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FUNDAMENTAL HUMAN RIGHTS AND COERCIVE MEASURES: IMPACT AND INTERDEPENDENCE

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The current article is devoted to the impact of coercive measures both when applied by the UN Security Council and without its authorization (unilateral coercive measures) by states and regional organizations over the enjoyment of human rights. It assesses grounds, justifications and consequences of application of both comprehensive sanctions applied to states and targeted sanctions applied to specific individuals from the legal point of view. This activity often happens in the course of complex, long-term, extreme situations of human rights – that is intractable human rights crisis. States and international organizations feel free to take activity being in breach of international law under the slogan of the need to protect endangered human rights. The article analyses, what measures can be viewed as unilateral coercive measures, assesses the impact of comprehensive measures of the UN Security Council over Iraq's general population, considers whether and under which conditions means of pressure can be applied over the states or specific individuals or legal entities legally or with reference to state's consent or application of countermeasures. It is concluded that comprehensive sanctions may legally be taken by the UN Security Council, however their impact on the enjoyment of human rights is huge and negative. Means of pressure (both towards states and individuals) may only be applied by states if they are legal under international law or their illegality is otherwise excluded in accordance with international law. Any other means are prohibited under international law.

Key words: unilateral coercive measures; sanctions; targeted sanctions; human rights; negative impact.

ОСНОВОПОЛАГАЮЩИЕ ПРАВА ЧЕЛОВЕКА И ПРИНУДИТЕЛЬНЫЕ МЕРЫ: ВЛИЯНИЕ И ВЗАИМОЗАВИСИМОСТЬ

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Посвящена влиянию принудительных мер, принимаемых как с санкции Совета Безопасности ООН, так и в одностороннем порядке, на соблюдение прав человека. Дается оценка фактическим и правовым основаниям, а также последствиям применения всеобъемлющих применяемых к государствам санкций и целевых санкций с точки зрения международного права. Поскольку такие действия часто имеют место в ходе гуманитарных кризисов, государства и международные организации считают возможным прибегать к противоправным деяниям под лозунгом необходимости защиты прав человека. Обсуждается вопрос о том, какие деяния могут и должны рассматриваться как односторонние принудительные меры. Исследуется влияние санкций Совета Безопасности ООН 1990-х гг. на население Ирака. Указывается, какие меры и в каких ситуациях могут быть правомерно применены для оказания давления на государства, физических или юридических лиц. Делается вывод о том, что международное право разрешает введение Советом Безопасности ООН всеобъемлющих санкций, однако их применение имеет огромный негативный гуманитарный эффект. Средства давления на государства, физических и юридических лиц могут

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применяться только в том случае, если они правомерны с точки зрения международного права либо их противоправность исключается в соответствии с международным правом. Любые иные средства воздействия запрещаются международным правом.

Ключевые слова: односторонние принудительные меры; санкции; целевые санкции; права человека; негативное влияние.

Starting from the 1990s, the UN and the world have been living in the era of sanctions. During this period sanctions have evolved from comprehensive to targeted ones, although the former are still applied in some restricted forms. Traditionally, sanctions are applied by international organizations. However, in recent years we often hear about sanctions of individual states.

This activity even more frequent in the course of complex, long-term, extreme situations of human rights – that is intractable human rights crisis. States and international organizations feel free to take activity being in breach of international law under the slogan of the need to protect endangered human rights. It shall be taken into account however that this pressure can also have a substantial negative influence on the enjoyment of human rights by individuals of targeted states and/or directly targeted individuals. As a result, this situation has been repeatedly considered by the UN Human Rights Council (hereafter UNHRC) and in March, 2015 the UN High Commissioner for Human Rights (hereafter UNHCHR) has appointed a Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights (hereafter Special Rapporteur).

Therefore, in order to analyze the status of endangered fundamental human rights in the international context especially in the course of human rights crisis, it is necessary:

- to define, what unilateral and multilateral coercive measures are and what is their status under international law;
- to assess the impact of measures targeting states to the observance of human rights;
- to assess the impact of targeted measures over the observance of human rights;
- to define existing mechanisms of human rights protection in situations where coercive measures are applied.

Unilateral coercive measures under international law

The notion of coercive measures is very unclear in international law. On an everyday basis, states independently or via international organizations look for some means of influence over other states. However, not all means of such an influence are legal under international law. It is also obvious that no state or international organization will ever confess that its activity goes counter to international law.

From the terminological point of view, the situation is not any clearer. When one speaks about enforcement or coercive activity, terms like enforcement activity, sanctions, force, countermeasures, unfriendly acts, coercion are used. Therefore, when we speak about the impact on human rights, it is necessary to define what we are going to assess.

The term *Unilateral coercive measures* (hereafter UCM) is intensively discussed and even more often mentioned. However, the UN Charter does not contain it. Moreover, there is no universal definition of the UCM in international law. a Thematic study refers to the UCM as to "*economic* measures *taken by states to compel a change in the policy of another state*" (para. 2) and notes that the notion includes more recently also targeted measures (freezing assets and travel bans) in order to "influence individuals who are perceived to be in a position to decide on the political action in a particular state" (para. 3) [1].

This definition demonstrates four main characteristics: 1) applied by states; 2) primarily (but not exclusively) economic measures; 3) applied to states or individuals able to decide on the policy of the state; 4) aimed to change a policy of a target state. It says nothing about the status of these measures in international law, however. Therefore, it is necessary to take a closer look at these measures:

Subject. UCM are measures applied by states. The notion of states shall be interpreted here in the broad way. States may act both independently and indirectly through coalitions and international organizations. This approach is implicitly inherent in the UN practice as well. For example, the UN Security Council used to authorize states acting both independently and through international organizations (resolutions 1031 (1995) of 15.12.1995, paras. 14–17, 36; 1247 (1999) of 19.06.1999, paras. 10–13; 1575 (2004) of 22.11.2004, paras. 10, 14–16; 1785 (2007) of 21.11.2007, paras. 10, 14–16; 1948 (2010) of 18.11.2010, paras. 10, 14–16; 1973 (2011) of 11.03.2011, paras. 4, 8, 15). Therefore, "unilateral" shall be understood as measures taken without proper authorization of the UN Security Council. It may therefore be measures taken by individual states, groups of states or regional organizations.

Means. Economic measures are the prior mechanism of unilateral coercive measures. However, this list is not limited to economic measures exclusively, which is illustrated by the prohibition of intervention not only by economic but also by political and other measures (Declaration of Principles of International

Law 1970, Helsinki Final Act 1975), as well as qualification of specific forms of targeted sanctions as UCM.

Target. Initially only states have been viewed as targets of UCM. Later, the scope has also expanded to individuals "who are perceived to be in a position to decide on the political action in a particular state". Nevertheless, this approach seems to be too narrow, too.

Targeted sanctions are introduced to influence a state rather often. It does not mean, however, that (in such a case) they are aimed only at individuals able "to decide on the political action in a particular state". For example, EU targeted sanctions seeking to change the policy and behavior of a state in order to enhance democracy, the rule of law and good governance, are introduced against persons or entities "benefitting from or supporting the … regime", (e.g. Council Decision 2012/36/CFSP, art. 1(2) "responsible for "undermining … agreement" (e.g. Council Decision 2011/173/CFSP, art. 1(1c)) or "misappropriation of … state funds" (e.g. Council Decision 2011/172/CFSP, art. 1(1)) who are often state officials, judges, journalists, hardly able to decide on or change the policy of a state. Moreover, targeted sanctions introduced under the slogan of struggle against international terrorism or other transnational crimes (beyond authorizations of the UN Security Council) may also be aimed to apply a pressure over a state.

Purpose. UCM are aimed to change a policy or behavior of a target state. This characteristic mostly deprives the "target" element of its qualifying role. Therefore, we shall also include here measures aimed to change policy or behavior of specific individuals or organizations.

Targeted sanctions are directed against non-state actors. They may include the following types of measures:

- freezing assets and other economic resources, such as property, directly or indirectly controlled by individuals and organizations included on the list;
- prohibiting entry into the territory of states or transit through their territory; aviation restrictions, visa bans;
- prevention of the direct or indirect supply, sale or transfer of weapons and military equipment; the direct or indirect supply of technical assistance or training, financial or other assistance, including investment, brokering or other financial services, related to military activities or to the supply, sale, transfer, manufacture, maintenance or use of weapons and military equipment (Resolution 1597 (2008) PACE, paras. 9–12) [2; 3; 4, p. 168].

Therefore, from the legal point of view it is possible to define UCM close to enforcement action under art. 53 of the UN Charter. F. Morrison defines enforcement action as "any action which would itself be a violation of international law, if taken without either some special 'justification' or without the contemporaneous consent or acquiescence of the targeted state". [5, p. 43]. It is necessary, therefore, to establish and use legal criteria to be able to define what UCM are.

The UN Charter prohibiting the use of force in international relations (art. 2 (4)), establishing a foundation for the prohibition of intervention into the domestic affairs of states (art. 2 (7)) and conferring the UN Security Council with "primary responsibility for the maintenance of international peace and security" (art. 24 (1)) has substantially limited rights of individual states and regional organizations as concerns application of pressure over other states. Therefore, the application of pressure will correspond to the requirements of the UN Charter only if:

- it is legal under international law;
- it is taken with prior explicit authorization of the UN Security Council; or
- its illegality is excluded on other grounds, e. g. in the course of countermeasures.

However, as far as the UN Security Council is the only institution empowered by the UN Charter to take enforcement action, and the use of enforcement measures by the Council constitutes an exception from the principles of international law, authorization of the UN Security Council shall be interpreted in the narrowest possible way. Any measures taken beyond the limits of the UN Security Council authorization (scope, purposes, timing) shall be subjected to analysis as concerns correspondence to two other criteria. It is also important that the fact that decisions about UCM are taken by international organizations (besides the UN Security Council) does not endow these measures with any sort of legality or makes them multilateral. From the legal point of view UCM are measures, which are not legal under international law, illegality of which is not excluded under international law or via authorization of the UN Security Council.

Impact of measures targeting states to the observance of human rights

The humanitarian impact of these measures applied to states is usually very high. Economic, political and other sanctions result in the crash of or are able to undermine substantially the economic system of the state, increase unemployment rates, decrease the level of education, vaccination and medical care. The humanitarian impact of comprehensive sanctions imposed on Iraq in 1991 may serve as an appropriate example of the case, despite the UN Security Council authorization in resolution 687 (1991) of 03.04.1991. The report was prepared by the Global Policy Forum together with 13 NGOs in 2002 [6]. The major reasons

for negative consequences have been stated as the following: 1) bombardment of infrastructure: electricity plants, factories, water supplied during the Gulf war; 2) economic sanctions, prohibiting to sell oil; 3) need to pay compensation after the war; 4) introduction of non-fly zones; 5) prohibition to import medicines including vaccination, which could presumably be used to produce biological weapons.

The impact of sanctions over Iraq's civilian population is provided in the report as the following:

1. "In accordance with FAO information in 2000 around 800,000 Iraqi children have been "chronically malnourished". The UNICEF 1999 study had shown 21 % of children under five underweight, 20% stunted (chronic malnutrition) and 9 % wasted (acute malnutrition).

2. The food basket in the country became very poor. There was an insufficient number of not only calories but also of vitamins A, C, *riboflavin, foliate and iron in the diet due to the lack of vegetables, fruits and animal products*.

3. Bad water quality and sanitation resulted in diarrhoea that also increased child mortality (up to 70 % in 2001). Sanctions "blocked the rebuilding of much of Iraq's water treatment infrastructure as well as of the electricity sector which powers pumps and other vital water treatment equipment".

4. Electricity shortages seriously disrupted hospital care and disrupted the storage of certain types of medicines.

5. Shortages of medical equipment and spare parts, blockages of certain important medicines, shortage of skilled medical staff, and more.

6. 500,000 children under five years old had died in "excess" numbers in Iraq between 1991 and 1998" (Iraq sanctions).

In this way, measures applied to states can have far-reaching implications for the rights of the targeted state population including the right to life, adequate standard of living (incl. medical care, food, clothes and housing), the right to development, the right to self-determination (First report of the UN Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights of 28.08.2015 [7]).

All this has been the reason why, in the early 2000s, the UN recognized comprehensive sanctions as being ineffective and causing too much suffering and started to impose actively targeted ones. As the UN Secretary-General announced: "If we want to punish, let us punish the guilty" (Address to International Rescue Committee on the humanitarian impact of economic sanctions, UN Secretary-General, press release, SG/SM/7625, 15, November, 2000).

Status of coercive measures targeting states under international law

As mentioned above, the UN Security Council is entitled to decide what non-military or military measures are to be applied by states and regional organizations for the maintenance of international peace and security (UN Charter, art. 41, 42, 53). However, sometimes states intend to take means of pressure in order to enforce the decisions or behavior they prefer. As mentioned above, states and regional organizations may only take measures, which are either legal under international law or illegality of which is excluded in accordance with international law.

Legal acts are only those, which do not breach any norm of international law, either in the sphere of economy, environment, human rights or any other sphere. As for the circumstances, precluding wrongfulness of acts of states, only consent of the target state and countermeasures may be referred to as concerning application of coercive means.

Consent. It is generally recognized in international law that "valid consent by a state to a commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent" (Draft articles on responsibility of states for internationally wrongful acts 2001 (hereafter DARS), art. 20 [8]; Draft articles on responsibility of international organizations (hereafter DARIO), art. 20). The same approach was taken by the ICJ (Certain Expenses (1962) [9, p. 162]; Military and Paramilitary Activity (1986) [10, p. 126, para. 246]).

The wording or art. 20 of DARS and DARIO provides for the need in any given case to establish that (1) state consent is given, (2) the consent is valid, and (3) the act remains within the limits of this consent.

Consent is given. The fact that consent is given by a state for the commission of certain acts should result from the wording of the consent (DARS with comments (2001) comment to art. 20, para. 3). It *is to be clearly established* and may be given both verbally or in written form, *ad hoc* or in advance – or also in the form of an international treaty. No presumption of consent may be established on the basis that it had been requested but no negative answer was received (DARS with comments (2001) comment to art. 20, paras. 4, 6).

Consent *should identify the acts that may be committed*. In reality, the scope of these acts is rather disputable. In particular, it is not that clear whether consent may be given to an act that would otherwise be in breach of peremptory norms of general international law.

Formally, the answer is obvious. The Vienna Convention on the Law of Treaties 1969 stipulates that provisions being in conflict with *jus cogens* norms are void (art. 53, 64). In comments to art. 26 of DARS and DARIO, it is further maintained that "circumstances precluding wrongfulness in chapter V of Part One do

not authorize or excuse any derogation from a peremptory norm of general international law". At the same time, these provisions shall not be interpreted unequivocally.

Consent is valid. Valid consent should be freely given (without the application of pressure on a state or its agent) by the agent representing a state who is authorized to give consent in a given case (DARS with comments (2001) comment to art. 20, paras. 4, 5), in advance of the act or when it is occurring (DARS with comments (2001) comment to art. 20, para. 3) [11, para. 29] (consent given after the act is only a waiver to invoke responsibility for a committed act) (DARS with comments (2001) comment to art. 45(a), paras. 2, 3).

A government representing a state should be effective both at the moment when it gives consent and at the time the act (which otherwise would be wrongful) is committed [12, p. 146–147]. The right of an effective government (as opposed to its opposition) (Military and paramilitary (1986) [10, p. 126]; Geyerhalter D. [13, p. 71]) to invite foreign troops is usually recognized in the legal doctrine (Jamnerjad M., Wood M.[14, p. 378]; KunigP. [11, para. 29],). In recent years, it has sometimes been asserted that the effectiveness of the government is not sufficient and that the government should also be recognized by other states and claim its adherence to democracy and the rule of law (Geyerhalter D. [13, p. 72]; Nolte G. [15, para. 17]). These criteria are, however, too loose. They are often politically motivated and conditioned.

Countermeasures. DARS provides for a set of circumstances precluding wrongfulness of the act. The application of countermeasures for violation of norms being of interest for the international community as a whole is the most cited justification for application of UCM.

A thematic study has correctly noted that reference to countermeasures is only acceptable when they do not affect the prohibition to use force, obligations for the protection of fundamental human rights, obligations of humanitarian character and other obligations under peremptory norms of general international law and are proportionate to the violation committed (para. 23).

These rules, however, need some further explanation. It is also necessary to pay attention to subjects and grounds of countermeasures. In accordance with art. 49(1) of DARS, "An injured State may only take countermeasures *against a State* which is *responsible for an internationally wrongful act in order to induce that State to comply with its obligations*". Therefore, countermeasures may only be introduced by *injured state* in response to the *violation of a specific international obligation by a specific state* and may be directed only *against that state* to induce it to comply with the obligation.

Therefore, countermeasures may only be invoked when pressure is applied against a state as a whole, or against individuals immediately responsible for the policy or activity of a state in breach of an international obligation, in order to change that policy or activity, that is, in reality, a very narrow list of individuals. No measures can be taken against other individuals with reference to counter measures.

Subject entitled to apply countermeasures. In accordance with art. 22, 49(1) of DARS, countermeasures may be taken in relation between the directly injured state and the respondent state. The application of countermeasures by other states (including through international organizations) is only allowed as regards so-called "*collective obligations*" owed to the international community as a whole (*erga omnes* obligations) (Vienna Convention on the Law of Treaties, 1969, art. 60(2); DARS, art. 42, 48; Barcelona Traction 1970 [16, p. 32]; General Comment No. 31 [17, para. 2]; Geyerhalter D. [13, p. 65]; Frowein J. [18, p. 391–404]; Wolfrum R. [19, p. 581]).

There is no precise list of *erga omnes* obligations. In the modern interdependent world it may be very broad. However, due to the high potential for abuse, especially in the sphere of human rights (Simma B. [20, p. 134]), use of pressure by states other than the directly injured state as concerns *erga omnes* obligations shall be very limited. It is remarkable that exactly this issue has been the most debated issue in the course of work on DARS (Tams C. [21, p. 789]; Crawford J. [22, p. 302]. Therefore, I would maintain here that the scope of *erga omnes* obligations for the purpose of application of countermeasures by the third states shall be interpreted restrictively and be identical to the list of *jus cogens* norms (Vaur-Chaumette A.-L. [23, p. 1026]; Simma B. [20, p. 133].

Therefore, states (and, intermediately, regional organizations) not directly injured may only apply countermeasures in the case of a serious breach of obligations arising under peremptory norms of general international law as defined in art. 40–41 of DARS. The list of these is rather narrow (DARS with commentary (2001) 133). The ICJ identifies them as serious violations of the right to self-determination (Barcelona traction 1970 [16, p. 34–35]; Crawford J. [22, p. 277–279]), international humanitarian law (Palestinian wall 2004 [24, paras. 88, 155]) and mass systematic and outrageous violation of fundamental human rights (Interpretation of peace treaties 1950 [25, p. 77]; Barcelona traction 1970 [16, p. 32]). We may add here situations threatening international peace and security. Due to the extreme danger constituted by these situations to international peace and security, the UN Security Council is usually viewed as the most appropriate (the only) organ endowed with powers to act.

Limitations. Countermeasures shall generally be limited to the "non-performance for the time being of international obligations of the State taking the measures towards the responsible State" (DARS, art 49), proportionate with the injury suffered (DARS, art. 51),

taken with due account for the requirements of humanity and the rules of good faith and implemented in accordance with the rules of art. 52 of DARS.

Moreover, as noted in art. 50(1) DARS countermeasures cannot affect obligations to protect fundamental human rights. It basically means that art. 50(1b) prohibits violations of the fundamental rights of every individual, rather than only mass systematic and outrageous violations. As fundamental are viewed all non-derogable human rights including in accordance with art. 4 of the ICCPR, the right to life (art. 6), freedom from torture (art. 7) or slavery (art. 8(1, 2)), prohibition of imprisonment on grounds of an inability to fulfill contractual obligations (art. 11), prohibition of punishment for offenses that are not viewed as crimes at the moment of their commission (*nullum crimen*) (art. 15), right to recognition of personality (art. 16), or freedom of thought, conscience and religion (art. 18).

Impact of targeted measures on the observance of human rights

As mentioned above, targeted sanctions aimed at minimizing the negative effects of comprehensive ones have more direct impact on the enjoyment of human rights of targeted individuals. For example, *bans on admission* are recognized to violate the right to freedom of movement (European Convention on human rights and fundamental freedoms 1950 (hereafter ECHR), art. 2; International Covenant on civil and political rights 1966 (hereafter ICCPR), art. 12), the right to privacy and family life (ICCPR, art. 17; ECHR, art. 8), and the right to life, when access to medical help is urgent (ICCPR, art. 6; ECHR, art. 2) (Cameron (2005) 184–185). *Financial sanctions* are viewed as violating the rights to privacy, family life and property (ECHR, art. 8; Protocol 4, art. 1; Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Martin Scheinin (A/HRC/4/26), 29 January 2007, paras. 38–41 [26]). An arms embargo: property rights (Cameron I. [27, p. 185–186]). Sanctions against journalists concerning anything said or written by them: the right to hold opinions and freedom of expression (ECHR, art. 10; ICCPR, art. 19). The introduction of targeted sanctions in general: the right to a fair trial, to a fair hearing, to effective remedy, to protection by law, procedural guarantees (ECHR, art. 6, 13, 14; ICCPR, art. 14(2), 26; PACE resolution 1597(2008), para. 5.1), the right to be informed promptly on the nature and cause of the accusation, to defend oneself (ECHR, art. 6(3)) and to protection of reputation (Zollman v. Great Britain, Application no. 62902/00 of 27 November 2003; ICCPR, art. 17) (Cameron I. [27, p. 186]).

However, before looking for mechanisms for human rights protection in the course of targeted sanctions, it is necessary to define the legal framework for these sanctions, when applied by different organs.

The UN Security Council has the exclusive position in international law. It is conferred with major responsibility for the maintenance of international peace and security (art. 24(1) of the UN Charter) and is entitled to take enforcement measures (Chapter VII). The only limitations imposed over the UN Security Council are set forth in the UN Charter. The UN Security Council shall act in conformity with purposes and principles of the UN Charter (art. 24(2)) and only when a situation threatens international peace and security. As all subjects of international law it shall also in accordance with peremptory norms of public international law including prohibition to violate non-derogable human rights.

As concerns the application of targeted sanctions by the EU, it shall be remembered that it can only take measures, which are in conformity with international law or illegality of which is excluded in accordance with international law. Targeted sanctions are mostly imposed on individuals either accused in commission of serious crimes (e.g. "severe human rights violations", "crackdown on civil society" (EU Council Decision 2010/639/CFSP, art. 1(1)) undermining "the sovereignty, territorial integrity, constitutional order and international personality" of … state (EU Council Decision 2011/173/CFSP, art. 1(1a)), "harbouring, financing, facilitating, supporting, organizing, training or inciting individuals or groups to perpetrate acts of violence or terrorist acts against other States or their citizens in the region". (EU Council Decision 2010/127/CFSP, 1 March 2010, art. 3)), or for certain affiliation with state authorities (e.g. "persons or entities benefitting from or supporting the … regime" (EU Council Decision 2012/36/CFSP, art. 1(2).) persons responsible for "undermining … agreement" (EU Council Decision 2011/173/CFSP, art. 1(1c)).

The latter does not constitute a crime at all. Moreover, the wording used to define the reason for targeted sanctions is open to abuse. For example, every taxpayer in the state may be viewed as supporting the regime. And every person getting salary, medical care, education emergency services etc. from the states, benefits from it. Therefore, restriction of rights of the latter category imposes a sort of punishment for something that does not constitute a violation of either international or national law. The very fact of quasi-punishment violates thus provisions of art. 15 of the ICCPR prohibiting to recognize someone guilty for acts or omissions that did not constitute a crime at the moment of their commission. Moreover, this right has a non-derogable nature even in the time of emergency (ICCPR, art. 4(2)).

As concerns the first category, when targeted sanctions are applied for alleged serious crimes, no investigation, court hearing or even attempt of investigation or hearing takes place. Violation of the listed rights

thus cannot be justified. Moreover, in the absence of investigation and hearing introduction of targeted sanctions violates procedural rights: the right to a fair trial, to a fair hearing, to effective remedy, to protection by law, procedural guarantees (ECHR, art. 6, 13, 14; ICCPR, art. 14(2), 26), the right to be informed promptly on the nature and cause of the accusation, to defend oneself (ECHR, art. 6(3)).

Preclusion of wrongfulness as concerns targeted sanctions

When we speak about coercive means applied to individuals, we cannot refer to the consent of a state of nationality towards these individuals even in the situation when a state itself initiated their listing. As mentioned above, a state cannot consent to the violation of rights of its national or inhabitant.

As for the application of countermeasures all general rules of DARS and DARIO are applied also to the application of targeted sanctions. However, when sanctions are applied to specific individuals, this exemption may be applied with much more difficulties. It has already been cited that in accordance with art. 49(1) of DARS, "*An injured State* may only take countermeasures *against a State* which is *responsible for an internationally wrongful act in order to induce that State to comply with its obligations*". Therefore, countermeasures may only be introduced by an *injured state* in response to the *violation of a specific international obligation by a specific state* and may be directed only *against that state* to induce it to comply with the obligation.

Hereby it is mostly important that not directly injured states may only apply countermeasures in the case of a serious breach of obligations arising under peremptory norms of general international law as defined in art. 40–41 of DARS. As far as such a breach may only be committed by a state, targeted sanctions may thus be applied in the course of countermeasures only against individuals immediately responsible for the policy or behavior of the state. That means only high state officials as they are understood under international law. The same conclusion comes from the requirement of art. 49 of DARS to apply countermeasures against a state.

It shall be also taken into account that as noted in art. 50(1) of DARS countermeasures cannot affect obligations to protect fundamental human rights. However, in the case of targeted sanctions it is important that this prohibition concerns not only mass systematic and outrageous violations of non-derogable human rights but additionally all procedural guarantees, in particular the right to due process (ICCPR, art. 14(2–7); ECHR, art. 6, 13, 14), the inalienable nature of which is broadly recognized by human rights institutions (General Comments No. 29 [28, para. 16]) and legal scholars. Therefore, the decision on their limitation shall be null and void under international law from the moment of their adoption.

Therefore, neither the UN Security Council nor regional organizations can legally impose targeted sanctions on individuals as far as the existing process infringes minimal procedural guarantees of fair trial, which constitute inalienable human right norms of peremptory character. Rights of regional organizations to impose means of pressure on states and non-state actors is limited to implementation of activity of the UN Security Council within the limits of authorization, activity, which otherwise is legal under international law or illegality of which is excluded under international law.

Mechanisms for human rights protection against unilateral coercive measures

It shall be noted here that UCM imposed on states as such could hardly be adverted by specific individuals. The targeted state thus is the only actor, which can complain about illegality or too high a negative impact of the imposed measures. At the present moment, no international mechanism provides for the possibility of individuals to appeal for protection of their rights from the violations happened because of measures applied to states.

The situation becomes substantially different if we speak about targeted measures, applied to individuals directly. Hereby it is possible to use a number of mechanisms at both the universal and the regional levels. The UN provides currently a number of mechanisms. They include: 1) mechanisms for de-listing (Ombudsperson. Focal point), 2) mechanisms of control over the situation with human rights (Special Rapporteur on the Promotion and Protection of Human Rights while countering terrorism; Special Rapporteur); 3) quasi-judicial bodies (UNHRC).

Since 2006, the UN Security Council has started to take steps to guarantee the human rights of targeted individuals. In particular, states are obliged to provide detailed information when submitting for listing names of specific individuals as well as to provide a ground for listing(resolutions 1989(2011) of 17.06.2011, para. 13), to avoid false identification (para. 15); to inform listed individuals immediately upon listing about the fact of listing, reason, consequences, limitations and mechanisms of appeal(para. 20).

Appeal for de-listing may be forwarded to Ombudsperson (sanctions against Al-Qaeda and ISIL: resolutions 1904(2009) of 17.12.2009, 1989(2011), addenda 2) or to the Focal Point (sanctions against all other groups: resolution 1730(2006) of 19.12.2006, travel ban and asset freezing against individuals from Al Qaeda and ISIL group: resolution 2083(2012) of 17.12.2012, other sanctions against Al Qaeda and ISIL: resolutions 2083(2012), 2253(2015), 2255(2015)).

As of January 2016, the Focal Point has considered de-listing applications from 62 individuals and 39 organizations. 17 individuals and 17 organizations have been excluded from the list [29]. There have 47 individuals and 26 organizations been de-listed by the Ombudsperson [30]. It shall also be mentioned that the Ombudsperson and Focal Point are UN subsidiary bodies, which can only consider application of measures by the UN Security Council. They do not have any authority to consider legality or grounds of sanctions application by the EU.

Special rapporteurs collect information, communicate to governments, but have no authority to de-list individuals or to act as a quasi-judicial body. Individuals can also use international mechanisms of human rights protection such as the UNHRC or ECHR in accordance with their rule that is to complain about violation of specific articles of the ICCPR or ECHR by a specific state.

EU documents contain rather developed provisions for human rights protection. They provide for:

• The need to adopt and implement sanctions in accordance with the purposes and principles of the United Nations (Basic principles of the use of restrictive measures (sanctions): Brussels, 7 June 2004, 10198/1/04 Rev. 1 (hereafter Principles), para. 1) and obligations under the UN Charter (Principles, para. 4);

• The obligation to define precisely the objective of sanctions as well as criteria upon which individuals are subjected to them (Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy: Brussels, 2 Dec. 2005, 15114/05 (hereafter Guidelines), paras. 5, 18; Principles, para. 9) and to lift sanctions as soon as the objectives are met (Principles, para. 9);

• The possibility for the sanctions' legality to be appealed to the Court of Justice of the EU (Treaty on Functioning of the EU, art. 275);

• The obligation to develop mechanisms for humanitarian exceptions from the sanctions regime (Guidelines, paras. 24, 68) in order to prevent improper application of the sanctions (Practices, paras. 6–9, 22). As a subtle step in this direction, provisions on humanitarian exceptions are introduced in most of the Council's decisions and regulations (see, *e.g.*, Council Regulation 765/2006, 18 May 2006, art. 3(a); Council Decision 2010/639/CFSP, para. 6). Moreover, in late 2011 special notice was taken by the Council in explaining the possibility for individuals subjected to restrictive measures to apply to "competent authorities of relevant Member states".

Theoretically, these principles cover the whole spectrum of human rights and are able to guarantee these rights when targeted sanctions are imposed (if it is ensured that the sanctions do not violate the obligations of any EU member state). However, the reality, as repeatedly acknowledged in the legal doctrine, is unfortunately not that optimistic. As mentioned above, targeted sanctions violate a broad number of human rights.

Despite the stated readiness of the EU and its member states to fulfill their international obligations, including those in the sphere of human rights, procedural rights and guarantees are not observed in the course of applying targeted sanctions. In particular, despite the obligation to review regularly the lists of sanctioned individuals (at least once every six months) in accordance with art. 1(6) of the EU Common Position 2001/931/CFSP of 29.12.2001 and the possibility to apply for de-listing, reviews take place rather seldom: once every several years. Art. 275 of the TFEU provides for the possibility to appeal the legality of applying restrictive measures to natural and legal persons to the EU Court of Justice. In practice, this is limited to the right of states to bring to the attention of the Court measures taken against their nationals or legal persons (Kadi v. Council and Commission 2005, paras. 261–291; Yusuf and al Barakaat International Foundation 2005, paras. 309–346), or the submission of written objections by a person (Mojahedines case, para. 69). Individuals are deprived of any possibility to be heard both before and after restrictions are imposed (Resolution 1597 (2008) PACE, para. 9; United Nations Security Council and European Union Blacklists, PACE doc. 11454, paras. 87–90).

In addition, the EU often prevents individuals from exercising procedural rights, referring to the administrative rather than criminal nature of restrictions (Mojahedines, para. 77). I would, however, disagree with the last assumption. The wording of the EU acts that impose restrictive measures "for …[something]" clearly demonstrates a punitive purpose and turns it into punishment (Bianchi A. [31, p. 905]). Moreover, in the majority of cases, restrictive measures are applied to individuals expressly accused of the commission of serious crimes ("*who are responsible for*", in the wording of EU documents), *e.g.*, "severe human rights violations", "crackdown on civil society"(Council Decision 2010/639/CFSP, op. cit., art. 1(1)), undermining "the sovereignty, territorial integrity, constitutional order and international personality" of … state (Council Decision 2011/173/CFSP, op. cit., art. 1(1a)). Thus, the only conclusion one can reach is that EU targeted sanctions tend to substitute for criminal punishment. The EU instruments claim people guilty and impose punishment without criminal investigations, hearings or the possibility of appeal. Beyond any doubt, this violates the presumption of innocence as well as other procedural guarantees that become even more important due to the seriousness of the accusations.

Some other persons – "natural and legal persons, bodies and entities associated with them" (Council Decision 2010/639/CFSP, art. 2; Decision 2011/172/CFSP, art. 1(1)), "persons or entities benefitting from or supporting the … regime"(Council Decision 2012/36/CFSP, art. 1(2)) persons responsible for "un-

dermining … agreement"(Council Decision 2011/173/CFSP, art. 1(1c)) or "misappropriation of … state funds"(Council Decision 2011/172/CFSP, art. 1(1)) – are sanctioned and, as concerns the consequences, punished for acts which are not qualified as crimes under the legislation of either their own or any other state. This results in the violation of the right not to be held guilty for any offense that did not constitute an offense at the moment of its commission (ICCPR, art. 15(1); ECHR, art. 7(1)).

None of these violations may be justified through reference to the emergent and extraordinary character of the situation. In the modern world, the rights of particular individuals may only be restricted in accordance with a court's decision taken in compliance with procedural rules. Any other limitations may take place only in a time of public emergency, the existence of which is officially proclaimed (ICCPR, art. 4; ECHR, art. 15).

The latter limitations, however, as stipulated by the ICHR in General Comment No. 29, must be expressly prescribed by national law and have a minimal, proportionate, necessary and non-discriminatory character (paras. 2, 4–5) (General Comment No. 29*:* Article 4). In accordance with art. 4 of the ICCPR, no derogation is allowed from the right to life (art. 6), freedom from torture (art. 7) or slavery (art. 8(1, 2)), prohibition of imprisonment on grounds of an inability to fulfill contractual obligations (art. 11), prohibition of punishment for offenses that are not viewed as crimes at the moment of their commission (*nullum crimen*) (art. 15), right to recognition of personality (art. 16), or freedom of thought, conscience and religion (art. 18). The ECHR limits this list to the first four freedoms.

Conclusions: proposals for evolving protection of human rights infringed by measures applied by states and international organizations

If we speak about the improvement of procedure for human rights protection in the case of comprehensive sanctions, the best mechanism shall focus on the first hand on the general enhancement of the rule of law in the course of imposition of any means of pressure. Attempts to "make the life of population that bad so that it changes the government" shall not be viewed as appropriate means and definitely goes counter the very notion of the responsibility to protect. It also never helps in the situation, when the intractable human rights crisis already exist, but may rather deteriorate the situation.

It shall therefore also be taken into account that violation of human rights under the slogan of the need to protect human rights is ridiculous both from a moral, logical and legal point of view. Therefore, references to "legitimacy" rather than "legality" of activity under the slogan of "do something or do nothing" has nothing to do with international law.

The UCM are measures applied by states, groups of states or regional organizations without or beyond authorization of the UN Security Council to states, individuals or entities in order to change a policy or behavior of a directly or indirectly targeted states, if these measures cannot undoubtedly be qualified as not violating any international obligation of the applying state or organization, or its wrongfulness is not excluded under general international law.

To make a fair judgment it shall be admitted that comprehensive sanctions usually have some negative humanitarian impact regardless of the fact of their legality. Therefore, this impact shall be carefully calculated before sanctions are imposed and any decision taken shall pay due regard to these aspects.

As for the UN Security Council targeted sanctions that these measures violate procedural guarantees of listed individuals including the rights to fair trial, that has been criticized by the PACE already in 2007–2008. It is believed thus to be necessary to correct the procedure. a state submitting a person for listing shall simultaneously with submission of information start criminal hearing against individuals and administrative or criminal (depending on legislation) procedure against organizations. a person or organization shall be submitted by the state for de-listing if their national court finds them non-guilty.

Procedural guarantees, including the right to due process, are therefore inalienable. They constitute basic standards of promotion and protection of human rights, are of interest to the international community as a whole (*erga omnes*)and have a peremptory character (*jus cogens*) (Barcelona Traction, Light and Power Company 1970 [16, p. 32]; International Status of South-West Africa 1950 [32, p. 133]; Interpretation of Peace Treaties 1950 [25, p. 77]; Kadi v. Council and Commission, paras. 226–232; Yusuf and al Barakaat International Foundation, paras. 277–283). As such, they occupy the supreme position in the international legal system and are obligatory for all subjects of international law (including regional organizations and even the UN Security Council) in all situations (Bianchi A. [31, p. 886]; Reinisch A. [33, p. 858–859]). Acts of any of these organizations (including resolutions of the Security Council) are to conform with *juscogens* norms, including in the sphere of human rights. Otherwise, applying analogously the provisions of art. 53 of the Vienna Convention on the Law of Treaties ("A treaty is void if […] it conflicts with a peremptory norm of general international law"), they will be void from the moment of their adoption (van Herik L. [34, p. 801]; Orakhelashvili A. [35, p. 423, 468–469]; Bekjashev *K. A.* [36, p. 66–67]; Case Concerning Armed Activities on the Territory of the Congo, Separate Opinion of Judge Dugard (2006) [37, p. 88–89, para. 8]; Cassesse A. [38, p. 26]; Bianchi A. [31, p. 906–909].

Therefore, neither the UN Security Council nor regional organizations can legally impose targeted sanctions on individuals as far as the existing process infringes minimal procedural guarantees of fair trial, which constitute inalienable human rights norms of peremptory character. Rights of regional organizations to impose means of pressure on states and non-state actors is limited to the implementation of activity of the UN Security Council within the limits of authorization, activity, which otherwise is legal under international law or illegality of which is excluded under international law.

As for UCM applied by states or regional organizations, the law of human rights is an important qualifying criteria on this point. Measures are legal if they do not violate any human right set forth in the international documents. Illegality of pressure applied by not directly injured states is excluded if it is applied in response violation of *jus cogens* norms including gross mass violations of fundamental human rights, shocking the conscience of mankind, and do not violate fundamental human rights including the right to life, freedom from torture or slavery, prohibition of imprisonment on grounds of an inability to fulfill contractual obligations, prohibition of punishment for offenses that are not viewed as crimes at the moment of their commission (*nullum crimen*), right to recognition of personality, or freedom of thought, conscience and religion as well as procedural guarantees (that has the major importance in the course of application of targeted sanctions).All other measures that constitute UCM are illegal under international law and shall be withdrawn.

Application of pressure collectively or through international organization does not change its qualification. It is generally agreed in international law that international organizations may legally take measures, which may legally be taken by their member states (Kelsen H. [39, p. 724]; Walter C. [12, p. 137–138, 191]; Geyerhalter D. [13, p. 65]). However, as far as every member state of an international organization bears its own set of international rights and responsibilities, pressure may be applied through an international organization to the third states and to its member states beyond the provisions of its constituent documents if it may be legally taken by all its member states or illegality of which is excluded towards all member states. Measures applied to member states are limited to those set forth in the constituent and other documents of organizations and shall be taken in accordance with the UN Charter and peremptory norms of international law. Existing mechanisms for de-listing are not sufficient and do not provide for necessary procedural guarantees.

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