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UNILATERAL COERCIVE MEASURES: NOTION AND QUALIFICATION

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The present article addresses the issue of terminology used to identify unilateral means of pressure: unilateral coercive measures, sanctions, unilateral sanctions, bilateral sanctions, international sanctions, autonomous sanctions, sectoral or territorial sanctions, etc. It assesses the legality of various forms of sanctions imposed by states and international organisations without or beyond the authorisation of the UN Security Council, inter alia, as concerns general international law, international economic law, the law of international responsibility, human rights law and international humanitarian law. The article also focuses on extraterritoriality and overcompliance as integral elements of the application of unilateral sanctions and on characteristics of unilateral coercive measures and presents a definition of the latter.

Keywords: unilateral sanctions; unilateral coercive measures; secondary sanctions; sectoral sanctions; extraterritoriality; overcompliance.

ОДНОСТОРОННИЕ ПРИНУДИТЕЛЬНЫЕ МЕРЫ: ПОНЯТИЕ И КВАЛИФИКАЦИЯ

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Изучается проблема терминологии, используемой для обозначения односторонних мер давления (односторонние принудительные меры, односторонние санкции, двусторонние санкции, международные санкции, автономные санкции, секторальные и территориальные санкции и др.). Дается оценка правомерности различных форм санк-

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ций, налагаемых государствами и международными организациями либо за пределами полномочий от Совета Безопасности ООН, либо без них, в контексте общего международного права, международного экономического права, права международной безопасности, права в области прав человека и международного гуманитарного права. Помимо этого, автор статьи рассматривает проблему экстратерриториальности и чрезмерного исполнения как неотъемлемый элемент применения односторонних санкций, выявляет характеристики односторонних принудительных мер и формулирует определение последнего понятия.

Ключевые слова: односторонние санкции; односторонние принудительные меры; вторичные санкции; секторальные санкции; экстратерриториальность; чрезмерное применение.

The world is facing the expansion of the application of new and different forms and types of unilateral sanctions. The terminology used to identify unilateral means of pressure has expanded correspondingly: unilateral coercive measures, sanctions, unilateral sanctions, bilateral sanctions, international sanctions, autonomous sanctions, sectoral or territorial sanctions, etc. The uncertainty and ambiguity in the terminology impede the possibility to identify a legal framework and standards applicable to every specific type of unilateral sanctions.

The existing academic works focus on the notion of sanctions (G. Sparrow [1], T. N. Neshataeva¹, R. Nephew [2]), identify specific aspects of extraterritoriality or overcompliance (T. Ruys [3]) or focus on the assessment of specific cases only (G. Puma [4]) but do not present a notion of unilateral coercive measures and do not provide a comprehensive overview and assessment of the notion, characteristics and legal status of unilateral sanctions. As a result, the topic of the research is timely and current today.

This article addresses the issue of the terminology used to identify unilateral means of pressure. It provides an overview and assesses the legality of various forms of sanctions imposed by states and international organisations without or beyond the authorisation of the UN Security Council, inter alia, as concerns general international law, international economic law, the law of international responsibility, human rights law and international humanitarian law. The article also focuses on extraterritoriality and overcompliance as integral elements of the application of unilateral sanctions and on characteristics of unilateral coercive measures and presents a definition of the latter.

Notion and types of unilateral sanctions. The world community is facing today the expansion of the number, scope and grounds of unilateral sanctions taken without or beyond the authorisation of the UN Security Council. The contemporary practice involves also the issue of extraterritoriality of unilateral sanctions, the application of secondary sanctions, the development of national civil and criminal penalties for violations of sanctions regimes, compliance and overcompliance strategies, the application of countersanctions (e. g. Belarus, China, Russian Federation) and the development of mechanisms to resist extraterritorial consequences of sanctions (Russian Federation, European Union), including the drafting of relevant national legislation and the establishment of e. g. *the instrument in support of trade exchanges* (INSTEX)². Various forms of unilateral sanctions are imposed in pursuit of a common good, thereby transforming exceptions in international relations into the ordinary practice of many states. Due to the existing terminological discrepancies, the term “unilateral sanctions” is used in the present article without any prejudice as to the legality or illegality of such sanctions and to refer to any means of pressure applied by states or international organisations without or beyond the authorisation of the UN Security Council.

The situation is exacerbated by the fact that due to the absence of a universally recognised definition of unilateral coercive measures and their illegal character, announced in a number of resolutions of the Human Rights Council³ and the UN General Assembly⁴, states prefer to present their unilateral activities as not constituting unilateral coercive measures and to use therefore other terms, like “sanctions”, “restrictive measures”⁵,

¹Нешатаева Т. Н. Международно-правовые санкции специализированных учреждений ООН : автореф. дис. ... канд. юрид. наук : 12.00.10. М. : Моск. гос. ун-т, 1985. 24 с.

²EU sells medical goods via INSTEX [Electronic resource]. URL: <https://financialtribune.com/articles/business-and-markets/102669/eu-sells-medical-goods-via-instex> (date of access: 17.08.2021).

³Human rights and unilateral coercive measures : resolution adopt. by the Human Rights Council on 6 Oct. 2010. A/HRC/RES/15/24. Para 1–3 ; Human rights and unilateral coercive measures : resolution adopt. by the Human Rights Council on 18 Apr. 2012. A/HRC/RES/19/32. Para 1–3 ; Human rights and unilateral coercive measures : resolution adopt. by the Human Rights Council on 8 Oct. 2013. A/HRC/RES/24/14. Para 1–3 ; Human rights and unilateral coercive measures : resolution adopt. by the Human Rights Council on 12 Oct. 2015. A/HRC/RES/30/2. Para 1, 2, 4 ; Human rights and unilateral coercive measures : resolution adopt. by the Human Rights Council on 24 March 2017. A/HRC/RES/34/13 ; Human rights and unilateral coercive measures : resolution adopt. by the Human Rights Council on 6 Oct. 2020. A/HRC/RES/45/5. Preamble.

⁴Human rights and unilateral coercive measures : resolution adopt. by the United Nations General Assembly on 18 Dec. 2014. A/RES/69/180. Para 5, 6 ; Human rights and unilateral coercive measures : resolution adopt. by the United Nations General Assembly. A/RES/70/151. Para 5, 6 ; Human rights and unilateral coercive measures : resolution adopt. by the United Nations General Assembly. A/RES/71/193. Para 5, 6.

⁵Guidelines on the implementation and evaluation of restrictive measures (sanctions) in the framework of the EU common foreign and security policy [Electronic resource]. URL: <https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf> (date of access: 18.08.2021) ; Adding to the evidence: the impact of sanctions and restrictive measures on humanitarian aid [Electronic resource]. P. 6. URL: <https://www.alnap.org/help-library/adding-to-the-evidence-the-impact-of-sanctions-and-restrictive-measures-on-humanitarian> (date of access: 17.08.2021).



“unilateral measures not in accordance with international law”⁶, “security measures”, “economic sanctions”⁷, “economic, financial, political restrictive measures”⁸, “special economic measures”⁹, “enforcement measures”⁸, “autonomous sanctions”⁹, “autonomous” financial targeted sanctions and “travel bans”¹⁰. Compliance companies classify sanctions as unilateral, multilateral and global¹¹. One also speaks about international sanctions, sectoral sanctions, targeted sanctions, countersanctions, direct or indirect sanctions, primary or secondary sanctions [4, p. 12], and intended or unintended sanctions. Some other institutions refer to counter-terrorism cases against their nationals as sanctions cases¹². States involved are also identified in various ways, including as sanctioning or sanctioned, targeting or targeted, sender or source states¹³.

It shall also be mentioned that there is even no clear definition of the general notion of “sanctions” in international law today. In the international legal doctrine, sanctions have been viewed as a power (possibility) to ensure the law [1, p. 11–12], an analog of responsibility for internationally wrongful acts [5, p. 237–238], punishment¹⁴ [6, p. 49; 7, p. 135; 8, p. 19], a complex of enforcement measures applied to a delinquent state

[9, p. 202; 10, p. 182; 11, p. 214–224; 12, p. 115], a method to make someone comply¹⁵ [8, c. 19], negative consequences of a violation [2, p. 9, 12, 14; 14, p. 309], measures to protect the international legal order¹⁶ [14, p. 13], measures not involving the use of armed force to maintain or restore international peace and security¹⁷, a means of implementation of international responsibility¹⁸ [6, p. 49, 51; 13, p. 306, 308], counter-measures or retorsions [3], “equivalent to action taken against a state by a group of states or mandated by an international organisation”¹⁹, enforcement measures of the UN Security Council acting under chapter VII of the UN Charter or measures taken by international organisations toward its member states under and in accordance with their constituent documents [3]. R. Nephew puts an emphasis on national legislation and identifies sanctions as a “constellation of laws, authorities, and obligations laid out in a piece of legislation, government decree, UN resolution, or similar document that restrict or prohibit what is normally permissible conduct and against which performance will be assessed and compliance judged” [2, p. 8].

It is also notable that the grounds for and purposes of sanctions have changed. According to the develo-

⁶Human rights and unilateral coercive measures : resolution adopt. by the United Nations General Assembly on 17 Dec. 2015. A/RES/70/151. Para 1 ; Human rights and unilateral coercive measures : resolution adopt. by the United Nations General Assembly on 22 Dec. 2016. A/RES/71/193. Para 2.

⁷Unilateral economic measures as a means of political and economic coercion against developing countries : resolution adopt. by the United Nations General Assembly on 4 Feb. 1998. A/RES/52/181 ; The adverse consequences of economic sanctions: review of further developments in fields with which the subcommission has been or may be concerned [Electronic resource]. URL: <https://www.globalpolicy.org/global-taxes/42501-the-adverse-consequences-of-economic-sanctions.html> (date of access: 17.08.2021).

⁸О специальных экономических мерах и принудительных мерах : Федер. закон Рос. Федерации от 30 дек. 2006 г. № 281-ФЗ [Электронный ресурс]. URL: <http://pravo.gov.ru/proxy/ips/?docbody=&firstDoc=1&lastDoc=1&nd=102111154> (дата обращения: 17.08.2021).

⁹Alleged violations of the 1955 Treaty of amity, economic relations and consular relations (Islamic Republic of Iran v. United States of America) [Electronic resource]. URL: <https://www.icj-cij.org/public/files/case-related/175/175-20190823-WRI-01-00-EN.pdf> (date of access: 17.08.2021).

¹⁰Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions [Electronic resource]. URL: <http://www.ohchr.org/EN/Issues/UCM/Pages/HRC48-report.aspx> (date of access: 17.08.2021).

¹¹Piatetsky P., Vasilkoski J. When sanctions violate human rights [Electronic resource]. URL: <https://www.atlanticcouncil.org/wp-content/uploads/2021/06/GeoEcon-Sanctions-report-v4.pdf> (date of access: 17.08.2021).

¹²Ibid.

¹³See: Report of the special rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights of 26 July 2017. A/HRC/36/44 [Electronic resource]. URL: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/224/28/pdf/G1722428.pdf?OpenElement> (date of access: 18.08.2021).

¹⁴This approach is, however, disputed by the UN Secretary-General in the United Nations. See: Supplement to an agenda for peace. Position paper of the Secretary-General on the occasion of the fiftieth anniversary of the United Nations. Para 66 [Electronic resource]. URL: <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/UNRO%20S1995%201.pdf> (date of access: 18.08.2021). Although the punitive nature of sanctions has been rejected by most states. See: United Nations Security Council report of 17 April 2000. S/PV.4128 [Electronic resource]. URL: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_4128.pdf (date of access: 18.08.2021).

¹⁵Ronzitti N. The report of the High-Level Panel on Threats, Challenges and Change on the use of force and the reform of the United Nations. Leiden, Boston : Martinus Nijhoff Publishers, 2005. P. 11 ; Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions...

¹⁶Нешатаева Т. Н. Международно-правовые санкции специализированных учреждений ООН : автореф. дис. ... канд. юрид. наук : 12.00.10. М. : Моск. гос. ун-т, 1985. С. 17.

¹⁷Supplement to an agenda for peace. Position paper of the Secretary-General on the occasion of the fiftieth anniversary of the United Nations. Supra note 22 [Electronic resource]. URL: <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/UNRO%20S1995%201.pdf> (date of access: 18.08.2021). The same approach was taken by states that participated in the discussion of the problem in the UN Security Council (UN Security Council report. S/PV.4128).

¹⁸The same approach is supported by G. I. Tunkin, N. A. Ushakov, P. Kuris and cited in the publication “The notion of sanctions of international organisations” in the journal “Jurisprudence” (1984) by T. N. Neshataeva.

¹⁹Draft articles on responsibility of states for internationally wrongful acts (with commentaries) // Yearbook of the Internatl. Law Commis. 2001. Vol. II. Part 2. P. 128.



pers of the Global sanctions data base, more than 40 % of sanctions are introduced today to pursue the enhancement of democracy, human rights protection and other similar purposes [15, p. 60] rather than to address threats to peace, breaches of peace or acts of aggression, or in response to violations of erga omnes obligations as viewed by the International Court of Justice in the Barcelona traction case²⁰ [16, p. 126–127] as well as in the General comment No. 31 of International covenant on civil and political rights of 1996²¹ (ICCPR).

The EU, in particular, announces the possibility to apply restrictive measures as among the union's tools to promote its common foreign and security policy (CFSP) objectives, including peace, democracy and the respect for the rule of law, human rights and international law²², and further advancing universal values for all²³. The same approach (to view sanctions as a tool to achieve foreign policy goals) is taken by the United States [17, p. 463]. The UK Global human rights act aims "to deter, and provide accountability for an activity which, if carried out by or on behalf of a state within the territory of that state, would amount to a serious violation by that state of an individual's right to life, right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, or right to be free from slavery, not to be held in servitude or required to perform forced or compulsory labour, whether or not the activity is carried out by or on behalf of a state"²⁴. The EU

adopted the Global human rights act to "address serious human rights violations and abuses worldwide"²⁵.

All the above clearly shows that the "behavioural change paradigm" justifying the use of coercion for the legitimate (proper) purpose or motive, being traditional in the early legal doctrine [18, p. 366; 19, p. 3–7], has changed a lot today. The academic approach identifies five types of purposes for sanctions: compliance, subversion, deterrence, and international and domestic symbolism; others differentiate between denial instruments (to deny goods or benefits to targets), symbolic instruments, and punitive measures [2, p. 9; 20, p. 40] to constrain, coerce, signal or stigmatise [20, p. 22]. Some speak about the main purpose as "ensuring compliance with the command" [21, p. 35] or changing a behaviour of the target of sanctions by making the status quo too uncomfortable by causing pain [2, p. 10–12].

Another characteristic of the last decade is the expanding variability of forms of unilateral sanctions: political, diplomatic, cultural, economic, trade, financial, cyber and many others. In particular, the United States imposes sanctions on Belarus (economic and targeted sanctions)²⁶, Burma (economic sanctions)²⁷, Burundi (targeted sanctions, visa bans)²⁸, Central African Republic (economic, targeted sanctions)²⁹, China (economic and targeted sanctions, arms embargo)³⁰, Cuba (economic, trade, targeted sanctions, travel and visa bans, state-sponsor of terrorism)³¹, North Korea

²⁰Barcelona traction, light and power company (Belgium v. Spain) [Electronic resource]. URL: <https://www.refworld.org/cases, ICJ,4040aec74.html> (date of access: 03.01.2021).

²¹General comment No. 31 on the nature of the general legal obligation imposed on states parties to the covenant of 26 May 2004. CCPR/C/21/Rev.1/Add.13 [Electronic resource]. URL: <https://www.refworld.org/docid/478b26ae2.html> (date of access: 06.01.2021).

²²Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions...

²³Council approves conclusions on the EU action plan on human rights and democracy 2020–2024 [Electronic resource]. URL: <https://www.consilium.europa.eu/en/press/press-releases/2020/11/19/council-approves-conclusions-on-the-eu-action-plan-on-human-rights-and-democracy-2020-2024/> (date of access: 17.08.2021)

²⁴The global human rights sanctions regulations 2020 [Electronic resource]. URL: <https://www.legislation.gov.uk/ukxi/2020/680/made> (date of access: 17.08.2021).

²⁵Council regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses [Electronic resource]. P. 1–13. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2020:410I:FULL&from=EN> (date of access: 17.08.2021).

²⁶Executive order 13405 of 16 June 2006 blocking property of certain persons undermining democratic processes or institutions in Belarus [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2006-06-20/pdf/06-5592.pdf> (date of access: 17.08.2021); Belarus sanctions regulations 75 FR 73958–10 [Electronic resource]. URL: https://home.treasury.gov/system/files/126/fr75_73958.pdf (date of access: 17.08.2021); New regulations to implement Executive order 75 FR 5502–10 [Electronic resource]. URL: https://home.treasury.gov/system/files/126/fr75_5502.pdf (date of access: 17.08.2021).

²⁷Executive order 13742 of 7 October 2016 "Termination of emergency with respect to the actions and policies of the government of Burma" [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2016-10-12/pdf/2016-24847.pdf> (date of access: 18.08.2021).

²⁸Executive order 13712 of 23 November 2015 blocking property of certain persons contributing to the situation in Burundi [Electronic resource]. URL: <https://obamawhitehouse.archives.gov/the-press-office/2015/11/23/executive-order-blocking-property-certain-persons-contributing-situation> (date of access: 18.08.2021).

²⁹A rule by the Treasury department 79 FR 38248 of 7 July 2014 on Central African Republic sanctions [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2014-07-07/pdf/2014-15763.pdf> (date of access: 18.08.2021).

³⁰Executive order 13959 of 12 November 2020 addressing the threat from securities investments that finance communist Chinese military companies [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2020-11-17/pdf/2020-25459.pdf> (date of access: 18.08.2021); Executive order 13974 of 13 January 2021 amending Executive order 13959 addressing the threat from securities investments that finance communist Chinese military companies [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2021-01-19/pdf/2021-01228.pdf> (date of access: 18.08.2021); Council implementing Regulation (EU) 2021/478 of 22 March 2021 implementing Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses [Electronic resource]. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0478&from=EN> (date of access: 18.08.2021).

³¹Executive order 12854 of 4 July 1993 "Implementation of the Cuban democracy act" [Electronic resource]. URL: <https://home.treasury.gov/system/files/126/12854.pdf> (date of access: 18.08.2021).



(financial sanctions, general trade embargo)³², Congo (targeted sanctions)³³, Iran (economic, sectoral, targeted sanctions)³⁴, Iraq (financial and targeted sanctions, trade embargo)³⁵, Lebanon (targeted sanctions, freezing assets)³⁶, Libya (financial, targeted sanctions)³⁷, Mali (targeted sanctions, freezing assets)³⁸, Nicaragua (targeted, financial sanctions)³⁹, Russian Federation (sectoral, targeted sanctions)⁴⁰, Somalia (targeted, economic sanctions)⁴¹, Sudan (economic, targeted sanctions)⁴², South Sudan (targeted, economic sanctions)⁴³, Syria (targeted, economic sanctions)⁴⁴, Venezuela (economic, trade, sectoral, targeted sanctions)⁴⁵, Yemen (economic, targeted sanctions)⁴⁶ and Zimbabwe (targeted sanctions)⁴⁷. The UK imposes unilateral measures, sanctions

or financial sanctions against Afghanistan, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Burundi, Central African Republic, China and Hong Kong, North Korea, Congo, Guinea, Republic of Guinea-Bissau, Iran, Iraq, Lebanon, Libya, Mali, Myanmar, Nicaragua, Russian Federation, Somalia, South Sudan, Sudan, Syria, Venezuela, Yemen and Zimbabwe⁴⁸.

Switzerland applies targeted or smart sanctions, economic measures, targeted financial sanctions or coercive measures to Belarus, Burundi, Central African Republic, North Korea, Congo, Guinea, Guinea-Bissau, Iraq, Iran, Lebanon, Libya, Mali, Myanmar, Nicaragua, Somalia, Sudan, Syria, South Sudan, Ukraine (Crimea), Venezuela, Yemen and Zimbabwe⁴⁹.

³²Proclamation 8271 of 26 June 2008 on termination of the exercise of authorities under the trading with the Enemy act with respect to North Korea [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2008-06-27/pdf/08-1398.pdf> (date of access: 18.08.2021).

³³Executive order 13671 of 8 July 2014 taking additional steps to address the national emergency with respect to the conflict in the Democratic Republic of Congo [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2014-07-10/pdf/2014-16360.pdf> (date of access: 18.08.2021).

³⁴Executive order 13949 of 21 September 2020 blocking property of certain persons with respect to the conventional arms activities of Iran [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2020-09-23/pdf/2020-21160.pdf> (date of access: 18.08.2021).

³⁵Executive order 13668 of 27 May 2014 ending immunities granted to the development fund for Iraq and certain other Iraqi property and interests in property pursuant to Executive order 13303, as amended [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/DCPD-201400403/pdf/DCPD-201400403.pdf> (date of access: 18.08.2021).

³⁶Executive order 13441 of 1 August 2007 blocking property of persons undermining the sovereignty of Lebanon or its democratic processes and institutions [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2007-08-03/pdf/07-3835.pdf> (date of access: 18.08.2021).

³⁷Executive order 13726 of 19 April 2016 blocking property and suspending entry into the United States of persons contributing to the situation in Libya [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2017-04-19/pdf/2017-07837.pdf> (date of access: 18.08.2021).

³⁸Executive order 13882 of 26 July 2019 blocking property and suspending entry of certain persons contributing to the situation in Mali [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2019-07-30/pdf/2019-16383.pdf> (date of access: 18.08.2021).

³⁹Executive order 13851 of 27 November 2018 blocking property of certain persons contributing to the situation in Nicaragua [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2018-11-29/pdf/2018-26156.pdf> (date of access: 18.08.2021).

⁴⁰Executive order 14024 of 15 April 2021 blocking property with respect to specified harmful foreign activities of the government of the Russian Federation [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2021-04-19/pdf/2021-08098.pdf> (date of access: 18.08.2021).

⁴¹Executive order 13620 of 20 July 2012 taking additional steps to address the national emergency with respect to Somalia [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2012-07-24/pdf/2012-18237.pdf> (date of access: 18.08.2021).

⁴²Executive order 13804 of 11 July 2017 allowing additional time for recognising positive actions by the government of Sudan and amending Executive order 13671 [Electronic resource]. URL: <https://home.treasury.gov/system/files/126/13804.pdf> (date of access: 18.08.2021).

⁴³Executive order 13664 of 3 April 2014 blocking property of certain persons with respect to South Sudan [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2014-04-07/pdf/2014-07895.pdf> (date of access: 18.08.2021).

⁴⁴Executive order 13608 of 1 May 2012 prohibiting certain transactions with and suspending entry into the United States of foreign sanctions evaders with respect to Iran and Syria [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2012-05-03/pdf/2012-10884.pdf> (date of access: 18.08.2021).

⁴⁵Executive order 13884 of 5 August 2019 blocking property of the government of Venezuela [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2019-08-07/pdf/2019-17052.pdf> (date of access: 18.08.2021); Executive order 13857 of 25 January 2019 taking additional steps to address the national emergency with respect to Venezuela [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2019-01-30/pdf/2019-00615.pdf> (date of access: 18.08.2021).

⁴⁶Executive order 13611 of 16 May 2012 blocking property of persons threatening the peace, security, or stability of Yemen [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/CFR-2013-title3-vol1/pdf/CFR-2013-title3-vol1-eo13611.pdf> (date of access: 18.08.2021).

⁴⁷Executive order 13469 of 25 July 2008 blocking property of additional persons undermining democratic processes or institutions in Zimbabwe [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2008-07-29/pdf/08-1480.pdf> (date of access: 18.08.2021).

⁴⁸UK sanctions regimes. Information on UK sanctions regimes currently in force [Electronic resource]. URL: <https://www.gov.uk/government/collections/uk-sanctions-regimes-under-the-sanctions-act> (date of access: 18.08.2021); UK sanctions. Information on UK sanctions currently in place and how to apply for the appropriate licences [Electronic resource]. URL: <https://www.gov.uk/guidance/uk-sanctions> (date of access: 18.08.2021).

⁴⁹Sanctions [Electronic resource]. URL: https://www.seco.admin.ch/seco/fr/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos.html (date of access: 18.08.2021); Sanctions internationales et mesures de blocage unilatérales [Electronic resource]. URL: <https://www.finma.ch/fr/documentation/sanctions-internationales-et-lutte-contre-le-terrorisme/sanctions-internationales-et-mesures-de-blocage-unilatérales/> (date of access: 18.08.2021).



The European Union imposes restrictive measures, sanctions, economic and financial sanctions or sectoral sanctions against Afghanistan, Belarus, Bosnia and Herzegovina, Burundi, Central African Republic, China, Congo, Guinea, Guinea-Bissau, Haiti, Iran, Iraq, Lebanon, Libya, Mali, Moldova, Montenegro, Myanmar, Nicaragua, North Korea, Russian Federation, Serbia, Somalia, South Sudan, Sudan, Syria, Tunisia, Turkey, Ukraine, Venezuela, Yemen and Zimbabwe as well as within some horizontal regimes⁵⁰.

Sanctioning documents also provide for secondary sanctions towards third country nationals (North Korea, Cuba, Venezuela, Iran and Syria), as well as civil and criminal penalties to the nationals of sanctioning states to prevent them from interactions with designated individuals and companies (Global human rights act⁵¹, US sanctions against Belarus, Burundi, China, North Korea, Cuba, Congo, Iran, Iraq, Lebanon, Mali, Russian Federation, Sudan, South Sudan, Syria, Venezuela, Yemen and Zimbabwe).

To be able to provide a legal qualification of unilateral sanctions, the article further focuses on the specifics of sanctions' main categories.

Economic, trade and sectoral sanctions. *Economic or trade sanctions* have a long history [22, p. 12; 24, p. 1063]. In the 1990s they constituted the most frequent instrument of the UN Security Council but today they are mostly used unilaterally by states or regional organisations in the international arena and take a variety of forms. In particular, Cuba in its response to the questionnaire forwarded by the UN special rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights (hereinafter – special rapporteur) refers to “economic, commercial and financial blockades and embargoes; the interruption of financial flows and investment flows between the country imposing the measure and the country to which that measure applies; the use of fines to third parties in order to discourage investment or trade with the affected country; asset freeze; the creation of unilateral lists”⁵². Alluding to an observation by the International Court of Justice as concerns the US sanctions

against Iran case, it is noted that “autonomous sanctions (are) precisely to weaken the target state's economy”⁵³ [4, p. 12].

The *freezing of assets of state and private banks* is being actively used to put pressure on states (Syria, Venezuela, etc.) too, thereby preventing them from procuring their citizens' basic needs, including food and medicines, despite COVID-19.

For example, the Bank of England refused to unfreeze any part of the 1 bln US dollars in gold held from the Central Bank of Venezuela, to demonstrate non-recognition of N. Maduro as president of the country [24], not even, as reported by the United Nations Development programme (UNDP), for procuring medicines, other humanitarian goods and COVID-19 vaccines (including for participation in the COVAX programme). At the initial stage, the UK government referred to the private character of the bank, thus rejecting any responsibility for this action⁵⁴ that could be qualified as an attempt of sanctioning states and regional organisations to “shift responsibility” from the legal point of view, whereas it was correctly noted by professor J. Gordon that “the sanctioner creates conditions that, in effect, force private actors to sever their ties with the sanctioned entity; then in the face of extensive economic disruption, the sanctioner disclaims responsibility for these acts and from their consequences”⁵⁵. It is notable that the UK courts changed their approach later. In particular, as of August 2021 the UK Supreme Court considers the case of access to the Central Bank of Venezuela gold as a case between the “Guaido board” and “Maduro board” of the Central Bank of Venezuela with the UK secretary of state for foreign, commonwealth and development affairs as an intervener⁵⁶.

It is believed here that this approach seeks to provide the UK with the authority for jurisdiction in the case, making the decision dependent on the recognition of the government that contradicts customary standards on the recognition of states and governments. It is generally recognised that non-recognition of a government or of results of elections does not eliminate the personality of a state. States may decide to lower the level of

⁵⁰European Union sanctions [Electronic resource]. URL: https://eeas.europa.eu/topics/common-foreign-security-policy-cfsp/423/european-union-sanctions_en (date of access: 18.08.2021).

⁵¹Council regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses. Preamble, art. 16 [Electronic resource]. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R1998> (date of access: 18.08.2021).

⁵²Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions...

⁵³Alleged violations of the 1955 Treaty of amity, economic relations and consular relations (Islamic Republic of Iran v. United States of America). Para 80 [Electronic resource]. URL: <https://www.icj-cij.org/public/files/case-related/175/175-20190823-WRI-01-00-EN.pdf> (date of access: 17.08.2021).

⁵⁴Country visit of the special rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights to Venezuela (1 to 12 February 2021) [Electronic resource]. URL: <https://www.ohchr.org/EN/Issues/UCM/Pages/VisitVenezuela.aspx> (date of access: 18.08.2021).

⁵⁵Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions...

⁵⁶In the Supreme Court of the United Kingdom on appeal from the Court of Appeal (civil division) [Electronic resource]. URL: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1003665/20210818_Foreign_Secretary_s_Case_18_June_2021.pdf (date of access: 18.08.2021).



cooperation with a non-recognised government, however, any stronger measures are not welcomed as they may constitute intervention into the domestic affairs of states. Traditionally, the possibility of the effective government, which controls the territory of a state, to represent a state is not disputed [25, p. 151; 26, p. 253–256]. Moreover, in accordance with customary norms on the immunity of state property, assets of the central bank and property used for public functions belong to the state of Venezuela rather than to its government or any individual (art. 21(1c) of the United Nations Convention on jurisdictional immunities of states and their property of 2004 (not in force))⁵⁷. Therefore, freezing assets of the Central Bank of Venezuela in this specific case on the ground of non-recognition of its government as well as the adoption of relevant sanctions violates the sovereign rights of the country and impedes its effective government to exercise its duty to guarantee the needs of the population.

It is also remarkable that the very notion of *trade sanctions* has changed. It may include today restrictions on trade with all sorts of goods, including software [27]. At the same time, some trade sanctions have become transformed into so-called sectoral sanctions, which apply non-selectively to individuals and organisations acting in a particular sphere of the economy without any identifiable reason or violation from their side that differs significantly from those that have prompted traditional targeted sanctions. In particular, the United States applies non-selective sanctions in the financial, energy, defence, railway, metals and mining sectors of the Russian Federation⁵⁸ [28] “to impose costs... for its aggression in Ukraine”⁵⁹. Sectoral sanctions are also imposed by the United States in the gold⁶⁰, oil and financial sectors of the Venezuelan economy, and against the state-owned airline and TV industries⁶¹. The same approach has been taken by the European Union in relation to the Russian energy, defence, financial and dual-use goods sectors in general. Moreover, the European Union has introduced an import ban on

goods from and a ban on tourism services in Crimea and Sevastopol⁶².

A special form of sectoral sanctions can be seen in closing the airspace for flights of air companies registered in a designated state (Qatar (2017–2020), Venezuela, Belarus, etc.) and prohibiting their air companies to enter the airspace of the same country, affecting, therefore, the travel industry of the designated state. Similar situations exist as concerns trade with Cuba, Syria, Iran and Venezuela.

Financial sanctions include various impediments to money transfers to and from sanctioned states. In the existing financial system, this type of sanctions becomes extremely damaging due to the fact that the majority of mechanisms enabling trade are either within the United States or the European Union; this includes the possibility to cut off access to Society for Worldwide Interbank Financial Telecommunications as part of sanctions against Iran, Israel, the Russian Federation, Belarus and China [29–31]. This jurisdiction provides the United States in particular with the possibility to control and block payments in US dollars via Visa, MasterCard, American Express, Western Union and PayPal [32, p. 20]. A limited number of service providers as well as the interdependence or dependence on a specific financial system, currency, etc., make both non-controlling countries and end users vulnerable [33, p. 451].

Economic sanctions also include measures aimed not only against states but also those of a targeted character – affecting the designated individuals or companies⁶³. At the same time, the use of targeted sanctions is expanding (in particular, the EU’s financial sanctions include several thousand individuals and companies⁶⁴, and far more are listed by the United States⁶⁵). Imposing additional sanctions may theoretically be rather targeted but, as has been repeatedly reported, it worsens a country’s risk profile in the financial sphere; in the situation of Nicaragua, in particular, it resulted in the withdrawals and stopping operations of a number of US banks and their correspondent banks⁶⁶.

⁵⁷United Nations Convention on jurisdictional immunities of states and their property [Electronic resource]. URL: https://treaties.un.org/doc/source/recenttexts/english_3_13.pdf (date of access: 18.08.2021).

⁵⁸See: Executive order 13663 of 20 March 2014 establishing an emergency board to investigate disputes between the Long Island rail road company and certain of its employees represented by certain labour organisations [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/CFR-2015-title3-vol1/pdf/CFR-2015-title3-vol1-eo13663.pdf> (date of access: 18.08.2021).

⁵⁹Russia fact sheet [Electronic resource]. URL: <https://2017-2021.state.gov/russia-fact-sheet/index.html> (date of access: 18.08.2021).

⁶⁰Executive order 13850 of 1 November 2018 blocking property of additional persons contributing to the situation in Venezuela [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2018-11-02/pdf/2018-24254.pdf> (date of access: 18.08.2021).

⁶¹Venezuela sanctions regulations [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/CFR-2015-title31-vol3/pdf/CFR-2015-title31-vol3-part591.pdf> (date of access: 18.08.2021).

⁶²EU restrictive measures in response to the crisis in Ukraine [Electronic resource]. URL: www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis (date of access: 04.01.2021).

⁶³Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU common foreign and security policy. Para 13–24 [Electronic resource]. URL: <https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf> (date of access: 18.08.2021).

⁶⁴Consolidated financial sanctions list [Electronic resource]. URL: <https://webgate.ec.europa.eu/europeaid/fsd/fsf/public/files/pdfFullSanctionsList/content?token=dG9rZW4tMjAxNw> (date of access: 04.01.2021).

⁶⁵Specially designated nationals and blocked persons list [Electronic resource]. URL: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf> (date of access: 04.01.2021).

⁶⁶Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions...



It shall be taken into account that art. 24, 25 and chapter VII of the UN Charter provide for unique powers of the UN Security Council to impose enforcement measures for the maintenance of international peace and security. It is also generally agreed that international organisations are entitled to impose sanctions on their member states under and in accordance with their constituent documents [3] as long as they comply with peremptory norms of international law.

It is maintained here that the majority of the above-mentioned unilateral sanctions taken by states or regional organisations without or beyond the authorisation of the UN Security Council have no grounds in international law. Naturally, not every unfriendly act or means of pressure by a state is illegal. Customary international law provides for the possibility of “unfriendly acts”, which is not inconsistent with any international obligation of the state engaging in it (retorsion)⁶⁷, and for proportionate countermeasures in response to the violation of international obligations, as long as they abide by the limitations set out in the Draft articles on responsibility of states for internationally wrongful acts (DARS)⁶⁸ [21, p. 38]. International law also recognises the possibility to exercise universal criminal jurisdiction as concerns international crimes.

Customary international law provides for the possibility of “unfriendly acts” which can be qualified as *retorsions* depending on the scope of legal obligations of specific states [3] and can in certain situations include “acts of retorsion... the prohibition of or limitations upon normal diplomatic relations or other contacts, embargoes of various kinds or withdrawal of voluntary aid programmes” if these acts are compatible with legal

obligations of sanctioning states”⁶⁹. It is maintained here that assessing their legality shall concern all international obligations that are in force between states: multilateral, bilateral and unilateral, including treaties on amity, navigation, commerce, investment⁷⁰, human rights and fundamental freedoms⁷¹, including the possibility of appeal⁷², regular review⁷³ and humanitarian exceptions⁷⁴.

In accordance with DARS, *countermeasures* can only be taken by the directly affected states in response to violations of international obligations in order to restore fulfilment of that obligation; they shall be temporary and proportionate to the violation, and shall not violate human rights, peremptory norms of international law, or humanitarian law⁷⁵. Naturally, countermeasures can also be taken by states other than directly affected states in response to the violation of *erga omnes* obligations like aggression, genocide, apartheid or a mass gross violation of fundamental human rights shocking the conscience of mankind. Countermeasures can thus help to restore violated international obligations but in a legal way and without a negative humanitarian effect.

As a result, DARS provides for the possibility of non-directly injured states to invoke responsibility only if “the obligation breached is owed to the international community as a whole”⁷⁶, i. e., in response to the “serious breach by a state of an obligation arising under a peremptory norm of general international law” if it “involves a gross or systematic failure by the responsible state to fulfil the obligation”⁷⁷ with the purpose to cease the internationally wrongful act and to guarantee its non-repetition [16, p. 126–127]. The International Court of Justice concluded in a number of cases that such

⁶⁷Draft articles on responsibility of states for internationally wrongful acts (with commentaries) // Yearbook of the Internatl. Law Commis. 2001. Vol II. Part 2. P. 128.

⁶⁸Official records of the General Assembly. Fifty-sixth session, Supplement No. 10 and corrigendum (A/56/10 and Corr.1). Chap. IV [Electronic resource]. URL: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N01/665/27/PDF/N0166527.pdf?OpenElement> (date of access: 17.08.2021) ; Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions...

⁶⁹Draft articles on responsibility of states for internationally wrongful acts (with commentaries) // Yearbook of the Internatl. Law Commis. 2001. Vol II. Part 2. P. 128. See: Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions...

⁷⁰Extraterritorial sanctions on trade and investments and European responses [Electronic resource]. P. 55–60. URL: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/653618/EXPO_STU\(2020\)653618_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/653618/EXPO_STU(2020)653618_EN.pdf) (date of access: 17.08.2021).

⁷¹Basic principles on the use of restrictive measures (sanctions). Para 1, 4 [Electronic resource]. URL: <https://data.consilium.europa.eu/doc/document/ST-10198-2004-REV-1/en/pdf> (date of access: 18.08.2021) ; Guidelines on the implementation and evaluation of restrictive measures (sanctions) in the framework of the EU common foreign and security policy Supra note 10, para 9–11 [Electronic resource]. URL: <https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf> ; Council decision (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses [Electronic resource]. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020D1999&from=EN> (date of access: 18.08.2021).

⁷²Consolidated version of the Treaty on the functioning of the European Union. Art. 275 [Electronic resource]. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN> (date of access: 18.08.2021).

⁷³Guidelines on the implementation and evaluation of restrictive measures (sanctions) in the framework of the EU common foreign and security policy. Supra note 10, para 6 [Electronic resource]. URL: <https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf> (date of access: 17.08.2021).

⁷⁴Ibid. Para 25–27, 68–69.

⁷⁵Draft articles on responsibility of states for internationally wrongful acts (with commentaries) // Yearbook of the Internatl. Law Commis. 2001. Vol II. Part 2 ; Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions...

⁷⁶Art. 48 (1b) of Draft articles on responsibility of states for internationally wrongful acts (with commentaries).

⁷⁷Ibid. Art. 40.



violations can include acts of aggression, genocide, apartheid, impediments to the right to self-determination, slavery, slave trade, racial discrimination, torture, and serious violations of international humanitarian law of a “systematic, gross or egregious nature”⁷⁸. Traditionally, these situations are qualified by the UN Security Council as constituting a threat to, or breach of, international peace and security.

Even in the case of a breach of *erga omnes* obligations, countermeasures shall generally be restricted to addressing the “non-performance for the time being of international obligations of the state taking the measures towards the responsible state”⁷⁹ [34, S. 65], proportionate with the injury suffered⁸⁰, with due account for the requirements of humanity and the rules of good faith⁸¹, and implemented in accordance with the rules of art. 52 of DARS⁸² and art. 54 of the Draft articles on the responsibility of international organisations⁸³.

The *proportionality* of countermeasures appears to be another actively discussed element in the political and academic discourse. In particular, references to proportionality to the objective or motive rather than to the injury suffered, cited by some politicians⁸⁴, have no grounds in international law. As reaffirmed by the International Court of Justice in numerous cases, disproportionate countermeasures are prohibited by international law⁸⁵.

It is maintained here with regret that the *interpretation of legal provisions* is often rather malicious. In particular, due to the extreme sensitivity of economic relations, there is an extensive practice of interpreting “security clauses” of art. XXI(b)(iii) of General agreement on tariffs and trade (GATT) as a justification for applying economic sanctions, which provides states with the possibility to take “any action which it considers necessary for the protection of its essential security in-

terests, when taken in the time of war or their emergency in international relations”⁸⁶. It is also notable that the first attempts to refer to security exemption measures were made by the League of Arab States as regards the boycott towards Israel [35].

Security exemption clauses are applied in practice “to use economic measures for political means in a way which would be considered illegal under the regular regime of GATT” [36, p. 560] in the absence of consent about the notion and scope of “essential security interests”. The practice of consultations and the dispute settlement body as well as GATT preparatory materials interpret security clauses including “other emergencies in international relations” narrowly as an emergency being close to a state of war including the use of military force [36, p. 588–590]. Some respondent states (Belarus, Cuba) maintain that any trade restrictions, including on security grounds, can only be taken in full compliance with GATT regulations and other international agreements.

Another criteria which shall be taken into account while deciding on the legality of unilateral activity is a prohibition to violate either peremptory norms of international law or *obligations to protect fundamental human rights* and those prohibiting reprisals towards any individual⁸⁷. Therefore, the observance of human rights obligations, as well as assessments of the humanitarian impact, are vital in the course of any unilateral activity.

The humanitarian impact of sanctions started to be assessed already in early 2000s as regards comprehensive and economic sanctions of the UN Security Council. In particular, the report by 13 humanitarian non-governmental organisations on the effects of the UN Security Council sanctions against Iraq under Resolution 687 (1991) of 3 April 1991, prepared for the Global policy forum in 2002, noted chronic child malnutrition,

⁷⁸Barcelona traction, light and power company (Belgium v. Spain). Supra note 34, para 33 [Electronic resource]. URL: <https://www.refworld.org/cases,ICJ,4040aec74.html> (date of access: 03.01.2021) ; Case concerning East Timor (Portugal v. Australia). Para 29. [Electronic resource]. URL: <https://www.refworld.org/cases,ICJ,40239bff4.html> (date of access: 06.01.2021) ; Draft articles on responsibility of states for internationally wrongful acts (with commentaries) // Yearbook of the Internatl. Law Commis. 2001. Vol II. Part 2. P. 1–113, 127.

⁷⁹Art. 49 of Draft articles on responsibility of states for internationally wrongful acts (with commentaries). Even so, B. Geyrhalter, e. g., claims it is possible that economic sanctions may be applied to states responsible for mass violations of fundamental human rights.

⁸⁰Art. 51 of Draft articles on responsibility of states for internationally wrongful acts (with commentaries).

⁸¹See: The Naulilaa case (Portugal v. Germany) [Electronic resource]. P. 1026. URL: https://legal.un.org/riaa/cases/vol_III/1371-1386.pdf (date of access: 06.01.2021) ; Commentaries to art. 50, para 6 of Draft articles on responsibility of states for internationally wrongful acts (with commentaries).

⁸²Draft articles on responsibility of states for internationally wrongful acts (with commentaries) // Yearbook of the Internatl. Law Commis. 2001. Vol II. Part 2. P. 94–95, 135.

⁸³Draft articles on responsibility of international organisations // Yearbook of the Internatl. Law Commis. 2001. Vol II. Part 2.

⁸⁴Position of Germany (Arria formula meeting) [Electronic resource]. URL: <http://webtv.un.org/live/watch/part-12-virtual-arria-meeting-on-“end-unilateral-coercive-measures-now”/6212373519001/?term=> (date of access: 18.08.2021).

⁸⁵Portuguese colonies case (Naulilaa incident) // Reports of Internatl. Arbitral Awards. 1933. Vol. III. P. 1371–1386 ; para 83 of Ir service agreement ; para 85, 87 of Gabčíkovo-Nagymaros project ; Case relating to the territorial jurisdiction of the International Commission of the River Oder [Electronic resource]. URL: https://www.icj-cij.org/public/files/permanent-court-of-international-justice/serie_A/A_23/74_Commission_internationale_de_l_Oder_Arret.pdf (date of access: 18.08.2021) ; Extraterritorial sanctions on trade and investments and European responses. Supra note 99 [Electronic resource]. P. 55. URL: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/653618/EXPO_STU\(2020\)653618_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/653618/EXPO_STU(2020)653618_EN.pdf) (date of access: 17.08.2021).

⁸⁶General agreement on tariffs and trade. Art. XXI [Electronic resource]. URL: https://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm#articleXXI (date of access: 18.08.2021).

⁸⁷Art. 50 (1) of Draft articles on responsibility of states for internationally wrongful acts (with commentaries).



poor food basket composition, increased child mortality, economic crisis, the destruction of electricity supplies and medical care, and many other factors⁸⁸. UN organs, reaching the same conclusions, also reported on the low efficacy and high negative humanitarian impact of sanctions⁸⁹ [37].

Academic works of that period also referred to the enormous potential destructiveness of economic sanctions [38, p. 89, 94; 39], being a “deadly remedy” demonstrating a “comfortable astigmatism” [38, p. 89], and cited their enormous humanitarian effects in South Rhodesia, Iraq, Libya, Yugoslavia and Haiti, affecting economic rights and the rights to health, water, education and life, and the prohibition of physical and moral suffering because of economic collapse, malnutrition, epidemics, absence of food, medicine, vaccines, medical equipment, operations without anesthesia, suicides and forced migration, with a special impact on children, mothers, migrants, economic refugees and the poor [38, p. 100, 103–104, 110–111, 114–116, 120–121; 39, p. 207–210].

It is notable that the UN Secretary-General admitted already in 2000 that “the existence of a sanctions regime almost inevitably transforms an entire society for the worse”⁹⁰ with a high potential for corruption⁹¹ and reportedly prevents governments from exercising the responsibility to protect. As a result, targeted or smart sanctions imposed by the UN Security Council have been intended to minimise the negative humanitarian effects of sanctions against states⁹². The Committee on Economic, Social and Cultural Rights, in General comment No. 8, referred to the negative impact of sanctions on economic, social and cultural rights already in 1997⁹³.

Unfortunately, unlike sanctions of the UN Security Council, the expanding practice of unilateral sanctions

does not provide any mechanisms for humanitarian assessment, and mechanisms of humanitarian exemptions and redress are generally insufficient, complicated, confusing, lengthy, costly and ineffective⁹⁴. Thematic and country visit reports of the special rapporteur illustrate the devastating humanitarian impact of unilateral sanctions⁹⁵, which are sometimes called a peaceful tool that substitutes for military action and wars⁹⁶.

Consequently, numerous UN Human Rights Council resolutions refer to the negative impact of unilateral coercive measures (UCMs) on fundamental human rights including the rights to life, health and medical care, an adequate standard of living, food, education, work, housing and development, with a special impact on women, children, the poorest, adolescents, the elderly, persons with disabilities and other persons in vulnerable situations⁹⁷. These resolutions affirm that people should not be deprived of their means of subsistence, and that the extraterritorial application of laws is inadmissible⁹⁸.

I would also like to recall the special danger of so-called maximum pressure campaigns when imposing sanctions, in particular on Cuba or Venezuela. Relevant resolutions of UN organs condemn the use of UCMs “as tools of political or economic pressure against any country <...>, with a view to preventing these countries from exercising their right to decide, of their own free will, their own political, economic and social systems”⁹⁹. It is also remarkable that the listing of state-owned or state-controlled enterprises resulting in the application of sectoral sanctions is based on the unjustified recognition of state property, which as mentioned above enjoys immunity under international law, as personal property of the head of the state.

As a result, contemporary unilateral economic, trade and financial sanctions do not fit the criteria applied

⁸⁸Iraq sanctions: humanitarian implications and options for the future [Electronic resource]. URL: <https://www.globalpolicy.org/component/content/article/170-sanctions/41947-iraq-sanctions.html> (date of access: 18.08.2021).

⁸⁹UN sanctions: humanitarian aspects and emerging challenges: chairperson's report [Electronic resource]. URL: http://www.hlr-unsanctions.org/HLR_WG3_report_final.19.1.15.pdf (date of access: 04.01.2021).

⁹⁰Secretary-General, in address to International Rescue Committee, reflects on humanitarian impact of economic sanctions [Electronic resource]. URL: <https://www.un.org/press/en/2000/20001115.sgsm7625.doc.html> (date of access: 04.01.2021).

⁹¹Ibid.

⁹²Ibid.

⁹³General Comment No. 8: the relationship between economic sanctions and respect for economic, social and cultural rights. Para 10–14 [Electronic resource]. URL: <https://www.refworld.org/docid/47a7079e0.html> (date of access: 06.01.2021).

⁹⁴See: UN expert issues sanctions guidance amid COVID-19 aid concerns [Electronic resource]. URL: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26589&LangID=E> (date of access: 18.08.2021).

⁹⁵Reports submitted to the Human Rights Council on human rights and unilateral coercive measures [Electronic resource]. URL: <https://www.ohchr.org/EN/Issues/UCM/Pages/Reports.aspx> (date of access: 18.08.2021).

⁹⁶IAPD report [Electronic resource]. URL: <https://www.ohchr.org/EN/Issues/UCM/Pages/Reports.aspx> (date of access: 18.08.2021).

⁹⁷Human rights and unilateral coercive measures : resolution adopt. by the Human Rights Council on 6 Oct. 2010. A/HRC/RES/15/24 ; Human rights and unilateral coercive measures : resolution adopt. by the Human Rights Council on 18 April 2012. A/HRC/RES/19/32. Preamble, para 12 ; Human rights and unilateral coercive measures : resolution adopt. by the Human Rights Council on 8 Oct. 2013. A/HRC/RES/24/14. Para 1–3 ; Human rights and unilateral coercive measures : resolution adopt. by the Human Rights Council on 12 Oct. 2015. A/HRC/RES/30/2. Preamble, para 4, 5 ; Human rights and unilateral coercive measures : resolution adopt. by the Human Rights Council on 24 March 2017. A/HRC/RES/34/13. Preamble, para 12 ; Human rights and unilateral coercive measures : resolution adopt. by the Human Rights Council on 6 Oct. 2020. A/HRC/RES/45/5. Preamble.

⁹⁸Human rights and unilateral coercive measures : resolution adopt. by the Human Rights Council on 6 Oct. 2010. A/HRC/RES/15/24. Para 8 ; Human rights and unilateral coercive measures : resolution adopt. by the Human Rights Council on 18 April 2012. A/HRC/RES/19/32. Para 11 ; Human rights and unilateral coercive measures : resolution adopt. by the Human Rights Council on 24 March 2017. A/HRC/RES/34/13. Preamble, para 11.

⁹⁹Human rights and unilateral coercive measures : resolution adopt. by the Human Rights Council on 24 March 2017. A/HRC/RES/34/13. Para 4.



to countermeasures to exclude their wrongfulness in accordance with the law of international responsibility. The announced purpose of the “maximum pressure” campaigns of the US administration aimed at changing the governments of Venezuela, Cuba, Syria or other states violates the principle of sovereign equality of states and constitutes an undue intervention in their domestic affairs; for Venezuela, it also affects its regional relations¹⁰⁰.

Cyber sanctions. The development of cyber technologies has impacted the development of unilateral sanctions regimes considerably. In particular, malicious cyber activity is referred to as a ground for implementing unilateral sanctions¹⁰¹ [40]. It is believed here, however, that while states are obliged to take measures to suppress cyber crimes against the state, its nationals and legal entities, such measures shall remain within the recognised international intercourse: joining treaties, developing legislation, starting criminal investigations and prosecutions, and judicial cooperation¹⁰², which unfortunately does not often take place.

In particular, blocking online commerce has become a frequent means of implementing unilateral economic and financial sanctions. It usually results in prolonging the time necessary to complete transactions, increasing bank costs and entrepreneurial risks, shutting down investments and making it impossible to buy or order even essential goods¹⁰³.

Besides limiting trade in software, some sanctions refer to software traditionally used for regular administration, public and private purposes, in particular for

commercial Internet services or connectivity¹⁰⁴ and even for non-commercial activity. In particular, the terms of service for *Zoom* as of 20 August 2020 precluded use of the platform by those living in Cuba, the North Korea, Iran, Syria and Crimea, or through legislation of the United States¹⁰⁵, even for contacts and coordination among doctors to exchange their experiences on symptoms, diagnostics and means of treatment. Consequently, it was impossible to use *Zoom* for all states for official communication within the UN system, as initially planned. Cuba could not participate in a summit meeting on *Zoom* of leaders of the Organisation of African, Caribbean and Pacific States on 3 June 2020 to discuss the COVID-19 pandemic¹⁰⁶. Iranian citizens cannot access information on COVID-19 and its symptoms, even from the Iranian government, due to Google’s censoring of AC19, an Iran-developed app¹⁰⁷, and Iranian doctors cannot access a medical database (PubMed) after its server was transferred to Google¹⁰⁸. Citizens of Iran, Sudan and Venezuela cannot use online platforms for educational purposes, potentially affecting school enrolment and the dropout rate¹⁰⁹.

Venezuela is reported to be unable to conclude agreements on the rent of a satellite, which resulted in shrinking Internet coverage, preventing the exercise of human rights on the Internet, including access to educational and medical platforms, access to information and freedom of expression. Syria appeared to have been unable to buy software for CT scanners and ventilators produced only by US companies¹¹⁰ for fighting COVID-19¹¹¹. All of these facts illustrate examples of limitations im-

¹⁰⁰The United States imposes maximum pressure on former maduro regime [Electronic resource]. URL: <https://ve.usembassy.gov/the-united-states-imposes-maximum-pressure-on-former-maduro-regime/> (date of access: 18.08.2021).

¹⁰¹Executive order 13694 of 1 April 2015 blocking the property of certain persons engaging in significant malicious cyber-enabled activities [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2015-04-02/pdf/2015-07788.pdf> (date of access: 18.08.2021); Council regulation (EU) 2019/796 of 17 May 2019 concerning restrictive measures against cyber-attacks threatening the union or its member states regime [Electronic resource]. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0796&from=GA> (date of access: 18.08.2021).

¹⁰²Countering the use of the Internet for terrorist purposes [Electronic resource]. URL: <https://www.osce.org/files/f/documents/d/3/23078.pdf> (date of access: 04.01.2021); Regional workshop on countering the use of the Internet for terrorist purposes for judges, prosecutors and investigators from South Eastern Europe [Electronic resource]. URL: <https://www.osce.org/files/f/documents/7/e/299091.pdf> (date of access: 04.01.2021).

¹⁰³Negative impact of unilateral coercive measures on the enjoyment of human rights [Electronic resource]. URL: <https://www.undocs.org/en/A/75/209> (date of access: 18.08.2021). See: Joint communiqué on UCMs and their impacts [Electronic resource]. URL: <https://viennaun.mfa.ir/en/newsview/619102/Joint-Communiqu%C3%A9-on-UCMs-and-their-Impacts> (date of access: 18.08.2021).

¹⁰⁴Executive order 13685 of 19 December 2014 blocking property of certain persons and prohibiting certain transactions with respect to the Crimea region of Ukraine [Electronic resource]. URL: https://home.treasury.gov/system/files/126/ukraine_eo4.pdf (date of access: 18.08.2021); General license No. 9. Para (d) [Electronic resource]. URL: https://home.treasury.gov/system/files/126/ukraine_gl_9.pdf (date of access: 18.08.2021).

¹⁰⁵*Zoom terms of service* [Electronic resource]. URL: <https://Zoom.us/terms> (date of access: 18.08.2021).

¹⁰⁶Bloqueo de EE.UU. impide a Cuba participar en foro multilateral; Capturados en Venezuela 57 mercenarios; Protestas por racismo en EE. UU.; Bolsonaro bloquea fondos para lucha contra la COVID-19 [Electronic resource]. URL: <http://www.granma.cu/hilo-directo/2020-06-05/hilo-05-06-2020-00-06-14> (date of access: 18.08.2021).

¹⁰⁷Responses and comments from the Islamic Republic of Iran [Electronic resource]. URL: <https://www.ohchr.org/Documents/Issues/UCM/submissions/states/Iran.docx> (date of access: 04.01.2021).

¹⁰⁸*Ibid.*

¹⁰⁹Submission by the Coalition of Sudanese Doctors Abroad for SR UCM-Study on the impact of unilateral sanctions on human rights during the state of emergency in the context of COVID-19 pandemic [Electronic resource]. URL: <https://www.ohchr.org/Documents/Issues/UCM/submissions/privates/SudaneseDoctorsAbroad.docx> (date of access: 04.01.2021).

¹¹⁰Note 100/20 of the Permanent mission of Syrian Arab Republic to the United Nations office and other organisations in Geneva of 15 June 2020.

¹¹¹On humanitarian impact during the pandemic see: Douhan A. Negative impact of unilateral coercive measures on the enjoyment of human rights in the coronavirus disease pandemic [Electronic resource]. URL: <https://www.undocs.org/en/A/75/209> (date of access: 04.01.2021).



posed with the use of cyber means, affecting a broad scope of human rights including the rights to access information, to access the Internet, to freedom of expression, to health and in some cases even the right to life with discrimination taken on the ground of nationality of residence.

It shall also be taken into account that there are some other international law aspects affected by sanctions in the digital age. One can name the expanding practice of blocking social media accounts to comply with sanctions, as is done in particular by US-registered companies as part of the Magnitsky sanctions regime [41; 42]. Some authors even speak about cyber censorship taking place overall to prevent the distribution of information which may be considered harmful to the government for one or another purpose [32, p. 19].

It is also believed here that online announcements of listings of individuals and companies or proclaiming them as suspected terrorists or criminals, as it is done e. g. through the web page and *Twitter* of the US Rewards for justice programme¹¹², increase reputational risks, affecting *inter alia* the right to reputation. Such activity may endanger *inter alia* the lives of such individuals and impede their enjoyment of labour rights, and contradicts provisions of General comment No. 16, which refers to the obligations of states not to infringe the honour and reputation of individuals and to provide adequate legislation to guarantee their protection¹¹³, as well as of General comment No. 32, elaborating on the presumption of innocence and requesting governments to not make public statements affirming the guilt of the accused¹¹⁴.

Targeted sanctions. Targeted sanctions can be qualified today as an integral feature of the contemporary system of unilateral sanctions. They started to be ap-

plied to individuals and companies in order to minimise the negative humanitarian impact of comprehensive or economic sanctions. International law does not regulate this type of sanction specifically. They traditionally include travel and visa bans, freezing assets, prohibition to satisfy claims related to the introduction of sanctions; prohibition of export of and assistance in setting up hardware and software; prohibition to buy hardware; limitations on dual-use goods and equipment; and restrictions on the purchase of goods originating from a particular state (including petroleum products, textiles or cultural property)¹¹⁵.

It shall be noted that grounds for the listing of individuals and companies have also expanded considerably. Such listings occur either to implement resolutions of the UN Security Council acting under chapter VII of the UN Charter, often when going beyond the authorisation of the Council; or autonomously to maintain international peace and security; to suppress international, transnational or national crimes; to promote and protect human rights, democracy, the rule of law and good governance¹¹⁶; or to protect national security or other interests, often via the announcement of a state of emergency¹¹⁷. Another tendency demonstrates the expanding policy of designating individuals *ex officio* often without accusing them of committing any wrongful act with reference to the non-recognition of a government or results of elections (Venezuela¹¹⁸, judges of the International Criminal Court (ICC))¹¹⁹.

It is believed here that the application of targeted sanctions to individuals and companies raises serious concerns about their legality as well as the validity of grounds for their introduction. From the point of international law, targeted sanctions, as well as any other sanctions in the absence of UN Security Council

¹¹²See: Mandates of the special rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; and the Working group on Arbitrary detention [Electronic resource]. URL: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26324> (date of access: 18.08.2021).

¹¹³CCPR General comment No. 16: article 17 (right to privacy). The right to respect of privacy, family, home and correspondence, and protection of honour and reputation [Electronic resource]. URL: <https://www.refworld.org/docid/453883f922.html> (date of access: 06.01.2021).

¹¹⁴General comment No. 32: article 14. Right to equality before courts and tribunals and to fair trial. Para 30 [Electronic resource]. URL: <https://www.refworld.org/docid/478b2b2f2.html> (date of access: 06.01.2021).

¹¹⁵See: EU sanctions map [Electronic resource]. URL: <https://www.sanctionsmap.eu/#/main> (date of access: 18.08.2021).

¹¹⁶EU restrictive measures.

¹¹⁷Mandates of the special rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; the special rapporteur on the right to food; the special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the independent expert on human rights and international solidarity report [Electronic resource]. URL: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25785> (date of access: 18.08.2021).

¹¹⁸Preliminary findings, Venezuela country visit report [Electronic resource]. URL: <https://www.ohchr.org/EN/Issues/UCM/Pages/VisitVenezuela.aspx> (date of access: 18.08.2021).

¹¹⁹Executive order 13928 of 11 June 2020 blocking property of certain persons associated with the International Criminal Court [Electronic resource]. URL: <https://home.treasury.gov/system/files/126/13928.pdf> (date of access: 18.08.2021); Joint communication from special procedures. AL USA 15/2020 [Electronic resource]. URL: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25379> (date of access: 04.01.2021); Secretary Michael R. Pompeo at a press availability with secretary of defense Mark Esper, attorney general William Barr, and national security advisor Robert O'Brien [Electronic resource]. URL: www.state.gov/secretary-michael-r-pompeo-at-a-press-availability-with-secretary-of-defense-mark-esper-attorney-general-william-barr-and-national-security-advisor-robert-obrien/ (date of access: 18.08.2021); ASP president O-Gon Kwon rejects measures taken against ICC [Electronic resource]. URL: www.icc-cpi.int/Pages/item.aspx?name=pr1527 (date of access: 18.08.2021); Situation in the Islamic Republic of Afghanistan [Electronic resource]. URL: https://www.icc-cpi.int/CourtRecords/CR2020_00828.PDF (date of access: 18.08.2021).



authorisation, can only be applied if they do not breach any international obligation of states, including – especially as they are directed against specific individuals – obligations in the sphere of human rights, or if their wrongfulness is excluded in accordance with international law in the course of countermeasures.

Targeting states usually acknowledge the need to adopt and implement sanctions in accordance with the purposes and principles of the United Nations, obligations under the UN Charter, human rights and fundamental freedoms¹²⁰, to provide the possibility of appeal¹²¹, regular review¹²², and to develop mechanisms for humanitarian exceptions¹²³; these unfortunately often do not happen in reality.

Academic works and humanitarian actors assert, in particular, that targeted sanctions do affect a number of human rights. In particular, bans on admission violate the right to freedom of movement,¹²⁴ the rights to privacy and family life, the right to life [43, p. 184–185] and the right to work when one's work involves crossing borders¹²⁵. Financial sanctions are viewed as violating the rights to privacy, family life, health and property¹²⁶, an arms embargo affects property rights [44, p. 185–186], sanctions against journalists concerning anything they write or say violate the rights to hold opinions and freedom of expression. Targeted sanctions in general violate the rights to a fair trial, effective remedy, protection by law, procedural guarantees¹²⁷, and to be informed promptly on the nature and cause of the accusation, to defend oneself and to protection of reputation [44, p. 186]. References to the adminis-

trative character of sanctions regimes are not properly grounded as in the majority of cases sanctions are imposed “for ...[something]”, clearly demonstrating a punitive purpose and turning it into punishment [14, p. 905; 45, p. 798]. This violates the presumption of innocence as well as other procedural guarantees.

Contemporary practice of targeted sanctions ignores the fact that targeted sanctions listing individuals and companies generally cannot be justified as countermeasures, which, in accordance with art. 49(1) of DARS, may only be applied 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 activity¹²⁸ when all other requirements of countermeasures are observed. Countermeasures are thus not applicable to other categories of persons or entities. Moreover, the listing of state officials *ex officio* contradicts the prohibition on punishment for the activity that does not constitute a criminal offence prevents the officials from the possibility to represent the interests of states in international courts and other international institutions, and undermines the principle of sovereign equality of states.

The US sanctions against judges and officials of the International Criminal Court on the ground of Executive order 13928 of 11 June 2020¹²⁹ doubly affected procedural rights. Besides general concerns about applying targeted sanctions to judges and court officials, these sanctions constituted a clear violation of their privileges and immunities granted to guarantee their role in international adjudication¹³⁰. Moreover, it under-

¹²⁰Basic principles on the use of restrictive measures (sanctions). Para 1, 4 [Electronic resource]. URL: <https://data.consilium.europa.eu/doc/document/ST-10198-2004-REV-1/en/pdf> (date of access: 18.08.2021) ; Guidelines on the implementation and evaluation of restrictive measures (sanctions) in the framework of the EU common foreign and security policy. Supra note 10, para 9–11 [Electronic resource]. URL: https://digitallibrary.un.org/record/251268/files/A_RES_52_181-EN.pdf (date of access: 18.08.2021) ; Council Decision (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses [Electronic resource]. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020D1999&from=EN> (date of access: 18.08.2021).

¹²¹Consolidated version of the Treaty on the functioning of the European Union. Supra note 101, art. 275 // Official Journ. of the Europ. Union. 2012. P. 47–390.

¹²²Guidelines on the implementation and evaluation of restrictive measures (sanctions) in the framework of the EU common foreign and security policy. Supra note 10, para 6 [Electronic resource]. URL: <https://www.globalpolicy.org/global-taxes/42501-the-adverse-consequences-of-economic-sanctions.html> (date of access: 18.08.2021).

¹²³Ibid. Para 25–27, 68, 69.

¹²⁴It is believed here that provisions of art. 13 of ICCPR (“An alien lawfully in the territory of a state party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority”) may analogously be applied.

¹²⁵Mandate of the special rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights [Electronic resource]. URL: <https://www.ohchr.org/EN/Issues/UCM/Pages/SRCoerciveMeasures.aspx> (date of access: 18.08.2021).

¹²⁶See: Scheinin M. Report of the special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Para 38–41 [Electronic resource]. URL: https://digitallibrary.un.org/record/593068/files/A_HRC_4_26-EN.pdf (date of access: 04.01.2021).

¹²⁷Obligation to observe these rights is stressed in the Parliamentary Assembly of the Council of Europe documents, e. g., para 5.1.

¹²⁸Art. 43–59 of Draft articles on responsibility of states for internationally wrongful acts (with commentaries) ; The protection of human rights and the principle of non-intervention in internal affairs of states [Electronic resource]. URL: https://www.idi-iil.org/app/uploads/2017/06/1989_comp_03_en.pdf (date of access: 04.01.2021). See: [34, S. 66].

¹²⁹Executive order 13928 of 11 June 2020 blocking property of certain persons associated with the International Criminal Court [Electronic resource]. URL: <https://home.treasury.gov/system/files/126/13928.pdf> (date of access: 18.08.2021) ; USA removes sanctions on ICC officials [Electronic resource]. URL: <https://www.coalitionfortheicc.org/news/20210629/usa-removes-sanctions-icc-officials> (date of access: 18.08.2021).

¹³⁰Joint communication from special procedures. AL USA 15/2020 [Electronic resource]. URL: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25379> (date of access: 04.01.2021).



mined the ICC's efforts to investigate, prosecute and sanction international crimes and thwarted victims' access to justice.

Some other concerns arise about sanctions imposed on individuals and companies for alleged involvement in committing international crimes. In accordance with international law, such cases could be brought to International Criminal Court or started domestically on the basis of universal jurisdiction [46, S. 114–123]. The use of a judicial mechanism guarantees that those who commit international crimes do not enjoy impunity, but at the same time it provides due process guarantees as well as prevents any violation of human rights. Unfortunately, states prefer to impose sanctions today instead of starting criminal cases in international or national courts as it is easier, faster and the standards of proof are nearly non-existent. As a result, if international crimes really take place, their perpetrators do not face any criminal charge; however, a huge group of people suffer from economic and travel limitations and are publicly announced to be international criminals without any court verdict, in violation of the presumption of innocence and with very limited possibility to access court institutions.

A larger group of individuals and companies are directly designated for alleged wrongful activity which cannot be qualified as an international crime, and therefore no grounds for the exercise of universal jurisdiction exists. This clearly demonstrates attempts to expand national or regional jurisdiction beyond national borders. At the same time, practice demonstrates no attempt to start criminal processes, even when grounds for national jurisdiction exist.

Moreover, unilateral targeted sanctions are imposed today by the executive bodies of the United States and the European Union in the absence of court hearings

or due process guarantees. US declarations of national emergencies¹³¹ cannot be used as an excuse as they do not conform to art. 4 of the ICCPR, which allows a party to derogate on the basis of declaring a public emergency only if there is a threat to the life of the nation (temporary character; prohibition of derogations from non-derogable human rights, such as the right to life, freedom from torture, punishment for offenses that are not crimes at the moment of their commission, and the right to recognition of personality¹³²).

Some authors (T. Ruys) raise additional concerns that long-term asset freezing, without due process, can be qualified as an expropriation or confiscation [3], not providing, as does a criminal process, the possibility to apply to the court for a release of asserted property and compensation of losses in a reasonable time. Therefore, targeted individuals appear to be in a worse situation in comparison to those facing criminal charges at the national level.

It shall also be taken into account that the right of individuals to judicial protection of their rights is guaranteed both in international practice and legal doctrine. All procedural guarantees – in particular the right to due process¹³³ and the right not to be held guilty for any offense that was not an offense at the moment of its commission¹³⁴ are considered inalienable by human rights institutions¹³⁵, legal scholars¹³⁶ [47, p. 305] and international treaties¹³⁷. Violating these rights is qualified even in time of war as a serious breach of international humanitarian law¹³⁸. Unfortunately, existing international mechanisms do not provide for the possibility to guarantee corresponding rights for those targeted by unilateral sanctions. Art. 275 of the Treaty on the functioning of the European Union, authorising the European Court of Justice (ECJ) to review the legality of decisions involving restrictive measures against natural

¹³¹Executive order 13894 of 14 October 2019 blocking property and suspending entry of certain persons contributing to the situation in Syria [Electronic resource]. URL: <https://www.govinfo.gov/content/pkg/FR-2019-10-17/pdf/2019-22849.pdf> (date of access: 18.08.2021) ; International emergency economic powers act [Electronic resource]. URL: <https://home.treasury.gov/system/files/126/ieepa.pdf> (date of access: 18.08.2021).

¹³²International covenant on civil and political rights. Art. 15(1) [Electronic resource]. URL: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (date of access: 18.08.2021).

¹³³Ibid. Supra note 175, art. 14 (2–7).

¹³⁴Ibid. Art. 15(1).

¹³⁵General comment No. 29: article 4: derogations during a state of emergency. Para 16 [Electronic resource]. URL: <https://www.refworld.org/docid/453883fd1f.html> (date of access: 06.01.2021).

¹³⁶Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions...

¹³⁷Principles of international law recognised in the Charter of the Nürnberg Tribunal and in the Judgment of the tribunal Principle V [Electronic resource]. URL: https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_1_1950.pdf (date of access: 18.08.2021) ; Geneva convention relative to the protection of civilian persons in time of war (Fourth Geneva convention). Art. 72, 73, 46(4) [Electronic resource]. URL: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf (date of access: 18.08.2021) ; Geneva convention relative to the treatment of prisoners of war (Third Geneva convention). Art. 105–108, 129(4) [Electronic resource]. URL: <https://www.refworld.org/docid/3ae6b36c8.html> (date of access: 18.08.2021) ; Protocol additional to the Geneva conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I). Art. 75 [Electronic resource]. URL: <https://www.refworld.org/docid/3ae6b36b4.html> (date of access: 18.08.2021) ; Protocol additional to the Geneva conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II). Art. 76 [Electronic resource]. URL: <https://www.refworld.org/docid/3ae6b37f40.html> (date of access: 18.08.2021).

¹³⁸Geneva convention relative to the protection of civilian persons in time of war (Fourth Geneva convention). Supra note 181. Art. 147 [Electronic resource]. URL: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf (date of access: 18.08.2021) ; Art. 85(4e) of the Protocol additional to the Geneva conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I). Supra note 181 [Electronic resource]. URL: <https://www.refworld.org/docid/3ae6b36b4.html> (date of access: 18.08.2021).



or legal persons¹³⁹, guarantees only limited access to justice rather than a fair trial mechanism. No possibility for due process or judicial review is provided by US legislation.

Secondary sanctions, extraterritoriality and over-compliance. It shall also be noted that the effects of economic, financial, sectoral and targeted sanctions are exacerbated by the application of criminal prosecution and civil tort liability towards third-country nationals in foreign countries who are accused of sanctions violations via the introduction of so-called long arm jurisdiction, simultaneously with freezing assets and travel bans [14, p. 21–22], and by the introduction of civil and criminal penalties for the sanctioning country's own nationals for circumvention of sanctions regimes. The above tendency is supplemented by the expansion of so-called secondary sanctions used in the implementation of various sanctions regimes against states, sectors of the economy, and individuals to “put pressure on third parties to stop their activities with the sanctioned country by threatening to cut off the third party's access to the sanctioning country”¹⁴⁰.

Academic assessments of the abovementioned measures vary a lot. Secondary sanctions are traditionally viewed as measures taken extraterritorially to third states, third-state nationals or entities for their trade, cooperation or association with those affected by primary sanctions, or those helping to circumvent the effects of primary sanctions¹⁴¹ [48, p. 4, 7–8]. The US doctrine refers to secondary sanctions as “retaliatory” sanctions that “do not impose monetary penalties, but rather seek to cut off foreign parties from access to the US financial and commercial markets if these entities conduct business in a manner considered detrimental to US foreign policy” [23, p. 1055, 1112–1113]. Another approach in secondary sanctions includes civil and criminal penalties imposed by countries against their own nationals. In particular, any transactions, including online transactions made by United States persons or involving the United States relating to the property or interests in property of sanctioned individuals are prohibited unless authorised or exempted¹⁴².

In particular, appendix A to part 501 of the Economic sanctions enforcement guidelines of the United States provides for civil monetary penalties of up to 289.239 US dollars or criminal penalties of up to 1 000 000 US dollars, imprisonment for up to 20 years or both upon conviction. A similar approach may be found in a number of other US documents regarding Iraq, the Russian Federation, Lebanon, Somalia and many others. Art. 15 of the EU Global human rights regulation imposes over the EU member states the obligation to provide for civil or military penalties for those who may circumvent the application of sanctions¹⁴³.

A few examples of secondary sanctions clearly demonstrate their “fear” effect. A number of enterprises, entities, individuals and ships involved in the delivery of essential goods cargoes have been subject to these sanctions. In particular, around 35 Venezuelan vessels have been reportedly listed for delivering oil to Cuba [49, p. 27]. Five Iranian captains bringing cargoes of gasoline from Iran to Venezuela have been listed and announced as international terrorists¹⁴⁴. At the national level, the US Treasury department's office of foreign assets control (OFAC) has imposed harsh penalties on banks, shipping companies, tech companies and others. In the case of BNP Paribas in 2014, the US penalties totalled some 9 bln US dollars, and included a partial suspension of access to the US Federal reserve system [50]. Exclusion from the US financial system is viewed as the “death penalty” for Western banks engaged in facilitating US dollar transactions, pretending to establish jurisdiction on the basis of US dollars being used in the payments¹⁴⁵. As a result, Iran was not to be able to use foreign currency for humanitarian imports such as grains and medicine, including insulin for the survival and well-being of millions of diabetics [51], as well as other sorts of medicine, medical equipment and spare parts.

It is maintained here that states are not entitled to extend their jurisdiction beyond the national borders or develop punitive civil and criminal jurisdiction to prevent any transactions with sanctioned individuals, states or companies, as this activity constitutes an abuse

¹³⁹Consolidated version of the Treaty on the functioning of the European Union // Official Journ. of the Europ. Union. 2012. P. 47–390.

¹⁴⁰Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions... ; Council Regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses. Art. 10, 11, 15 [Electronic resource]. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R1998> (date of access: 19.08.2021).

¹⁴¹Ibid.

¹⁴²Cyber-related sanctions programme [Electronic resource]. URL: www.treasury.gov/resource-center/sanctions/Programs/Documents/cyber.pdf (date of access: 19.08.2021).

¹⁴³Council regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses [Electronic resource]. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R1998> (date of access: 19.08.2021).

¹⁴⁴Mandates of the special rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; and the special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism [Electronic resource]. URL: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25985> (date of access: 19.08.2021).

¹⁴⁵Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions...



of rights and establishes the atmosphere of “fear” of secondary sanctions and civil and criminal penalties, especially as the legality of primary sanctions is often questioned.

Extraterritoriality used to be a recognised characteristic of economic and other types of sanctions since late 1980s. Some criticism of the extraterritorial application of unilateral measures has been expressed by the UN already in 1948 towards the Arab League, which sought to implement a secondary boycott of Israel and conditioned trade with third-state companies on their rejection to do any business with Israel [3]. Since 1996, starting with the Helms-Burton act, the United States actively prevents foreign partners from accessing US markets when they are doing business with governments and companies subject to primary sanctions¹⁴⁶. The Caesar act can be cited as a clear example of extraterritorial application, threatening to sanction third countries, companies, or individuals dealing with the government of Syria, its Central bank or listed persons, preventing *inter alia* reconstruction projects in the country already severely affected by military conflict¹⁴⁷.

The expansion of jurisdiction on the ground of payment in US dollars has been repeatedly cited for China as regards Huawei’s economic and trade exchanges with Iran¹⁴⁸; for Venezuela as for the reported threats to private business and third-country donors, partners and humanitarian organisations¹⁴⁹ or designation of owners of ships, vessels and captains delivering oil and gasoline cargos to and from Venezuela; for humanitarian non-government organisations (NGOs) as for the designation of banks and prevention of payments in

US dollars that makes impossible financial transfers to (from) states targeted by sanctions¹⁵⁰ and many others.

General consent about the illegality of applying extraterritorial sanctions exists today both in the legal doctrine¹⁵¹ and political discourse of the directly targeted states (Iran, Belarus, Guyana¹⁵², China, etc.) and countries which traditionally are viewed as imposing sanctions¹⁵³. In particular, the European Union reports that it has been affected among others by extraterritorial measures applied by the United States against Cuba, Russian Federation and Iran while building Nord Stream 2. It refers to the incompatibility of extraterritorial sanctions with international law as affecting the sovereignty of the EU member states¹⁵⁴ [52].

It has been generally agreed that any measures can only be taken by states with sufficient jurisdictional ties. The following jurisdictional grounds have been identified in particular in the EU parliament study: when conduct produces substantial effects within the territory of the legislating state; when a state needs to legislate to remedy harm done to its nationals abroad; to protect the security of the state against conduct by foreigners or non-residents; and on the basis of universal jurisdiction to remedy international crimes¹⁵⁵. Therefore, the EU member states and their partners emphasise that their sanctions are non-extraterritorial and are to be applied within their respected jurisdictions only¹⁵⁶. The EU insists that its sanctions are not extraterritorial and believes that extraterritoriality is against international law¹⁵⁷.

Extraterritorial application is reported to result in overcompliance and to affect all foreign partners, in

¹⁴⁶Helms-Burton act, Iran and Lybia sanctions acts, etc.

¹⁴⁷Mandates of the special rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; the special rapporteur on the right to food; the special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the independent expert on human rights and international solidarity report [Electronic resource]. URL: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25785> (date of access: 18.08.2021).

¹⁴⁸Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions...

¹⁴⁹Preliminary findings of the visit to the Bolivian Republic of Venezuela by the special rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights [Electronic resource]. URL: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26747&LangID=E> (date of access: 18.08.2021).

¹⁵⁰Virtual arria meeting, end unilateral coercive measures now [Electronic resource]. URL: <http://webtv.un.org/live/watch/part-12-virtual-arria-meeting-on-%E2%80%9Cend-unilateral-coercive-measures-now%E2%80%9D/6212373519001/?term=> (date of access: 18.08.2021) ; Call for submissions: UCM-Study on impact of unilateral sanctions on human rights during the state of emergency amid COVID-19 pandemic [Electronic resource]. URL: <https://www.ohchr.org/EN/Issues/UCM/Pages/call-covid.aspx> (date of access: 27.01.2021).

¹⁵¹Call for submissions: UCM-Study on impact of unilateral sanctions on human rights during the state of emergency amid COVID-19 pandemic... ; Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions...

¹⁵²Ibid.

¹⁵³Key action 7 of communication: the European economic and financial system: fostering openness, strength and resilience [Electronic resource]. URL: https://ec.europa.eu/finance/docs/policy/210119-economic-financial-system-communication_en.pdf (date of access: 27.01.2021).

¹⁵⁴Extraterritorial sanctions on trade and investments and European responses [Electronic resource]. P. 51. URL: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/653618/EXPO_STU\(2020\)653618_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/653618/EXPO_STU(2020)653618_EN.pdf) (date of access: 17.08.2021).

¹⁵⁵Ibid. Supra note 206, p. 52–54.

¹⁵⁶Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions...

¹⁵⁷Ibid.



trade, health, education, culture etc.¹⁵⁸ [49, p. 19–20]. They also result in the expansion of direct and indirect targets of sanctions, including specially designated individuals and companies, populations in whole or in part, refugees, counter-partners of designated individuals and companies, nationals of sanctioning states, third country nationals, humanitarian organisations and their constituent parts, and employees and beneficiaries in third countries¹⁵⁹.

The same approach is taken in relevant resolutions of the UN Human Rights Council and the General Assembly as an exacerbating characteristic, “creating obstacles to trade relations among states, thus impeding the full realisation of the rights set forth in the Universal declaration of human rights and other international human rights instruments, in particular the right of individuals and peoples to development”, with member states being called upon “to take effective administrative or legislative measures, as appropriate, to counteract the extraterritorial application or effects of unilateral coercive measures”¹⁶⁰.

This has resulted in the development of blocking documents by states to protect their economic interests as well as interests of their companies, including the EU regulation 2271/96 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom¹⁶¹; the Federal law of the Russian Federation of 30 December 2006 No. 281-ФЗ “On special economic measures and enforcement measures”; and Venezuela’s anti-blockade constitutional law.

The application of primary sanctions and secondary extraterritorial sanctions and the introduction of civil and criminal penalties in national legislation to nationals and residents of sanctioning states for violations of sanctions regimes results in growing overcompliance with sanctions, the effect of which can hardly be overcome even after the adoption of anti-sanctions laws. The use of the above means results in the development of

a culture of fear despite the reported attempts of some sanctioning states to avoid it¹⁶². The EU Guidance note on the provision of humanitarian aid can serve as a good example in this regard from the point of the special rapporteur. It expressly prohibits EU member state actors to comply with certain US sanctions¹⁶³ [53, p. 8]; however, in reality, the majority of them will prefer to take de-risking or a zero-risk approach. Russian legislation also follows a zero-compliance approach, prohibiting Russian nationals and entities to comply with foreign sanctions¹⁶⁴, and private businesses are reported to be extremely concerned about the possibility of new sanctions.

As noted above, the financial sector (banks) are the first to be affected (fined) for violating US unilateral sanctions [54, p. 81], especially taking into account that the banking system is entirely inter-related and the majority of banks in most countries have corresponding banks in the countries which impose one or more type of sanctions. Therefore, these banks prefer either to refrain from any bank transfers or consider it a long cumbersome process. It has been reported, for example, concerning bank transfers to severely targeted societies like Syria or Venezuela, that the duration of bank transfers has moved from 2 days to up to 45–60 days, while the costs for bank transfers have increased from 0.25–0.5 % up to 5–10 % for one bank transfer.

Due to enormous fines and the possibility of criminal prosecution, bank de-risking policies result in freezing funds and impeding transactions of any partners that may relate to a specific individual, company or state, including private business, hospitals [55, p. 101–103], scholars, nationals or targeted countries, humanitarian organisations or donors of humanitarian aid¹⁶⁵.

Humanitarian organisations, in particular, report about the complexity and inconsistency of humanitarian exemptions policies, such that even when humanitarian licenses can be received by NGOs from the authorities of one EU member state, there are high chances that

¹⁵⁸Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions... ; Call for submissions: UCM-Study on impact of unilateral sanctions on human rights during the state of emergency amid COVID-19 pandemic...

¹⁵⁹Douhan A. COVID-19 pandemic: humanitarian concerns and negative impact of unilateral sanctions and their exemptions, COVID-19 [Electronic resource]. URL: <https://www.ohchr.org/Documents/Issues/UCM/UCMCOVID19GuidanceNote.docx> (date of access: 27.01.2021).

¹⁶⁰Resolution 34/13 of the Human Rights Council of 24 March 2017 [Electronic resource]. URL: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/086/62/PDF/G1708662.pdf?OpenElement> (date of access: 10.09.2021).

¹⁶¹Council regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (as for 07.08.2018) [Electronic resource]. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996R2271&from=EN> (date of access: 19.08.2021).

¹⁶²Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions...

¹⁶³Commission guidance note on the provision of humanitarian aid to fight the COVID-19 pandemic in certain environments subject to EU restrictive measures [Electronic resource]. URL: https://ec.europa.eu/info/sites/info/files/business_economy_euro_banking_and_finance/documents/201116-humanitarian-aid-guidance-note_en.pdf (date of access: 18.08.2021).

¹⁶⁴Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions... ; Дело № А40-171207/17-111-1562 от 17 января 2018 г. [Электронный ресурс]. URL: <https://sudact.ru/arbitral/doc/bTjH2q2wmrNV/> (дата обращения: 18.08.2021).

¹⁶⁵See: Detrimental impacts: how counter-terror measures impedes humanitarian action [Electronic resource]. URL: <https://www.interaction.org/wp-content/uploads/2021/04/Detrimental-Impacts-CT-Measures-Humanitarian-Action-InterAction-April-2021.pdf> (date of access: 19.08.2021).



they won't be accepted by banks of another one [56]; while delivery companies¹⁶⁶ [57] and trade partners¹⁶⁷ will prefer not to risk facing civil liability or criminal charges even when shipments involve medicine, medical equipment, food, components or raw materials necessary for vaccine production [49, p. 20], especially when it comes to shipments to Venezuela, Syria, Cuba, Iran [53, p. 6–7, 11–13; 58, p. 15; 59]. Some NGOs report that they lose 1/10 of the aid money they try to use for humanitarian activity within the banking sector only because of the rising costs of bank transfers or rejections to make transfers by banks. Furthermore, significant de-risking by banks is increasingly driving humanitarian actors to work through informal payment channels or to use cash. This not only creates security risks for the humanitarian actors, it also makes the money harder to trace and increases the risk of extortion and misuse or diversion of funds to finance terrorism, undermining one of the central aims of sanctions measures [60, p. 3].

Private businesses resident in targeted countries, which usually do not fall under primary sanctions themselves, face similar problems. They face the unwillingness of producers and trade partners to cooperate with them directly because they are from targeted societies. As a result, they have to act via several agents, including several delivery or transportation companies, and they have to find ways to do several bank transfers via several banks, and as a result, they say that that is very lengthy, costly, and results in prices that are two, three or four times higher from the point of view of the end consumer¹⁶⁸.

Qualification of unilateral coercive measures.

The illegal nature of unilateral coercive measures has been repeatedly affirmed in numerous resolutions of the Human Rights Council (para 1–3 of Resolution 15/24; para 1–3 of Resolution 19/32; para 1–3 of Resolution 24/14; para 1–3 of Resolution 27/21; para 1–2, 4, 34/13 of Resolution 30/2) and the General Assembly (para 5, 6 of Resolution 69/180; para 5–6 of Resolution 70/151, para 5–6 of Resolution 71/193). The Security Council and the General Assembly have referred to the negative impact of UCM on human rights, the right to development, solidarity and cooperation, and have also affirmed that people should not be deprived of their own means of subsistence, especially as concerns food and medicine, and that the extraterritorial application of laws affecting international humanitarian and human rights is inadmissible. It shall be concluded thus that unilateral measures, which violate international obligations of states and therefore cannot be qualified as retorsion,

countermeasures or implementation of resolutions of the UN Security Council constitute unilateral coercive measures.

In accordance with the UN Human Rights Council resolutions, unilateral coercive measures are viewed as “any type of measures including but not limited to economic or political measures, to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind” (preamble of Resolution 34/13). The special rapporteur, however, notes the absence of generally agreed consent on the elements of UCMs.

Definitions proposed by states, NGOs and academic institutions vary and identify the following elements of UCMs: activity or threat to use the activity; of a single state or group of states or international organisation (excluding the UN); adopted by major states; without authorisation of the UN Security Council; aimed at changing the target's (individual, legal entity, state, group of states, international organisation) behaviour, promoting the regime or governmental structure change; with the aim of preventing threats to international peace and security, or punishing certain governments for human rights violations they have committed and trying to minimise them or alleged pursuit of common goods; by exerting pressure or coercion on targets (economic, political, financial, legal measures) or freezing assets of central banks, targeted measures against people with political importance; while using their financial, trade, technological and other advantages; in satisfaction of their own interests; without respecting the right to self-determination of that country, while limiting its economic capacity and violating the human rights of its inhabitants; in violation of its international obligations towards other states or international organisations; falling outside the realm of permissible “unfriendly” acts under customary international law and countermeasures as part of state responsibility; interfere in their internal and external affairs, and infringe upon their inalienable rights of choosing and developing political, economic and cultural systems out of their own will; it violates the principles of sovereign equality and non-interference in internal affairs; violating principles of international law; to obtain subordination in the exercise of its sovereign rights¹⁶⁹.

Due to the recent expansion of the application of unilateral sanctions, growing extraterritoriality and overcompliance, it can be concluded that the majority of unilateral sanctions adopted without or beyond the

¹⁶⁶See: US must lift its Cuba embargo to save lives amid COVID-19 crisis, say UN experts [Electronic resource]. URL: www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25848&LangID=E (date of access: 19.08.2021).

¹⁶⁷Call for submissions: UCM-Study on impact of unilateral sanctions on human rights during the state of emergency amid COVID-19 pandemic... ; Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions...

¹⁶⁸See: Report of the special rapporteur Alena Douhan on the negative impact of unilateral coercive measures on the enjoyment of human rights [Electronic resource]. URL: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/195/98/pdf/N2119598.pdf?OpenElement> (date of access: 18.08.2021).

¹⁶⁹Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions...



authorisation of the UN Security Council do not correspond to the criteria of retortions or countermeasures, and can therefore be qualified as unilateral coercive measures.

The latter thus are any type of measure or activity applied by states, groups of states or regional organisations without or beyond the authorisation of the UN Security Council, not in conformity with international obligations of the sanctioning actor or the illegality of which

is not excluded on the ground of the law of international responsibility, regardless of the announced purpose or objective, including but not limited to economic, financial, political or any other sort of state-oriented or targeted measures applied to other states, individuals, companies or other non-governmental entities, to change their policy or behaviour, to obtain from it the subordination of the exercise of its sovereign rights, secure advantages of any kind, to signal, coerce or punish.

Conclusion

This detailed analysis of the types and legality of unilateral sanctions applied without or beyond the authorisation of the UN Security Council brings me to the following conclusions.

The types, means, grounds, purposes, and targets of unilateral sanctions have expanded so much that they are often viewed as a traditional means of international intercourse aimed to protect “common goods”, including international peace and security, national security, promotion of democracy or protection of human rights, and as a softer and publicly acceptable alternative to the use of force [38; 63, p. 36] in the absence of authorisation of the UN Security Council. Contemporary developments are characterised by complicated and confusing legislation, insufficient transparency, the expansion of secondary sanctions, extraterritoriality, and overcompliance.

Any unilateral measures can only be taken by states or regional organisations in compliance with international legal standards: with authorisation of the UN Security Council acting under Chapter VII of the UN Charter in response to a breach of peace, a threat to peace or an act of aggression; if they do not violate any international treaty or customary norm in force between corresponding states or if their wrongfulness is excluded in accordance with international law in the course of countermeasures, in full compliance with the rules of law of international responsibility.

Economic sanctions encompass an extremely broad scope of unilateral measures, such as freezing assets of central banks or government-owned companies, introducing trade or economic embargoes, impeding bank transfers, and freezing bank accounts and transactions of private individuals and companies.

The goals of any measures taken by states and regional organisations without authorisation of the UN Security Council must be legal and legitimate, but this fact is without any prejudice to the legality of the measures taken. Any unilateral measure must be taken in conformity with the principles of international law, including the prohibition of the use of force, non-intervention in the domestic affairs of states, non-discrimination, sovereign equality, promotion and protection of human rights as well as other relevant treaty law and customary norms of international law. Any references to “common goods”

purposes, states of emergency and “security clauses” can only be used in strict conformity with international law with the narrowest interpretation of the terms used.

The legality of unilateral measures shall be assessed within various aspects of international law: the law of international security, international criminal law, international humanitarian law, international trade law, international human rights law, and the law of international responsibility. Spheres of international law that are more specific, such as international maritime law and international air law, shall also be considered when they are relevant. Any action that states take must be in conformity with the 1969 Vienna convention on the law of treaties.

Countermeasures are to be considered as an important mechanism to guarantee international responsibility. All countermeasures must comply with international law with due account to proportionality (to the breaches of international law by a delinquent state), necessity (no other means are available), goal (to restore the observance of international law), and limitations (prohibition to violate peremptory norms of international law, including the obligation to refrain from the threat or use of force, obligations for the protection of fundamental human rights and obligations of a humanitarian character, prohibiting reprisals).

The application of unilateral sanctions *ex officio* and freezing assets on the ground of non-recognition of election results do not correspond to customary rules of international law on the recognition of governments and judicial immunities of states and their property, affecting thus the whole populations of targeted countries. Targeted unilateral sanctions shall not be used as a supplement to already existing mechanisms, including criminal jurisdiction in the absence of grounds of jurisdiction, a much lower (nearly-non-existent) burden of proof, and the unavailability of fair trial, procedural, and access to justice guarantees.

Secondary sanctions include today measures imposed on third states and third-country nationals and entities for the violation of primary sanctions or circumvention of sanctions regimes. States are not free to adopt civil and criminal penalties for its nationals and resident companies for implementation of unilateral sanctions. The extraterritorial application of primary



and secondary sanctions and the implementation of civil and criminal penalties are illegal under international law. These measures result in growing overcompliance with sanctions regimes, exacerbating drastically negative humanitarian effect of unilateral sanctions.

As a result, a majority of unilateral sanctions adopted without or beyond the authorisation of the UN Security Council today have no grounds in international law as they do not correspond to the criteria of retortions or countermeasures, and shall be qualified thus as unilateral coercive measures.

Unilateral coercive measures are any type of measures or activity applied by states, groups of states or

regional organisations without or beyond the authorisation of the UN Security Council, not in conformity with international obligations of the sanctioning actor or the illegality of which is not excluded on the ground of the law of international responsibility, regardless of the announced purpose or objective including but not limited to economic, financial, political or any other sort of state-oriented or targeted measures applied to other states, individuals, companies or other non-governmental entities, to change their policy or behaviour, to obtain from it the subordination of the exercise of its sovereign rights, secure advantages of any kind, to signal, coerce or punish.

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