The Financial Transaction Tax and the EU:
International law limits on a state’s right to tax

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So the UK’s attempt to annul the decision authorising enhanced cooperation in relation to the FTT has failed (see Case C-209/13, 30.4.14). That is no surprise. It does not necessarily follow, of course, that any challenge to the implementation of enhanced cooperation will also fail. The arguments over the FTT will go on for some time yet.

One disputed matter is the extent to which UK competences and rights are infringed by the FTT. Another concerns the UK’s contention that the impact of the FTT on non-participating Member States, such as the UK itself, contravenes customary international law.

The impact of public international law on a state’s right to impose taxation has long been debated. Sometimes there has been reluctance to acknowledge that international law can limit a state’s right to tax at all. More often, the debate has concerned the nature of the connection between a state and what it wants to tax.

The debate has sometimes been highly abstract and academic. Furthermore, much of the writing is dated. Now, the impact of the law of supranational institutions such as the EU and the WTO as well as modern human rights law, international, regional and national, needs to be kept in mind.

As this case shows, a state’s interests can require the limitation as well as the protection of states’ rights to tax. EU Member States before the CJEU often try to maximise their room for action. In this case the UK is relying on customary international law to impose limits on states’ taxing rights. Any success may not be entirely without cost. It will be subject to those limits too.

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