

Doctrina
Studia Społeczno-Polityczne
13/2016
PL ISSN 1730-0274

Mariusz Boguszewski

Siedlce University of Natural Science and Humanities

Faculty of Humanities

Wydział Sprawiedliwości i Spraw Wewnętrznych

Stałe Przedstawicielstwo RP przy UE

The outline of the development of sanctions in the foreign policy over the centuries

Zarys rozwoju sankcji w polityce zagranicznej na przestrzeni wieków

Abstrakt: Już od czasów starożytnych w ramach prowadzonej przez różne podmioty polityki zagranicznej stosowano sankcje, równoległe z prowadzonymi konfliktami zbrojnymi lub oddzielnie, w celu osiągnięcia określonych celów politycznych. Z upływem czasu sankcje ulegały ciągłej transformacji obejmującej rodzaje, jak również procedury decyzyjne skutkujące ich nakładaniem. Artykuł dostarcza przeglądu procesu przekształcania się charakteru sankcji od prymitywnych narzędzi nakierowanych na osiągnięcie jednego prostego skutku, po wyrafinowane środki, służące określonemu porządkowi międzynarodowemu, stanowiące efekt wieloetapowego procesu decyzyjnego i niosące ze sobą różnorodne następstwa. Studium oparto o najbardziej spektakularne przykłady zastosowania sankcji w historii ludzkości.

Abstract: Since the ancient times sanctions have been applied in the course of various foreign policies in parallel with the ongoing armed conflict or separately in order to achieve certain political objectives. Over time, sanctions have undergone continuous transformation including types, as well as the decision-making procedures resulting in their application. The article provides an overview of the process of transformation of the nature of the sanctions beginning with primitive tools aimed at achieving one simple effect to elaborate measures used for a particular international order, resulting from a multi-stage, decision-making process and having

a variety of consequences. The study is based on the most spectacular examples of applied sanctions in the history of mankind.

Słowa kluczowe: Historia sankcji, embargo, sankcje inteligentne, polityka zagraniczna, Unia Europejska

Key words: history of sanctions, embargo, smart sanctions, foreign policy, the European Union

Introduction

The concept of international sanctions has been around at least from the time of the Bronze Age when its use was firstly recorded. They accompanied armed conflicts, but also were employed separately in order to achieve certain political objectives. Since then, different forms of sanctions and imposing procedures have been developed – from archaic measures aiming at achieving a single result and imposed in a simple decision-making process to complex instruments of international law against certain groups or interests which result from multistage decisions based on democratic principles. Considering that, the development of international law over centuries hand in hand with political systems remains impressive. Due to the extent of the problem and very limited nature of this study, only the main development trends of international sanctions in the history of countries and societies will be presented and supported by the most spectacular examples.

Sanctions from antiquity to modern times

Since the ancient times we have observed frequent uses of the army and the embargo, understood today as economic sanctions under international law, being effective tools for implementing policy objectives. Empires creation could not do without these two elements of pressure¹. One of the earliest studied sources of sanctions dates from about 8th-7th century BCE, during the reign of the Assyrian king Tiglath-Pileser III who created the first in the history professional standing army and special engineering forces for

¹ See <http://www.politykaglobalna.pl/2010/06/narodziny-imperium/> (dostęp: 17.08.2016).

strengthening his power. A special selection of recruits, training, excellent equipment and armament of the army gave the Assyrian king power over the world. The road network and the postal service supported the prosperity of the empire that collapsed as a result of the Medes invasion preceded by long economic sanctions. The Assyrian army suffered horrendous casualties under numerous campaigns of conquest and was dependent on import of warhorses from Media. Cutting off the horse supply to the Assyrian king Ashurbanipal, and the constant pressure on the external borders of the empire are one of the first known in the history effective employment of economic sanctions².

Another spectacular ancient example of economic sanctions imposed in times of peace is the Megarian Decree that, however, brought counterproductive results³. In 432 BCE Athenian Pericles banned Megarians goods from Greek city-states. All this to punish and deter Megara on the support provided to Sparta in the conflict against Athens, and as retaliation for refusing to join the Delian League under the leadership of Athens. The effects of the sanctions affected mainly civilians of Megara. As a result, this led to the outbreak the Peloponnesian Wars a year later and the loss of hegemony in the region of Athens, which allowed Sparta to become a leading power in Greece. The lesson learned shows that sanctions which have been imposed hastily almost always turn against imposer.

In ancient times, sanctions, particularly economic ones, were the natural complement to military tools⁴. A good example of this practice is the embargo imposed against the Gauls by the Roman Empire on trade of gold and silver during 232–225 BCE. Interestingly, the ban also included those non-citizens of Rome and living in third countries. In the late period, the Roman Empire was known more as an advocate of free trade than political barriers. However, Roman legions carefully watched the exported goods, mainly weapons and precious metals, so they could not reinforce militarily their adversaries. Even in the seventh century CE, when the western part of the Empire was limiting the exchange of goods as a result of invasions, in

² I. Eph'al *The Ancient Arabs: Nomads on the Borders of the Fertile Crescent 9th-5th Centuries B.C.*, Jerusalem 1982, p. 147–170.

³ H.G. Askari, G. Hossein, J. Forrer, H. Teege, J. Yang, *Economic sanctions. Examining Their Philosophy and Efficacy*, Westport/USA 2003, p. 5–7.

⁴ W.V. Harris, *War and Imperialism in Republican Rome 327-70 BC*, Oxford 1979, p. 198.

the eastern part Alexandrian merchants were trading with the Gauls without any restrictions, the same in Greece with the Visigoths⁵.

In the process of political systems development, the role of economic sanctions was increasing as a complementary tool to foreign policy of many governments. It also reflected the needs of internal policy and economic needs. We can observe the process of institutionalisation of the instrument and its natural inclusion into the catalogue of measures of international relations as a result of a sudden increase in economic exchanges between the politically divided and fragmented partners⁶. Since the beginning of the Middle Ages, embargo has gradually transformed into a complex mechanism of export control for internal needs and in particular for shaping the international order. Some say that in the medieval period embargo, being a trading ban in relations between equivalent subjects of international law, began being instrumentally used in order to achieve purely political results – for political economy, understood as the weakening economy object resulting in the inevitable weakening of political structures⁷. We can only multiply example of this procedure from economic sanctions between Venice and Genoa, Flemish cities, the Hanseatic League, and even imposing by the English kings.

In the days of the formation of modern political and economic powers, an excellent example of the employment of economic sanctions in international politics trying to incorporate in the process the greatest possible number of countries under the personal leadership was the so-called “Continental System” installed by Napoleon on November 21, 1806 by the Berlin decree.⁸ Unfortunately, it is also an example of far-reaching results of imposing tough sanctions on a wide scale affecting countries other than the target, over which Napoleon lost control. France, based on the Berlin decree, introduced an international ban for European vessels on sailing to British ports or other territories under its sovereignty and similarly for British vessels on sailing to European ports. To the content and formulation, the document

⁵ A.H.M. Jones, *The Later Roman Empire 284-602. A social, Economic and Administrative Survey*, Baltimore 1964, p. 824.

⁶ S. Stantchev, *Spiritual Rationality. Papal Embargo as a Cultural Practice*, Oxford 2014, p. 1.

⁷ S. Stantchev, *Spiritual Rationality...*, p. 2.

⁸ See full text <http://www.napoleon.org/en/history-of-the-two-empires/articles/the-berlin-decree-of-november-21-1806/> (dostęp: 17.08.2016).

remains an excellent example for consistent description of the situation, disposition and sanctions provided. By imposing this economic sanction, Napoleon was seeking a response to the naval blockade of the French ports by the British navy. For the UK the economic tensions with France were the kind of everyday life since the Middle Ages, and as of 1660 mutual economic sanctions were a permanent state⁹. The history shows that the most evident result of Napoleon's sanctions was the involvement of Russia intending to re-establish the wood trade with the Great Britain in 1810. These materials have always been used by British shipyards to build warships. Napoleon understood that creating for Russia an exception in the Continental System would create a pull factor for other countries. Therefore he decided on a military intervention in Russia, which resulted in irreparable losses and the fall of Napoleon's Empire. It shows that he did not learn very much from the lessons of the ancient world history.

Sanctions as a tool of global players

The attractiveness of sanctions as means to achieve political and economic goals in the medieval period and subsequent ages was recognized by the Papacy, which was extremely eager to take advantage of them, achieving not only political and economic goals, but also giving them moral and religious meaning. They did not serve to achieve higher goals, but rather short-term interests, also aiming at recognition of sovereignty or controllability of certain social and religious groups¹⁰. One of examples are trade restrictions imposed by the Papacy from the thirteenth to the sixteenth century, as part of international policy i.a. towards entire groups of Christian-heretics, orthodox Christians, Jews and Muslims. The restrictions were part of a relatively orderly legislation imposed in an institutionalised way.

The organisation of Hanse cities is a very interesting object of studies on the evolution of total economic sanctions towards the beginning of smart sanctions, forced by the limited instrumentation. In the implementation of its political and economic objectives, the Hanseatic League had at disposal three types of measures: negotiations, trading suspension and war. The sus-

⁹ E.F. Hecksher, H. Westergaard, *The Continental System : en economic interpretation*, Gloucester 1964, p. 13.

¹⁰ S. Stantchev, *Spiritual Rationality...*, p. 11.

pension of trade was associated with the financing cessation of rulers being in conflict with the Hanseatic League, while the support for the member cities was still provided. This measure was imposed in the conflict of cities with the sovereigns of Braunschweig and Mecklenburg in 1396¹¹ It is also an early example on how non state organisations paly on different tools to defend its interests against regular state organisms.

The experience of the First World War ended in 1918 associated with huge losses in each field has brought the reflection on the need to establish a supranational organisation for peace in the world, curbing conflicts among countries by arbitration in the first place, preventing external aggression, establishing the Permanent Court of International Justice, which was included in Covenant of the League of Nations signed on 28 April 1919¹². However, the failure of decision-making, caused mainly by the unanimity requirement, voluntary application of sanctions by the member states, maladjustment of priorities for action in relation to the sovereignty of countries in making decisions put into question the desirability of application of sanctions and effectiveness of the whole organisation¹³. The flagship example of that is the history of sanctions against Italy in connection with the aggression against Abyssinia of 3 October 1935, called by historians "Italian experiment". Fifty of the fifty-four member states of the General Assembly recognized the violation by Italy of Article 12 of the Covenant. The subcommittee of eighteen countries whose participation was to ensure the success of sanctions urgently recommended a set of measures against Italy, which formally came into force on 18 November 1935. The sanctions included a ban on the import of goods of Italian origin, a ban on the export of weapons and related materials, goods that could strengthen military capacities (especially metal ores, caoutchouc), as well as a ban on financial transactions with individuals and institutions under the Italian jurisdiction. The sanctions were however ineffective as to its main objective. They did not lead to the end of the conflict in Abyssinia what was the main purpose of the Decree and publicly repeated. However, it led to a significant reduction (by 53%) in Italian exports a year after the imposition of sanctions¹⁴. On that basis one may con-

¹¹ P. Dollinger, *The German Hansa*. London 1999, p. 109.

¹² See full text <http://www.refworld.org/docid/3dd8b9854.html> (dostęp: 17.08.2016).

¹³ J.M. Farrall, *United Nation Sanctions and the Rule of Law*, Cambridge 2007, p. 59.

¹⁴ Ibidem, p. 54-57.

clude that these sanctions were not completely out of influence to Italy. On the other hand, having in mind the procedure implied to reach the decision on them and non-achievement the main goal, the finding on institutional weakness of the League of Nations remains justifiable.

United Nations

The United Nations established on 24 October 1945 under the United Nations Charter is the successor organisation to the League of Nations¹⁵, currently bringing together 193 countries. As a global player, the organisation tries to avoid the mistakes made by its predecessor and respond to any serious violations of international order. Currently, the UN Security Council holds 630 sanction regimes against individuals and 395 against companies¹⁶, hitting at least in several areas of activity: travel bans / freezing of assets of individuals and institutions, diplomatic restrictions, embargo on arms sales, restrictions on trade and transport, as well as other embargo and restrictions in the most important economy sectors for the subject of sanctions. These instruments are defined as targeted or intelligent sanctions¹⁷.

European Union

From the perspective of the experience of the League of Nations and the United Nations, it can safely be argued that the European Union in the course of each treaty reform aims to consolidate and strengthen its competence in the field of foreign policy, including the imposition of sanctions. The observation of practice in this field allows identifying three main trends. The first is an autonomous activity of the EU, which decides independently to impose specific restrictive measures on a third country most often in the absence of the reaction of the UN Security Council (UNSC). The second trend concerns the obligation for the EU to implement sanctions that have

¹⁵ The United Nations Charter, Statute of the International Court of Justice and the Agreement establishing the Preparatory Commission of the United Nations. Dz.U. 1947, nr 23, poz. 90, p. 261–347.

¹⁶ Data updated on 12 May 2016, <https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list#individuals>

¹⁷ J.T. Biersteker, E.S Eckert, M. Tourinho, *Designing United Nations Targeted Sanctions: Findings from the Targeted Sanctions Consortium*, Geneva 2012, p. 3–15

been imposed by the UNSC. This requirement results directly from the obligation of the EU Member States to comply with the UNSC resolutions. The European Union promotes uniform and effective application of sanctions and protection of the smooth functioning of the common market. The third trend, being a consequent development of the second one, includes situations when EU decisions strengthen and complement UNSCR resolutions. The last trend is an extremely important element of the EU's activity. It is estimated that about 82% of sanctions imposed by the EU are measures that go beyond the UNSC resolutions¹⁸. The European Union, bearing in mind the experience with the sanctions policy, particularly against Iraq, imposed in the nineties of the last century, which due to its global nature in the field of economy have led to a humanitarian catastrophe among the civilian population, consistently expands the employment of so-called smart sanctions¹⁹. In principle, they do not cover the entire nation, but target individuals, social groups or certain sectors of the economy.

There are three types targeted sanctions most often mentioned in the doctrine²⁰. The first relates to personal sanctions against certain individuals. For this purpose blacklists containing targeted individuals names and other information allowing their identification are featured. The most common consequences of this kind of sanctions are travel restrictions to certain territories, bans on issuing visas or having bank account abroad, as well as freezing financial assets of targeted individuals. The second type of targeted sanctions – selective sanctions – affects specific sectors of the economy. They consist of partial embargoes, bans on import and export of certain goods and services, bans on investments or payments and the freezing of assets of certain operators. This type of targeted sanctions affects more sectors of the economy than individuals. The third type of sanctions are traditional diplomatic sanctions listed in Article 41 of the UN Charter. The most radical measure is a rupture of diplomatic relations. Other sanctions are less spectacular, for instance the lowering the rank of the representation, the expulsion of attachés, the suspension of membership in an international organisation, the recall of ambassadors or the limitation of contacts.

¹⁸ C. Portela, *The EU's Use of 'Targeted' Sanctions Evaluating effectiveness*, CEPS Publications 2014, No 391, p. 3–6.

¹⁹ J. Mueller, K. Mueller, *Sanctions of Mass Destruction Essay*, EBSCO 1999, vol. 78, issue 3, p. 43.

²⁰ C. Portela, *The EU's Use of...*, p. 6.

The current political situation in the neighbourhood of the EU, particularly the Russian-Ukrainian conflict is a test of internal solidarity and the institutional and political capacity in the field of imposing sanctions. Looking at the sequence of steps undertaken by the EU, one must remember that the EU acted at three different levels. Firstly, it has imposed travel restrictions and the freezing of assets of individuals and legal entities responsible for undermining the territorial integrity, sovereignty and independence of Ukraine, as well as for activities against the Constitution of Ukraine, referring to the future status of any part of its territory²¹. Secondly, the sectoral restriction measures include restrictions on access to the capital of Russia's largest state-owned banks and entities controlled by them and selected companies from the energy and armaments sectors, the ban on arms exports, the ban on exports of dual-use goods and technologies and the ban on exports of equipment and technologies for oil exploration under extreme conditions²². Thirdly, the EU has introduced specific measures resulting from the non-recognition policy of annexation of the Crimea and Sevastopol. It has established restrictions on the import of products from the Crimea to the EU, investments in the peninsula, the tourist sector and EU exports of specific products and technologies in the transport, telecommunications and energy sectors²³. The sanctions imposed by the EU will last at least until 23 June 2016. A lively debate on the effectiveness of the above-mentioned measures is currently taking place at the EU level.

Conclusions

The above short analysis leads to the conclusion that the catalogue of sanctions as a tool of international policy of countries and supranational institutions has extended over the centuries. Policy makers use them more willingly in the expanding range of situations. At the same time, despite the above-mentioned direction of "institutionalisation" of the process of imposing sanc-

²¹ so-called 2nd phase sanctions entered into force on 17 March 2014 and imposed by Council Decision 2014/145/ CFSP, with a total number of 151 individuals and 37 legal entities.

²² so-called 3rd phase sanctions entered into force on 31 July 2014 and imposed by the Council Regulation no 833/2014.

²³ Measures without connection to 2nd and 3rd phase sanctions imposed by the Council Regulation no 692/2014.

tions, the elementary attention to democratic decision-making process is maintained. In addition, each case of a sanction regime is considered and analysed individually. Indisputable seems to be a tendency to move from the employment of a global embargo towards tailor-made targeted or smart sanctions, the intention of which is to reach out to specific target groups, responsible for the violation of the international order.

Today, in relation to how the goals of sanctions are understood, the most acceptable in view of the doctrine seems to be an opinion pointing at general common denominators²⁴. Primary goals, publically revealed, are most often employ to make a target of sanctions comply with wishes of the sanctioning country or institution. They are usually the most difficult goals to achieve. Secondary goals underline symbolically the international prestige of the sanctioning country or institution having the moral legitimacy to act in a specific way. They also respond to expectations of certain domestic interest groups, strengthening at the same time the position of the sanctioning country or institution. Tertiary goals affect politically the international situation in a real way.

Sanctions can punish targeted nations or individuals in a situation of violation of a particular international order. With the moral legitimacy they may also prevent future violation of international norms. Without going into considerations on effectiveness of a particular type of sanctions, it is undisputed that both the classic embargo and targeted / intelligent sanctions raise costs to the sanctioning subject as to its target. The imposition is always preceded by a specific profit and loss account.

The number of sanction regimes held today shows however, that the international community in the process of its development has less and less tolerance for behaviours violating international law and order.

Bibliography

Askari H.G., Hossein, G., Forrer, J., Teegen, H., Yang, J. (2003) *Economic sanctions. Examining Their Philosophy and Efficacy*. Westport/USA 2003.

Biersteker J. T., Eckert E.S., Tourinho M., *Designing United Nations Targeted Sanctions: Findings from the Targeted Sanctions Consortium*, The Graduate Institute Geneva 2012.

²⁴ A.I. Mandelovitz, *Economic Sanctions. Effectiveness as Tools of Foreign Policy. Report to the Chairman*, Committee of Foreign Relations, U.S. Senate. U.S. General Accounting Office 1992, p. 1-12.

The Covenant of the League of Nations. (1919). Derived from: <http://www.refworld.org/docid/3dd8b9854.html>.

Dollinger P., *The German Hansa*. London 1999.

Eph'al I., *The Ancient Arabs: Nomads on the Borders of the Fertile Crescent 9th-5th Centuries B.C.*, Jerusalem 1982.

Farrall J.M., *United Nation Sanctions and the Rule of Law*, Cambridge 2007.

Harris W.V., *War and Imperialism in Republican Rome 327-70 BC*. Oxford 1979.

Hecksher E.F. (1964). *The Continental System*. Ed. Westergard H. Gloucester. p. 13.

Jones A.H.M., *The Later Roman Empire 284-602. A social, Economic and Administrative Survey.vol II*, Baltimore 1964.

Mandelovitz A.I., *Economic Sanctions. Effectiveness as Tools of Foreign Policy. Report to the Chairman, Committee of Foreign Relations, U.S. Senate*. U.S. General Accounting Office 1992.

Maciążek P.A., *Narodziny Imperium*. PolitykaGlobalna.pl 2010, derived from: <http://www.politykaglobalna.pl/2010/06/narodziny-imperium/>.

Mueller J., Mueller K., *Sanctions of Mass Destruction Essay*. EBSCO 1999, vol. 78, issue 3.

Napoleon I. (1806). *The "Berlin Decree" of November 21 1806*, derived from: <http://www.napoleon.org/en/history-of-the-two-empires/articles/the-berlin-decree-of-november-21-1806/>.

Portela C., *The EU's Use of 'Targeted' Sanctions Evaluating effectiveness*, CEPS Publications 2014, No 391.

Stantchev S., *Spiritual Rationality. Papal Embargo as a Cultural Practice*. Oxford 2014.