

Grado en Derecho
Trabajo de Fin de Grado (21067/22747)
Curso académico 2015-2016

**LEGAL ANALYSIS OF THE RESTRICTIVE
MEASURES IMPOSED BY THE EUROPEAN UNION
AND THE UNITED STATES ON THE RUSSIAN
FEDERATION**

Inés Blanco de Tord
151471

Tutor del trabajo:
Ángel José Rodrigo Hernández



**Universitat
Pompeu Fabra**
Barcelona

DECLARACIÓ D'AUTORIA I ORIGINALITAT

Jo, *Inés Blanco de Tord*, certifico que el present treball no ha estat presentat per a l'avaluació de cap altra assignatura, ja sigui en part o en la seva totalitat. Certifico també que el seu contingut és original i que en sóc l'únic autor, no incloent cap material anteriorment publicat o escrit per altres persones llevat d'aquells casos indicats al llarg del text.

Com a autor/a de la memòria original d'aquest Treball Fi de Grau autoritzo la UPF a dipositar-la i publicar-la a l'e-Repository: Repositori Digital de la UPF, <http://repositori.upf.edu>, o en qualsevol altra plataforma digital creada per o participada per la Universitat, d'accés obert per Internet. Aquesta autorització té caràcter indefinit, gratuït i no exclusiu, és a dir, sóc lliure de publicar-la en qualsevol altre lloc.

Inés Blanco de Tord
Barcelona, 3 de juny de 2016

ABSTRACT

The restrictive measures imposed by the European Union and the United States on Russian individuals and entities are an example of the appearance of new forms of economic statecraft as means to deal with the global challenges that we are facing nowadays. The vast literature on this topic in different fields, especially in International Law, proves its relevance and complexity. The concepts of sanctions, countermeasures and restrictive measures are subject to many different interpretations. Thus, one important task is to qualify the measures adopted against Russia given their specific characteristics. To analyze the efficacy of these measures, it is first important to understand their content, their purpose and their target. The EU and the US set different procedures for the adoption of these measures but their content is substantially similar. Finally, the political and economic consequences need to be examined with regards to the purposes and the nature of the restrictive measures, which were designed to coerce and constrain, but above all to signal the position of the initiators and their rejection to the responsible actors' actions. Finally, the future of the conflict in Crimea and East Ukraine is unpredictable and it certainly depends on the peaceful cooperation of all the parties involved.

INDEX

I. Introduction.....	5
II. Background to the conflict.....	7
III. Sanctions, countermeasures and restrictive measures	9
A. THE CONCEPT OF INTERNATIONAL SANCTION.....	9
B. COUNTERMEASURES.....	12
C. RESTRICTIVE MEASURES ADOPTED BY THE EUROPEAN UNION AND THE UNITED STATES	16
IV. Restrictive measures adopted by the European Union against Russia	18
A. JURIDICAL BASE.....	18
B. COMPETENT ORGANS AND ADOPTION PROCEDURE	19
C. CONTENT	22
V. Restrictive measures adopted by the United States against Russia	25
A. JURIDICAL BASE.....	25
B. COMPETENT ORGANS AND ADOPTION PROCEDURE	26
C. CONTENT	27
VI. Analysis of the effectiveness of the sanctions	30
A. EFFECTIVENESS OF THE MEASURES: POLITICAL AND ECONOMIC CONSEQUENCES	30
B. EFFECTIVENESS OF THE MEASURES IN RELATION TO THEIR AIMS.....	31
VII. Conclusions.....	37
VIII. Bibliography	39
IX. Documents.....	43
X. Case law	47
XI. Annex.....	48

I. Introduction

The aim of this paper is to analyze from a legal point of view the measures imposed by the European Union and the United States on Russian individuals and entities, in response to the annexation of Crimea and the crisis in Eastern Ukraine.

We live in a world of new challenges and threats of global dimensions, which cannot be solved only by two or even various states. One of the tangible consequences of this scenario, in contrast with previous conflicts in history, is that the disputes between big players are not anymore of a military character, but rather they have an economic nature. Nowadays, geopolitics and economics come hand in hand as a tool to project power. I believe that the analysis of these specific sanctions regime would help to grasp the numerous challenges that the states are facing in their compliance with International Law in this new context.

In this paper I defend two main theses. On the one hand, after my analysis I have concluded that the most accurate denomination of such measures according to International Law is “restrictive measures”. Although other legal terms such as “sanctions” or “countermeasures” could also be admissible depending on the interpretation of such concepts, as it will be explained afterwards, I believe that according to the characteristics of the instruments adopted against Russia, “restrictive measures” is the most adequate term to describe them.

On the other hand, regarding the effectiveness of the measures, I believe it is not possible to determine the exact impact of their implementation. However, Russia’s political and economic situation has been very unstable during these past years and it is clear that the measures have contributed to this current outlook. Moreover, the country’s future remains unpredictable because it depends on the development of the conflict and on the actions taken by the different actors involved.

Therefore, the core of the paper consists of two main sections. The first one tries to legally qualify the restrictive measures and describe the legal issues that they present, by examining all the different interpretations abounding in literature regarding the concepts of sanctions and countermeasures.. The following section explains what is the legal procedure for the adoption of these measures, according to the EU and the US legal systems. It particularly focuses on the process followed in this specific conflict.

The other main part of the analysis focuses on the effectiveness of the measures. Did the sanctions have a big impact on the Russian economy and political system? Are there any observable results that the Western measures have fostered a change in Russia's behavior? To answer these questions it is important to first describe both the economic and political consequences of their adoption. Secondly, the effectiveness of the measures is evaluated with regards to their aim. The purpose is to analyze the intentions that the actors were pursuing with the design of these instruments and whether they were successful in achieving them or not.

For the writing of this paper I have primarily used secondary sources of law, such as international legal literature and doctrine written by academics and practitioners, specialized journals and reports from international organizations and think tanks, as well as EU secondary sources like unilateral acts and agreements (i.e. Directives, Regulations...), and US executive orders and other documents issued by the US government. I have accessed to these documents through the official European Union Law database (EUR-Lex) and the US Federal Register website. Additionally, I have also used primary sources of law such as the US Constitution and several EU treaties.

The topic covered in this paper is a very contemporary and current issue, as both the conflict and the sanctions are still ongoing. Therefore, one of the most important tasks has consisted in constantly looking for the most recent information and afterwards contrasting it with the official documents released by the public authorities. Throughout my research I have also had some difficulties to find unbiased and trustful information, above all in the Russian media. Moreover, there is a wide diversity of opinions and theories around the topic of international sanctions, so one important challenge was to learn to analyze and build my own interpretation. This has not always been easy, especially when it implied defining complex legal terms.

Finally, I want to point out again the relevance of the topic of this paper nowadays because it provides an example of the importance of supranational governance to deal with modern international conflicts.

II. Background to the conflict

The crisis between Russia and Ukraine started with the popular uprising that took place in Kyiv's Maidan Square in November 2013 against President Yanukovich's regime and his rejection to sign the association agreement with the European Union.

In early 2014 the protests developed into turmoil and triggered the emergence of an interim government of national unity. The parliament voted to remove Yanukovich from office -who fled the country- and to hold early presidential elections. On February 27th Russian forces began to take over Crimea, an autonomous republic within Ukraine. Crimea was annexed by Russia on March 18th, when trouble was spreading through parts of Eastern Ukraine, and separatist groups, mainly Russian-backed militias, took over government buildings and whole towns.

These events sparked the biggest crisis between Russia and the West since the Cold War, and as the crisis deepened, Western governments, led by the European Union and the United States, imposed unprecedented sanctions against President Vladimir Putin's government. Although the EU had adopted informal sanctions before, it was not until March 17th, after the celebration of the Crimean referendum to join Russia, that the EU adopted its first formal measures against Russia.

The conflict entered a more violent phase in the following months and particularly after the shooting down of Malaysia Airlines flight MH17 over Hrabove, on July 17th. Following that tragic incident, the European Union, the United States, Canada and other Allies and partners enacted sanctions in a coordinated manner.¹² The West increased the scope of its sanctions when the conflict expanded into other parts of southern and eastern Ukraine and afterwards escalated into the ongoing war in the Donbass region.

The Russian government responded in kind, adopting sanctions against some Canadian and American individuals and, in August 2014, with a total ban on food imports from the European Union, United States, Norway, Canada and Australia.

After multiple attempts to halt the war in the Donbass region, the Minsk I agreement (also called Minsk Protocol) implemented an immediate ceasefire. The agreement was signed in

¹ Vincent L. Morelli, "Ukraine: Current Issues and U.S. Policy", (U.S. Library of Congressional Research Service. RL 33460, 2016)

² "Report on the human rights situation in Ukraine", (Office of the United Nations High Commissioner for Human Rights, December 15th 2014)

September 2014 by representatives of Ukraine, the Russian Federation, the Donetsk People's Republic, and the Lugansk People's Republic, following extensive talks in Minsk under the auspices of the Organization for Security and Cooperation in Europe.

The ceasefire collapsed one year later and a new package of measures, called “Minsk II”, was agreed to on 12 February 2015, with the aim to stop fighting in the Donbass.

One year later in February 2016, however, Crimea is still in Russian hands, approximately 7% of Ukrainian territory remains under control of the separatists and Russia, and the implementation of the Minsk II agreement has remained elusive.³

An early, clear resolution of the problem is still unlikely. The prospects for a long-term political settlement of the diplomatic crisis in eastern Ukraine remain remote and the instability of the region will continue unless all the actors prove their commitment to the Minsk process.

³ Morelli, “Ukraine: Current Issues and U.S. Policy” (2016). See also “Russia and the Separatists in Eastern Ukraine” (Crisis Group Europe and Central Asia Briefing N°79, Kyiv/Brussels, 5 February 2016)

III. Sanctions, countermeasures and restrictive measures

Since the beginning of the 21st century, the debate on the concept of sanctions has gained special importance in international legal literature. It is indeed one of the most controversial and exciting topics in International Law nowadays, specially because it is an issue where law meets politics. Therefore, as we go deeper into the analysis of the measures adopted by the EU and the US against Russia, we first need to examine this issue and determine which of the definitions of the term better applies in this context.

a. The concept of international sanction

According to some lines of opinion, the term “sanction” must be restricted to the coercive measures adopted by a “competent social organ”, which is an organ within an international organization, against an entity (usually a State) that has failed to comply with a treaty.⁴

Depending on what we understand by Law, it is possible to find different meanings of “sanction” within any legal system.

For natural law theorists or positivists, sanctions are a cosubstantial element of law. In Austinian terms, law is nothing more but the command of the sovereign based on the power to inflict punishment, and thus basically a “command backed by threats”.⁵ His successors, however, believe that law is the primary norm, which stipulates the sanction. Hans Kelsen understands law as a coercive order and therefore argues that “a social order guaranteeing collective security is by its very nature a legal order, and a legal order is a system of norms providing for sanctions”.⁶ Therefore, as Nicholas Tsagourias and Nigel D. White explain, Kelsen believes that sanctions are “an inherent component of any legal order including one providing Collective Security”.⁷ Professor Georges Abi-Saab also conceives sanctions as “an attribute of the legal system as such, and not of every legal rule or norm in isolation”.⁸

In contrast with this idea, Hart considers that the sanction can sometimes be missing and thus that it is not an essential element of the legal system as a whole and even less of each rule

⁴ Georges Abi-Saab, “The Concept of Sanctions in International Law”, in Vera Gowlland-Debbas (ed.), *United Nations Sanctions And International Law* (Kluwer Law International, 2001), 32.

⁵ Hans Kelsen, *Pure Theory Of Law* (University of California Press, 1967), 31, 71-5

⁶ Hans Kelsen, *Collective Security Under International Law* (Washington DC, Naval War College, 1957 - New Jersey, Law book Exchange, 2011), 101

⁷ Kelsen, *Pure Theory Of Law* (1967), *op cit.* 31, 71-5

⁸ Abi-Saab, “The Concept of Sanctions in International Law” (2001), *op cit.* 80

taken individually.⁹ Furthermore, Hart considers that underdeveloped legal systems, such as the international legal order, are characterised by a lack of centralized coercion.

If we considered a *stricto sensu* definition of sanctions, the term would only include all coercive measures taken in execution of a decision of a competent social organ. Abi-Saab defines a “competent social organ” as any organ “that is legally empowered to act in the name of society or community that is governed by the legal system”.¹⁰ This definition implies that collective measures taken by a group of States outside the determination by a competent social organ would not fall within the concept of sanction. Therefore, the restrictive measures adopted against Russia would not meet one of the three elements that stand out in this definition: the application of a recommendation from a competent social organ such as, for example, the United Nations Security Council.

However, Abi-Saab defends nowadays a broad concept of sanction, which comprises all the means and guarantees needed to ensure the adequate functioning of the legal system, or how he calls it, its “normative integrity”, i.e. the conformity of social conduct with its normative prescriptions.¹¹ These means to protect normative integrity can be preventive, corrective, legal or coercive. In his broader definition of sanction, enforcement would not be an essential element, but a possible step in case there is the required determination by a legally competent organ. According to this interpretation, it would be correct to use the term sanctions to refer to the measures adopted against Russia.

Another line of opinion focuses the interpretation of the concept on the cause that triggers the adoption of the sanction. For instance, for Vera Gowlland-Debbas, three elements are common to any definition of sanction: “They constitute legal consequences following on a violation of a legal obligation, they infringe the subjective legal rights of the party against whom they are directed, and they are measures which amount to a dispensation of the sanctioning state from a legal obligation (a circumstance excluding wrongfulness)”.¹² Also, Nicholas Tsagourias and Nigel D. White define sanctions as “non-forcible measures taken in response to actual or potential violations of international public order norms”. These sanctions

⁹ Ibid. 30

¹⁰ Ibid.

¹¹ Ibid. 80

¹² Vera Gowlland-Debbas, “UN Sanctions and International Law: an overview” in Vera Gowlland-Debbas (ed.), *United Nations Sanctions And International Law*, *op. cit.* 2-28.

include a variety of financial, diplomatic and economic measures.¹³ Moreover, according to Picchio Forlati, measures are only labeled as sanctions when threats and violations of international peace and security are also breaches of law. If no such breach has taken place, they cannot be called sanctions.¹⁴ In Tsagourias and White's opinion, Kelsen's conception of sanctions as "coercive reactions against an actual violation of the law", or "against suspected or expected violation"¹⁵ allows anticipatory action against possible violations of the law, but leaves out the idea that collective security should be able to deal with any kind of threat to peace or security, regardless of whether the violation of international law is actual or potential.

Nevertheless, Kelsen accepts that legal systems legitimate coercive measures necessary to maintain peace and security, even though they have no relation to actual or possible violations of the law. And as the aforementioned authors also point out, Kelsen concludes that it is the threat to, or breach of, the peace rather than any violations of international law what really triggers collective security action.¹⁶

As we have seen, according to some authors sanctions only refer to centralized reactions that follow international secondary rules and that take place exclusively against internationally unlawful acts. However, according to others, a collective reaction by a group of States, or by international society at large, to attacks against shared interests, like in the case studied in this paper, would also qualify as a sanction.¹⁷

Picchio detects two different conceptions in the doctrine of sanctions in international law:

- (a) an unlawful act as a precondition for sanctions
- (b) identifying sanctions with institutional centralized reactions to situations of any kind negatively affecting general interests, breaches of international law included.¹⁸

On the one hand, the first alternative limits the concept of sanctions to reactions to unlawful acts. Therefore, according to this conception only countermeasures would fully qualify as

¹³ Nicholas Tsagourias and Nigel D. White, "*Collective Security: Theory, Law and Practice*", First ed. (United Kingdom, Cambridge University Press, 2013), 221

¹⁴ Laura Picchio Forlati, "The Legal Core of International Economic Sanctions" in Laura Picchio Forlati, Linos-Alexandre Sicilianos, *Les Sanctions Économiques en Droit International*, (Leiden [etc.]: Martinus Nijhoff, 2004), 109

¹⁵ Kelsen, *Collective Security*, (2011), 102

¹⁶ Tsagourias and D White, *Collective Security: Theory, Law and Practice*, (2013) *op cit.* 220-221

¹⁷ Picchio Forlati, *Les Sanctions Économiques en Droit International*, (2004), *op. cit.* 106

¹⁸ *Ibid.* 108

international sanctions, as we will explain in the following section. On the other hand, the second alternative restricts the conception of sanctions as a coextensive with United Nations' measures, because it focuses the identification on the centralization of the reaction.¹⁹

Regarding their purpose, in Abi-Saab's opinion, sanctions are also a mechanism for Collective Security institutions to protect the international or regional order.²⁰ In addition, Tsagourias and White consider that sanctions' aim is the restriction of the state or non-state target's freedom.²¹ For Delbrück and Gowlland-Debbas, sanctions have become a central tool in the international community for the enforcement of their core "public interest" norms²² and in Picchio's opinion, the real test to detect sanctions is indeed the role they perform in making international law effective. This role is even pursued by other measures, especially enforcement or security measures falling within the scope of international secondary rules.²³

b. Countermeasures

The International Law Commission defines countermeasures as a "feature of a decentralized system by which injured States may seek to vindicate their rights and to restore the legal relationship with the responsible State which has been ruptured by the internationally wrongful act".²⁴

Although there are many different acceptations of the term, the common element is the qualification of a measure adopted by a State in response to a prior action by another State, with the aim to protect its own interests.²⁵

As the concept refers to reactions by one State to a conduct attributable to another State, these are considered horizontal reactions. The term has a generic sense and covers all reactions permitted in international law to illegality, including retorsion, reciprocity, institutional sanctions and suspension or extinction of a treaty, among others. Abi-Saab believes that this

¹⁹ Ibid.

²⁰ Georges Abi-Saab, "The Concept of Sanctions in International Law" (2001), *op. cit.* 35

²¹ Tsagourias and D White, *Collective Security: Theory, Law and Practice*, (2013), *op cit.* 223

²² Jost Delbrück "The Impact of the Allocation of International Law Enforcement Authority on the International Legal Order", in J. Dëlbruck (ed.) *Allocation Of Law Enforcement Authority In The International System: Proceedings Of An International Symposium Of The Kiel Institute Of International Law, March 23 To 25*, (Berlin: Duncker and Humblot, 1995), 158 and Vera Gowlland-Debbas (ed.), *United Nations Sanctions And International Law*, (Kluwer Law International, 2001), 7-9

²³ Picchio Forlati, *Les Sanctions Économiques en Droit International*, (2004), *op. cit.* 106

²⁴ *Materials on the responsibility of States for internationally wrongful acts*, (New York, United Nations Legislative Series, 2012, STS/LEG/SER.B/25) Art. 49, Part three, Chapter II, 304

²⁵ Vid. L. Boisson de Chazournes, *Les contre-mesures dans les relations internationales économiques* (Paris: Editions A. Pedone, Institut Universitaire de Hautes Études Internationales Genève, 1992) 26-36

generic sense serves a “useful explicative function” but prevents the concept from being truly operational.²⁶

Countermeasures need to meet certain requirements that are also stated in the International Law Commission’s Articles on State Responsibility, such as temporary nature and proportionality to the wrong suffered. If these requirements were not met, the act would be considered unlawful and would give rise to the right to take countermeasures on behalf of the target state.²⁷ Additionally, the International Law Commission has stated that countermeasures need to be distinguished from sanctions, which are adopted by an institution against its members according to its rules and are *per se* lawful measures.²⁸

Countermeasures are instrumental to obtaining reparation, as well as to ensuring that the state ceases the international wrongful act. Elisabeth Zoller defends in fact this reparation purpose is what differentiates countermeasures from other measures or “sanctions” whose objective is to punish the State that fails to comply with an international norm.²⁹ On the same line, James Crawford and Professor Arangio Ruiz conceive reparation in a broad sense, and further argue that the measures have to be reversible, as they are meant to induce the state to comply with its obligation under international law.³⁰

Tsagourias and White put forward another important distinction between countermeasures and sanctions. While the former could only lead to the temporary non-fulfillment of obligations or suspension of agreements owed to the responsible state, the latter could go further and terminate those agreements, outlaw any further agreements on trade or other areas and furthermore, oblige all member states to adopt such measures.³¹

Picchio Forlati goes even further and points out that countermeasures are characterized by the lack of punitive character at international law-level. Abi-Saab agrees with Picchio Forlati’s conception of sanctions and restricts the term “countermeasures” to the description of the injured State’s reaction.³² Therefore, there is no need of a previous agreed or third-party determination that an unlawful act has actually taken place in order for countermeasures to be

²⁶ Abi-Saab, “The Concept of Sanctions in International Law”(2001), *op.cit.* 37

²⁷ Tsagourias and White, *Collective Security: Theory, Law and Practice*, (2013), *op. cit.* 227

²⁸ Vid. Gowlland-Debbas, et al. (2001) and Picchio Forlati (2004)

²⁹ Luis Pérez-Prat Durbán, *Cooperación política y Comunidades Europeas en la aplicación de sanciones económicas internacionales*. (Madrid: Universidad Autónoma de Madrid, 1991), 233

³⁰ See on this topic: James Crawford, “The relationship between sanctions and countermeasures”, in Gowlland Debbas, *United Nations Sanctions and International Law*, and Katselli Proukaki, *The Problem of Enforcement in International Law: Countermeasures, the non-injured state and the idea of international community* (New York: Routledge, 2010), 72 and the Report of the International Law Commission on the work of its Fifty-third session, (YbILC, A/56/10, 2001). 57-68

³¹ *Ibid.* 228

³² Tsagourias and White, *Collective Security: Theory, Law and Practice*, (2013) *op.cit.*107

lawful.³³ The fact remains that unlike countermeasures, sanctions or centralized reactions do not take place *per se* in response to unlawful acts but primarily to threats to, or breaches of, international peace and security.³⁴

Furthermore, and taking into account the requirements for sanctions laid down by Professor Abi-Saab explained in the previous section, countermeasures only satisfy two of these requirements. Although they are taken in response to an internationally wrongful act and they are also coercive in their effect, they are not taken by a competent social organ. As James Crawford points out, they are taken by the State that suffers the injury, “in its own right and in its own account”.³⁵ Therefore, countermeasures can be taken even if the wrongfulness is strictly bilateral.

A remaining issue would be that of collective countermeasures. It is a common belief among authors that the law of collective self-defense is an obscure and uncertain issue that has not been well defined in state practice. Tsagourias and White, for instance, claim that in the presence of such a collective right, the boundaries between countermeasures and sanctions become less clear.³⁶

However, in the modern world it is impossible to ignore the question of collective action and multilateral obligations. In fact, countermeasures in the collective interest are well established in international law and in state practice.³⁷

The International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts (henceforth “Draft Articles”) distinguishes between injured states and states other than injured states. An ‘interested’ or ‘third’ state can be defined as one which is not directly affected or injured by an internationally wrongful act, yet has a legal interest in compliance by reason ‘of the importance of the rights involved’.

In light of the general definition of “injured State” in article 40 of the Draft Articles, Crawford believes that articles 47 to 50 allow countermeasures to be taken in respect of collective violations.³⁸ Obviously, not any belief of a breach of international law justifies that a state implements countermeasures. The test is an objective one and it is laid out by article

³³ Vid. Picchio Forlati, *Les Sanctions Économiques en Droit International*, (2004), *op.cit.* 107, and Abi-Saab, “De la sanction en droit international”, *Theory of International Law on the Threshold of the 21st Century, Essays in Honour of Krzysztof Skubiszewski*, (J. Makarczyk (ed.), The Hague: Kluwer, 1996), 61-77

³⁴ *Ibid.*

³⁵ James Crawford, “The relationship between sanctions and countermeasures”, in Gowlland-Debbas, *United Nations Sanctions and International Law*, 57-68

³⁶ Tsagourias and N.D. White, *Collective Security: Theory, Law and Practice*, (2014), *op. cit.* 227

³⁷ Katselli Proukaki, *The Problem of Enforcement in International Law: Countermeasures, the non-injured state and the idea of international community* (2010), *op. cit.* 110

³⁸ Crawford, “The relationship between sanctions and countermeasures”, *op. cit.* 65

47 of the Draft Articles.³⁹ Only specific breaches in the Draft Articles entail legal consequences for third states: namely, when a serious breach of a peremptory norm of general international law or a breach of an obligation owed to the international community as a whole is committed.⁴⁰

The necessity of enforcing fundamental collective interests of international law has led to the development of solidarity measures, supported by *erga omnes* norms. *Erga omnes* norms arise when various other states are affected by the violation of a norm that appeared to hurt only one state.⁴¹ Therefore, in all the occasions that states have responded to violations of obligations, their conduct has only been considered lawful when they have proved that these obligations had an *erga omnes* and *erga omnes partes* effect.⁴² In sum, as Posner points out, *erga omnes* norms enable collective enforcement of norms such as the general rules of the international system, “by making clear that certain conducts that could be regarded as violations of bilateral norms are in fact attempts to participate in collective action”.⁴³

Finally, most of the countermeasures that are often taken are in response to violations of international obligations in the field of human rights.⁴⁴ Although the International Law Commission set out a framework for third state responsibility when serious human rights violations are committed, due to the controversial nature of countermeasures by third states, it opted for a saving clause, under Article 54, which leaves the resolution of other matters to the further development of international law.

Unfortunately, the analysis of this matter would need further study, which is beyond the scope of this document.

³⁹ Annie Bird, “Third State Responsibility for Human Rights Violations” (Essex: European Journal of International Law, 2010) 21 (4): 883-900; See also Elena Katselli Proukaki, *The Problem of Enforcement in International Law: Countermeasures, the non-injured state and the idea of international community* (New York: Routledge, 2010), 72 and the Report of the International Law Commission on the work of its Fifty-third session, (YbILC, A/56/10, 2001)

⁴⁰ See Ibid. 883-900

⁴¹ Eric A Posner, “Erga Omnes Norms, Institutionalization, and Constitutionalism in International Law” (The University of Chicago Law School: John M. Olin Law & Economics Working Paper No. 419, 2d Series, August 2008)

⁴² See the examples of countermeasures by states other than the injured in state practice described in Katselli Proukaki, *The Problem of Enforcement in International Law: Countermeasures, the non-injured state and the idea of international community* (2010), *op. cit.* 103-209.

⁴³ Posner, “Erga Omnes Norms, Institutionalization, and Constitutionalism in International Law” (2008)

⁴⁴ Bird, “Third State Responsibility for Human Rights Violations” (2010)

c. Restrictive measures adopted by the European Union and the United States

In the context of the EU, the terms sanctions or restrictive measures are used interchangeably. Restrictive measures are defined as an instrument of a diplomatic or economic nature, which seeks to bring about a change in activities or policies such as violations of international law or human rights, or policies that do not respect the rule of law or democratic principles.

However, what has been analyzed in the previous pages could help us determine whether the term “sanctions” is the most appropriate one we could use to refer to the measures adopted by the EU and the US against Russia.

First of all, as it has been explained and as it is also stated in the International Law Commission Articles on States Responsibility, the term “sanctions” normally accounts for measures taken in accordance with the constituent instrument of some international organization, in particular under Chapter VII of the Charter of the United Nations, even though the latter actually uses the term “measures”, not “sanctions”.⁴⁵ In the context of this paper, neither the sanctions imposed by the European Union nor the ones adopted by the United States were adopted by any international organization. Henceforth, there is not a “competent social organ”, in the sense that Abi-Saab conceives it, in any of the actions taken against Russia. According to authors like Picchio or Tsagourias and White, and above all according to Abi-Saab’s *lato sensu* concept of sanction, it would be correct to describe the measures adopted in the Ukrainian conflict as sanctions. However, from my point of view it could also be argued that the measures are not sanctions because their purpose is to signal and to constrain, as well as the fact that they are adopted by the EU and the US, neither of them being Abi-Saab’s “competent social organ” with regards to Russia. Moreover, it would be easy to argue that Russia’s actions qualify as wrongful acts, as they violate international law norms and they go against the public order. Secondly, the term “countermeasures” requires the reaction of Ukraine, as the State affected by Russia’s wrongful act.

Moreover, the measures imposed by the EU and the US did not aim at the reparation of the occupied regions, as countermeasures require. For instance, the EU applies sanctions according to Article 11 of the Treaty of the European Union, which sets out the specific objectives of the Common Foreign and Security Policy. Among these objectives we can find the strengthening of the security of the Union, the promotion of international cooperation or

⁴⁵ See: *Materials on the responsibility of States for internationally wrongful acts* (2012), Article 22, p. 50

the safeguarding of the common values and fundamental interests, among others. The United States punished the Russian Federation for having imposed an unusual and extraordinary threat to the national and foreign policy of the United States.

The problematic point when trying to apply the concept of collective countermeasures to the restrictive measures adopted against Russia lies in the definition of the general interests. If we described these measures as countermeasures we would be affirming that the interests that were affected by Russia's actions in Ukraine were common to many states. The US and the EU would therefore need to prove that the interests were not only owed to themselves but to the whole international community. Even more, it is also not clear which interests would those be.

Finally, from all that has been mentioned until now, it would not be wrong to describe the measures against Russia as "sanctions" in *Abi-Saab's* broad concept or as "collective countermeasures". However, in my point of view, taking all the details and legal aspects into account, it seems that the term of "restrictive measures" would be the most accurate one to refer to the measures adopted by the European Union and the United States against the Russian Federation for its violation of Ukrainian sovereignty and territorial integrity.

Having reached a conclusion on the qualification of the measures, the next section will go further into their details by proceeding to examine their juridical base and the procedure of their adoption.

IV. Restrictive measures adopted by the European Union against Russia

a. Juridical base

The two main causes that triggered the restrictive measures adopted by the EU against the Russian Federation were the violation of Ukrainian sovereignty and the illegal annexation of Crimea and Sevastopol. The restrictive measures adopted by the EU are aimed to bring a change to Russian's policy towards Ukraine and its duration depends on the implementation of the Minsk agreements. However, the latter were not implemented when it was foreseen (end of December 2015), so the EU leaders extended the measures until 31st July 2016.

Following the first session of the European Council, in March 20th 2014, the President of the Council at that time, Herman Van Rompuy, stated the following: *"Sanctions are not a question of retaliation; they are a foreign policy tool. Not a goal in themselves, but a means to an end. Our goal is to stop Russian action against Ukraine, to restore Ukraine's sovereignty – and to achieve this we need a negotiated solution. Europe stands ready to facilitate and engage in a meaningful dialogue involving Ukraine and Russia and supports all multilateral initiatives towards that aim"*.⁴⁶

In the EU system, sanctions or restrictive measures⁴⁷ are an essential foreign policy tool and are imposed with a view of pursuing the objectives of the European Union in accordance with the principles of the Common Foreign Security Policy (henceforth "CFSP").⁴⁸ Some of these objectives, set out in the Treaty of the European Union ("TEU"), include safeguarding EU's values and fundamental interests, preserving peace, preventing conflicts and strengthening international security. EU sanctions are not punitive, but they seek to bring about a change in policy or activity by the subject: the target country, its government, entities or individuals.

The European Union has two responsibilities regarding sanctions. On the one hand, it is in charge of implementing all sanctions imposed by the United Nations Security Council. On the other hand, the EU imposes restrictive measures on its own initiative where it deems it necessary.

⁴⁶ Remarks by President Herman Van Rompuy, following the first session of the European Council 2014, Brussels 20 March 2014, EUC 67/14, PRESSE 175.

⁴⁷ The European Union uses the terms "sanctions" and "restrictive measures" interchangeably

⁴⁸ For further details see the official website of the Council of the EU and the European Council, which includes one section for the description of the adoption of EU restrictive measures: (www.consilium.europa.eu/en/policies/sanctions/)

As it was said before, the imposition of restrictive measures is a foreign policy decision, and therefore the EU can adopt them in order to achieve the objectives stated in Article 21, Paragraph 2, of the TEU.⁴⁹ Sanctions regimes usually have several objectives such as sending a political signal of disapproval; deterring further examples of negative behaviour or forcing a state to change its behaviour. In the case of the Ukrainian conflict, the EU seems determined to achieve all of them.⁵⁰

Furthermore, restrictive measures need to be drafted in light of the obligation under Article 6(3) TEU and under the WTO Agreements, as they must respect fundamental rights and international obligations of the European Union.⁵¹

Depending on their nature and their targets, EU restrictive measures may have different legal basis. Francesco Giumelli distinguishes between two different “pillars”⁵², in reference to their former description in the Treaty of the Functioning of the European Union (henceforth “TFEU”). Regarding trade and financial sanctions, when they fall within the domain of CFSP decisions under Chapter 2, Title V of the TEU, they are implemented on the basis of Article 215 of TFEU⁵³, through the adoption of a Council regulation. In this case the Parliament does not participate in the decision, but is only informed about it. When the EU’s purpose is to combat and prevent terrorism Article 75 TFEU establishes that, the Council and the Parliament, via the ordinary legislative procedure, adopt the regulation jointly.⁵⁴

b. Competent organs and adoption procedure

Articles 30 and 31 of the TEU regulate the process by which sanctions are imposed under the CFSP domain. The first step in the procedure is the adoption of CFSP Council Decisions, where restrictive measures are laid down. Any member state and the High Representative of the Union for Foreign Affairs and Security Policy have the right to undertake initiatives and

⁴⁹ European Union, *Consolidated version of the Treaty on European Union*, Rome, 25th March 1957, (Official Journal of the European Union, C 326, 26/10/2012), 13-45

⁵⁰ Ian Bond, Christian Odendahl, Jennifer Rankin, “Frozen: The politics and economics of sanctions against Russia”, (Centre for European Reform: March 2015)

⁵¹ “Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy” *Council of the European Union*, 15 June 2012, 11205/12.

⁵² Francesco Giumelli, “How EU sanctions work: A new narrative. EU Institute for Security Studies”, (Chaillot Paper No. 129, 2013), 11-12

⁵³ European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, Rome, 25th March 1957 (Official Journal of the European Union, C 326, 26/10/2012), 47-199

⁵⁴ *Ibid.* Article 294, at 173

make a proposal of measures, which needs to be adopted by unanimity. The European Commission can also give support to these initiatives.

In the Council, the relevant preparatory bodies examine and discuss the proposed measures, which are often discussed in greater detail by the Political and Security Committee and by the competent geographical working groups of the Council. Before the approval by the Committee of Permanent Representatives II (henceforth “COREPER II”) and the Council, in the Foreign Relations Counselors Working Group (“RELEX”) the representatives of EU member states negotiate and concrete the terms of the measures. Afterwards, the Council adopts a CFSP Decision under Article 29 of the TEU, which enters into force on the day of the publication in the Official Journal of the European Union. As we can see, the Council is the pivotal actor, as it is the forum where decisions are taken.

The decision adopted is directly binding on EU member states. In the case of economic measures such as export bans or asset freezes, member states are the ones in charge of their implementation. Therefore, economic and financial measures require separate implementing legislation in the form of a Council regulation, which is directly binding on EU citizens and businesses. This Council regulation is adopted based on the CFSP Council decision and pursuant to Article 215 of the Treaty of the Functioning of the European Union⁵⁵, on a joint proposal from the High Representative and the Commission. The Council informs the European Parliament of the adoption of the Council regulation. Usually the CFSP Council decision and the Council regulation are adopted together, so both legal acts produce their effects at the same time. This is particularly relevant in the case of an asset freeze.

The most relevant legal instruments adopted by the EU in the Ukraine conflict are Council Decisions 2014/145/CFSP,⁵⁶ 2014/512/CFSP⁵⁷ and 2014/386/CFSP⁵⁸; as well as Council Regulations 269/2014/EU⁵⁹, 2014/833/EU⁶⁰ and 692/2014/EU⁶¹. All these instruments have been followed by other documents introducing several amendments to the initial restrictive measures. For instance, the 10 March 2015 the Council adopted Implementing Regulation

⁵⁵ Ibid. Art. 215

⁵⁶ OJ L 78, 17 March 2014, p. 6-15

⁵⁷ OJ L 229, 31 July 2014, p. 13

⁵⁸ OJ L 183, 24 June 2014, p. 70-71

⁵⁹ OJ L 78, 17 March 2014, p. 6-15

⁶⁰ OJ L 229, 31 July 2014, p. 1

⁶¹ OJ L 183, 24 June 2014, p. 9-14

(EU) 2016/35⁶², implementing the aforementioned Regulation 269/2014, by reviewing the individual designations and amending the Annex of persons and entities subjected to the restrictive measures.⁶³

The Council regulation describes the content, scope and other details for the implementation of the measures. It is a “legal act of general application” and therefore any person or entity within the EU is bound by it.⁶⁴ The notification procedure is done personally by a letter or by means of a notice published by the Council in Series “C” of the Official Journal of the European Union. The effectiveness of the restrictive measures depends on their proper implementation, enforcement and monitoring. Member states along with the Commission implement the measures according to their competences. For instance, member states will implement the measures laid down only in the CFSP decision (embargoes or transport restrictions), under the supervision of the Commission.

The EU and its Member States should actively and systematically communicate on EU restrictive measures, including with the targeted country and its population. When notified of the measures taken against them, persons and entities targeted can ask the Council to reconsider its decision, by providing observations on the listing. They can also challenge the measures before the General Court of the EU.

Finally, the Council, in association with the Commission for more effective use of sanctions, develops a policy framework of basic principles on the use of Restricted Measures.⁶⁵

These principles include the intensification of the Council’s coordination with the UN, the flexibility on the deployment of all its instruments, the enlisting of the support of the widest possible range of partners and the use of sanctions as a comprehensive policy approach which should include political dialogue, incentives and conditionality. Moreover, the Council accepts the compromise to maintain and restore international peace and security in accordance with the principles of the UN Charter and the CFSP principles.

⁶² OJ L 67, 10 March 2016, p. 1-17

⁶³ Until the date of submission of this paper the last relevant EU decision adopted is Council Decision 2015/1781/CFSP, 5th October 2015, amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine and EU Regulation 353/2016 (see above)

⁶⁴ Op. cit. Article 288 TFUE «*A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States*».

⁶⁵ Council of the European Union, “Basic Principles on the use of Restricted Measures (Sanctions)”, (Political and Security Committee, June 1 2004, Document 10198/1/04)

Where possible and consistent with the European Union's overall strategy towards the third country concerned, the legal instruments imposing restrictive measures may refer to incentives to encourage the required change in policy or activity. It is be important to ensure that such incentives do not reward non-compliance.

c. Content

Throughout the years, sanctions have become more sophisticated and they now constitute more than mere foreign policy devices. Contrary to their classical form, restrictive measures nowadays are “smart” sanctions, targeted sanctions that are aimed at non-state actors like individuals or companies and that regard only specific industries or products. Thus, restrictive measures today differ from the commonly used embargos and other inter-state foreign policy instruments that targeted one political community (i.e. a city, a region, a state...).

Among the restrictive measures imposed to the Russian Federation in response to the illegal annexation of Crimea and deliberate destabilization of Ukraine, we can distinguish between diplomatic measures, which are broader, and other narrower measures which are more individual and require specific legal base in the EU treaties, such as asset freeze or travel bans.⁶⁶

Diplomatic measures often involve the interruption of diplomatic relations. In the case of the conflict of Ukraine, bilateral talks with Russia were suspended and instead of the G8 summit in Sochi, the G7 held a meeting in Brussels on the 4th and 5th June 2014.⁶⁷ Moreover, also as a consequence of these events, the OECD Council and the International Energy Agency suspended in 2014 their negotiation processes with Russia.⁶⁸

The adoption of individual restrictive measures, both from the EU and the US, took place gradually, in different moments in time, so we can classify this set of measures in five rounds. Many authors such as Simond de Galbert also distinguish between the Early Individual

⁶⁶ Source: European Commission official website (<http://www.consilium.europa.eu/en/policies/>)

⁶⁷ European Commission, “G7 Summit in Brussels, 4 – 5 June 2014: Background note and facts about the EU's role and actions”, (European Commission Press Release, Brussels 3rd June 2014) and “G-7 Leaders Statement”, (European Commission Statement 14/41, Brussels 3rd March 2014)

⁶⁸ Vid. Information and Press Department of the Russian Ministry of Foreign Affairs, “Comments regarding the temporary suspension of the events within the framework of the negotiation process regarding Russia’s joining the Organization for Economic Co-operation and Development (OECD)”, (Ministry of Foreign Affairs of the Russian Federation N° 556, 14 March 2014)

Sanctions (March and July 2014) and the Sectorial Sanctions Against Russia (July and September 2014).⁶⁹

On the one hand, the three first rounds of restrictive measures were aimed at individual targets, persons and entities that had compromised Ukraine's territorial sovereignty, integrity and independence. For instance, the main content of the first round of sanctions were the travel bans and the freezing of assets of persons involved in the conflict and responsible for human rights violations. EU Decision 2014/119 extended measures until 6th March 2016.⁷⁰

The second round of sanctions included further individual measures, as we can observe in Decision 2014/145, which restricted admission and froze funds and economic resources of responsible individuals and entities.

During the third round of measures, the European Union issued Decision 2014/386 on 23rd June 2014, enacting an import ban on goods from Crimea and Sevastopol, as well as other restrictions in July on trade and investment related to certain economic sectors and infrastructure projects. EU Decision 2014/933 afterwards introduced some amendments and reinforced its previous one, extending the ban to further transactions. These sanctions against Crimea were renewed and extended until June 2016.

On the other hand, during the period between July and September 2014, following the Malaysian MH17 plane crash and the escalation of the conflict, some sectorial sanctions were put into place against Russia. These measures were also called "economic sanctions" and targeted exchanges with Russia in specific economic sectors such as financial, energy and military sectors. Additionally, in July 2014 EU leaders introduced restrictions on economic cooperation concerning different operations.

The fourth round of measures includes EU Decision 2014/512 of 31st July 2014, which put into place several measures on the Russian government in the four areas:

- i. restrictions on lending to Russian state banks
- ii. an arms embargo
- iii. an export ban on oil technology and services that could be used for Arctic or deep-sea drilling, or shale oil projects

⁶⁹ Simond de Galbert, "A Year of Sanctions Against Russia –Now What? A European Assessment of the Outcome and Future of Russia Sanctions" (Report of the CSIS Europe Program, October 2015) 26-28

⁷⁰ OJ, L 66, 6 March 2014, 26

- iv. export ban on dual-use goods –equipment such as specialist computers or heavy engineering vehicles that could be used for military purposes

Finally, the fifth and final round of economic sanctions in September 2014 was aimed at the extension and intensification of sectorial sanctions, amending EU Decision 2014/512.

V. Restrictive measures adopted by the United States against Russia

a. Juridical base

To direct the executive branch and implement policy, the U.S. President can use executive orders, presidential memoranda and presidential proclamations. However, these two last legal instruments are usually classified as administrative rather than executive orders. Moreover, the President, along with his advisors, can also issue a Presidential directive, which can affect different areas such as National Security or Homeland Security.

The basis for the US restrictive measures against the Russian Federation is constituted by four presidential executive orders. Executive Order 13600⁷¹ was the first one, which was signed by President Barack Obama on 6 March 2014. The following two, Executive Orders 13661⁷² and 13662⁷³ were signed on 17 March and 20 March respectively. The fourth one to be adopted that same year was Executive Order 13685, in December 19, 2014.

Congressional approval is not required for Executive Orders (hereinafter “EO”) to take effect, as they have the same legal weight as laws passed by Congress. However, if an executive order’s policy directly contradicts the law, it will only have legal effect if the President was exercising its “exclusive and independent constitutional authority”⁷⁴. Executive orders are not explicitly mentioned in any constitutional provision or statute. However, the Constitution contains several clauses granting the President specific Executive powers, either directly or by delegation of the Congress. More precisely, executive orders usually use a reasoning based on Article II, Section 1, Clause 1 and on Article II, Section 3, Clause 5 of the Constitution to justify their issuance as one of the President’s duties. The first clause, also known as the

⁷¹ U.S. President, Executive Order, “Blocking Property of Certain Persons Contributing to the Situation in Ukraine, 2014, Executive Order 13660,” (Federal Register Vol. 79, No. 46, March 6, 2014): 13493

⁷² U.S. President, Executive Order, “Blocking Property of Additional Persons Contributing to the Situation in Ukraine, 2014, Executive Order 13661,” (Federal Register Vol. 79, No. 53, March 16, 2014): 15535,

⁷³ U.S. President, Executive Order, “Blocking Property of Additional Persons Contributing to the Situation in Ukraine, 2014, Executive Order 13661” (Federal Register Vol. 79, No. 56, March 24, 2014): 16169,

⁷⁴ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 638 (1952) (Jackson, J. concurring). Stating that, “When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive presidential control in such a case only by disabling the Congress from acting upon the subject”.

Executive Vesting Clause, refers to the President as the executive authority,⁷⁵ while the second clause instructs him to “take Care that the Laws be faithfully executed”.⁷⁶

Within the legal framework on which Executive orders rely to analyse the validity of these documents, we can also find the International Emergency Economic Powers Act (“IEEPA”),⁷⁷ the National Emergencies Act (“NEA”),⁷⁸ section 212(f) of the Immigration and Nationality Act of 1952,⁷⁹ and section 301 of title 3, United States Code.

b. Competent organs and adoption procedure

The President, as head of the Executive Branch, gives legally binding orders to Federal Administrative Agencies. The intent of these executive orders is to guide federal agencies and officials in their execution of the laws or policies established by the Congress, although in many instances in the past they have guided to a direction opposite to the Congress’s intent.

After the President signs an Executive order, the White House sends it to the Office of the Federal Register, who numbers each order and publishes it in the daily Federal Register.

The Office of Foreign Assets Control administers the economic measures, while the U.S. Department of Commerce, Bureau of Industry and Security, and the U.S. Department of State, Directorate of Defence Trade Controls, administers exports control.

The U.S. Congress can use the congressional recourse to challenge actions or decisions taken by the executive branch, for example through the amendment of a previous law. This is less common when executive orders deal with powers constitutionally granted to the President, such as foreign policy, national defense, or the implementation and negotiation of treaties. Even more, some of these orders are not made public given national security concerns. Additionally, Executive Orders that deviate from the Congress’s intent or that exceed the President’s powers can also be challenged in court.

The U.S. Secretary of the Treasury is authorized to promulgate rules and regulations, to submit the recurring and final reports to the Congress on the national emergency declared in

⁷⁵ U.S. Constitution, article II, §§ 1-3; *National Constitution Center*, Online version March 2016.

⁷⁶ U.S. Const., art. II, §§ 1-3.

⁷⁷ 50 U.S. Code §1701 et seq.

⁷⁸ 50 U.S. Code §1601 et seq.

⁷⁹ 8 U.S. Code §1182(f)

the orders, consistent with section 401(c) of the NEA⁸⁰ and section 204(c) of IEEPA,⁸¹ and to employ all powers granted to the President by IEEPA, as may be necessary to carry out the purposes of the corresponding executive order.⁸²

c. Content

U.S. sanctions seek to increase Russia's political isolation as well as the economic costs to the country. Swedish Economists Susanne Oxenstierna and Per Olsson defend that US sanctions as well as EU sanctions were accurately designed to have "as much impact on the regime and to minimize the impact on the population".⁸³ They include a variety of targeted prohibitions that have increasingly expanded the scope of the sanctions program, and their main focus are financial services, energy and defense industries. Therefore, their scope is similar to that of EU measures and includes asset freezes, financial restrictions applied to banks and enterprises, restrictions on export of dual-use technologies and sectoral bans on the sale of technology for deep-sea oil production, among others. Nevertheless, in contrast with European sanctions, US sanctions don't have an established date of expiry in time and don't need a positive action to be renewed. In fact, American sanctions need positive action to be lifted, as they are not time-limited.

Similarly to EU sanctions, the adoption of US sanctions can be described in five different rounds.

The first round of measures took place the 6th of March 2014, when President Obama signed Executive Order 13660, based on the finding that the situation in Ukraine constituted an "unusual and extraordinary threat to the national security and policy of the United States", as the order states.⁸⁴ The measures targeted individuals and entities responsible for actions that had undermined Ukraine's sovereignty and threatened its territorial integrity, and they

⁸⁰ 50 U.S.C. §1641(c)

⁸¹ 50 U.S.C. §1703(c)

⁸² See for instance: U.S. President, Executive Order, "Blocking Property of Certain Persons Contributing to the Situation in Ukraine, 2014, Executive Order 13660," *Federal Register* Vol. 79, No. 46 (March 6, 2014): 13493, §§8-9

⁸³ Susanne Oxenstierna and Per Olsson, "The economic sanctions against Russia: Impact and prospects of success". Swedish Defense Research Agency Report N°4097, Stockholm, September 2015, p. 20

⁸⁴ Executive Order 13660 Op. Cit.

consisted on the restriction of entry into the United States, the blocking of their property and other prohibitions.⁸⁵

President Obama's Executive Order 13661 constituted the second round of measures, which expanded the previous order's scope to the actions and policies of the Government of the Russian Federation with respect to Ukraine. Although EO 13661 only authorizes measures on individuals and entities responsible for these actions and policies (admission restrictions, blocking of assets, and limitations on resource transfers), it creates an important legal base for further economic restrictive measures against Russia.

Shortly after, the United States adopted Executive Order 13662, which also expanded the scope of the restrictive measures to persons operating in the "financial services, energy, metals and mining, engineering, and defence and related material" sectors of the Russian economy determined by the secretary of treasury.⁸⁶

The third round of sanctions focused on Crimea and on the ban by the European Union and the United States of certain transactions, such as investment or provision of sectorial services, with the region annexed by Russia. On December 19th of 2015, the US adopted and signed Executive Order 13685, in coordination with the EU's adoption of Decision 2014/933, which aimed to amend Decision 2014/386. The measures included in these documents blocked "property of certain persons and prohibit certain transactions with respect to the Crimea Region of Ukraine".⁸⁷

The fourth round of measures took place the 16th of July 2014, when the U.S issued two directives that barred from dealing in new equity or loans of greater than 90 days maturity for financial and energy companies. The maturity period was afterwards reduced to 30 days.

Four additional directives were issued under EO 13662, by the U.S secretary of the treasury on September 12 of the same year. The directives tightened debt-financing restrictions, prohibited the provision of financing for new debt issued by energy companies, prohibited the issue of debt of greater than 30 days maturity to Rostec and imposed sanctions that targeted Russian deep-water, Arctic offshore and shale projects. The President of the U.S. also signed

⁸⁵ Ibid. §4

⁸⁶ Executive Order 13662, Op. Cit. §1

⁸⁷ U.S. President, Executive Order, "Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to the Crimea Region of Ukraine", 2014, Executive Order 13685," *Federal Register* Vol. 79, No. 247 (December 19, 2014): 77357

the Ukraine Freedom Support Act in December 2014, supporting the imposition of further sanctions.

Finally, the last round of restrictive measures mostly consisted on an update of the new parties added to the U.S. Treasury Specially Designated Nationals List⁸⁸ and the Sectoral Sanctions Identification List⁸⁹, as part of the so-called “maintenance” package, which was aimed to control the practices that were designed to avoid the sanctions, as well as further align U.S. measures with their international partners and provide additional information on sanctions compliance.

⁸⁸ Office of Foreign Assets Control, “Specially Designated Nationals and Blocked Persons List”, *U.S. Department of the Treasury*, May 5, 2015.

⁸⁹ Office of Foreign Assets Control, “Sectoral Sanctions Identification List”, *U.S. Department of the Treasury*, December 22, 2015.

VI. Analysis of the effectiveness of the sanctions

After having described the restrictive measures adopted against Russia, we will now examine their effectiveness in two parts. First of all, we will see the consequences of the sanctions in the Russian economy and political system; secondly, we will connect these consequences to the intentions of the EU and the US, in order to analyze if the measures adopted were successful in fostering a change in Russia's behavior.

a. Effectiveness of the measures: political and economic consequences

It is hard to measure the specific impacts of the restrictive measures on the Russian economy because additionally to the imposition of the restrictive measures, in 2015 the economy had to face a sharp decline in oil prices.⁹⁰ Another difficulty is the lack of information regarding Russia's countermeasures. However, thanks to data from the World Bank, the OECD and other international organizations, it is possible to analyse the outcome and the effects that the measures have had so far.

The twin shocks described above triggered a deep economic recession in Russia that reached its lowest point in the second quarter of 2015. As we can see in Exhibit 2 (Vid. Annex), the country's annual GDP contracted by a total of 3,7%.⁹¹ The sanctions limited the access to global financial markets to Russian firms and banks, damaging investor confidence and restricting capital inflows. When trying to adjust to the worsening external environment, gross income plummeted discouraging investment. The investment income balance decreased from US\$58.0 billion in 2014 to US\$31.6 billion in 2015.⁹² In fact, gross domestic income decreased by about 10% as a consequence of trade effects and gross capital formation dropped by 18.7% in 2015. The low oil prices also contributed to the steep depreciation of the rouble, which led to very high inflation and a severe decline in import volumes⁹³. The decrease of household purchasing power subsequently affected consumer demand, which suffered its first contraction since 2008.

At the same time that these restrictive measures were adopted, in August 2014 the Russian

⁹⁰ The World Bank, "Global Monitoring Report 2015/2016: Development Goals in an Era of Demographic Change" (International Bank for Reconstruction and Development and the World Bank, Washington DC: 2016)

⁹¹ The World Bank in the Russian Federation, "Russia Economic Report N° 35: The Long Journey to Recovery" (World Bank Group: April 2016)

⁹² Ibid. 9

⁹³ See Annex, figure n°2

Federation imposed a ban on food imports from Western states.⁹⁴ The ban, that still remains in place and is expected to be extended, led to higher prices and hence to further inflation.⁹⁵

Regarding the political effects of the measures, the economic isolation explained above has triggered a diplomatic stalemate. As a consequence of the tensions with the West, Russia is now seeking other partnerships in Asia, above all with China.

Sanctions normally cause political instability in the short term, and in this case the measures imposed by the US and the EU have still not destabilized the Kremlin. Rather, Putin's regime has used the sanctions to justify the economic slowdown and its leaders have become less accountable for the economic problems of the country. The government has also approved numerous reforms with the intention, above all, to promote the evolving "securitization" of the economy and it has reallocated resources to those groups and sectors that have supported the system. Therefore, the crisis has strengthened the totalitarian regime.

One dangerous possible outcome would be that Russia resumed collaboration with the OECD or other international institutions. Russia's deviation from its progress towards integration into the global economy, prior to the conflict, would be very detrimental to the country's future development, and also for the rest of the world.

Although the sanctions have triggered all the negative consequences explained above, the concurrence of restrictive measures and the failing of oil prices have also fostered export competitiveness and trade diversification. These unintended side effects also include the strengthening of Russia's bilateral ties with others players like China, India or Iran, and the tightening of the sources of profit, which have been reduced to the government and the Central Bank.

In the following section we will examine whether the sanctions have achieved the EU and the US's purposes or, otherwise, they have not had the desired effects on the Russian Federation and its responsible actors.

b. Effectiveness of the measures in relation to their aims

Once again, to assess the success of sanctions it is vital to consider how they intended to influence the course of events. In this section we will follow Francesco Giunelli's analytical

⁹⁴ Hunter Christie, Edward. "Sanctions after Crimea: Have they worked?" (NATO Review Magazine: July 13, 2015)

⁹⁵ "Russia to extend Western food ban to 2018" (*The Daily Star*, 27 May 2016)

distinction between the different purposes of sanctions in order to evaluate the effectiveness of the restrictive measures imposed on Russia in relation to the objectives of the EU and the US for their adoption.⁹⁶

According to this author, depending on their purpose and on their nature, sanctions can be identified as coercing, constraining or signaling. We will use this classification to assess the effectiveness of the different measures in force as a result of the crisis in Ukraine.

The first round of EU measures, imposed on persons involved in the conflict and responsible for human rights violations, were designed to prevent former Russian leaders from using misappropriated public funds.⁹⁷ These measures could be identified as coercive, as they are aimed at a behavioral change, specifically at preventing the abovementioned illegal practice. In fact, the essence of coercion is precisely “that targets are asked to do something that they can do without compromising their political survival”.⁹⁸ Therefore, several restrictive measures on Russia have sought to coerce the Russian authorities into stopping these unlawful practices and suspending their support to the rebel groups by means of creating discomfort for key actors and by offering a lawful policy option more appealing to their target.⁹⁹

The US and EU strict economic measures have tried to bring Russia’s occupation to a halt by means of negotiations, which has become the main response by Western leaders after the signature of the Minsk II agreement. The effectiveness of these coercive measures is hard to analyze due to the lack of information from the Russian government. As it has been explained in the previous sections, the elites of the country were affected by the measures, although it is not easy to distinguish how much were these consequences due to the sanctions or to the shock in oil prices. Another important point is that restrictive measures, together with those of the Minsk II agreement, were aimed at the de-escalation of the conflict. Nevertheless, the reality is that the ceasefire has not always been respected, and some areas in Ukraine are still suffering from separatists’ attacks. Therefore, some authors share the opinion that the first rounds of sanctions over the Ukrainian crisis were perhaps more psychological than tangible, so its effectiveness it is not easily measurable.

⁹⁶ Francesco Giumelli, “Coercing, Constraining and Signaling: Explaining and Understanding International Sanctions after the End of the Cold War”, (*ECPR Press*: 2011)

⁹⁷ OJ L 66, 6 March 2014. *Op cit.* 26

⁹⁸ Francesco Giumelli, “How EU sanctions work: A new narrative”. (EU Institute for Security Studies, *Chaillot Paper* No. 129: 2013), 18

⁹⁹ See Giumelli, “Sanctioning Russia: the right questions”(2015), *op. cit.* 2

Regarding sanctions from the second and third rounds (as they have been classified in this paper), they were imposed on Crimea-based targets and they intended to constrain the operational capacities of responsible individuals and entities. They could be classified as constraining because, despite the lack of a specific request for action, they are limiting the capacities of the targets to embark on specific policies, as well as some of their rights, for example by restricting the admission of the target actors.¹⁰⁰ The measures also aim to achieve the de-escalation of the conflict, by calling on the Russian Federation to immediately withdraw its armed forces and to stop the increasing flow of weapons, equipment and militants across the border.¹⁰¹

The incompatibility of interests triggers this kind of measures, which in this case do limit the political activities of the targets. Furthermore, they also have some element of coercion and of signaling, as they are showing other actors how the EU firmly rejects this type of actions.

Similarly, US measures also had a very important constraining purpose. Most of the measures adopted by this country implied the blockage of the transfer, export or withdraw of all property and interests in property, the prohibition of donations and receipts of contributions or provisions of funds or services and the suspension of entry into the US of individuals and entities contributing to the conflict.

As we have seen in the previous section, the restrictive measures imposed by both actors exerted significant adverse influences at the microeconomic level on the availability of new loans for Russian banks and firms in foreign capital markets. The restrictions of access to financing forced the Russian state to use part of its foreign exchange reserves to shore up the sanctioned entities. These developments also caused that the Central Bank of Russia abruptly ceased to defend the value of the ruble and increased interest rates in December 2014.

However, their macroeconomic effects were smaller, in part because they were offset by Russian counter-measures. Even after two years since the adoption of the first sanctions, the different recovery policies that have taken place, like the massive recapitalization program, have not managed to decrease the financial sector's vulnerability.

Authors and experts on the topic, as well as EU representatives, defend that the EU's restrictive measures adopted against Russia, and in general most of EU informal measures,

¹⁰⁰ Ibid.18-19

¹⁰¹ OJ L 229, 31 July 2014, p .13

are mainly aimed at signaling that the European Union disapproves the targeted subjects' actions. According to Francesco Giumelli, the EU has historically used restrictive measures "to support democracy and human rights, to preserve peace, to prevent conflicts, to strengthen international security, and to promote an international system based on stronger multilateral cooperation and good global governance".¹⁰² Therefore, although the EU has pointed out several reasons to justify his adoption of restrictive measures against Russia on the conflict of Crimea and East Ukraine, its main goal has been to signal the EU's support for the integrity, sovereignty and independence of Ukraine.¹⁰³

Regarding the measures adopted by the US, taking into account the statements of the Foreign Affairs Committee and the Executive Orders by which the instruments were adopted, their main purpose was to condemn Russia's military intervention in Ukraine. Therefore, they can be classified as constraining and, above all, signaling. For instance, the US described the aim of its package of measures as "demonstrating the force of United States resolve in the face of face of unprovoked military intervention and threats"¹⁰⁴, as well as defending Ukraine's right to self-determination.¹⁰⁵ Additionally, the US welcomed the new Ukrainian government and claimed the need to support and respect the decision that had been taken by democratic means.¹⁰⁶

As we can see, the primary objective of sanctions is not always to disrupt and prohibit trade relations. Senior US administration officials stated that sanctions are unlikely to create "an immediate change in Russian policy", but are designed to "steadily show the Russians that there is going to be much more severe economic pain and political isolation" if they do not comply with International Law.¹⁰⁷ The fall in the value of the Russian ruble and the Moscow stock market could also be seen as evidence to the effectiveness of sanctions. All the data on this topic shows a clear decrease of the confidence in Russia's economy. According to a

¹⁰² Francesco Giumelli, "Beyond Intergovernmentalism: the Europeanization of Restrictive Measures?", *Journal of Contemporary European Research*, Vol. 9, Issue 3 (2013), 396

¹⁰³ OJ L 78, 17 March 2014, Article 1(6), p. 16

¹⁰⁴ See the "Statement on US Foreign Policy toward Ukraine before the House Foreign Affairs Committee in Washington, DC March 6, 2014", by Eric Rubin, Deputy Assistant Secretary of the Bureau of European and Eurasian Affairs. (<http://www.state.gov/p/eur/rls/rm/2014/mar/223023.htm>, last accessed on 27th May 2016)

¹⁰⁵ Kathleen Hennessey, "Obama says Russian moves in Crimea will be 'costly'", *Los Angeles Times*, March 13, 2014.

¹⁰⁶ See the "Statement on US Foreign Policy toward Ukraine before the House Foreign Affairs Committee in Washington, DC March 6, 2014", by Eric Rubin, Deputy Assistant Secretary of the Bureau of European and Eurasian Affairs.

¹⁰⁷ Mikael Eriksson, "West's Sanctions against Russia: Grand Strategy in the Making?" (Sweden Defense Research Agency (FOI), Stockholm, Memo 4933 in Project A14101, RUFBS Briefing, May 2014), 1-3

signaling measure, the purpose would be to create uncertainty in the marketplace and also to create specific expectations, both on the targets and on the audience.

However, this impact of the measures is hard to evaluate, even more because the economic difficulties started before conflict and thus prior to the adoption of the measures.

A further reflection on the matter is that both the EU and the US have always tried to achieve their goals while trying not to compromise their future relations and further engagement with the sanctioned country. In this case, Russia is an important state that plays a powerful role in the world today, especially in Europe.¹⁰⁸

To determine the success of the restrictive measures, one last point needs to be analyzed: the unintended consequences of the measures. Some of the initiators of the restrictive measures on Russia have also suffered the consequences on their economies. There are three ways by which measures might have affected the European economies. First of all, they can be affected directly by Western sanctions, principally through trade, i.e. by losses in export revenues.¹⁰⁹ Secondly, these consequences might have come from Russia's food import ban. Russian countermeasures have not really had macroeconomic effects due to the low rate of exports of the affected commodities. The seven member states that have experienced the biggest net losses are Sweden, Greece, Belgium, Estonia, Latvia, Finland and Lithuania. The third possibility is that the losses might have been caused by Russia's recession and lower exchange rate. This latter indirect effect, which decreased the demand for imports, is probably the largest.

Finally, the impact on the US exports has been almost negligible, while on EU exports has been modest, so the overall internal cost of the measures is limited. Therefore, the adoption of a restrictive measures policy until now appears to be affordable for the initiators.

All in all, in spite of the predictions on the stagnation of the Russian economy that were already made before the Ukrainian crisis, there is no doubt that the restrictive measures have exacerbated those macroeconomic challenges already foreseen.¹¹⁰ However, overall,

¹⁰⁸ See: Leander Leenders, "EU Sanctions: A Relevant Foreign Policy Tool?" (EU Diplomacy Papers Issue No. 3/2014, Department of EU International Relations and Diplomacy Studies, Collège d'Europe: 2014), 26-28; or Viljar Veebel and Raul Markus, "Lessons from the EU-Russia Sanctions 2014-2015", (Baltic Journal of Law & Politics Vol. 8, No. 1, 2015), 169; or Francesco Giumelli, "Coercing, Constraining and Signaling: Explaining and Understanding International Sanctions after the End of the Cold War" (2011), 30-33

¹⁰⁹ Giumelli "Sanctioning Russia: the right questions" (2015)

¹¹⁰ Mikael Eriksson, "West's Sanctions against Russia: Grand Strategy in the Making?" (2014)

restrictive measures are having quite negligible effects on important economic and military power balances or on the decision-making of the Russian elite with regard to national security matters, such as the status of Crimea.

The extension of the measures and the persistent shock in global oil prices is leading to a change in the internal structure of the Russian economy and a transformation of its relations with its trading partners. Russian entities and households are gradually adapting, and the weaker ruble could facilitate the expansion of certain non-resource tradable industries. In recent years Russia has tightened its economic integration with China and the members of the Eurasian Customs Union, while sanctions and countersanctions have weakened trade ties with other countries.

VII. Conclusions

The issues that arise from the conflict analyzed in this paper are an example of the global challenges that we are encountering today and which are going to be more and more common in the next decades. Throughout the past years, economic policies and geopolitics have progressively become more regional and the international scenario has characterized by a lack of collective power and, above all, by the absence of global governance. Unless there are effective and solid institutions, the response to global risks will take place through regional, national or ad-hoc mechanisms. However, as we said in the introduction of this paper, the great challenges we are facing require long-term multilateral agreements. Unilateral or even bilateral relations only focus on national interests, which tend to be local and shortsighted. In the case of a conflict like the Ukraine crisis, it is impossible to think of a solution that does not include all the parties involved.

Furthermore, economic instruments are the new arms in international conflicts. Analyst Edward Luttwak created the term “geo-economics” to refer to this new reality that he defined as the logic of the conflict through the grammar of commerce.¹¹¹ The main risk is that the use of sanctions will increase, as well as regional trade agreements, as means to strengthen geopolitical alliances.

In the specific case of the measures adopted against Russia, it is important to point out that, as it was examined in the previous section, the success of these measures has to be examined with regards to their purpose. Indeed, the EU and the US’s measures cannot be evaluated according to their ability to change the target’s behavior, as it has been proved that their main purpose was a different one. Therefore, sanctions or restrictive measures can be successful as an exercise of power, constraining and signaling targets in the international system. In the case of the measures against Russia, we can conclude that their purposes were of a constraining and, above all, signaling, character.

Moreover, although the qualification of the measures may not have an effect on their content, it could have an impact on their legitimacy and their implementation. As we are heading to a completely interdependent world that will need to have effective monitoring and sanctioning systems, I believe it is fundamental to describe accurately the different legal instruments, in order to ensure the lawfulness and fairness of every conflict’s solution. For that, and in order

¹¹¹ Edward Luttwak, “From Geopolitical to Geo-economics: Logic of Conflict, Grammar of Commerce” (*The National Interest* No. 20. 1990) pp. 17-23

to attain the best and earliest responses to any international crisis, states' leaders have to keep in mind the principles of coordination and cooperation. Collapsing Russia's economy would cause many problems to all the actors involved

Regarding the future of the Russian Federation, although the country has been facing growth problems because of the increase in prices of raw materials and the decrease of external financing, the current situation of its economy looks better than expected. However, its future is very unpredictable and data indicate that the outlook for Russia in the long term is bleak. However, it seems that European restrictive measures, which expire at the end of July, will probably not be renewed, as it is unlikely that a unanimous decision takes place. In the presence of so many conflicting interests, I believe it is necessary that all the parties involved in the conflict respect the second Minsk agreement and leave aside their personal national priorities to cooperate to resume the stability of the region.. Finally, the war in Crimea and East Ukraine has already taken a heavy toll in the country's population and its potential spillover effects on the European Union and the rest of the world would be prejudicial for everyone.

VIII. Bibliography

Books

Abi-Saab, Georges “De la sanction en droit international”, *Theory of International Law on the Threshold of the 21st Century, Essays in Honour of Krzysztof Skubiszewski*, (J. Makarczyk (ed.), The Hague: Kluwer, 1996), 61-77

Boisson de Chazournes, Laurence. *Les contre-mesures dans les relations internationales économiques* (Paris: Editions A. Pedone, Institut Universitaire de Hautes Études Internationales Genève, 1992) 26-36

Crawford, James, “The relationship between sanctions and countermeasures”, in Gowlland-Debbas, *United Nations Sanctions and International Law*, Kluwer Law International, Springer Netherlands, 2001, 57-68.

Delbrück, Jost. “The Impact of the Allocation of International Law Enforcement Authority on the International Legal Order”, in “*Allocation of Law Enforcement Authority in the International System: Proceedings of an International Symposium of the Kiel Institute of International Law, March 23 to 25*”, edited by J. Dölbrück. Berlin, Duncker and Humblot, 1995.

de Wilde d’Estmael, Tanguy. *La dimension politique des relations économiques extérieures de la Communauté européenne*. Bruxelles: Etablissements Emile Bruylant, 1998.

de Vries, Anthonius W. and Hadewych, Hazelzet. “The EU as a New Actor on the Sanctions Scene”, in Peter Wallensteen & Carina Staibano (eds.), *International Sanctions: Between Words and Wars in the Global System*. Oxon, Frank Cass, 2005, 95-107.

Gowlland-Debbas, Vera (ed.). *United Nations Sanctions and International Law*. Kluwer Law International (Springer Netherlands), 2001.

Hart, Herbert L.A. *The Concept Of Law*. Oxford: Clarendon Press, 1961.

Katselli Proukaki, Elena. *The Problem of Enforcement in International Law: Countermeasures, the non-injured state and the idea of international community*. New York: Routledge, 2010.

Kelsen, Hans. *Collective Security under International Law*. Washington DC: Naval War College, 1957, (New Jersey, Lawbook Exchange, 2011).

Kelsen, Hans. *Pure Theory Of Law*. University of California Press, 1967.

Pérez-Prat Durbán, Luis. *Cooperación política y Comunidades Europeas en la aplicación de sanciones económicas internacionales*. (Madrid: Universidad Autónoma de Madrid, 1991)

Portela, Clara. *European Union Sanctions and Foreign Policy: When and why do they work?* New York: Routledge, 2010.

Picchio Forlati, Laura, “The Legal Core of International Economic Sanctions” in *Les Sanctions Économiques en Droit International*, dir. Laura Picchio Forlati and Linos-Alexandre Sicilianos, (Leiden [etc.]: Martinus Nijhoff, 2004)

Tsagourias, Nicholas and White, Nigel D., *Collective Security: Theory, Law And Practice*. United Kingdom: Cambridge University Press, 2013, First edition.

University of Chicago Press. *The Chicago Manual of Style*. 15th ed. Chicago: Univ. of Chicago Press, 2003. Online version: <http://www.chicagomanualofstyle.org/>

Articles

Bird, Annie. “Third State Responsibility for Human Rights Violations” (Essex: European Journal of International Law, 2010) 21 (4): 883-900.

Bond, Ian and Odendahl, Christian and Rankin, Jennifer. “Frozen: The politics and economics of sanctions against Russia” (Centre for European Reform: March 2015).

Connolly, Richard and Galeotti, Mark and Skyner, Louis and Wood, Andrew. “Sanctions on Russia: Economics Effects and Political Rationales. (Chatham House, the Royal Institute of International Affairs, Russian and Eurasia Programme Event Summary, June 2015).

Davis, Cristopher. “The Ukraine conflict, Economic-Military Power Balances and Economic Sanctions: lessons from the past for future EU policies” (Royal Institute el Cano, ARI 20/2015, 10 April 2015), 81-109.

de Galbert, Simond “A Year of Sanctions Against Russia –Now What? A European Assessment of the Outcome and Future of Russia Sanctions” (Report of the CSIS Europe Program, October 2015), 26-28.

Duhamel, Sylvain. “L’usage des mesures restrictives autonomes de l’Union européenne: deux poids deux mesures ou des mesures de poids?” Master’s thesis, Bruges, College of Europe, 2012.

https://www.coleurope.eu/system/files_force/thesis/files/duhamel_sylvain.pdf?download=1

Eriksson, Mikael. “West’s Sanctions against Russia: Grand Strategy in the Making?”, Sweden Defense Research Agency (FOI), Stockholm, Memo 4933, Project A14101, RUFBS Briefing, May 2014.

Gebert, Konstanty, “Shooting in the dark? EU sanctions policies”, Brussels: European Council on Foreign Relations (ECFR), 2013. http://ecfr.eu/page/-/ECFR71_SANCTIONS_BRIEF_AW.pdf.

Giuliani, Jean-Dominique, “Russia, Ukraine and International Law”. *Fondation Robert Schuman*, European issues No. 344, February 17, 2015.

Giumelli, Francesco and Ivan, Paul. “The Effectiveness of EU sanctions: An analysis of Iran, Belarus, Syria and Myanmar (Burma)”, *EPC Issue Paper*, No. 76, Brussels, November 2013.

Giumelli, Francesco, "Sanctioning Russia: the right questions". *European Union Institute for Security Studies*, Issue Alert No.10, February 2015. http://www.iss.europa.eu/uploads/media/Alert_10_sanctions.pdf

Giumelli, Francesco, "Beyond Intergovernmentalism: the Europeanization of Restrictive Measures?" *Journal of Contemporary European Research*, Vol. 9, Issue 3 2013, pp. 390-405

Giumelli, Francesco. "How EU sanctions work: A new narrative. EU Institute for Security Studies, *Chaillot Paper* No. 129 (2013): 24

Hunter Christie, Edward. "Sanctions after Crimea: Have they worked?" *NATO Review Magazine*, July 13, 2015. <http://www.nato.int/docu/Review/2015/Russia/sanctions-after-crimea-have-they-worked/EN/index.htm> (accessed April 2016).

Leenders, Leander, Restrictive Measures: 'The EU Way To Go'?, Master's thesis, Bruges, College of Europe, 2013. https://www.coleurope.eu/system/files_force/thesis/files/leenders.pdf?download=1

Leenders, Leander. "EU Sanctions: A Relevant Foreign Policy Tool?". *EU Diplomacy Papers Issue No. 3/2014*, Department of EU International Relations and Diplomacy Students, Collège d'Europe (2014).

Lehne, Stefan, "The Role of Sanctions in EU Foreign Policy", *Carnegie Endowment for International Peace*, 14 December 2012, retrieved 2 May 2013, <http://carnegieendowment.org/2012/12/14/role-of-sanctions-in-eu-foreign-policy/etnv>.

Newland, Eric. "Executive Orders in Court." *The Yale Law Journal*, Vol. 124, No. 6 (2015): 1836-2201.

Nitoiu, Cristian (ed.), Barnsle, Joseph (ed.) et al., "Avoiding a New 'Cold War': The future of EU-Russia relations in the Context of the Ukraine Crisis", LSE Ideas Dahrendorf Forum, Special Report 20 March 2016.

Olson, William J. "The Impact of Executive Orders on the Legislative Process: Executive Lawmaking?" *CATO Institute*, Subcommittee on Legislative and Budget Process, October 27, 1999, <http://www.cato.org/publications/congressional-testimony/impact-executive-orders-legislative-process-executive-lawmaking>

Portela, Clara, "The EU's 'Sanctions Paradox'", Berlin: *Stiftung Wissenschaft und Politik*, October 2007.

Posner, Eric A. "Erga Omnes Norms, Institutionalization, and Constitutionalism in International Law." (The University of Chicago Law School: John M. Olin Law & Economics Working Paper No. 419, 2d Series, August 2008) <http://www.law.uchicago.edu/files/files/419.pdf>

Report of the International Law Commission on the work of its Fifty-third session, (YbILC, A/56/10, 2001)

Szczepanski, Marcin, “Economic impact on the EU of sanctions over Ukraine conflict”, *European Parliamentary Research Service*, Briefing October 2015.

Veebel, Viljar and Markus, Raul, “Lessons from the EU-Russia Sanctions 2014-2015”, *Baltic Journal of Law & Politics* Vol. 8, No. 1, 2015, 165-194.

White, Nigel D. “UN Sanctions: Where Public Law Meets Public International Law” in J. Farrall and K. Rubenstein (eds.), *Sanctions, Accountability and Governance in a Globalised World*, Cambridge: Cambridge University Press, 2009.

IX. Documents

United States

U.S. Library of Congressional Research Service. *Ukraine: Current Issues and U.S. Policy*, by Vincent L. Morelli, RL 33460 (2016). <https://www.fas.org/sgp/crs/row/RL33460.pdf>

U.S. Library of Congressional Research Service. *Executive Orders: Issuance, Modification, and Revocation*, by Vivian S. Chu and Todd Garvey, RS 20846 (2014). <https://www.fas.org/sgp/crs/misc/RS20846.pdf>

JUSTIA, U.S. Supreme Court Case Law, <https://supreme.justia.com> (accessed on March 13, 2016)

50 U.S.Const. §1641(c) and §1703(c)

Office of Foreign Assets Control “Directive 1 as amended under Executive Order 13662”, *U.S. Department of the Treasury*, September 12, 2014. https://www.treasury.gov/resource-center/sanctions/Programs/Documents/eo13662_directive1.pdf

U.S. President, Executive Order, “Blocking Property of Certain Persons Contributing to the Situation in Ukraine, 2014, Executive Order 13660,” *Federal Register* Vol. 79, No. 46 (March 6, 2014): 13493, <https://www.gpo.gov/fdsys/pkg/FR-2014-03-10/pdf/2014-05323.pdf>

Office of Foreign Assets Control, “Specially Designated Nationals and Blocked Persons List”, *U.S. Department of the Treasury*, May 5, 2015. <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>

Office of Foreign Assets Control, “Sectoral Sanctions Identification List”, *U.S. Department of the Treasury*, December 22, 2015. <https://www.treasury.gov/ofac/downloads/ssi/ssi.pdf>

U.S. President, Executive Order, “Blocking Property of Additional Persons Contributing to the Situation in Ukraine, 2014, Executive Order 13661,” (Federal Register Vol. 79, No. 53, March 16, 2014): 15535, <https://www.gpo.gov/fdsys/pkg/FR-2014-03-19/pdf/2014-06141.pdf>

U.S. President, Executive Order, “Blocking Property of Additional Persons Contributing to the Situation in Ukraine, 2014, Executive Order 13661” (Federal Register Vol. 79, No. 56, March 24, 2014): 16169, <https://www.gpo.gov/fdsys/pkg/FR-2014-03-24/pdf/2014-06612.pdf>

“Fact Sheet: Ukraine-Related Sanctions”, *The White House*, Office of the Press Secretary, March 17, 2014, <https://www.whitehouse.gov/the-press-office/2014/03/17/fact-sheet-ukraine-related-sanctions>

European Union

“Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy” *Council of the European Union*, 15 June 2012, 11205/12.

European Commission, “Sanctions or restrictive measures”, 2008, retrieved 3 May 2013, http://eeas.europa.eu/cfsp/sanctions/docs/index_en.pdf

“G-7 Leaders Statement”, European Commission Statement 14/41, Brussels 3rd March 2014. http://europa.eu/rapid/press-release_STATEMENT-14-41_en.htm

Remarks by President Herman Van Rompuy, following the first session of the European Council 2014, Brussels 20 March 2014, EUC 67/14, PRESSE 175.

European Commission, “G7 Summit in Brussels, 4 – 5 June 2014: Background note and facts about the EU's role and actions”, (European Commission Press Release, Brussels 3rd June 2014) and "G-7 Leaders Statement", (European Commission Statement 14/41, Brussels 3rd March 2014)

“European Commission's support for Ukraine”. Brussels, June 25, 2014. http://europa.eu/rapid/press-release_MEMO-14-279_en.htm

Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, OJ L 66, 6.3.2014, p. 26

Council Decision 2014/145/CFSP of 17 March 2014, containing notice to listed persons/entities bodies; travel restrictions; and asset freezes, (OJ L 78, 17.3.2014, p. 16

Council Regulation (EU) No 269/2014 of 17 March 2014, containing asset freezes, OJ L 78, 17.3.2014, p. 6–15

Council Decision 2014/386/CFSP of 24 June 2014 containing import ban on goods originating in the Crimea/Sevastopol, OJ L 183, 24.6.2014, p. 70–71

Council Regulation (EU) No 692/2014 of 24 June 2014, containing exceptions to trade bans in respect of the Crimea/Sevastopol, OJ L 183, 24.6.2014, p. 9–14

Council Decision 512/2014/CFSP of 31 July 2014, concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, OJ L 229, 31.7.2014, p. 13–17

Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine OJ L 229, 31.7.2014 p. 1

Council Decision 2014/659/CFSP of 8 September 2014 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, OJ L 271, 8.09.2014, p. 54

Council Regulation (EU) No 960/2014 of 8 September 2014 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 271, p. 3

Council Decision 2014/872/CFSP of 4 December 2014 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in

Ukraine, and Decision 2014/659/CFSP amending Decision 2014/512/CFSP OJ L 349, 04.12.2014, p. 58

Council Regulation (EU) No 1290/2014 of 4 December 2014 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, and amending Regulation (EU) No 960/2014 amending Regulation (EU) No 833/2014, OJ L 349, p. 20

Council Decision 2015/1764/CFSP of 1 October 2015 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 257, 2.10.2015, p. 42.

Council Decision 2015/2431/CFSP of 21 December 2015 amending Council Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 334, 22.12.2015, p. 22

Council Decision (CFSP) 2015/1781 of 5 October 2015 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, OJ L 259, 6.10.2015, p. 23-24

Council Implementing Regulation (EU) 2016/353 of 10 March 2016 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine OJ L 67, 12.3.2016, p. 1–17

Russian Federation

Comments from the Information and Press Department of the Russian Ministry of Foreign Affairs regarding the temporary suspension of the events within the framework of the negotiation process regarding Russia's joining the Organisation for Economic Co-operation and Development (OECD) N° 556, March 2014. http://www.mid.ru/en/foreign_policy/news

International Organizations

The World Bank, "Global Monitoring Report 2015/2016: Development Goals in an Era of Demographic Change" (International Bank for Reconstruction and Development and the World Bank, Washington DC: 2016), <http://pubdocs.worldbank.org/pubdocs/publicdoc/2015/10/503001444058224597/Global-Monitoring-Report-2015.pdf> (Accessed on April 1, 2016)

Organization for Economic Cooperation and Development, Statistics. <http://stats.oecd.org>

The Central Bank of the Russian Federation, Statistics. <http://www.cbr.ru/eng/>

Newspapers

Lee, Jasmine C. "Why the Russian Economy is Tumbling" *The New York Times*, April 12, 2016. http://www.nytimes.com/interactive/2016/04/12/world/europe/russian-economy-tumbling.html?_r=1 (Accessed on 17 April 2016).

Luttwak, Edward. “From Geopolitical to Geo-economics: Logic of Conflict, Grammar of Commerce, *The National Interest*, No. 20. (1990) pp. 17-23

“Russia to extend Western food ban to 2018” (*The Daily Star*, 27 May 2016). <https://www.dailystar.com.lb/News/World/2016/May-27/> (Accessed on May 28, 2016)

Hennessey, Kathleen. “Obama says Russian moves in Crimea will be ‘costly’”, *Los Angeles Times*, March 13, 2014, <http://www.latimes.com/world/worldnow/la-fg-wn-obama-ukraine-20140303-story.html> (Accessed on April 22, 2016)

Gurvich, Evsey, “The impact of sanctions on Russia: Negligible now, disastrous later” *Europe’s World*, June 22, 2015, <http://europesworld.org/2015/06/22/impact-sanctions-russia-negligible-now-disastrous-later/> (accessed May 2, 2016).

“Sanctions: What could be the next move?” *BBC News*, March 21, 2014, <http://www.bbc.com/news/business-26612848> (Accessed on 17 April, 2016).

“Economical sanctions against Russia” *TASS Infographics*, <http://tass.ru/en/infographics/7239> (Last accessed on May 30, 2016).

Others

Almunia, Joaquín. “El futuro y las prioridades de Europa”, Foro de Foros (Barcelona), 11 February 2016

“Geopolítica y gobernanza global: riesgos y oportunidades” (Open Online Course directed by Javier Solana, *ESADE Business and Law School*, November 3- December 10, 2015).

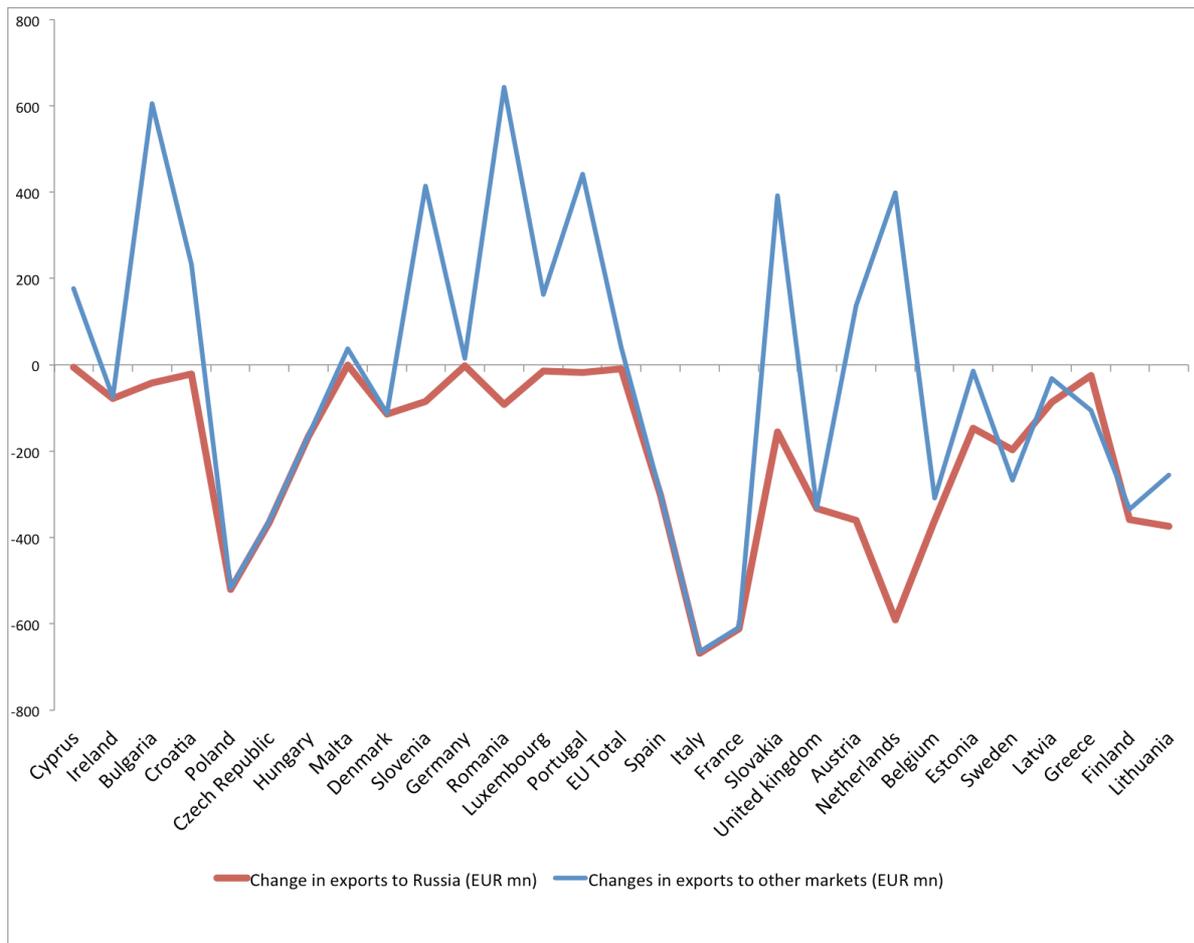
X. Case law

Case concerning East Timor, ICJ Reports, 1995, p. 90 at 172

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 638

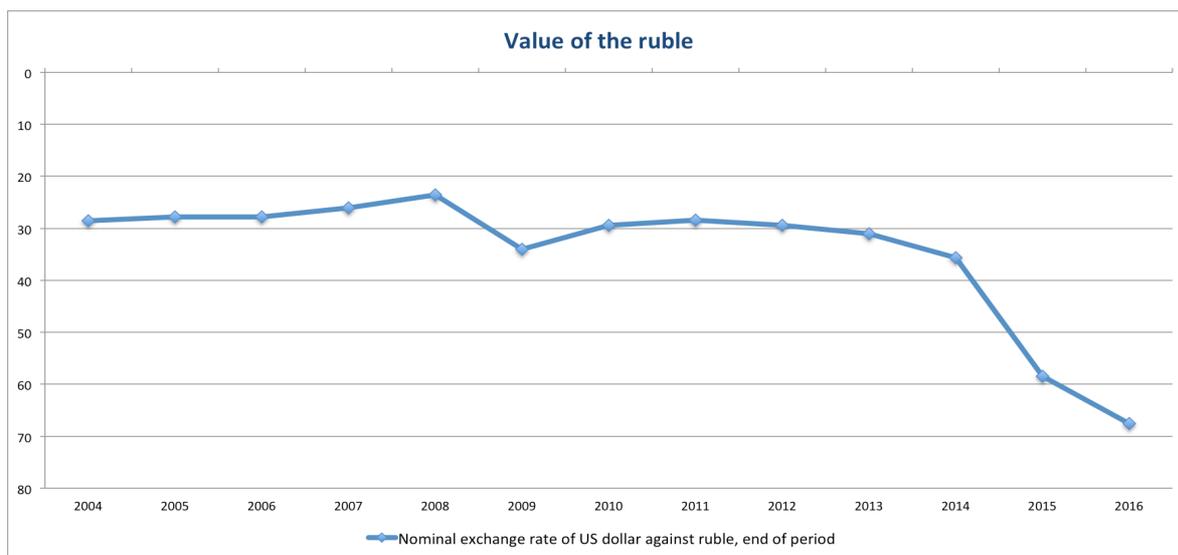
XI. Annex

FIGURE 1: Changes in goods exports to Russia and to other countries – EU Member States



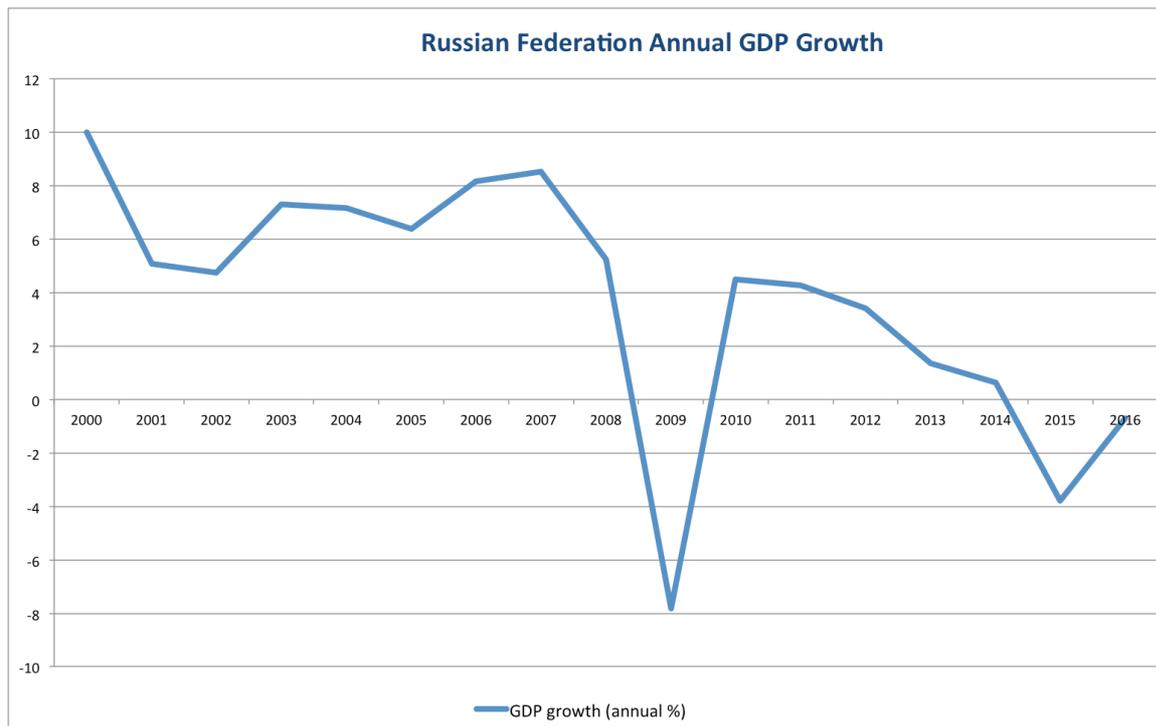
Source: Eurostat trade statistics; 2015Q1 compared to 2014Q1; Extra-EU and Intra-EU trade.

FIGURE 2: Evolution of the nominal exchange rate of US dollar against ruble (Q1)



Source: Central Bank of the Russian Federation

FIGURE 3: Russian Federation Annual GDP Growth



Source: The World Bank