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Proposals to Improve the Effectiveness of Public International Law Sanctions

Daniel-Ștefan Paraschiv

Assistant Professor PhD, "Constantin Brâncoveanu" University of Pitești, Râmnicu Vâlcea, Romania
daniel.paraschiv@hotmail.com

Abstract: Public international law, like other legal systems, has the primary role to ensure the social international order, mainly by formulating legal rules that must be complied with by the subjects to whom they apply and by putting in place binding rules penalizing violations, named in the doctrine sanctioning legal norms or penalties, which can be enforced in the eventual cases of failure to abide by the established compliance norms. However, because not all states are parties to or have ratified the instruments that provide for public international law sanctions, or do not agree to their application in certain circumstances, such sanctions cannot be enforced against certain states or other entities. In view of this, a more efficient involvement of all states is necessary for the implementation and application of international regulations that should ensure the establishment of more equitable relationships among public international law entities. This would also ensure more stability in international relations and better cooperation, by combining the efforts of all the states with the aim to prevent and eliminate major conflicts, acts of terrorism, and international crime in general, which would be impossible to take place as they do now, without them being supported or tolerated by certain states.

Keywords: Sanctions, Public International Law, Countermeasures, International Crimes

Introduction

In the past centuries, human society was dominated (Paraschiv, 2012, p. 6) by the belief in the sanctioning power of deities, many natural phenomena harmful to people being interpreted as divine punishments. However, sanctions have gradually started to be applied by man's power, though with deep connotations linked (Paraschiv, D.-Ș. et al., 2014, p. 9) to divine powers. The laws prescribing particular conducts, as well as sanctions for non-compliance were initially considered an expression of divinity and consequently, a real competition to „seize" the right to sanction took shape between the graduates of law schools and those of theology schools, while clergymen were in many cases bachelors of both secular law and religious law. The lawfulness of the right to punish had often been disputed, but always without solid grounds. Even though the lawfulness of the right to punish was questioned, they ended up adopting one of the philosophical systems that accepted such a right (Tanoviceanu, 1924, p. 26). In the main, it is accepted that society is entitled (Craiovan, 2001, p. 284; Dogaru et al., 1999, p. 455) to punish – "jus puniendi", but regarding the basis of this right, there are several opinions (Tanoviceanu, 1924, pp. 30-31) and theories, which can be grouped into three systems:

- - the absolute theories, according to which punishment is regarded as a counter equivalent of the damage done by action – "malum passionis propter malum actionis" – so the purpose of the sanction is represented by repression – „punitur quia peccatum est"; the standard theory in this system is that of retribution;
- - the relative theories, in which repression is no longer the purpose (Paraschiv, G. et al., 2014, p. 4) of the punishment, the latter representing only a means to prevent the wrong from being repeated – "punitur ut ne peccetur"; the standard theory in this system is social defence;
- - the eclectic system – "punitur quia peccatum est et ut ne peccetur", comprising the views according to which sanction has a double character, being at the same time an equivalent of the wrong done, and also a means to prevent it from being repeated.

With the formation of the primitive societies, the centralized legal sanctions (Paraschiv & Paraschiv, 2007, pp. 19-20) also emerged, coexisting in parallel with the private justice phenomenon and gaining more and more ground on the latter. Hence, at present, it has become the only – or almost the only – accepted solution for fighting crime. The reason for applying sanctions, in their broad sense, including the public international law sanctions was, at the beginning, represented by the humans' instinct to respond to violence by another act (Craiovan, 2001, pp. 284-285) of violence, as powerful as possible, then the feeling of revenge of the person affected by the unjust violation of their right, directed at the entity who had violated those rights. The idea of revenge, in its primitive form, did not imply proportionality between deed and punishment, but it contained the whole structure of law in embryo, as it developed later. Other reasons for applying sanctions in addition to revenge, existing at the dawn of human history, consist in the necessity to ensure (Paraschiv & Paraschiv, 2007, p. 19) an order in the relevant community's sphere of influence and the wish to prevent certain acts harmful to the members of the community concerned, etc.

The international legal order

Unlike the domestic legal order, in the international one there are no authorities as a rule, expressly overseeing the enforcement of the international legal norms for the benefit (Nolte, 2002, p. 1087) of the whole community – the states, individually or collectively, and the international organizations ensuring the observance and application of the international law norms as well as the restoration (Popescu, 2006, p. 173) of the international regulatory order.

In the international relations, this also results from the definition of the public international law, which is identified (Popescu, 2005, pp. 16-17) with "all norms of law created by states and the other international law subjects, based on a consensus – expressed in treaties and other sources of law – with a view to regulating the relationships between them, whose enforcement is ensured by voluntary compliance, or if necessary, by measures of constraint applied either by the states individually or collectively, or by the international organizations". The international legal order is ensured by the voluntary compliance with the international law norms, and otherwise, by measures of constraint directly applied by the states, individually or collectively, or through the international organizations against the state (Popescu, 2005, pp. 16-17) that has violated such norms.

If any international dispute arising from the violation of the public international law norms or of another subject's rights by a state or another international subject is not settled peacefully, the aggrieved party may resort to some limited constraining measures against those who have committed such acts, aiming to prevent (Damrosch & Scheffer, 1995, p. 245) the use of armed force. As they are complementary to the means of peaceful settlement of the international disputes, the sanctions applied in these situations seem a „tough" instrument (Miga-Beşteliu, 2003a, p. 385) of resolving disputes. The sanctions imposed by the states and the international organizations in the relationships between them, are grouped into: countermeasures – which represent the most diverse category in point of forms of manifestation and which are further sub-classified into retaliation and reprisal – to which one may add the armed self-defense, the military blockade, and other sanctions applied to the member states of an international organization, by the latter, for non-compliance with binding provisions of the memorandum, or with other international obligations.

Reactive measures were established in response to the emergence of states. They were the first active subjects of initiating such sanctioning measures, including in the field of international judicial cooperation, such as the issue of extraditing individuals to the Republic of Belarus. This state supports the Russian Federation in the war with Ukraine (Franguloiu, 2024, p. 163). In the past, states commonly used and applied constraining measures individually to resolve international disputes. They were implemented either by the use of armed force or by sanctions without the use of force, such as retaliation or different forms of

economic reprisals – the embargo, the boycott, or political ones – the cessation of diplomatic relations. The classical international law allowed states to react to another state's injurious or illegal act in case they did not resort to war, by a series of actions or omissions qualified as "reprisals", "retaliation", „sanctions" or – in the context of the relationships established by the treaties – by invoking "exceptio non adimpleti contractus", subsequently regulated (Miga-Beşteliu, 2003b, p. 28) under Article 60 of the Vienna Convention in 1969 on the law of treaties. As to the use of force, in practice and in the doctrine, a distinction was made between: armed intervention – when states took action in order to defend their own interests – and reprisals, as a response against (Cassese, 2001, p. 231) another state's illicit acts.

The events following World War II, in particular the confirmation of the principle referred to in Article 2, paragraph 4 of the UN Charter on the prohibition of threat or use of force in international relations, caused the reactions by way of „armed countermeasures" to be mainly outlawed, and only the countermeasures which did not imply the use of armed force were acceptable.

Shortcomings in the application and enforcement of public international law sanctions

Nevertheless, we note that there are still many shortcomings in the regulation of public international law sanctions, including their establishment and enforcement in concrete cases of infringement of the international law order. Thus, in some fields of the international relations of universal or regional interest, international sanctions have not been implemented yet, or they are not sufficiently regulated – for instance, in the fields of environmental protection – or they are not properly adjusted to the gravity of the actions – for instance, in the field of countering international terrorism. Also related to the regulation of the public international law sanctions, we see that there are not enough procedural norms for their application, such as the lack of precise deadlines for the establishment and enforcement of the sanctions, which leads to the possibility that they may be applied belatedly, as happened with Libya, when the sanctions imposed by the United Nations were not put into practice until a month after the outbreak of the violent repression carried out against the civil population, who requested state democratization and granting of civil and political rights. Certain public international law sanctions cannot be applied to some states or other entities because not all states are parties to or have ratified the instruments that provide for such sanctions, or they do not agree to their application under certain circumstances.

Another problem is the fact that some specialists in the field of legal sciences (Năstase, 2004, p. 56) are skeptical with regard to the extent to which the international law governs or at least influences the behavior of the states, especially in the matter of international conflicts, starting from the reality that sometimes states have a selective attitude to the international law norms. International law is unable to stop governments from doing what they want, but that does not mean it has lost its importance or is about to be dissolved, taking into account that if ignored, major risks will occur for the states concerned. Even though we are aware that at least in the near future, in the absence of some supranational structures with full powers, a system of international sanctions for the defense of the universal values, consistently applicable to all the states and all the other entities involved in public international relationships, cannot be regulated, we consider that the present regulations can be improved in order to ensure a more efficient defense of the public international law order.

Considerations regarding some proposals to improve the effectiveness of public international law sanctions

With reference to general proposals, valid for any category of sanctions, we first consider that greater efforts are required on the part of international entities to ensure a greater participation of the states in maintaining the legal order across all fields of international life. Hence, the more states (Paraschiv, D.-Ș. et al., 2018, p. 213) and other entities agree to the regulation of international sanctions that are legally binding for them, the more effective international law will

be in respect of its application to more international actors, on a wider surface of the Globe. The states and the international organizations should be permanently preoccupied with the stimulation of the process of ordering and codifying by domains of the international regulations, implicitly of the applicable sanctions and procedures that must be used for breach of such regulations, because at present provisions on the same issue are laid down in several disparate instruments.

To increase the effectiveness of public international law sanctions, new international legal bodies of universal or regional character should be established. In this respect, they should have the competence to settle cases of infringement of the public international law – according to the principle of specialization – and should benefit from appropriate procedures and means necessary for establishing and enforcing sanctions. Furthermore, we consider that more action should be taken for insuring the financial resources necessary for the proper implementation of the international justice, in all the fields of the international life, providing the specialized personnel and the facilities required for the accomplishment of this process.

The effectiveness of international sanctions is also influenced by the celerity with which they are established and put into practice, therefore, it would be necessary for international regulations to contain express provisions in this respect, while the competent bodies need to act more promptly when ordering and enforcing them. Also, in the field of environmental protection, it is appropriate to establish sanctions by means of international instruments against the private polluters or the guilty states, where the acts severely affect the environment. In addition, we consider that the serious deeds which cause real catastrophes to the environment ought to be included in the category of international crimes "stricto sensu", so that those responsible for them should be punished by the International Criminal Court.

As to the acts of international terrorism, which are permanently spreading due to the evolution of the means and methods of committing them, we reckon that in addition to some measures, such as the investigation of the causes of committing these deeds with the aim to eliminate them, it is required to take action to improve the regulatory framework for their repression. The terrorism acts with extremely serious consequences or those which pose a higher threat by the manner in which they are committed, should be included in the category of international crimes "stricto sensu", in order for them to fall under the jurisdiction of the International Criminal Court. Moreover, we consider that the present competences of the Security Council should be extended to the terrorism deeds and this institution should be explicitly given attributions which would unequivocally confer upon it a legal framework required for ordering the measures necessary for combatting the new forms of terrorism, with a high degree of danger, and also for preventing the possible actions by some states to the detriment of others, under the pretext that they fight „preventively" against terrorism.

Additionally, we consider that the serious cross-border organized crime acts falling within the competence of the ICC, which have as their object the illicit trafficking of drugs or other psychotropic substances, human trafficking, in particular of women and children etc., should also be included in the category of international crimes "stricto sensu", because the regulations in different countries on the punishment of such deeds are non-homogeneous, therefore some perpetrators are likely to escape punishment or be applied very mild sanctions as compared to the danger carried by the acts committed by them. Moreover, it is necessary that the states extend the system of cooperation for combating and penalizing the crimes pertaining to the international criminal law. There has been some progress in this respect within the European Union, where it is required to continue the process of correlation of the national legislations in accordance with the European regulations, but greater effort is needed in other parts of the world, too, taking into account that criminals have high possibilities to travel to other countries situated at very long distances from the crime scene, after committing the crimes. Public international law, which also contains the sanctioning system applicable in cases where international disputes cannot be resolved peacefully, still remains a viable

instrument which will evolve, given the states' interdependency needs and the joint preoccupations for a universal justice (Jackson, 2003, p. 28) and order.

With a view to increasing the efficiency of the proposals set forth, we consider that, preliminarily, it would be necessary for the international specialized bodies to perform a historical, statistical and sociological research on the effects in the good conduct of the international relationships with respect to all the categories of applicable sanctions, so that the most appropriate regulations should be elaborated in the field, as the international instruments also provide the most adequate institutions and procedures of settling international disputes by peaceful means and by applying sanctions with more beneficial effects for all the parties involved in the litigation and which should bring the expected outcomes.

Conclusions

To sum up the whole theme tackled in this paper, we draw the conclusion that however well-established the system of public international sanctions is and however much would be accomplished in the area of acceptance of the principles underpinning its application by as many international actors as possible, it would be yet more important that the states resolve their issues related to disputes occurring in the conduct of the international relations through preventive diplomacy, bearing in mind that dialogue on an equal footing and the respect of the sovereignty of each subject may lead to best results, but nonetheless when some disputes arise, every effort should be made to settle the disputes peacefully, without being necessary to apply sanctions, which, most of the time, lead to tense relations between the international entities and to the deterioration to a greater extent of the relationships between states or other international entities.

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