

The use of international economic sanctions in the fight against terrorism

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The international community has increasingly resorted to international economic sanctions in response to threats to international peace and security. The UN Security Council has imposed multilateral sanctions 12 times in the past decade compared with twice in the previous 45 years. The EU has also followed this trend. In this context, it is not surprising that in the aftermath of the September 11 attacks, the US and its allies broadened economic sanctions targeted at terrorist individuals and organisations, as well as measures to combat money laundering.

On 25 September 2001, President Bush issued a new Executive Order freezing the assets of 27 designated individuals and groups and prohibiting any dealings with them by US persons. This list is under constant review and has been largely expanded. The Order enables the US Treasury Department to designate financial institutions and non-US governmental entities that obstruct the US search for terrorist assets. In addition, a program dating from 1999 targets the Taliban Regime in Afghanistan including its leaders, entities it owns or controls, and persons who support it in any way.

The UN also imposed specific sanctions in response to the events of September 11. On 28 September 2001, acting under Chapter VII of the UN Charter, the Security Council adopted Resolution 1373.

The Council urged all States to prevent and suppress the financing of terrorist acts, criminalize the wilful financing of such acts, and freeze the financial assets or economic resources available for the benefit of persons involved in such acts.

These measures may well be the sign of a new stage in the evolution of collective enforcement capabilities. Like in the past cases, the Security Council has acted to mobilise the collective efforts of the international community toward enforcement of important norms of international law and morality. However, the unique feature of these sanctions is that for the first time, broad economic sanctions were targeted not at a “rogue” State but against entities and non-state actors. This is essential as the lack of link between State responsibility and individual responsibility make this case particularly complex and raise novel legal issues. Two sanction measures were deemed necessary to fight terrorism, namely measures against the Taliban regime and States that are held to harbour terrorists on the one hand, and specific measures targeted at individuals and entities on the other. This may illustrate a conflation of the international responsibility of the State with the criminal responsibility of individual perpetrators.

According to the Draft Articles on State Responsibility, “The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.” However, international law, and human rights law in particular, is moving toward lowering the threshold for holding States accountable for the failure to prevent violations by non-State actors. It is possible that the US will argue that State acquiescence in a pattern of conduct of non-State actors will be sufficient to attribute such conduct to the State.

These new forms of international economic sanctions may address some of the concerns traditionally voiced against such measures, namely the harm suffered by the civilian population of the targeted State. One can hope that these measures, being targeted to the maximum extent against the alleged wrongdoers will avoid at least the most serious types of harm to vulnerable populations.

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