

SANCTIONING POWERS OF THE NATIONAL SECURITY COUNCILS

САНКЦІЙНІ ПОВНОВАЖЕННЯ РАД НАЦІОНАЛЬНОЇ БЕЗПЕКИ

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The article revolves around the investigation of the organizational and legal foundations of the sanctioning activities of the National Security Councils (NSCs) of the USA, UK, Germany, and Ukraine. It is noted that NSCs are integral parts of governmental structures that determine the priority directions for ensuring national security in political, economic, social, military, scientific-technological, environmental, informational, and other spheres.

Despite the similarity of the main goals and directions of the NSCs' activities, there are significant differences in their powers and mechanisms of operation. These differences reflect the specifics of the political, legal, and socio-economic conditions of each country.

The importance of a thorough investigation of the legal status of the NSCs of leading countries in the world, especially in terms of powers to apply special economic and other restrictive measures to protect national interests, national security, sovereignty, and territorial integrity, counteract terrorist activity, and prevent violation, restore violated rights, freedoms, and legitimate interests of citizens, society, and the state is emphasized. Such research allows not only to understand the peculiarities of the sanction policies of leading countries in the world but also to identify the most effective ways of their formation and implementation with the participation of NSCs.

It is established that the application of economic and other sanctions by NSCs is often accompanied by problems and does not always ensure an effective impact on the subjects under sanctions. In some cases, the applied sanctions can negatively affect the state that applies them. In this regard, the importance of creating a proper legal and organizational basis for building quality sanction strategies is emphasized.

Based on the study of foreign experience, priority directions for improving the sanctioning activities of the National Security and Defense Council of Ukraine are outlined.

Key words: security of the state, national security, national security council, sanctions, sanctions policy.

Стаття присвячена дослідженню організаційно-правових засад санкційної діяльності рад національної безпеки США, Великої Британії, Німеччини та України. Констатовано, що ради національної безпеки є невід'ємними частинами урядових структур, які визначають пріоритетні напрями забезпечення національної безпеки у політичній, економічній, соціальній, військовій, науково-технологічній, екологічній, інформаційній та інших сферах.

Разом з тим, попри схожість основних цілей і напрямів діяльності рад національної безпеки, існують значні відмінності в їхніх повноваженнях та механізмах роботи. Ці відмінності є відображенням специфіки політичних, правових і соціально-економічних умов кожної країни.

Підкреслена важливість ґрунтовного дослідження правового статусу рад національної безпеки провідних країн світу, зокрема, в частині повноважень щодо застосування спеціальних економічних та інших обмежувальних заходів з метою захисту національних інтересів, національної безпеки, суверенітету і територіальної цілісності, протидії терористичній діяльності, а також запобігання порушенню, відновлення порушених прав, свобод та законних інтересів громадян, суспільства та держави. Таке дослідження дозволяє не лише зрозуміти особливості санкційних політик провідних держав світу, а й виявити найбільш ефективні способи їх формування та реалізації за участю рад національної безпеки.

Встановлено, що застосування радами національної безпеки економічних та інших санкцій нерідко супроводжується проблемами та не завжди забезпечує дієвий вплив на підсанкційних суб'єктів. В окремих випадках застосовані санкції можуть негативно відбиватися на державі, котра їх застосовує. У зв'язку з цим підкреслюється важливість створення належного правового та організаційного підґрунтя для побудови якісних санкційних стратегій.

На основі вивчення зарубіжного досвіду окреслено пріоритетні напрями удосконалення санкційної діяльності Ради національної безпеки та оборони України.

Ключові слова: безпека держави, національна безпека, рада національної безпеки, санкції, санкційна політика.

In the realm of global politics and security, the National Security Councils (NSCs) hold a pivotal role. These entities, embedded within the governmental structures of nations worldwide, are tasked with the formulation and implementation of national security strategies. Despite sharing a common objective of safeguarding national interests, these councils exhibit significant variations in their powers and operational mechanisms, reflecting the unique political, legal, and socio-economic contexts of their respective countries.

An exploration into the NSCs of top world countries offers a rich tapestry of structures and strategies. Each one is shaped by diverse political systems and national security challenges, providing a broad spectrum of approaches to national security. This comparative analysis holds high practical value, as it not only provides valuable insights into the diverse strategies employed by different countries in addressing national security concerns, but also facilitates the identification of best practices and innovative approaches that have proven effective in specific contexts.

For modern Ukraine, navigating the complexities of significant geopolitical shifts and national security challenges, this comparative analysis holds immense potential. By understanding the powers and strategies of NSCs in top world countries, Ukraine can glean valuable insights to bolster its own national security framework.

The implementation of these findings in the Ukrainian context could range from structural and procedural modifications in the functioning of its NSC to the adoption of novel strategies in areas such as economic sanctions, intelligence coordination, and crisis response. This process of learning and adaptation, guided by the experiences of top world countries, could significantly enhance the effectiveness of Ukraine's national security strategy and its application of economic sanctions.

In essence, this exploration transcends the academic realm and aims to make a tangible impact on national security policy-making, particularly in the context of Ukraine. By fostering

a deeper understanding of global best practices and facilitating their contextual adaptation, this endeavor aspires to contribute meaningfully to the enhancement of national security in Ukraine and beyond.

The *United States National Security Council (NSC)* is the principal forum used by the President for consideration of national security, military, and foreign policy matters¹. It is part of the Executive Office of the President of the United States and is composed of senior national security advisors and Cabinet officials¹. The NSC advises and assists the President on national security and foreign policies and coordinates these policies among various government agencies. The NSC plays a key role in the application of economic sanctions, which are measures adopted to counter threats to national security posed by particular activities and countries². The Office of Economic Sanctions Policy and Implementation (EB/TFS/SPI) is responsible for developing and implementing these foreign policy-related sanctions [1].

The Office of Economic Sanctions Policy and Implementation (EB/TFS/SPI) is responsible for developing and implementing foreign policy-related sanctions adopted to counter threats to national security posed by particular activities and countries. SPI builds international support for implementation of economic sanctions, provides foreign policy guidance to the Department of Treasury and Commerce on sanctions implementation, and works with Congress to draft legislation that advances U.S. foreign policy goals in these areas. SPI maintains and enforces sanctions to maximize their economic impact on our targets and minimize the damage to U.S. economic interests [1].

Economic sanctions, which can be either comprehensive or selective, employ measures such as asset blocking and trade restrictions to achieve objectives related to foreign policy and national security. These measures may encompass a range of restrictions, including the denial of a designated entity's access to the U.S. financial system, the freezing of an entity's assets under U.S. jurisdiction, or the prohibition of the export of specified items.

In recent years, the United States has increasingly leveraged economic sanctions as a strategic tool to achieve a variety of foreign policy objectives. For instance, in response to Russia's incursion into Ukraine, the United States has enacted a comprehensive suite of sanctions against Russia. Similarly, sanctions have been imposed on Venezuela, specifically targeting entities involved in undermining democratic processes or institutions.

These sanctions can manifest in various forms, ranging from comprehensive economic embargoes affecting an entire country to more targeted measures aimed at specific sectors, individuals, or corporate entities. The economic restrictions imposed can encompass a wide array of measures, such as denying a designated entity access to the U.S. financial system, freezing an entity's assets under U.S. jurisdiction, or prohibiting the export of restricted items.

The implementation of these sanctions involves a multitude of federal agencies, each playing a distinct role in the process, including policy development, target identification, and violation prosecution. Key departments such as the Treasury, State, and Commerce each harbor units specifically dedicated to the implementation of sanctions. Notably, the Treasury's Office of Foreign Assets Control stands as the largest federal office dedicated to implementing sanctions.

However, this office, along with other federal agencies, faces a series of challenges in effectively implementing sanctions and assessing their effectiveness. These challenges include competition with other agencies and the private sector for hiring staff to meet its growing workload, and protracted lead times for acquiring necessary security clearances. Thus, while sanctions serve as a potent tool in the arsenal of U.S. foreign policy, their effective implementation and assessment present a complex and multifaceted challenge.

For example, Federal agencies do not engage in exhaustive evaluations that quantify the efficacy of sanctions in achieving the objectives of U.S. foreign policy. The measurement of sanctions' effectiveness is fraught with challenges, including the difficulty in distinguishing the impact of sanctions from other influencing factors, the dynamic nature of policy goals and objectives, and the scarcity of dependable data.

In turn, U.S. agencies have initiated measures to identify and alleviate any potential adverse humanitarian implications of sanctions on Venezuela. For instance, the Treasury Department maintains a dedicated call center and email account to provide assistance to humanitarian organizations encountering challenges related to sanctions [3].

In essence, the National Security Council (NSC), in concert with a multitude of departments and agencies, holds a pivotal role in the deployment of economic sanctions, serving as a potent instrument of U.S. foreign policy and national security.

The National Security Council (NSC) of the United Kingdom is a cabinet committee that oversees matters related to national security, foreign policy, defense, trade, international relations, development, resilience, and resource security. NSC is a cabinet committee of ministers, supported by a dedicated secretariat, which exists to co-ordinate and consider matters relating to national security, foreign policy, defence, international relations and development, resilience, energy and resource security.

The NSC currently has three formal subcommittees, each comprising of ministers whose departments have a stake in the issues to be discussed. These are the NSC (Threats, Hazards, Resilience and Contingencies), NSC (Nuclear Deterrence and Security), and NSC (Emerging Powers). The NSC coordinates responses to threats faced by the United Kingdom and integrates the work of relevant government entities with respect to national security.

The NSC's powers are broad and include the ability to identify and monitor national security risks and opportunities, tackle the causes of instability at their root, exert influence to exploit opportunities and manage risks, and enforce domestic law and strengthen international norms to help tackle those who threaten the UK and its interests [4, p. 24-27].

In terms of economic sanctions, the UK implements a range of sanctions regimes through regulations made under the Sanctions and Anti-Money Laundering Act 2018 (the Sanctions Act). The Sanctions Act provides the main legal basis for the UK to impose, update, and lift sanctions. The prohibitions and requirements in these Regulations apply to conduct by UK persons, including anyone in the UK, UK nationals outside of the UK, and bodies incorporated or constituted under the law of any part of the UK.

The UK may impose the following types of sanctions measures:

- trade sanctions, including arms embargoes and other trade restrictions

- financial sanctions, including asset freezes

- immigration sanctions, known as travel bans

- aircraft and shipping sanctions, including de-registering or controlling the movement of aircraft and ships [5].

Some sanctions measures (such as asset freezes and travel bans) apply only to persons or ships which have been designated or specified by the UK Government³. This is publicized through the UK sanctions list, which contains designations or specifications made using legislation under the Sanctions Act.

The UK government publishes the UK Sanctions List, which provides details of those designated under regulations made under the Sanctions Act. The list also details which sanctions measures apply to these persons or ships, and in the case of UK designations, provides a statement of reasons for the designation [6].

In summary, the National Security Council of the United Kingdom has broad powers related to national security,

including the ability to apply economic sanctions. These sanctions are implemented under the Sanctions and Anti-Money Laundering Act 2018 and can take various forms, including trade and financial sanctions. The specifics of these sanctions are detailed in the UK Sanctions List.

Germany's National Security and Defense Council (NSDC) is not a standalone entity but rather a part of the country's broader security architecture. The NSDC's powers and responsibilities are not explicitly defined in the context of applying economic sanctions [7].

However, Germany's approach to sanctions can be understood by examining its national security strategy and sanctions regime. National Security Strategy Germany's National Security Strategy provides guidance in the face of current and foreseeable security challenges. It is a comprehensive document based on a broad concept of security and references existing documents while informing other strategies. The strategy emphasizes Germany's dependence on a strong North Atlantic Alliance and a united European Union [8].

Sanctions Regime Germany applies all sanctions imposed by the United Nations Security Council and the European Union. It does not unilaterally impose sanctions. However, Germany maintains a discrete national export control regime that, in very limited circumstances, is used to impose unilateral export control measures.

Germany's sanctions regime distinguishes between sanctions with a focus on a specific jurisdiction and sanctions with a focus on specific individuals/entities³. Sanctions with a focus on a specific jurisdiction can further be divided into embargoes, comprehensive sanctions, and targeted sanctions.

Economic Sanctions are designed to restrict trade, usually within a particular economic sector, industry or market [9].

When it comes to implementing EU sanctions against a country, various federal and regional authorities collaborate, each operating within their designated responsibilities and competencies. Commercial banks, insurance companies, and other economic operators are responsible for ensuring compliance with asset freezing requirements once the relevant EU legal instrument takes effect. These entities diligently report on frozen assets to the Deutsche Bundesbank.

In summary, while the National Security Council (NSDC) plays a role in shaping Germany's national security strategy, the implementation of economic sanctions involves a broader network of entities. These measures adhere to guidelines established by international bodies such as the United Nations (UN) and the EU. Although the NSDC's specific powers in this process lack explicit definition, it is evident that sanction application is a multifaceted endeavor spanning various levels of government and economic sectors. Germany's approach underscores its commitment to international cooperation and adherence to established legal frameworks.

The National Security and Defense Council of Ukraine (NSDC) The National Security and Defense Council of Ukraine (NSDC), a constitutionally established specialized state body, plays a pivotal role within the presidential framework. Its primary mandate is to safeguard state independence and national security. The NSDC conducts rigorous analyses of both internal and foreign policies, assesses threats, and formulates strategies to address them. Additionally, it sets security priorities in foreign relations, military matters, and other critical domains [10].

Operationalizing economic sanctions constitutes a significant facet of the NSDC's mandate. Ukraine, embroiled in a protracted conflict with Russia, has found itself at the epicenter of international sanctions [11, p. 195-196]. These measures, imposed by the United States, United Kingdom, European Union, and other nations (including Australia, Canada, and Japan), are a direct response to Russia's audacious invasion of Ukrainian territory.

The focal point of these sanctions lies in curtailing Russia's financial prowess. Specifically, foreign currency reserves

worth an astounding \$350 billion – approximately half of Russia's total reserves – have been frozen. This financial straitjacket aims to limit Russia's maneuverability and exert pressure on its decision-making calculus.

The NSDC's actions reverberate across various domains, including cyberspace activities, military-industrial enterprises, and critical infrastructure [12, c. 99-101]. These actions underscore Ukraine's unwavering commitment to international cooperation and adherence to established legal frameworks.

The application of sanctions, while a powerful tool in international relations, faces inherent challenges. The legal intricacies surrounding their implementation often lead to complexities. For instance, the use of frozen Russian assets to fund Ukraine as reparations for the war is legally intricate. While the intent is noble, translating this into practical action involves navigating intricate legal frameworks.

Moreover, the efficacy of sanctions remains a subject of debate. Despite imposing over 16,500 sanctions on Russia since its invasion of Ukraine, these measures have not dealt a decisive blow to President Putin's ambitions. The delicate balance between exerting pressure and avoiding unintended consequences remains elusive.

Sanctions targeting Russian officials and oligarchs, such as asset freezes and travel restrictions, often yield symbolic rather than substantive results. While they may signal disapproval and impose inconveniences, their impact on altering Russia's behavior remains limited. The symbolic nature of these actions underscores the challenge of achieving meaningful change through sanctions [13].

In conclusion, while the NSDC plays a crucial role in shaping Ukraine's national security strategy, the implementation of economic sanctions involves a broader network of entities and follows the guidelines set by international bodies like the UN and the EU. The NSDC's specific powers in this process are not explicitly defined. However, it is clear that the application of sanctions is a complex process involving various levels of government and sectors of the economy. It's also worth noting that Ukraine's approach to sanctions is guided by its commitment to international cooperation and adherence to international law.

Conclusion. In the realm of national security and the application of economic sanctions, the examination of international practices reveals several salient strategies that could be judiciously adopted within the Ukrainian context:

- explicit delineation of roles and responsibilities: The establishment of a clear demarcation of duties and responsibilities within the National Security and Defense Council can engender a more efficacious execution of national security strategies, including the imposition of economic sanctions. This explicit delineation can obviate potential conflicts and foster a more harmonious interplay among different organs of executive authority.
- inter-agency coordination: The enhancement of coordination among various executive entities can lead to a more effective implementation of sanctions. This inter-agency synergy can ensure a comprehensive and unified approach towards the enforcement of sanctions, thereby augmenting their overall impact.
- adherence to international guidelines: The strict observance of guidelines set forth by international bodies such as the United Nations and the European Union when applying economic sanctions is a practice of paramount importance. By bolstering its adherence to these guidelines and actively participating in international discussions on sanctions, Ukraine can fortify its standing in the global arena.
- national legislation on sanctions: The enactment of national legislation pertaining to sanctions can provide a robust legal foundation for the implementation of sanctions. Such legislation can serve as a bulwark against potential legal challenges and ensure the legality and legitimacy of the sanctions imposed.

public communication: The development of effective public communication strategies regarding national security strategies and the application of sanctions can ensure that the citizenry is well-informed about the rationale and objectives behind the imposition of sanctions. This can foster public support and understanding for these measures, thereby enhancing their overall effectiveness.

In conclusion, while each nation's approach to national security and the application of sanctions is shaped by its unique national context, there are several practices gleaned

from international experiences that could be judiciously adopted within the Ukrainian context. These include the explicit delineation of roles and responsibilities, enhanced inter-agency coordination, strengthened adherence to international guidelines, the enactment of national legislation on sanctions, and the development of effective public communication strategies. The adoption of these practices could significantly enhance the effectiveness of Ukraine's national security strategy and the application of economic sanctions.

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