



Application of anti-terrorism measures in armed conflict

Tilburg, 26 October 2015



LTTE case

- Fighting for Tamil People against Sri Lanka (1976-2006);
- Blacklisted by EU in 2006;
- Challenge brought to General Court.



LTTE case

The GC found that anti-terrorism sanction did not infringe non-intervention principle, and were applicable irrespective of the existence of a conflict in Sri Lanka.



International law on terrorism

- No general definition in customary law;
- No comprehensive international treaty.



International tribunals

STL, ICTY and SCSL have provided a definition of terrorism applicable in time of peace (STL) and war (ICTY + SCSL).



Anti-terrorism measures

- 1) Incompatible with non-intervention?
- 2) Incompatible with IHL?



Non intervention

- Intended to protect State's sovereignty;
- Military but also logistical and financial assistance is prohibited;
- Assistance to a State against non-state group is permitted (ICJ, Nicaragua Case).



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Non intervention

For the intervention to be lawful, it is necessary the consent of the affected State.



Non intervention

Anti-terrorism measures do not in principle constitute any form of prohibited intervention.



IHL and liberation struggle

Anti-terrorism measures does not in principle conflict with IHL. Freedom fighters can perpetrate terrorist acts as defined by IHL.



Judicial review

- Application of Kadi case law;
- Need to distinguish between criminal proceedings and judicial review of preventive measures.



Conclusions

- 1) Terrorism is prohibited in times of peace and war.
- 2) A party to an IAC or NIAC can perpetrate terrorist acts.
- 3) As a consequence, such party can be subject to sanctions imposed unilaterally by third parties.
- 4) Anti-terrorism sanctions in most cases do not constitute unlawful intervention.
- 5) Need to guarantee due process rights but taking into account preventive/administrative nature of sanctions.