国際機構の権限の根拠は設立文書（条約）にあり、したがって、国際機構は設立文書当事国（＝国際機構加盟国）により委譲された権限のみを行使することができる。ならば、国際機構が何らかの損害を与える場合、「損害を与える行為をするような国際機構に権限を委譲したこと」を理由に、国際機構加盟国の責任を問うことはできるか。

１．ヨーロッパ人権裁判所 Bosphorus 事件大法廷判決（2005 年）

ヨーロッパ人権裁判所の Bosphorus 事件判決（2005 年）を例に考えてみよう。ユーゴスラヴィア紛争中に採択された国連安保理決議 820 (1993)は、次のように定めていた。

> 24. Decides that all States shall impound all vessels, freight vehicles, rolling stock and aircraft in their territories in which a majority or controlling interest is held by a person or undertaking in or operating from the Federal Republic of Yugoslavia (Serbia and Montenegro) and that these vessels, freight vehicles, rolling stock and aircraft may be forfeit to the seizing State upon a determination that they have been in violation of resolutions 713 (1991), 757 (1992), 787 (1992) or the present resolution;

これを受けて、ヨーロッパ共同体(EC)は同決議の内容を EC 域内で実施するための規則 990/93 を採択した[1]。

> *Article 8*
>
> All vessels, freight vehicles, rolling stock and aircraft in which a majority or controlling interest is held by a person or undertaking in or operating from the Federal Republic of Yugoslavia (Serbia and Montenegro) shall be impounded by the competent authorities of the Member States.
>
> Expenses of impounding vessels, freight vehicles, rolling stock and aircarft may be charged to their owners.

この EC 規則に基づき、アイルランド政府は、トルコの Bosphorus 社がユーゴスラヴィア国営のユーゴスラヴィア航空からリースしていたボーイング 737-300 機がダブリン空港に着陸した際、同機を差し押さえ、没収した。Bosphorus 社は財産権侵害等を主張してアイルランド国内裁判所に訴えたが最高裁でも敗訴し、ヨーロッパ人権条約に基づきヨーロッパ人権裁判所にアイルランドを訴えた。ヨーロッパ人権条約（第一）議定書 1 条は財産権の保障を定めている。

さて、安保理決議および EC 規則により航空機の没収が義務づけられており、アイル

[1] 「規則(regulation)」とは、とりあえず「EU（この事件当時は EC）の法規範の一種」と理解しておけば良い。EC 構成国たるアイルランドは、この規則により法的に拘束される。
日本であれば、安保理決議により科される制裁措置は、外国為替および外国貿易法（外為法）に基づいて実施される。EC においては、その権限が既に EC 構成国から EC に移譲されていたため、EC 構成国各国ではなく EC が安保理決議実施のための立法を行った。EU になってからも同様である。

ランドはその義務を履行しただけである場合、アイルランドによる財産権侵害は成立し得るのだろうか。ヨーロッパ人権裁判所大法廷は、次のように述べた。

152. The Convention does not, on the one hand, prohibit Contracting Parties from transferring sovereign power to an international (including a supranational) organisation in order to pursue cooperation in certain fields of activity […].

153. On the other hand, it has also been accepted that a Contracting Party is responsible under Article 1 of the Convention[2] for all acts and omissions of its organs regardless of whether the act or omission in question was a consequence of domestic law or of the necessity to comply with international legal obligations. […]

155. In the Court's view, State action taken in compliance with such legal obligations is justified as long as the relevant organisation is considered to protect fundamental rights, as regards both the substantive guarantees offered and the mechanisms controlling their observance, in a manner which can be considered at least equivalent to that for which the Convention provides […].

そして、EC においては基本権保護が図られており、したがって EC 規則に従うアイルランドによる没収はヨーロッパ人権条約に違反しない、と判断された[3]。

この理由付けによれば、EC の措置を実施するアイルランドがヨーロッパ人権条約に違反することがあるとすればどのような場合か？

２．自由権規約人権委員会 Sayadi 事件見解（2008 年）

もちろん、類似の問題は他の人権条約との関係でも問題になり得るところであり、実際に市民的及び政治的権利に関する国際規約（自由権規約）[4]との関連で問題になった。

安保理は、アフガニスタンのタリバーン政権に対する制裁を決議 1267 (1999)・1333 (2000)・1390 (2002)によって科した（その内容は、下記 Al-Dulimi 事件の決議 1483 (2003)とほぼ同様である）[5]。これを受けて、EC はそれを実施するための規則 881/2002 を採択した（上記 Bosphorus 事件の場合と同様）。さらに、それを受けて、ベルギーは、ベルギー国籍を有する Sayadi らに対する刑事捜査を開始した。その結果、Sayadi らは制裁委員会作成の制裁リストに載り、移動の自由の制限や財産凍結などの対象となった。そこで、

[2] これは、条約本体の 1 条であり、議定書の 1 条ではない。

[3] Bosphorus 事件の日本語評釈として、須網隆夫「旧ユーゴ連邦に対する政策決議を実施する EC 規則に基づくユーゴ航空所有機の没収」戸波江二ほか（編）『ヨーロッパ人権裁判所の判例』（信山社、2008 年）59 頁、庄司克宏「欧州人権裁判所の『同等の保護』理論と EU 法」慶応法学 6 号（2006 年）285 頁。庄司論文には、Bosphorus 判決より前に類似の議論の原型を示した Matthews 判決（1999 年）の説明もある。

[4] 同規約は日本も当事国である。同規約の定める人権の内容および人権保障手続については、国際法第一部で学んでいる。参照、酒井啓亘ほか『国際法』（有斐閣、2011 年）第 5 編第 5 章。もっとも、以下に述べる個人通報制度については、日本は参加していない。

[5] これら決議によって設置された制裁委員会は、現在、対 ISIL・アルカイーダ制裁委員会として存続している。

Sayadi らは、ベルギー国内裁判所に訴えたところ、ブリュッセル第一審裁判所は、Sayadi らをリストから外す手続をとることをベルギー政府に命じた。さらに、Sayadi らはベルギーで刑事訴追されたが、ブリュッセル第一審裁判所は免訴(non-lieu)[6]の判断を下した。そこで、ベルギー政府は制裁委員会に同人らをリストから外すことを求めたが、制裁委員会はこれに応じなかった。そこで、Sayadi らはベルギーを相手に、自由権規約 12 条（移動の自由）などの違反を主張して自由権規約人権委員会に個人通報申立[7]を行った[8]。

中心的争点は、ベルギーの措置が 12 条 3 項の例外に当たるかどうかであった。これについて、自由権規約人権委員会は、以下の見解(U.N. Doc. CCPR/C/94/D/1472/2006)を示した[9]。

10.6 In the present case, the Committee recalls that the travel ban for persons on the sanctions list, particularly the authors, is provided by Security Council resolutions to which the State party considers itself bound under the Charter of the United Nations. Nevertheless, the Committee considers that, whatever the argument, it is competent to consider the compatibility with the Covenant of the national measures taken to implement a resolution of the United Nations Security Council. […]

10.7 The Committee notes that the obligation to comply with the Security Council decisions adopted under Chapter VII of the Charter may constitute a “restriction” covered by article 12, paragraph 3, which is necessary to protect national security or public order. It recalls, however, that the travel ban results from the fact that the State party first transmitted the authors’ names to the Sanctions Committee. […] In the present case, the Committee finds that, even though the State party is not competent to remove the authors’ names from the United Nations and European lists[10], it is responsible for the presence of the authors’ names on those lists and for the resulting travel ban.

10.8 The Committee notes that a criminal investigation that had been initiated against the authors at the request of the Public Prosecutor’s Office was dismissed in 2005, and that the authors thus do not pose any threat to national security or public order. Moreover, on two occasions the State party itself requested the removal of the authors’ names from the sanctions list, considering that the authors should no longer be subject, inter alia, to restrictions of the right to leave the country. The dismissal of the case and the Belgian authorities’ requests for the removal of the authors’ names from the sanctions list show that such restrictions are not covered by article 12, paragraph 3. The Committee considers that the facts, taken together, do not disclose that the

[6] 日本の刑事訴訟法における不起訴処分に類似。

[7] この手続の詳細は国際法第一部で学んでいる。参照、酒井啓亘ほか『国際法』（有斐閣、2011 年）第 5 編第 5 章第 5 節 3(1)。

[8] 自由権規約の当事者となれるのは国家のみであり、国連は同規約の当事者ではない。したがって、国連を相手に申立を行うことはできない。

[9] 評釈として、水島朋則「対テロ安保理決議の実施における自由権規約違反の可能性――サヤディ対ベルギー事件」国際人権 20 号（2009 年）115 頁、丸山政己「国連安全保障理事会と自由権規約委員会の関係――狙い撃ち制裁に関わる Sayadi 事件を素材として――（2・完）」山形大学法政論叢 49 号（2010 年）61 頁。さらに、小畑郁「個人に対する国連安保理の強制措置と人権法によるその統制」国際問題 592 号（2010 年）5 頁。

[10] “European list”とは、EC 規則に基づいて作成される同様の制裁対象者リスト。

restrictions of the authors' rights to leave the country were necessary to protect national security or public order. The Committee concludes that there has been a violation of article 12 of the Covenant.

これに対して、何人かの委員が意見を付した。国際機構法に特に関連する箇所を抜粋する（全文は、上記意見へのリンクを参照）。

Ruth Wedgwood 反対意見

Belgium was required by the Security Council to provide information about the authors. The decision to "list" the authors under the financial sanctions directed against Al-Qaida and its affiliates was taken by the Sanctions Committee of the Security Council, not by Belgium.

岩沢雄司個別意見

The majority's Views dismiss the State party's arguments [on Article 103 of the Charter of the United Nations[11]], stating merely that "the Committee considers that, whatever the argument, it is competent to consider the compatibility with the Covenant of the national measures taken to implement a resolution of the United Nations Security Council" (para. 10.6). I do not believe that the Committee should sidestep the issue raised by Article 103 of the Charter in this manner […]. The State parties to the Covenant are obliged to comply with the obligations under it to the maximum extent possible, even when they implement a resolution of the United Nations Security Council. […] The State party could have acted otherwise while in compliance with the resolutions of the Security Council of the United Nations. For the reasons stated above, I am of the view that Article 103 of the Charter of the United Nations does not prevent the Committee from reaching the conclusions drawn in the Views.

Sayadi 事件見解は、Bosphorus 事件判決とどこが似ていてどこが異なるだろうか。また、どちらの見解が適切か。なお、Wedgwood・岩沢意見は重要な論点を提起しているが、これについては次の Al-Dulimi 事件と併せて考えよう。

３．ヨーロッパ人権裁判所 Al-Dulimi 事件

Bosphorus 事件は EU 構成国の責任がヨーロッパ人権裁判所において、Sayadi 事件は EU 構成国の責任が自由権規約人権委員会において、それぞれ問われた事例であった。それに対し、Al-Dulimi 事件では、EU 非構成国の責任が問われた事例である[12]。

（１）小法廷判決（2013 年）[13]

2003 年のイラク戦争後に、安全保障理事会は、次の規定を含む決議 1483 (2003)を採

[11] 今回及び前回扱った問題と国連憲章 103 条との関連につき、加藤陽「国連憲章第 103 条と国際人権法」国際公共政策研究 18 巻 1 号（2014 年）163 頁。

[12] 類似の類型の事案として、Nada 事件がある。同事件につき、丸山政己「国連安全保障理事会決議に基づく狙い撃ち制裁の実施と欧州人権条約上の義務――Nada 対スイス事件（欧州人権裁判所大法廷 2012 年 9 月 12 日判決）」（山形大学）法政論叢 56 号（2013 年）35 頁。

[13] 参照、加藤陽「国連憲章の義務の優先と欧州人権裁判所における『同等の保護』理論」国際公共政策研究 19 巻 1 号（2014 年）147 頁。

択した。文中の the previous Government of Iraq とはフセイン政権のことである。

> 23. *Decides* that all Member States in which there are:
>
> (a) funds or other financial assets or economic resources of the previous Government of Iraq or its state bodies, corporations, or agencies, located outside Iraq as of the date of this resolution, or
>
> (b) funds or other financial assets or economic resources that have been removed from Iraq, or acquired, by Saddam Hussein or other senior officials of the former Iraqi regime and their immediate family members, including entities owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction,
>
> shall freeze without delay those funds or other financial assets or economic resources and, unless these funds or other financial assets or economic resources are themselves the subject of a prior judicial, administrative, or arbitral lien or judgement, immediately shall cause their transfer to the Development Fund for Iraq, it being understood that, unless otherwise addressed, claims made by private individuals or non-government entities on those transferred funds or other financial assets may be presented to the internationally recognized, representative government of Iraq; and *decides further* that all such funds or other financial assets or economic resources shall enjoy the same privileges, immunities, and protections as provided under paragraph 22;

この決議採択を受け、スイスは、イラクに対する経済制裁に関する政令を改正し、資産凍結の対象となる個人の決定は、国連のデータに基づいてスイス経済省が行うこととした（スイスは EU 構成国ではない〔EU サイト・スイス外務省サイト〕ため、EU 規則を履行するのではなく、日本と同様に自ら国内法上の措置を執る）。その後、安保理決議 1518 (2003)に基づいて安保理補助機関として設置された制裁委員会が、上に引用した決議 1483 (2003) の 23 段にいう個人を特定し、そこに Al-Dulimi 氏も含められた。同制裁委員会の決定に基づき、スイス経済省は上記スイス政令による資産凍結の対象となる個人として Al-Dulimi 氏を指定した。同氏は、この指定が公正な裁判を受ける権利の侵害であるなどと主張して指定取消を求めてスイス裁判所に訴えたが敗訴し、ヨーロッパ人権裁判所に提訴した。ヨーロッパ人権条約 6 条は、公正な裁判を受ける権利を定めている。

裁判所（小法廷）は、2013 年の判決において次のように判示した。

> 114. The Court reiterates that the Convention does not prohibit Contracting Parties from transferring sovereign power to an international organisation in order to pursue cooperation in certain fields of activity. States nevertheless remain responsible under the Convention for all acts and omissions of their organs stemming from domestic law or from the necessity to comply with international legal obligations (see Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi, cited above, §§ 152-153). State action taken in compliance with such obligations is justified where the relevant organisation protects fundamental rights in a manner which can be considered at least equivalent to that for which the Convention provides. […]
>
> 118. As to the protection afforded in the present case, the Court observes that the respondent Government themselves admit that the system in place […] does not provide a level of protection that is equivalent to that required by the Convention […]. The Court shares that view.

[…]

134. Having regard to the foregoing, the Court takes the view that, for as long as there is no effective and independent judicial review, at the level of the United Nations, of the legitimacy of adding individuals and entities to the relevant lists, it is essential that such individuals and entities should be authorised to request the review by the national courts of any measure adopted pursuant to the sanctions regime. Such review was not available to the applicants. It follows that the very essence of their right of access to a court was impaired.

135. Accordingly, there has been a violation of Article 6 § 1.

（２）大法廷判決（2016 年）[14]

この事件は、その後大法廷に移送された（ヨーロッパ人権条約 43 条。大法廷に移送される条件の詳細はこちら）。そして、大法廷は、2016 年の判決において、やや異なる理由付けで同じ結論に達した。

135. The Court would emphasise that one of the basic elements of the current system of international law is constituted by Article 103 of the UN Charter […].

140. （国連憲章 1 条および 24 条 2 項に鑑み、）[T]here must be a presumption that the Security Council does not intend to impose any obligation on member States to breach fundamental principles of human rights […]. In the event of any ambiguity in the terms of a UN Security Council resolution, the Court must therefore choose the interpretation which is most in harmony with the requirements of the Convention and which avoids any conflict of obligations.

147. […] [A]ny State Party whose authorities give legal effect to the addition of a person – whether an individual or a legal entity – to a sanctions list, without first ensuring – or being able to ensure – that the listing is not arbitrary will engage its responsibility under Article 6 of the Convention.

148. Furthermore, the European Court of Justice has also held that “it is not a consequence of the principles governing the international legal order under the United Nations that any judicial review of the internal lawfulness of the contested regulation in the light of fundamental freedoms is excluded by virtue of the fact that that measure is intended to give effect to a resolution of the Security Council adopted under Chapter VII of the Charter of the United Nations” (Kadi I[15], §299 […]). As the Court has already observed, the Security Council is required to perform its tasks while fully respecting and promoting human rights […]. To sum up, the Court takes the view that paragraph 23 of Resolution 1483 (2003) cannot be understood as precluding any judicial scrutiny of the measures taken to implement it.

149. In those circumstances, and to the extent that Article 6 § 1 of the Convention is at stake, the Court finds that Switzerland was not faced in the present case with a real conflict of obligations capable of engaging the primacy rule in Article 103 of the UN Charter. […]

150. Turning to the precise obligations imposed by the Convention on Switzerland in the present

[14] 参照、鈴木悠「安保理決議に基づく狙い撃ち制裁の実施と欧州人権条約の関係――Nada 事件および Al-Dulimi ほか事件判決を手がかりとして」東北ローレビュー4 号（2017 年）53 頁。

[15] Kadi 事件には、第 3 部 7.で触れた。

case, the Court accepts that the Federal Court was unable to rule on the merits or appropriateness of the measures entailed by the listing of the applicants. […] However, before taking the above-mentioned measures, the Swiss authorities had a duty to ensure that the listing was not arbitrary. In its judgments of 23 January 2008 the Federal Court merely confined itself to verifying that the applicants' names actually appeared on the lists drawn up by the Sanctions Committee and that the assets concerned belonged to them, but that was insufficient to ensure that the applicants had not been listed arbitrarily.

151. The applicants should, on the contrary, have been afforded at least a genuine opportunity to submit appropriate evidence to a court, for examination on the merits, to seek to show that their inclusion on the impugned lists had been arbitrary. That was not the case, however. […]

155. Having regard to the foregoing, the Court finds that there has been a violation of Article 6 §1 of the Convention in the present case.

これに対し、Pinto de Albuqurque 裁判官は、結論に賛成しつつも以下のような意見を述べた（Hajiyev, Pejchal, Dedov 各裁判官同調。正文はフランス語）。

65. […] [N]either the 1518 Committee nor the Focal Point[16] provides an independent and impartial mechanism for the taking and reviewing of listing and delisting decisions. Consequently, the Contracting Parties to the Convention[17] must then ensure that the pertinence of the complainant's inclusion on the sanctions list is examined by their courts and that the latter have sufficient evidence on which to assess it […]

71. […] The Charter's weak constitutional claim may not always prevail in this conflict, in spite of the secondary rule of Article 103. In the absence of a constitutionally binding catalogue of freedoms and rights enforceable by a court of law, or other body or official authorised to exercise judicial power, within the United Nations, Council of Europe member States may have to verify the internal and external validity of UN resolutions.

他方、Sicilianos 裁判官は、やはり結論に賛成しつつ、また別の意見を述べた（正文はフランス語）。

5. […] In the case of a State outside the EU, when it takes steps to implement a Security Council resolution imposing economic sanctions it is directly enforcing that resolution.

7. […] The UN Charter and its Article 103 are unique […]. […] The United Nations and other international organisations cannot therefore be placed on the same plane. […]

8. More specifically, when it comes to the implementation of the Security Council's economic sanctions by non-members of the EU, such as Switzerland, there are two sides to the equation: either there is no real conflict of obligations for the respondent State, as the Court has found in the present case, in which case the equivalent protection test does not even come into play (see paragraph 149 of the judgment); or there is a conflict of obligations, but then it will be governed by Article 103 of the UN Charter. In both cases – and *tertium non datur* – the equivalent protection

[16] 安保理による制裁手続を指す。

[17] ヨーロッパ人権条約のこと。

test is inapplicable to a situation such as the present.

これらの見解のいずれが説得的だろうか。あるいは、また別の考えがあり得るか。

以上