Fit”, 3 <i>European Constitutional Law Review</i> (2007), pp. 183-207.</p>
Number of Audiences	21 (2 faculty members, 18 graduate students, 1 from EUIJ)