

# **International Sanctions as a Tool of Global Governance?**

## **The Case of the Czech Republic<sup>1</sup>**

Paper prepared for the 7<sup>th</sup> Pan-European International Relations Conference, Stockholm 9-11 September 2010 (draft version, please do not quote)

### **Authors**

Radka Druláková, Jan Martin Rolenc, Zuzana Trávníčková, Štěpánka Zemanová, University of Economics, Prague

### **Introduction**

Since the end of the Cold War, substantial changes have occurred in multilateral international sanctions regimes and international sanctions policy. They include general shifts of sanctions activity from unilateral, performed by various individual states (especially the powerful ones such as the U.S.), to multilateral, performed ever more often within an international institution (such as the UN, EU or OSCE). In addition, some particular initiatives have been brought into effect too, especially with the aims to reduce the formerly high degree of politicization of the area (especially on the level of the UN Security Council), to adapt the existing scale of sanctions tools to new international threats such as escalating interstate conflicts or global terrorism, to limit the negative effects of sanctions in relation to civil population, and last but not least to increase the often unsatisfactory effectiveness of individual sanctions regimes.

Each of these developments has attracted much attention among both practitioners and scholars. The theory of international relations and security studies have contributed with critical assesment of the existing sanction tools, as well as with identification of new security threats at the eve of the new millenium. The quantitative interdisciplinay research combining approaches of political science, economics and statistics has dealt extensively with the impact and effectiveness of santions regimes. However, the issue of sanctions effectiveness has been so far examined primarily from the target perspective, i.e. the ability to achieve goals and to

---

<sup>1</sup> The authors gratefully acknowledge funding from the Czech Science Foundation (research project No. P408/10/0191. The International Context of the Czech Sanctions Policy) and from the Ministry of Education, Youth and Sports of the Czech Republic and the Faculty of International Relations, University of Economic Prague (research plan No. MSM6138439909, Governance in Context of Globalized Society and Economy).

change policy or other behaviour of the targeted state or other targeted entity (target). This is only one part of the story as the effectiveness is a complex issue which, of course, ends by the target but starts by the state sending particular sanctions measures (sender). In this paper, we adopt the latter perspective, i.e. that of the sender. We also focus primarily on economic sanctions<sup>2</sup> as the majority of the research on sanctions effectiveness does. As the theory of international regimes tells us, an important aspect of regime effectiveness (including effectiveness of sanctions regimes) and a prerequisite for achieving goals consists in regime strength which may be defined as the ‘ability of states to cooperate in the issue area’ (Hasenclever – Mayer – Rittberger 1997: 2).

According to Biersteker et al. (2005: 58), the changing practice within the field of international sanctions requires, for example, that the senders: possess legal authority to implement relevant resolutions; ‘designate an administrative agency to oversee implementation; disseminate information to those affected by sanctions; undertake compliance activities; decide upon exemptions and exceptions as appropriate; and pursue enforcement actions where sanctions are breached’. These requirements may be considered the general aspects of sanctions implementation at the national level. In addition, there are also several sector-specific requirements such as administration of frozen assets. In other words, to create an effective sanctions regime means not only to use effective sanctions tools which really affect the target but, in the first place, to force the sending states to meet several new legal and administrative demands when imposing superior sanctions. The ability of international institutions which create multilateral sanctions regimes to influence the behaviour of their member states in order to increase the effectiveness of sanctions at the side of the sender is still an understudied issue. Thus, it is addressed in this paper both theoretically and from a practical point of view, using the case of the Czech Republic and its involvement in the sanctions regimes created by the UN and the EU.

The first part of the paper searches for variables which determine the member states’ compliance with sanctions regimes and the institutions’ potential to influence the states’ behaviour when they implement the sanctions regime. The second part specifies the instruments used by the United Nations. The third part focuses on the current sanctions policy instruments of the EU. The fourth chapter analyzes the new shape of the Czech sanctions policy and its components which relate to the implementation of economic sanctions. In

---

<sup>2</sup> Economic sanctions include both trade (embargo, boycott, tariff increase, tariff discrimination, quotas, dumping, etc.) and capital measures (freezing of assets, aid suspension, controls on capital movements, etc.).

particular, the paper examines the extent of recent changes within the Czech sanctions policy and their relationship with the dynamics of the UN and EU sanctions policies, in order to determine to what extent they result from global processes at the level of the UN and how far they rather correspond to the initiatives of the EU.

## **1 Sanctions regimes from a sender perspective – a theoretical point of view**

As we have mentioned in the Introduction, the international society, responding to the difficulties with using the traditional economic sanctions instruments during the Cold War era, has since the 1990s been struggling to develop new sanctions designs. During the past two decades, these initiatives have led to the creation of new sanctions instruments such as targeted (smart) sanctions which: constrain the wealthiest social strata and political elites and do not affect common people in the target countries, enable the international society to respond better to new types of conflicts (rather internal than international), are more acceptable to general public and reduce administrative burdens of imposing states (what is connected with sanctions regime observance control). This tendency has been widely reflected in theoretical literature, for example in Tostensen – Bull 2002, Wallensteen – Staibano – Eriksson 2003, and Strandow – Wallensteen 2007).

Hand in hand with the change in the nature of sanctions, sanctions activity moved from a unilateral base to a multilateral one, performed ever more often within international institutions. This has also been reflected in numerous titles. As far as multilateral sanctions regimes applied particularly by the UN are concerned, Cortright – Lopez (2000), Anthony (2002), and Horn (2003) may be given as examples. In addition, several studies deal with the concrete possibilities and limits of the UN sanctions policy in the era of humanization of international politics (e.g. Weiss 1999, Addis 2003, Bessler – Garfield – Mc Hugh 2004) and in the context of democratization and good governance (e.g. Hart 2000, Trávníčková – Druláková – Zemanová 2008). The EU sanctions policy, its legal basis, context, development, problems and effectiveness are discussed inter alia in Kreutz 2005, de Vries 2002, and Druláková – Trávníčková – Zemanová 2009).

However, the interplay of levels on which multilateral sanctions can be imposed and implemented has not been examined consistently so far, even though there is a clear practical linkage as the EU, in the framework of its sanctions policy, also implements measures

introduced by the UN. A broader reflection of the impact of the new sanctions policy on individual policies of the sender states which represent the crucial part of the implementation mechanisms has been missing as well. For example, as far as the Czech Republic is concerned, only a few papers are available for the time being (Tesař et al. 2002, Trávníčková – Druláková – Zemanová 2008). Also these papers focus primarily on the international development but the latest changes within the Czech national environment, especially the changes of legislation and the adoption of appropriate executive measures, are addressed very briefly.

The relationship between and importance of the various levels (global, regional, etc.) can be perceived an integral part of a wider framework of thought on international political, security, as well as economic order and governance. Most current academic debates in this field suggest that, in security terms (where the issue of international sanctions primarily belongs), it is doubtful whether any global order or global governance exists or even if it is in the making. On the contrary, most visible and successful security solutions appear to originate on subsystemic, most often regional level. Hence, in the security field, the power of regionalization seems to be stronger than the power of globalization (internationalization) (cf. Rolenc 2010).

Various explanations of this situation can be found. The most general is a normative-institutional one which suggests that, on global level, cultural, religious, as well as civilizational heterogeneity endures, leading to absence of consensus on basic values and norms, as well as absence of institutional structures which would be strong enough to withstand the global security challenges (Keohane 2002, Kirchner – Sperling 2007: 13). Simultaneously, institutions on various levels of governance have different tools to put through their aims and, consequently, this leads to various degrees of effectiveness of their activities. Other possible explanations are offered by the sociologic-institutionalist perspective. Within the UN, only a small group of states is involved in the decision-making when sanctions are imposed. In regional bodies such as the EU, the participation in sanctions policy-making is usually broader which brings more opportunities for social learning.

The adoption of international sanctions is a substantial (and definitely not a common) decision of the representatives of the state power (on the national level or in an international institution). The application of a sanctions regime, on the other hand, influences the daily life of not only the state authorities, but also of companies, enterprises and individuals. In the case

of targeted financial sanctions, each bank or other financial institution in the country must follow up the sanctions lists and not provide services to the listed entity. International sanctions bring both restrictions for the sanctioned persons and a duty to respect these restrictions of other subjects.

For example, the adoption of international sanctions by the UNSC creates an obligation for any state to follow the sanctions. But without further implementation, it is not directly binding for any national subjects. The duties stemming from the sanctions regime must be enacted in law. Otherwise, they would not be enforceable and the success of sanctions would depend on the will of banks and other entrepreneurs to observe the sanctions or not. States which adopt sanctions often and for which the participation in international sanctions regimes is important, create national legislation concerning the sanctions (or supranational legislation if we consider the Member States of the European Union).

Regarding the development of sanctions in, approximately, the past twenty years, the most visible general trend is the shift from comprehensive to targeted sanctions. What we can see, is that this shift has been realized hand in hand with a significant specification and delimitation of legal framework for sanctions. The legal regulation of international sanctions becomes more and more extensive and detailed. Together with journalists they devote great attention to any new U.S. sanctions legislation, as well as to new rulings of the European Union. It is a fact that no concrete research has yet been carried to tackle this issue, to characterize the quantitative and qualitative development of sanctions legislation and the reasons for such a development.

We suppose that the changes in the national sanctions legislation (later, we focus on the Czech Republic) may be explained by several reasons: by the internationalization, by the regionalization or by the immanent reaction of legislators on the sanctions policy (e.g. the more active is the sanctions policy, the more detailed must be the legislation; or the more are the sanctions targeted, the more detailed must be the legislation; or perhaps the more the state wants the sanctions policy to be really effective, the more detailed must be the legislation). In this paper, we do not analyze the circumstances of the growing mass of sanctions legislation all around the world. We build on the fact that the precise legal regulation is a necessary condition for an effective sanctions application.

Generally, there are three possible ways to design a legal framework for a sanctions regime (seen from the point of view of the sending state):

- National legislative mechanism: States known for their active (and independent) sanctions policy, in the first place the U.S., dispose of established proceedings to create a legal framework for a sanctions regime (in the U.S. this is represented by the acts of the Congress and the executive orders of the President). The application and enforcement of the sanctions legislation is ensured by a specialized body (in the U.S. the Office of the Foreign Assets Control of the Department of the Treasury).
- Supranational legislative mechanism: E.g. the European Union (the legal basis of the EU sanctions policy will be touched upon below).
- Legislative vacuum: Most of the states do not realize their autonomous sanctions policy. Regarding the sanctions adopted by the UNSC, they usually do not create special domestic legislation for the implementation of such measures.

Based on the general trends, according to which the process of regionalisation appears to be more effective than internationalization, and based on the actual conduct of the sanctions policies, one can hypothesize that it was primarily the authority of the EU which induced the current changes within the Czech sanctions policy and created conditions for an increased efficiency of the mechanisms for imposing sanctions by the Czech Republic as a state participating in sanctions regimes (in the role of the sender of sanctions). The validity of this hypothesis will be examined in the following sections.

## **2 The UN Economic Sanctions Policy**

Enforcement measures approved by the UN Security Council are characterized by their wide scope. In principle, they should be implemented by all the UN member states. At the same time, they include a broad range of tools reaching from international military action to comprehensive economic sanctions, and more specific measures such as arms embargoes, travel bans, financial sanctions and diplomatic restrictions. However, the permanent members of the UNSC dispose of a veto power when imposing sanctions and the approval or possible disapproval reflects inter alia the actual situation and the distribution of power in international relations. For that reason, the real use of enforcement measures was limited to a few cases

during the Cold War (the Korea question, Portuguese colonialism, South Africa, Rhodesia) and has been connected with many difficulties even today. Economic sanctions do not represent any exception in this regard. As Askari et al. (2003: 44) point out, there were only four economic sanctions episodes in the first 45 years of the existence of the UN and thirteen in the 1990s.

Next to legally binding decisions, sanctions may be also recommended by the UNSC. In such cases, it is not necessary that the member states follow the recommendations. They are rather mandated to do so as the possibility to impeach the legitimacy of sanctions is limited and broader international support safeguarded.

Each decision on sanctions is of individual nature and the Security Council designs the sanctions mechanism with respect to the specific circumstances of the concrete situation. As for the implementation of sanctions measures included in the UNSC resolutions, the signatories to the UN Charter are committed in Art. 25 to accept them and put them into effect. According to Art. 48, Sec. 2, they should do so both within the framework of their own international activities, as well as through international organisations in which they participate.

States, as well as other subjects to international relations, do not have to limit their sanctions initiatives to the maintenance or restoration of international peace and security. It is possible that they use sanctions also as a response to other types of severe breaking of international legal norms (recently e.g. of those protecting human rights). The options of the UN are, on the contrary) limited in this regard. It does not mean that the UN should serve only as a forum for conflict resolution. Together with its family of agencies it has to fulfil many other important tasks: for example, the development of friendly relations between countries, the achievement of international cooperation in solving international problems of economic, social, cultural, or humanitarian character and the strengthening of respect for human rights (the UN Charter, Chapter 1, Art. 1, Sec. 2 and 3). For their implementation, however, the use of positive action is presupposed. The Security Council may deal with the infringements of these principles by the imposition of sanctions, in connection with armed conflicts. However, if governments or non-governmental bodies which do not respect these norms are not involved in the conflict, the use of sanctions comes into consideration only if the relevant situation can be described as a threat to international peace. On the other hand, the UNSC has recently started to use sanctions in cases which do not directly have the nature of a conflict but threaten international

security, focusing primarily on international terrorism (Syria and Lebanon 2005) and the proliferation of nuclear weapons (North Korea, Iran 2006).

A broad room for discussion on possible steps to increase the effectiveness of sanctions approved by the UN was offered by the governments of Switzerland, Germany and Sweden, organizing a series of conferences focused on law enforcement tools. Conferences were held in March 1998 and March 1999 in Interlaken, in June 1999 in Geneva, in November 1999 in Bonn and in Berlin in December 2000. The so-called Interlaken process focused on financial sanctions, the Bonn-Berlin meetings focused on arms embargoes, travel restrictions and flight bans. The Stockholm conference raised also the issue of targeting economic embargoes which had not been captured in this process before.<sup>3</sup>

In 2000, the UNSC set up an informal working group on general sanctions issues. The group finished its work in late 2006 with an extensive report. Here it defined what the Security Council should take into account when designing targeted sanctions (feasibility, possible wider implications, combination of targeted sanctions, probability if the target country will be able to avoid sanctions measures) and recommended to establish clear criteria for the removal of sanctions. The group also considered appropriate to create a credible mechanism which would monitor the enforcement of sanctions. Such sanctions committees are, compared to the working group, formal institutions which are entrusted with the administration of sanctions regimes (Anthony 2002).

### **3. Sanctions in the EU Policy**

Concerning economic sanctions applied nowadays by the EU, most attention has been paid to tougher standards designed by the norms of the so-called hard law, in particular to directives and regulations, or in particular aspects to the decisions implementing the founding treaties or regulations.<sup>4</sup> If sanctions take the form of regulations, they directly impose certain obligations on the member states, being fully binding in all parts and not requiring (or even not allowing) transformation into the national law systems. Council regulations imposing sanctions and

---

<sup>3</sup> For a reflection of these practical recommendations to sanctions policy in the EU documents, see Figure 2 in the Annex.

<sup>4</sup> Besides the tougher models, the EU institutions apply also softer models outlined, for example, in the form of opinions or recommendations (e.g. the open method of coordination). The fact that the softer models are based on the standards of the so-called soft law or on other types of instruments does not mean that they are not legally binding or that they do not cause internal changes.

Commission regulations implementing them, being part of Community law, are directly applicable in the member states and, at the same time, they take precedence over the law of the member states which is inconsistent. Moreover, the Commission is responsible for checking the correct implementation of the regulations in the member states.

If sanctions take the form of directives, they prescribe the results the member states should achieve within a given time frame. However, they do not provide any obligatory means to reach those results. Hence, the directives usually leave to the Member States some flexibility in implementation. However, in some cases (e.g. technical or environmental standards) the space for manoeuvring within the given range is very limited and, instead of harmonization of law (which should be the main task of directives), they lead almost to the unification.

The tougher EU models of governance need to be implemented in the national environment. In this respect, the EU compels the states to adjust their policies, institutional framework and national legislation to the EU norms through direct or indirect adaptive pressure. The indirect pressure results from the transfer of national competences to the Community institutions, the legally binding form of the decision, the engagements of the states subject to the decisions, or from the fact that other states have been adapting too. The direct pressure is represented by the use of incentives and control or enforcement mechanisms (periodic reviews by the Commission, actions for infringement before the European Court of Justice, etc.). Compared to national legislation, the EU legislation bears several advantages – it minimizes the risk of different interpretations among the member states and impedes distortions of competition in a market without internal borders (de Vries – Hazelzet 2005: 96).

Sanctions measures, in principle, fall within the sphere of the EU Common Foreign and Security Policy. Therefore, the primary tools for imposing sanctions at the EU level lie in the common positions taken by the EU Council according to the Art. 15 of the Treaty of Amsterdam (TA). Although such tools are not legislative acts with clearly defined legal implications, the provisions of the Article oblige the member states to bring their national policies in line with the common position. With regard to economic sanctions, the described model is further strengthened by the first pillar instruments. According to the current rules under primary legislation wording, joint positions cannot be directly applied within the area of the single internal market. Implementation of these cases requires legislative action by the Article 301 of the Treaty Establishing the European Economic Community, enabling thus exceptions to the rules of its functioning.

The proposals to impose a sanctions regime are generally based on the member states or the Commission positions and are approved unanimously. However, such a vote brings certain difficulties with discrepancy; hence, the TA introduced the so-called constructive abstention mechanism to allow approval of the position also in the situation when some countries (with more than one third of the total number of votes in the Council) abstain. The countries which did not support the majority position are not obliged to follow it. According to the TA, in such cases they should however not proceed to acts contradicting the adopted position.

In the past decade, the most dynamic of the EU sanctions policy has been the area of economic and financial sanctions. Most of them take the form of the targeted sanctions. Targeting usually goes to governments of third countries or non-state entities and individuals (e.g. terrorist groups and terrorists).<sup>5</sup> This trend in sanctioning reflects the Treaty of Lisbon (TL) which institutes external measures against natural or legal persons or groups or non-state entities (Art. 188 TL), hand in hand with introducing judicial review (by the European Court of Justice) of the decisions subjecting an individual or entity to restrictive measures (Declaration 25 TL) (Druláková et al. 2010).

The targeting of economic sanctions is reflected, among other, in drawing up lists of organized groups and individuals against whom these measures are directed. For example, the EU website can be consulted regularly to look at the updated list of persons, groups and entities against which the EU applies the financial limitations.<sup>6</sup> This list is created on the basis of the common positions, the Council regulations or the implementing regulations of the Commission. The major role in the practical implementation of the economic restrictive measures in the EU plays the banking sector. Several banks (e.g. the London bank, Citibank) generate updated lists of terrorists and terrorist groups with which it is forbidden to trade. This prohibition is binding for both the public and the private sector and its infringement is punished with high financial penalties.

The EU tries to move toward increased sanctions effectiveness. For example, the EU in its current sanctions policy has responded quite successfully to the problems which tie the UN Security Council when imposing joint sanctions: the UNSC is missing a single language

---

<sup>5</sup> Where sanctions target persons, groups and entities which are not directly linked to the regime of a third country, Art. 60, 301 and 308 of the Treaty Establishing the European Community have been relied upon. In such cases, adoption of a regulation by the Council requires unanimity and prior consultation with the European Parliament.

<sup>6</sup> See [http://ec.europa.eu/external\\_relations/cfsp/sanctions/consol-list\\_en.htm](http://ec.europa.eu/external_relations/cfsp/sanctions/consol-list_en.htm).

standard for sanctions and, very often, there are problems with the reading of the resolution imposing sanctions. The EU has developed a standard language for the penalties to avoid such problems (these provisions are found in the Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) under the Common Foreign and Security Policy (15114/05), approved by the Council).<sup>7</sup> There are several key documents which have recently shaped the EU sanctions policy in the direction of increased effectiveness: the 2004 Basic Principles, the 2005 Guidelines, and the 2008 Best Practices. We have conducted an assessment of their contribution to the increased effectiveness in the form of figures (Figure 1 and Figure 2 in the Annex) comparing recommendations, both theoretical and practical, both on sanctions creation / adoption and implementation, and their reflection in the respective EU documents.

#### **4 The Czech Sanctions Policy between Internationalization and Regionalization**

The current shape of the Czech sanctions act was influenced by two processes: internationalization and regionalization – Europeanization in the Czech context. The internationalization affects the general shift from unilateral sanctions implemented by individual states (prevailing in the Cold war era) to multilateral sanctions. These sanctions are usually connected with an international institution. The United Nations plays the most important role in this sense. In the past two decades, the number and the scope of sanctions adopted by the UNSC grew up significantly (especially in comparison with the sanctions adopted from the 1950s to the 80s). Within the cooperation with the member states, academic community and non-state actors, the Security Council strives for higher effectiveness of the sanctions.

Unlike in the Cold War era, several international fora are available for a European state: the universal one with the UN as an umbrella and two regional ones represented by the OSCE and the EU. The Czech Republic as a developed, democratic Central-European country shares the values of the European and transatlantic society of states and is highly interested in the maintenance of international peace and security. As a small country with an open economy it must consider the necessity of good political and economic relations with its important partners, as well as look for possibilities of enlarging its trade areas. Moreover, it is interested

---

<sup>7</sup> The Guidelines contain the main principles of the EU sanctions policy, common definitions and sample text above which may be used as a model of legal instruments for implementing control measures.

in strong and powerful international organizations with the EU and the UN on the top. These interests are complementary and contradictory at the same time.

On the one hand, a secure and stable international environment with a low intensity of threats such as international terrorism, organized crime or migration pressures connected with interstate conflicts (which may be achieved, among other, through an effective use of the international sanctions regimes) contributes to progress in international trade and growth of external economic relations of individual states. If the effectiveness of sanctions increases, it can support growth of prestige and influence of the UN and, simultaneously, rise of the soft power of the EU. On the other hand, despite the changing nature of the international sanctions regimes, a possible danger of a negative impact on the foreign trade of the Czech Republic persists. This is demonstrated by the tensions between the Czech Ministry of Foreign Affairs (emphasizing security and political aspects of international sanctions) and the Ministry of Finance (considering rather economic ones) when implementing the relevant resolutions of the UN Security Council and the regulations of the Council of the EU.

In February 2006, the Parliament of the Czech Republic approved a new sanctions act (Act No. 69/2006 Coll., on the Implementation of International Sanctions). Thanks to the new act, the Czech foreign policy obtained a useful and effective domestic instrument. It enables to apply restrictive measures to support efforts to ensure peace and security, and stability in current world. The new regulation was adopted as a reaction on non-sufficient existing regulation. The first Czech (general) sanctions act entered into force in 2000 (Act No. 98/2000 Coll., on the Implementation of International Sanctions for the Maintenance of International Peace and Security). Before then, the situation was not sustainable: the Czech Republic had obligations based on international sanctions (especially sanctions adopted by the Security Council) but it had no legal instruments to impose these obligations on the national subjects.

The troubles caused by the legal vacuum came into light also in relation to the European Union. Since 1996, the restrictive measures adopted by the EU have been carried out also by the non-member states (states in the European Economic Area and associated states), including the Czech Republic. The Czech Republic implemented especially the arms embargoes. However, contrary to Poland, Slovenia, Bulgaria, Romania or Baltic States it did not joined the measures (the freezing of financial assets) against the Federative Republic of Yugoslavia and Serbia.

The described gap in legal regulation was partially filled in by the 2000 act. It was adopted in the time of intensive preparation of the Czech Republic for the accession to the EU. However, it was based on the old-fashioned conception of sanctions ‘targeted’ at states and state representatives. Further, it was not applicable to legal acts of the EU with direct effect and it did not define substantial procedures regarding the review of particular sanctions measures or the competence of appropriate bodies (cf. Sněmovní tisk... 2005). That is why, after several years, it had to be completely substituted.

The insufficiency of the general sanctions act was overcome by special regulations; for example, by the Act No. 4/2005 Coll., on Some Measures Relating to the Iraqi Republic, which was difficult to use in practice. Moreover, by the moment of adoption of this act, the corresponding regulation of the EC Council was already in force. Let us summarize the situation in 2005: the Czech Republic had a general sanctions act but it was not suitable for the application of measures contained in the EC regulations. This represented a hazard of criticism and recourse of the EU institutions. In fact, the sanctions act was not applied.

The problems described above were smoothed away in 2006 by the new sanctions act. Especially the relation to the EU sanctions was solved.<sup>8</sup> In Sec. 2, international sanctions are defined as a command, a prohibition or a restriction designed to keep or restore international peace and security, to protect fundamental human rights and to fight terrorism, based on:

- a) The UN Security Council resolutions, adopted in accordance with the Art. 41 of the UN Charter;
- b) The common positions, common actions and other measures of the EU;
- c) The directly applicable laws of the EC which implement a common position or a common action.<sup>9</sup>

The UNSC resolutions and the EC common positions (subparagraphs a) and b) of Sec. 2) are not directly applicable under the Czech law, that is why the appropriate obligations of natural as well as judicial persons have to be promulgated in a form of a Government regulation (Sec. 4 par. 1). The Ministry of Finance, especially the Financial Analytical Unit is the body

---

<sup>8</sup> Concurrently, a new law changing other acts was adopted (Act No. 70/2006 Coll.). It amended financial acts (on banks, on capital market entrepreneurship, on system of payment, or on the Securities Commission) and also updated administrative and criminal laws (e.g. introduced a new offence – breakage of international sanctions).

<sup>9</sup> This represents an important shift in comparison with the previous sanctions act (2000) which ignored the EU regulations as a source of sanctions measures.

entitled to authorize exceptions from the sanctions regime (Sec. 9), dispose of frozen assets (Sec. 11) and administer them (Sec. 13), and supervise observation of the restrictions (Sec.15).<sup>10</sup>

If we concentrate on the financial sanctions targeted on persons suspected of terrorism financing, the procedural provisions represent a substantial progress in the Czech sanctions regulation. The sanctions act in force institutes the application of administrative procedure and the possibility to open administrative proceedings (including legal remedies). The act follows trends obvious on the European, as well as the international level – decisions concerning the sanctions implementation must be transparent and the person affected by the decision must have the right to ask for a review.

In June 2008, the sanctions act was completed with the Government regulation No. 210/2008 Coll., Regarding the Implementation of Special Measures in the Fight against Terrorism. The regulation is foreseen by the sanctions act and reacts on a specific legal situation in the EU sanctions implementation. There are two essential models how to create sanctions binding in the EU: First, a common position and a directly applicable regulation may contain sanctions against non-member states, persons and entities based outside the Union. Second, in case of restrictions against European citizens and subjects (e.g. ETA and its members), the directly applicable instruments cannot be used. The list of such persons is published in a form of a common position. Each member state has to implement the common position in its national legislation by its own legislative procedures (i.e. the Government regulation in the Czech Republic).

## **Conclusion**

Concerning the ability of states to cooperate within international institutions in the area of sanctions policy, and / or the enforcement of adopted sanctions at the state level, both have gaps. Within the international environment, the sanctions adopted by the UNSC sometimes suffer from political dragging and the enforcement is ambiguous, having no strict mechanisms. Within the regional framework, represented here by the case of the EU

---

<sup>10</sup> By the implementation of arms embargoes and travel restrictions, the Ministry of Industry and Trade and the Ministry of Foreign Affairs play important role. The application of sanctions focused on education (e.g. the prohibition to provide education in the field of atomic energy or military equipment) is supervised by the Ministry of Education.

economic sanctions, only if the sanctions take form of regulations, they directly impose certain obligations on the member states, being fully binding in all parts and not requiring (or even not allowing) transformation into national law systems. Hence, the regional environment seems to be better in enforcement, though not perfect.

In the Czech Republic, the adoption of the sanctions Act No. 69/2006 Coll., on the Implementation of International Sanctions, and of the Government Regulation No. 210/2008 Coll., Regarding the Implementation of Special Measures in the Fight against Terrorism, is undoubtedly a manifestation of the Europeanization of the Czech sanctions policy. With some simplification, we may say that the Act was in relation to pretreatment to add a European dimension, and not only for economic sanctions. In the case of the Regulation, the development of the EU sanctions policy has brought a completely new topic into the Czech legal order. The hypothesis formulated in the beginning of the paper thus appears to be supported by the EU case – the EU action is pivotal for the current sanctions policy changes in the Czech environment.

The described legislative shifts have implicit character as they do not result from direct decision-making contained in the secondary EU legislation. As to the extent, we can speak of accommodation in relation to the sanctions Act and of transformation when considering the government Regulation, as well as the issue of anti-terrorism sanctions against European subjects. In addition to the requirements resulting from the EU membership, the new form of sanctions policy reflects again the wider international trends, particularly the shift from general to targeted (smart) sanctions.

Given that the Czech Republic does not apply unilateral sanctions, its foreign policy traditions and laws allow the application of only the UNSC sanctions or sanctions approved at the EU level. As the sanctions announced by the UNSC and the EU considerably overlap, the Czech sanctions policy (since joining the EU) may be described as a very accurate reflection of the EU sanctions policy, both in terms of the concrete measures and the longer-term trends. Again, this is evident in both the newest and the most punitive legislative acts – the 2006 Act and the 2008 Government Regulation.

## Literature

ADDIS, A. (2003): Economic Sanctions and the Problem of Evil. *Human Rights Quarterly*, Vol. 25, No. 3, pp. 573-623.

Amsterodamská smlouva 1998, Praha: Ústav mezinárodních vztahů.

ANTHONY, I. (2002): Sanctions Applied by the United Nations and the European Union. In *SIPRI Yearbook 2002: Armaments, Disarmament and International Security*, <http://www.sipri.org/contents/expcon/05.pdf> [29.1.08].

ASKARI, H. G. et al. (2003): *Economic Sanctions. Examining Their Philosophy and Efficacy*, Westport, London: Praeger.

Basic Principles on the Use of Restrictive Measures (Sanctions) (2004), Council doc. 10198/1/04.

BESSLER, M. – GARFIELD, R. – MC HUGH, G. (2004): *Sanctions Assessment Handbook. Assessing the Humanitarian Implications of Sanctions*. United Nations, <http://www.seco.admin.ch/themen/00513/00620/00639/00641/index.html?lang=en> [29.1.08].

BIERSTEKER, T. J. (Ed., 2001): *Targeted Financial Sanctions. A Manual for Design and Implementation*. Providence: The Tomas J. Watson Jr. Institute for International Studies, [www.seco.admin.ch/themen/00513/00620/00639/00641/index.html?lang=en](http://www.seco.admin.ch/themen/00513/00620/00639/00641/index.html?lang=en) [20.2.08].

Consolidated list of persons, groups and entities – subject to EU financial sanctions, [http://ec.europa.eu/external\\_relations/cfsp/sanctions/list/consol-list.htm](http://ec.europa.eu/external_relations/cfsp/sanctions/list/consol-list.htm) [29.1.08].

CORTRIGHT, D. – LOPEZ, G. A. (2000): *The Sanctions Decade: Assessing UN Strategies in the 1990s*. Lynne Rienner Publishers.

DE VRIES, A. W. (2002): European Union Sanctions against the Federal Republic of Yugoslavia from 1998 to 2000: A Special Exercise in Targeting. In: CORTRIGHT, D. – LOPEZ, G. A. (Eds., 2002). *Smart Sanctions. Targeting Economic Statecraft*. Maryland: Rowman & Littlefield Publishers, Int., pp. 87 – 108.

DE VRIES, A. W. – HAZELZET, H. (2005): The EU as a New Actor on the Sanctions Scene, In: WALLENSTEEN, P. – STAIBANO, C. (Eds., 2005): International Sanctions. Between Words and Wars in the Global System, Frank Cass: Oxon, pp. 95 – 107.

DRULÁKOVÁ, R. et al. (2010): Assessing the Effectiveness of EU Sanctions Policy, Central European Journal of International and Security Studies, Vol. 4, No. 1, <http://www.cejiss.org/articles/vol4-1/rolencetal/> [10.08.10].

DRULÁKOVÁ, R. – TRÁVNÍČKOVÁ, Z. – ZEMANOVÁ, Š. (2009): Ekonomické sankce na počátku 3. tisíciletí. Mezinárodní vztahy, roč. 44, č. 1, pp. 66–85.

Restrictive measures: EU Best Practices for the effective implementation of restrictive measures (2006), Council doc. 10533/06.

Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and security Policy (2005), Council doc. 15114/05.

HART, R. A. Jr. (2000): Democracy and the Successful Use of Economic Sanctions. Political Research Quarterly, Vol. 53, No. 2, pp. 267-284.

HASENCLEVER, A. – MAYER, P. – RITTBERGER, V. (1997): Theories of International Regimes, Cambridge: Cambridge University Press.

HORN, A. (2003): Multilaterale ökonomische Sanktionsregime der Vereinten Nationen: Konzepte, Probleme, Resultate. Frankfurt: Peter Lang.

KEOHANE, R. (2002):

KIRCHNER, E. J. – SPERLING, J. (Eds., 2007): Global Security Governance: Competing Perceptions of Security in the 21st Century, Oxon : Routledge.

KREUTZ, J. (2005): Hard Measures by a Soft Power? Sanctions Policy of the European Union, Bonn: Bonn International Center for Conversion.

Lisabonská smlouva pozměňující Smlouvu o Evropské unii a Smlouvu o založení Evropského společenství, podepsaná v Lisabonu dne 13. prosince 2007, [http://bookshop.europa.eu/eubookshop/FileCache/PUBPDF/FXAC08115CSC/FXAC08115CSC\\_002.pdf](http://bookshop.europa.eu/eubookshop/FileCache/PUBPDF/FXAC08115CSC/FXAC08115CSC_002.pdf) [6.9.10].

Monitoring and evaluation of restrictive measures (sanctions) in the framework of CFSP – Establishment of a „Sanctions“ Formation of the Foreign Relations Counsellors Working party (RELEX/Sanctions) 2004, Council doc. 5603/04.

Nařízení vlády č. 210/2008 Sb., k provedení zvláštních opatření k boji proti terorismu (Government regulation No. 210/2008 Coll., Regarding the Implementation of Special Measures in the Fight against Terrorism).

ROLENC, J. M. (2010): Mezinárodní bezpečnostní vztahy a regionální spolupráce, In: LEHMANNOVÁ, Z. et al. (2010): Formování globálního řádu? Globalizace a global governance, Praha: Vysoká škola ekonomická v Praze, Nakladatelství Oeconomica, pp. 140-146.

Sanctions or restrictive measures in force (measures adopted in the framework of the CFSP), [http://ec.europa.eu/external\\_relations/cfsp/sanctions/measures.htm](http://ec.europa.eu/external_relations/cfsp/sanctions/measures.htm) [29.1.08].

Sankce (společná zahraniční a bezpečnostní politika), [http://ec.europa.eu/external\\_relations/cfsp/sanctions/index\\_cs\\_2006.pdf](http://ec.europa.eu/external_relations/cfsp/sanctions/index_cs_2006.pdf) [29.1.08].

Sněmovní tisk 1007/0 – Vládní návrh na vydání zákona o provádění mezinárodních sankcí, <http://www.psp.cz/sqw/text/tiskt.sqw?o=4&ct=1007&ct1=0> [1.7.10].

STRANDOW, D. – WALLENSTEEN, P. (2007): United Nations Arms Embargoes. Their Impact on Arms Flows and Target Behavior, Stockholm: SIPRI, [http://www.smartsanctions.se/literature/un\\_embargoes\\_071126.pdf](http://www.smartsanctions.se/literature/un_embargoes_071126.pdf) [20.2.08].

TESAŘ, F. et al. (2002): Mezinárodní sankce (OSN, EU, OBSE, jednostranné sankce) jako donucovací nástroj řešení sporů v mezinárodních vztazích a jejich místo, úloha a dopady na českou zahraniční politiku. Summary of the project. Vydal???, [http://www.mzv.cz/public/d5/b5/38/14358\\_14945\\_RB\\_18\\_3\\_02.doc](http://www.mzv.cz/public/d5/b5/38/14358_14945_RB_18_3_02.doc) [20.2.09].

TOSTENSEN, A. – BULL, B. (2002): Are Smart Sanctions Feasible? World Politics, Vol. 54, No. 3, pp. 373-403.

TRÁVNÍČKOVÁ, Z. – DRULÁKOVÁ, R. – ZEMANOVÁ, Š. (2008): Protiteroristické sankce jako příklad dobré správy. Praha 31.10.2008. In: ONDŘEJ, J., ŠTURMA, P. (eds.,

2008). Bezpečnost organizací, mezinárodní bezpečnost a mezinárodní humanitární právo. Praha : Nakladatelství Eva Rozkotová – IFEC, pp. 211–221.

TRÁVNÍČKOVÁ, Z. – DRULÁKOVÁ, R. – ZEMANOVÁ, Š. (2008): Sankční politika Evropské unie, In: Europeanization of the national law, the Lisbon treaty and some other legal issues, Brno: Masarykova univerzita, pp. 1–12, [http://www.law.muni.cz/edicni/sborniky/cofola2008/files/pdf/mps/travnickova\\_zuzana.pdf](http://www.law.muni.cz/edicni/sborniky/cofola2008/files/pdf/mps/travnickova_zuzana.pdf) [5.9.10].

WALLENSTEEN, P. – STAIBANO, C. – ERIKSSON, M. (Eds., 2003): Making Targeted Sanctions Effective. Guidelines for the Implementation of UN Policy Options. Uppsala: Uppsala University, Department of Peace and Conflict Research, [http://www.smartsanctions.se/stockholm\\_proces/reports/final%report20complete.pdf](http://www.smartsanctions.se/stockholm_proces/reports/final%report20complete.pdf) [20.2.08].

WEISS, T. G. (1999): Sanctions as a Foreign Policy Tool: Weighing Humanitarian Impulses, *Journal of Peace Research*, Vol. 36, No. 5, pp. 499 – 509.

Zákon č. 4/2005, o některých opatřeních ve vztahu k Irácké republice (Act No. 4/2005 Coll., on Some Measures Relating to the Iraqi Republic).

Zákon č. 69/2006 Sb., o provádění mezinárodních sankcí (Act No. 69/2006 Coll., on the Implementation of International Sanctions).

Zákon č. 98/2000 Sb., o provádění mezinárodních sankcí k udržování mezinárodního míru a bezpečnosti (Act No. 98/2000 Coll., on the Implementation of International Sanctions for the Maintenance of International Peace and Security).

ZEMANOVÁ, Š. (2007): Výzkum europeizace – aktuální problémy a perspektivy. *Mezinárodní vztahy*, Vol. 42, No. 4, pp. 29–51.

ZEMANOVÁ, Š. (2008): Evropeizace zahraniční politiky v oblasti lidských práv. Praha: Oeconomica.

## **Annex**

**Figure 1:** Reflection of theoretical recommendations to sanctions policy in the EU documents<sup>11</sup>

Sanctions creation / adoption (Hufbauer et al. 2007, Cortright – Lopez 2000)	Reflection in the EU documents (Basic Principles 2004, Guidelines 2005, Best Practices 2008)	Sanctions implementation (Cortright – Lopez 2000)	Reflection in the EU documents (Basic Principles 2004, Guidelines 2005, Best Practices 2008)
Inverse proportionality sanctions—goals	NO, in fact (aims are overreaching, e.g. restore international peace etc.)	Flexible application of sanctions	YES (Basic Principles: Art. 8)
Good relations sender—target	NOT solved, actually	Targeted pressures	YES (Basic Principles: Art. 6)
Democratic regimes more likely to comply	NOT solved, actually	Conduct of humanitarian assessment reports and third party assessment studies	NOT solved, actually
Proportionality costs for the target—effectiveness	Generally, YES (Guidelines: Art. 9 in fine mentions the “proportionality of measures”), NOT for particular sanctions regimes	Streamlining of humanitarian exemption applications	YES (Guidelines: Art. 24, Basic Principles: Art. 6, Best Practices Art. 54-61)
No direct relation effectiveness—number of sending countries	NO, in fact (Basic Principles: Art. 4)		
Appropriateness of sanctions	NOT solved, actually		
More precise technical terms and definitions	YES (Guidelines: section III)		
Identification of the specific policy changes for sanctions to be lifted	Only on a general level (general statement), not for particular sanctions regimes (Guidelines: Art. 4)		

**Source:** Druláková et al. 2010

<sup>11</sup> Worked out by the authors on the basis of the following sources: Biersteker, Thomas J., Eckert, Sue E., Halegua, Aron, Romaniuk, Peter, Reid, Natalie. 2001. Targeted Financial Sanctions: A Manual for Design and Implementation. The Swiss Confederation in cooperation with the United Nations Secretariat and the Watson Institute of International Studies, Wallenstein, Peter, Staibano, Carina, Eriksson, Mikael (Eds.). 2003. Making Targeted Sanctions Effective. Guidelines for the Implementation of the UN Policy Options. Uppsala: Uppsala University, Department of Peace and Conflict Research. Available at: [http://www.reliefweb.int/rw/lib.nsf/db900sid/LGEL-5KEE3/\\$file/upp-sanction-2007.pdf](http://www.reliefweb.int/rw/lib.nsf/db900sid/LGEL-5KEE3/$file/upp-sanction-2007.pdf) [25-1-2010], Hufbauer, Gary Clyde – Schott, Jeffrey J., Elliott, Kimberley Ann, Oegg, Barbara. 2007. Economic Sanctions Reconsidered, 3rd edition. Peterson Institute for International Economics: Washington, Biersteker, Thomas J., Eckert, Sue E. (Eds.). 2006. Strengthening Sanctions through Fair and Clear Procedures, White Paper Prepared by the Watson Institute Targeted Sanctions Project. Providence: Watson Institute of International Studies, Brown University. Available at: [http://watsoninstitute.org/pub/Strengthening\\_Targeted\\_Sanctions.pdf](http://watsoninstitute.org/pub/Strengthening_Targeted_Sanctions.pdf) [19-1-2010], Cortright, David, Lopez, George A. 2000. The Sanctions Decade: Assessing UN Strategies in the 1990s. Boulder – London: Lynne Rienner Publishers., Basic Principles on the Use of Restrictive Measures (Sanctions) (Council doc. 10198/1/04), Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy (Council doc. 15114/05) and EU Best Practices for the effective implementation of restrictive measures (Council doc. 8666/08)

**Figure 2:** Reflection of practical recommendations in the EU documents<sup>10</sup>

<b>Sanctions creation (Interlaeken, Bonn-Berlin, Stockholm, Watson)</b>	<b>Reflection in the EU documents (Basic Principles 2004, Guidelines 2005, Best Practices 2008)</b>	<b>Sanctions implementation (Interlaeken, Bonn-Berlin, Stockholm)</b>	<b>Reflection in the EU documents (Basic Principles 2004, Guidelines 2005, Best Practices 2008)</b>
Common language (definitions of key terms)	YES (Guidelines: Section III)	Appropriate legal framework (model law)	YES (especially in Guidelines)
Standardized design of sanctions resolutions	YES (Guidelines: Section III)	Administering agency (agencies)	YES (Council, RELEX/Sanctions)
Consideration of exemptions and exceptions	YES (Guidelines: Art. 24, 25, Best Practices: Art. 54-61)	Development and dissemination of information	YES (Guidelines: Art. 26, Part IV, Best Practices: Part E)
Financial sanctions targeting also elites and their supporters	YES (Guidelines: Art. 14)	Enforcement efforts	More or less, YES (Basic Principles: Art. 5)
Listing and procedures of de-listing	YES (Listing: Guidelines: Art. 17, De-listing: Council 0826/1/07 REV 1, Best Practices: Art. 17)	Compliance initiatives	YES (Guidelines: Art. 4)
		Best practices comparison	NO
		Better communication and coordination between actors involved in sanctions policy	YES (Guidelines: Art. 26, Best Practices: Art. 62-77, Art. 35)
		More effective monitoring of sanctions implementation	Generally, YES (Basic Principles: Art. 9, Guidelines: Part IV, Best Practices: Art. 66)

**Source:** Druláková et al. 2010