



UN AND EU COUNTER-TERRORISM RESPONSE MECHANISM

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Abstract. This article examines legal measures to combat international terrorism. The authors analyse the development and functioning of the mechanisms of the Al-Qaeda and Taliban Sanctions Committee and the UN Counter-Terrorism Committee in the context of UN Security Council Resolution No. 1267 (1999), by which the Council imposed sanctions in response to the Taliban's refusal to hand over Osama bin Laden. In subsequent decisions, the UN Security Council modified the goals of the sanction to include Al-Qaida and its associations (according to the resolution 1390 (2002)) and highlight three main measures: an asset freeze (and related financial measures), an arms embargo, and a ban on movement. There is no doubt that funding is a prerequisite to any terrorist action, and freezing the flow of money to those engaged in terrorist activities is vitally important, therefore identify legal challenges in enforcement of freezing of assets and travel ban on terrorist suspects is also important. Accordingly, the article evaluates whether the UN and EU procedures for listing and delisting suspected terrorists comply with the principles of due process, legal certainty, and effective judicial protection. Particular attention is paid to the need to balance the effectiveness of counter-terrorism sanctions with the protection of fundamental human rights and individual freedoms.

Keywords: countering terrorism, sanctions, legal procedures, financing terrorist organisations, United Nations, European Union.

Introduction

Many scholars who deal with this subject believe that the direction of terror is becoming more and more concrete, and the goals of terrorists are becoming obvious. Most powerful terrorist organizations known in the world have their spiritual leaders and mentors, a sometimes complex hierarchical and organizational structure, their ideology and strategy of action, and strong, wealthy patrons. In the process of studying the topic of terrorism, due to repeated acts of its unexpected manifestation, complex issues were identified and provocative theoretical ideas regarding its definition. Unfortunately, the fact remains that lawyers have not come close either to the socially accepted definition of terrorism or to the eradication of this crime in the foreseeable future. In today's world, we are witnessing a decline in the importance of traditional methods of protecting national borders, as well as increased efforts by states to tighten controls at their border crossing points. In our view, this phenomenon is primarily

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linked to globalisation and the rapid development of new technologies. We also believe that the issue of controlling migration flows concerns both highly developed countries and those lagging behind in economic and social terms, regardless of their political regime or system of government, as no country in the world is 100 per cent immune to acts of terrorism.

Research methods

In order to study and analyze some aspects of the fight against terrorism in the context of globalization, this article examines the situations and problems associated with the development of terrorism in the context of globalization and the development of cyberspace. In article, the author uses various types of official documents, conclusions, and statements, including the experience and opinions of public figures and structural intergovernmental bodies, in order to understand international position on combating terrorism and extremism. Most of the materials are available on official sources of websites and databases.

Results and discussions

Definition of Terrorism and September 11. The problems of national security and world stability are one of the main agendas in the modern world. This has been particularly acute in the last three decades. Against the backdrop of the genocides in Rwanda and Yugoslavia; the terrorist attacks of September 11, 2001; the formation of ISIS and Daesh in 2015; and the Israeli actions in Palestine 2023. Thus, the establishment of order, sustainable development and international unity is the overriding goal of the UN and other international organizations.

Modern terrorist organisations resemble corporations with revenues running into millions, featuring an internal division of labour and specialisation (which indicates a high degree of organisation and coordination), as well as training camps, workshops, warehouses, hideouts, printing works, hospitals, laboratories and other infrastructure. Furthermore, thanks to the black market in weapons and the constant modification of such weapons, they have extensive access to existing arsenals. Their tactics also reflect modern realities and are carried out not only in the physical world but also through the use of digital technologies (in the digital space) [1]. Their «staff» consists of ideologists and practitioners, leaders and performers, specialists in sabotage, and so on.

This also applies to terrorism, which is based on religious or separatist motives, since it is very difficult to draw a line between all types of terrorism, which initially have an anti-state and anti-constitutional orientation. In this case, we are talking about home-grown terrorism, which arises and develops spontaneously within a particular political system, thanks to the prevailing intra-system factors.

It should be noted that, according to many experts in the field of terrorism, terrorism is currently evolving into a kind of export industry, and a new form of terrorism is emerging in the guise of a 'terrorist state'. We are no longer talking about one or a few groups 'inspired' by the activities or ideas of 'fellow terrorists' from another country, but about terrorist groups from different countries establishing complex relationships, including in areas such as operational and combat training, logistical cooperation, including in the field of armaments, as well as joint operations – which points to a higher level of organisation and the emergence of a system and hierarchy within such a 'terrorist state' [2].

In the process of studying the topic of terrorism, due to repeated acts of its unexpected manifestation, complex issues were identified and provocative theoretical ideas regarding its definition. According to Boaz Ganor, the director of the International Policy Institute for Counter-Terrorism, no fewer than eight reasons why it is important to have a common international understanding as to what constitutes "terrorism" [3].

Specifically, we are considering the broader definition set out in paragraph 3 of the Common Position of the Council of the European Union of 27 December 2001 "On the application of specific measures to combat terrorism" (2001/931/CFSP), where 'terrorist group' means an organised group of more than two persons, established over a period of time and carrying out concerted actions with the aim of committing terrorist acts [4]. The 1999 UN Convention for the Suppression of the Financing of Terrorism (UN General Assembly Resolution No. 54/109) does not contain an explicitly defined concept of a 'terrorist group', but it does provide a definition of the financing of terrorism which may be indirectly linked to terrorist groups or organisations [5].

Tenth report of the Secretary-General on the threat posed by ISIL (Da'esh) to international peace and security. It is necessary to briefly consider the most comprehensive document – the Tenth Report of the Secretary-General

on the threat posed by ISIL (Da'esh) to international peace and security – as well as the range of efforts undertaken by the United Nations to support Member States in combating the threat of terrorism [6]. According to this report, current estimates of the financial reserves at ISIL's disposal range from 100 to 300 million dollars, including funds raised through fundraising activities [7].

Moreover, in year 2018, Listed as Ibrahim Awwad Ibrahim Ali al-Badri al-Samarrai (QDi.299). S/2020/95 20-00723 3/17 despite the difficulties in establishing contact with local authorities and non-State armed groups in the area, the total population in all detention centres and accommodation centres for displaced persons in the north-east of the Syrian Arab Republic stands at over 100,000 [8]. In 2019, the Government of Iraq launched Operation 'Will to Win', aimed at driving out ISIL fighters, whose numbers stand at approximately 11,000 [9].

At the same time, Al-Qaeda affiliates dominate the Sahel, Somalia and Yemen. It should not be forgotten that ISIL's presence in Afghanistan continues to be a cause of serious concern for Member States. The 'Islamic State's West African Province' in the Lake Chad basin was a highly active ISIL affiliate in the second half of 2019 [10]. ISIL has also stepped up its activities in Algeria, where the group 'Jund al-Khilafa in Algeria' (QDe.151) carried out an attack near the border with Mali and Niger. 'Islamic State in the Greater Sahara' has its stronghold in the tri-border area between Burkina Faso, Mali and Niger, which continues to put pressure on defence and security systems. This group maintains links with the 'Islamic State's West African Province' [11].

Despite some successes of counter-terrorism initiatives in Indonesia, Malaysia and the Philippines, the threat posed by ISIL persists. Although Philippine forces have killed Abu Talha, who was linked to the 'Abu Sayyaf' group (QDe.001), due to ineffective border controls and flawed visa procedures, some foreign terrorist fighters, many of whom originate from South-East Asia, are attempting to infiltrate the southern Philippines [12].

The first sanctions against Al-Qaeda and the Taliban Security Council resolution 1267 (1999) and establishment of Counter Terrorism bodies. The first sanctions against Al-Qaeda and the Taliban stem from Security Council resolution 1267 (1999). It is well known, the attacks of September 11, 2001, initiated the international community to reconsider and undertake new methods to deal with this matter. This was a decisive moment in the development of political and legislative actions in the fight against international terrorism by the UN and regional organizations. There is no doubt that financing is a necessary condition for any act of terrorism and freezing the cash flow for those involved in terrorist activities is vital. We share the view that the purpose of sanctions is punishment aimed at creating "a behavioral modification or a political statement, whatever the ultimate ends of the means used."

Currently the UN has a special, specialized The first sanctions against Al-Qaeda and the Taliban stem from Security Council resolution 1267 (1999) which aims to prevent and protect the world community from the threat of terrorism. Similar Committee bodies exist in other world organizations: the European Council, NATO, CSTO and others. Counter-terrorism activities most often use covert intelligence activities to identify persons involved in destructive movements and organizations.

The results of such activities are entered into separate departmental lists, which in the future are used to track all the activities of the person being checked, i.e. to monitor his movement both within the country and between countries. Besides, it was important to check up his financial activity - where the funds come from and where he sends them, in the context of financing terrorist organizations. The first sanctions against Al-Qaeda and the Taliban stem from Security Council resolution 1267 (1999), by which the Council imposed sanctions in response to the Taliban's refusal to extradite Osama bin Laden and continued opium cultivation. In subsequent decisions, the UN Security Council modified the goals of the sanction to include Al-Qaida and its associations (according to the resolution 1390 (2002)) and highlight three main measures: an asset freeze (and related financial measures), an arms embargo, and a ban on movement. These and other resolutions issued since then, such as 1452(2002), 1455(2003), and 1526(2004), are shaped by the current al-Qaeda and Taliban sanctions regime. Resolution 1267 prompted all states to "freeze funds and other financial sources, including funds derived from or derived from property owned or controlled, directly or indirectly, by the Taliban" [13]. The original, highly specialized nature of the committee's mandate is shown by the fact that sanctions must end with the sentence "as soon as the Taliban fulfills the obligation".

It is currently admitted that little effort was made to "ameliorate the negative impact of asset freezing" for those included in the so-called Consolidated List (further the List). Moreover, the process and criteria used to add names to the List "lacked transparency and individuals and entities were immediately named publicly without any opportunity to review their inclusion" [14], and until recent time there was no mechanism to appeal inclusion on

the List. For individuals and organizations listed on the basis of secret evidence, challenging their inclusion may be even more difficult (see further). Those included in the List by mistake can eventually succeed to have their names be de-listed, but “the consequence to their reputation of being identified by UN as a terrorist financier may be highly damaging” [15] In fact, according to Ambassador César Mayoral of Argentina, current Chairman of the Sanctions committee, sanctions regime is about “the accuracy of targeting the right individuals... and the political will of all States to make it effective”.

On 2 September 2003, the Committee decided to change its name in order to clarify its status and mandate: from now on, it would be officially known as ‘the Security Council Committee established pursuant to resolution 1267 (1999) concerning “Al-Qa’ida”, the “Taliban” and associated individuals and organisations’, or the “Sanctions Committee concerning Al-Qa’ida and the Taliban” (hereinafter referred to as “the Sanctions Committee”) [16].

The mandate of the Committee is defined to undertake inter alia the following tasks and to report on its work to the UN SC with its observations and recommendations: update regularly the List referred to in resolution 1390 [17], including through the designation of individuals and entities examine the reports submitted by members States and the Monitoring Group;

On 10 April 2003, the Committee adopted specific guidelines for considering additional information on listed individuals and entities submitted by States and/or regional organization [18]. It followed by the report issued by the High-level Panel on Threats, Challenges and Change, which suggested that Sanctions Committee should conduct a process for reviewing the cases of those claiming to be wrongly placed or retained on its lists”. Originally the Committee consisted of all Members of the UN SC and the Chairman was assisted by two Vice Chairmen appointed by the SC. The Committee later was given assistance through the Monitoring Group established pursuant to resolutions 1363 and 1390. As we already said above, one of main tasks of the Committee is to prepare and update regularly the List according to paragraph 2 of resolution 1390. Member States should incorporate the List in their legal systems through regulations adopted under the UN acts, executive decrees or other normative acts.

It is known, that sources for blacklisting, in addition to governmental and other state officials’ reports, are media and financial institutions, reports of police and intelligent agencies, surveillance information etc. The UN Secretariat can also forward to the Committee any information obtained from any published sources, including radio and television broadcasts.

According to the guidelines of the Committee, the information should be kept confidential at the provider’s request or if the Committee decides so. Any information submitted but not incorporated into the list will be stored in a restricted database. The Committee may share such information with another Member State that is seeking further details on listed individuals or entities, unless it is identified as confidential by the submitting source. Confidential information will be shared with another Member State (or other source) only with the prior consent of the State that originally submitted it. Proposed additions to the List should also include any relevant information to facilitate their identification by competent authorities: a) for individuals: name, date and place of birth, nationality, residence, passport or travel document number; b) for groups and entities: name, address, headquarters, affiliates, nature of business or activity, leadership.

The Monitoring Group was composed of experts on arms embargoes, travel ban, counter-terrorism and financing of terrorism and should review any information received and use all sources available to them. Upon finalizing the decision to incorporate additional information into the List, member States should be informed of such updates through Notes Verbale. From 2004 the updated List was made promptly available on the web pages of the Committee [19]. As far as de-listing process is concerned, an individual may petition the government of residence and/or citizenship to review the case. The government to which a petition is submitted should review all relevant information and then approach bilaterally the government originally proposing designation to seek additional information. If, following this, the government to which the petition was addressed wishes to continue with the delisting procedure, it should persuade the government that adopted the relevant decision to submit a joint or separate request for delisting to the Committee.

On the basis of the provisions of the aforementioned UN and Council of the EU acts, we have concluded that ‘a terrorist organisation is a group of persons or an organisation that systematically and in an organised manner engages in the commission of terrorist acts, including their planning, financing, preparation and execution. These acts may include acts of violence, attacks on the civilian population, state or international organisations, and may be

carried out for political, religious, ideological or other purposes.” Unlawful acts such as terrorism compel countries, in order to ensure national security, to take drastic measures to suppress them. Sometimes even by infringing upon fundamental human rights, in the form of discriminatory coercion to violate rights protected by law, such as the right to protection against arbitrary detention, freedom of movement, freedom of association, freedom of expression, and so on [20]. As there is no clear and universally accepted legal definition of the concept of ‘terrorism’ or its constituent elements, there is a risk of arbitrary action on the part of the state. Politically motivated abuses of such anti-terrorism laws do sometimes occur [21].

The European Union Counter-Terrorism List. The European Union maintains the aforementioned ‘EU Counter-Terrorism List’, which was updated on 20 July 2023. It includes 13 individuals and 21 organisations as persons, groups and legal entities to which Articles 2, 3 and 4 of Common Position 2001/931/CFSP apply [22]. It is interesting to note that the EU’s anti-terrorism list includes an individual who has been presumed dead for more than three years, yet still appears on the list. This supports our next argument that the names on lists such as the EU list, as well as on the list drawn up by the Sanctions Committee against ISIL (Da’esh) and al-Qaeda (hereinafter the ‘Sanctions Committee’), compiled by the security services, are of limited reliability; that is, they are characterised by a lack of proper identification and attention to data and corroborating information, as well as by cultural nuances in the interpretation of names and titles. According to UN data, the Sanctions Committee’s list currently includes 256 individuals and 89 organisations (data as at 21 July 2023) [22]. Thus, it can be argued that the List is not part of the criminal process, and such information is not required for the rule of law in criminal proceedings (placement of persons or objects on the List). However, some countries have expressed concern that the basic protection of the interests of persons on the anti-terrorist list is not available. This applies to both criminal and civil cases. Most cases involving the application of EU sanctions (the Court of First Instance, the European Court of Justice and the European Convention on Human Rights). In the US, only a small number of claims have been brought by legal entities and individuals. In light of the above, the following key issues relating to the process of inclusion on and removal from the sanctions list can be identified:

Firstly, there is the issue of prior notification regarding the imposition or lifting of measures by the Sanctions Committee, whether before or after listing: no notification is provided. This may be partly due to a lack of consistency regarding the effective enforcement of asset-freezing measures, for which prior warning is not required. For the first time, there is a need to comply with the requirement to act whilst maintaining the confidentiality of this information. Such procedural uncertainty makes it considerably more difficult to challenge a decision taken against a natural or legal person. Through proper notification and stricter adherence to the presumption of innocence, unjustified listing can be prevented at an early stage, before names are publicly announced and damage is done to an individual’s reputation, moral risk arises, or a company’s image is harmed.

Secondly, even if errors are found in the evidence, the state has little time (48–72 hours) to verify the information about the suspects. There are no specific time limits, and the names of these individuals may be kept secret indefinitely until the Security Council or the Committee decides otherwise – either on its own initiative or following an appeal lodged via the relevant ombudsman of one of the organisation’s member states.

Thirdly, the Implementation Committee’s guidelines provide for a delisting procedure, but they do not specify the circumstances indicating rehabilitation that could serve as grounds for such delisting. Furthermore, individuals included on the List cannot submit applications for delisting directly (on their own); this is only possible through the government of their country of residence and/or nationality. The only indirectly specified ground is the death of a person included on the List, as indicated by the phrase ‘in respect of a deceased person’. However, it is unclear who should submit the relevant application for delisting. Resolution 2610(2021) on the delisting procedure contains no provisions on this matter, nor does it address the possibility of requiring the requesting State to provide any information justifying delisting. Individuals hope for diplomatic protection from their own state, but the state may not be keen to intervene in the matter [11]. If a name appears on the List, any member of the Council can prevent removal from the List, and the requesting state cannot secure a review of the case. Furthermore, if the government is not favourably disposed towards the suspect, the application may not reach the Committee, despite all efforts. Inclusion on the List by the Committee does not prevent States from taking any measures in respect of the individuals or assets concerned on a case-by-case basis, in accordance with their national legislation. States may initiate criminal, civil or administrative proceedings against a natural or legal person proposed for inclusion

on the List, or take measures to seize and confiscate assets, rather than merely ‘freezing’ them, as required by the resolution. However, this must be carried out in conjunction with the State in accordance with the objective provisions of its own legislation.

Fourthly, there is currently no fact-checking mechanism in place that would allow deceased individuals to be removed from the List as soon as circumstances permit, although many States have made relevant recommendations. This may be because terrorists could stage their own deaths to avoid arrest, carry out further terrorist attacks or escape. Similarly, transactions on behalf of deceased persons may pass through financial systems long after their deaths [3].

Fifthly, the difficulty lies in the inconsistent approach to meeting basic needs: when an individual and their dependants are placed on the list, their assets are frozen, which affects their family members. Resolution 1267 originally permitted the unfreezing of assets on a case-by-case basis to meet humanitarian and social needs, but this provision was subsequently repealed [19].

Sixthly, due to the development of new technologies and the lack of uniform international regulation of online transactions using blockchain technology, it is becoming difficult to track the movement of funds. This, in turn, could be exploited to finance and support terrorism. All of this is due to the accessibility and anonymity of such financial transactions.

When discussing the EU list, one cannot fail to mention an interesting fact relating to the United Kingdom’s withdrawal from the European Union in 2016. Here, the ‘devil’ is in the detail. Since terrorist organisations such as the ‘Continuing Irish Republican Army (CIRA)’, the ‘Real Irish Republican Army (Real IRA)’ and the ‘Ulster Defence Association/Ulster Freedom Fighters (UDA/UFF)’, which were included on the EU list in 2001, do not appear in its current version dated 20 July 2023.

It would have been logical for the European Commission to decide to remove these three organisations from the list on the grounds that they do not pose a threat to the EU, and the reasoning behind such a decision should have been set out in writing; however, in reality, this did not happen, and the whole process was carried out mechanically. At the same time, for the United Kingdom itself, these organisations are terrorist organisations and pose a direct threat to the national security of the United Kingdom as a European state. This example shows that lists of terrorist organisations vary from country to country; however, their nature and the methods they use to achieve their aims are unlawful and terrorist in nature. In our view, this approach is not entirely effective. After all, the exclusion of a particular country from any international organisation, alliance, bloc or other grouping should not automatically mean that the organisations it has designated as terrorist no longer pose a threat either to that country itself or to other neighbouring countries in the region.

Consequently, we conclude that, in their efforts to ensure national security, states must not infringe upon the fundamental rights and freedoms of any individual who has been included on the anti-terrorism list of any individual state or on the lists of the UN and the EU. The principle of the presumption of innocence and the right to be removed from anti-terrorism lists on the basis of rehabilitation must be equally guaranteed and respected. All procedures for inclusion on anti-terrorism lists and for updating them must be clear, transparent in terms of legislation and process, as well as reasonable and logical.

In light of the above, we propose the following recommendations:

1. Investigative measures that do not fall within the category of classified information, as well as searches of private property, must be carried out with a court order. All data collected during counter-terrorism operations through surveillance and intelligence-gathering must be directly related to the objective of combating terrorism and must be gathered in accordance with international conventions and agreements between states and international organisations;

2. Member States must ensure the completeness and accuracy of data on individuals included on sanctions lists. The criteria used by the UN and EU Sanctions Committees for including individuals and organisations on lists for the purpose of freezing assets must be accessible and transparent to those individuals and organisations. Furthermore, individuals and organisations must be granted access to information regarding the grounds and reasons for the decision to freeze assets.

3. Before the name of an identified person is included on the List and made public, that person must be granted additional time, in accordance with the notification procedures. Any decision relating to the freezing of assets of individuals or organisations must be accompanied by a legal opinion.

4. Lists of individuals and organisations must be subject to periodic review, whilst the presumption of innocence must be upheld when adding names to the list. Three categories of persons shall have the right to be removed from the list: those who have been identified in error; those who have voluntarily ceased to support or facilitate the financing of terrorism and have demonstrated that they no longer warrant inclusion on the list; and those who, for objective reasons, are presumed to be deceased.

5. Any person has the right to submit a request for removal from the List directly to the Committee if a Member State has rejected that person's request submitted to the Committee. In the event of unjustified inclusion on the Sanctions Committee's list or any other similar list, a rehabilitation report must be drawn up and forwarded to the relevant authorities of the Member States.

6. The arbitration body and the trust fund shall comprise the State that submitted the application and representatives of neutral States; they shall consist of experts on security matters.

Contribution of the authors:

R. Sadykova – developed the research concept and conducted the legal analysis of the UN counter-terrorism sanctions mechanisms;

A. Kadyrbekov – examined the EU's practices and the procedures for listing and delisting.

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БҰҰ мен Еуропалық Одақтың терроризмге қарсы іс-қимыл тетіктері

Аңдатпа. Мақалада халықаралық терроризмге қарсы күрестің құқықтық шаралары қарастырылады. Авторлар БҰҰ Қауіпсіздік Кеңесінің 1267 (1999) қарары аясында «Әл-Каида» мен «Талибанға» қатысты санкциялар жөніндегі комитеттің және БҰҰ Терроризмге қарсы комитетінің құрылуы мен қызмет ету тетіктерін талдайды. Аталған қарар «Талибан» қозғалысының Усама бен Ладенді ұстап беруден бас тартуына байланысты санкциялар енгізуге негіз болды. Кейінгі шешімдерінде БҰҰ Қауіпсіздік Кеңесі санкциялардың қолданылу аясын кеңейтіп, 1390 (2002) қарарына сәйкес оларды «Әл-Каида» ұйымы мен онымен байланысты тұлғалар мен құрылымдарға да қолданды. Сонымен қатар үш негізгі санкциялық шара айқындалды: активтерді бұғаттау және соған байланысты қаржылық шектеулер, қару-жарақ эмбаргосы және жүріп-тұруға тыйым салу. Қаржыландыру кез келген террористік әрекетті жүзеге асырудың негізгі алғышарты болғандықтан, террористік қызметке қатысы бар тұлғаларға бағытталған қаржы ағындарын тоқтату аса маңызды. Осыған байланысты терроризмге қатысы бар деп күдік келтірілген тұлғалардың активтерін бұғаттау және олардың жүріп-тұруына тыйым салу шараларын қолдану барысында туындайтын құқықтық мәселелерді анықтау да ерекше мәнге ие. Мақалада БҰҰ мен Еуропалық Одақтың терроризмге қатысы бар деп күдік келтірілген тұлғаларды санкциялық тізімдерге енгізу және олардан шығару рәсімдерінің тиісті құқықтық рәсім, құқықтық айқындық және тиімді сот арқылы қорғалу қағидаттарына сәйкестігі бағаланады.

Терроризмге қарсы санкциялардың тиімділігі мен адамның негізгі құқықтары және жеке бостандықтарын қорғау арасындағы теңгерімді сақтау қажеттілігіне ерекше назар аударылады.

Түйін сөздер: терроризмге қарсы іс-қимыл, санкциялар, құқықтық рәсімдер, террористік ұйымдарды қаржыландыру, Біріккен Ұлттар Ұйымы, Еуропалық Одақ.

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Механизмы противодействия терроризму ООН и Европейского союза

Аннотация. В статье рассматриваются правовые меры борьбы с международным терроризмом. Авторы анализируют становление и функционирование механизмов Комитета по санкциям в отношении «Аль-Каиды» и «Талибана», а также Контртеррористического комитета ООН в контексте резолюции Совета Безопасности ООН 1267 (1999), на основании которой были введены санкции в ответ на отказ движения «Талибан» выдать Усаму бен Ладена. В последующих решениях Совет Безопасности ООН расширил сферу применения санкций, распространив их, согласно резолюции 1390 (2002), на «Аль-Каиду» и связанных с ней лиц и организации. Были определены три основные санкционные меры: замораживание активов и связанные с ним финансовые ограничения, эмбарго на поставки оружия и запрет на передвижение. Поскольку финансирование является необходимым условием осуществления любой террористической деятельности, пресечение финансовых потоков, направляемых лицам, причастным к терроризму, имеет первостепенное значение. В связи с этим важно выявить правовые проблемы, возникающие при применении мер по замораживанию активов и ограничению передвижения лиц, подозреваемых в причастности к терроризму. В статье оценивается соответствие применяемых ООН и Европейским союзом процедур включения подозреваемых в терроризме лиц в санкционные списки и исключения из них принципам надлежащей правовой процедуры, правовой определённости и эффективной судебной защиты. Особое внимание уделяется необходимости обеспечения баланса между эффективностью контртеррористических санкций и защитой основных прав и свобод человека.

Ключевые слова: противодействие терроризму, санкции, правовые процедуры, финансирование террористических организаций, Организация Объединённых Наций, Европейский союз.

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