CHAPTER 6

Sanctions against Non-State Actors

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Abstract

Sanctions against non-State actors (NSAs) are often assumed to be a post-9/11 phenomenon directed against terrorist organizations like Al-Qaida. By examining law and practice at UN, EU and US levels, this chapter shows their earlier origins, but also shows that they were originally closely modelled on sanctions targeted at States. Moreover, as with sanctions against States, sanctions against NSAs were primarily imposed to combat threats to peace and security, although there has been a move at the institutional level to include violations of international law within the conception of what constitutes a threat to international peace and security. The move towards targeting terrorist organizations has further extended the reach of sanctions, in terms of both the obligations of States and the nature and location of the targets, so that such measures have become truly global. It follows that the doctrine of counter-measures, based as it is on bilateral legal relationships between States, is incapable of providing a legal framework to regulate sanctions, so that what is needed is a clearer perception of international public order, and the norms that underpin it, as well as the sanctions that enforce compliance with those norms.

Keywords


1 Introduction

The aims of this chapter are: first to contextualise the imposition of sanctions against non-State actors (NSAs) – to explain the trend towards them and their goals and purposes. It considers the notion of NSAs (terrorists, rebels, ...) drawing a line between them and State actors, which is not as straightforward as might first appear (shown, for example, by the case of individual politicians or governmental employees). The next step is to undertake a legal doctrinal analysis
of such measures, first in terms of their legal nature (whether they are imposed to punish illegal acts or to tackle threats to the peace), and the values they are meant to protect (security, human rights, democracy, ...). The chapter then considers their legal bases (in treaties, collective countermeasures, custom, ...). The legal obligations imposed by them are analysed (whether they bind members, all States, NSAs themselves), and their legal effects considered (whether they criminalise, punish directly or indirectly, override existing obligations). Any legal limitations upon them are identified (from general principles of international law such as non-intervention to specific legal regimes such as international human rights law). The chapter also considers issues of implementation, oversight and enforcement of sanctions against NSAs; and accountability for misapplied or overly injurious sanctions. The legal analysis is based on relevant constitutional, international and regional laws, as well as the practice of the UN, the EU, and the US,1 as leading actors in the imposition of this type of measure. The aim is to consider the above issues in the light of the particular purposes, form and effects of sanctions against NSAs. Several studies of paradigmatic sanctions regimes against NSAs conclude the chapter, and conclusions are drawn particularly on the development of a more sophisticated legal framework to govern sanctions taken against NSAs.

2 The Trend towards Sanctions against NSAs

The post-Cold War period has seen a sharp move towards ‘smart’ sanctions against individuals or entities deemed responsible for breaches of international law or threats to international peace and security. This comports with a move in international law to supplement, but not replace, State responsibility with individual responsibility for breaches of international law. The main motivation has been to ensure that innocent citizens and civilians are not punished for the wrongdoings of their leaders. This is part of the move towards protecting human security alongside, but not instead of, State security and generally towards the protection of civilians.2 This trend was identified by the UN’s High Level Panel in its 2004 report ‘A More Secure World’:

As a result of growing concern over the humanitarian impact of comprehensive sanctions, the Security Council stopped imposing them after the

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1 For more detail on EU sanctions see Chapter 4 by Marco Gestri in this volume.