



PERSONAL IMMUNITY OF STATE OFFICIALS AND APPLICATION OF UNILATERAL COERCIVE MEASURES

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Unilateral coercive measures (UCMs) can be imposed against different types of officials including those who hold high-ranking offices. At the same time in accordance with international law heads of state, heads of government and ministers of foreign affairs enjoy absolute immunity from criminal and civil foreign jurisdiction. Therefore, it's unclear whether UCMs, adopting against such foreign state officials, are in conformity with international legal norms on immunity. Thus, the article attempts to reveal the scope of immunity *ratione personae* in the context of the application of UCMs. It specifies theoretical aspects of the topic (defines the scope of personal immunity of state officials, the essence and legality of UCMs under international law), addresses specific problems arising out from the application of UCMs against high-ranking officials. Moreover, the paper identifies the interplay between international legal norms on immunity and norms regarding UCMs and on this basis reveals the types of such measures and the circumstances under which they can be considered as legal.

Keywords: personal immunity; absolute immunity; high-ranking state officials; unilateral coercive measures; sanctions.

ЛИЧНЫЙ ИММУНИТЕТ ДОЛЖНОСТНЫХ ЛИЦ И ПРИМЕНЕНИЕ ОДНОСТОРОННИХ ПРИНУДИТЕЛЬНЫХ МЕР

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Односторонние принудительные меры (ОПМ) могут применяться к различным должностным лицам, в том числе и занимающим высокие должности. При этом в соответствии с международным правом главы государств, правительств и министры иностранных дел пользуются абсолютным иммунитетом от уголовной и гражданской юрисдикции иностранного государства. В связи с этим не вполне ясно, соответствуют ли ОПМ, принимаемые против таких должностных лиц иностранного государства, международным правовым нормам об иммунитете. Таким образом, автором предпринята попытка раскрыть объем иммунитета *ratione personae* в контексте применения ОПМ. В исследовании конкретизируются теоретические аспекты темы (определяется объем личного иммунитета должностных лиц, а также сущность и правомерность введения ОПМ в соответствии с международным правом), рассматриваются конкретные проблемы, возникающие в результате применения ОПМ против высокопоставленных должностных лиц. Кроме того, определяется взаимосвязь международно-правовых норм об иммунитетах и норм, касающихся ОПМ, и на этой основе выявляются типы последних, а также обстоятельства, при которых такие меры могут считаться правомерными.

Ключевые слова: личный иммунитет; абсолютный иммунитет; высокопоставленные государственные служащие; односторонние принудительные меры; санкции.

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It's widely accepted, that heads of state, heads of government, ministers of foreign affairs (so-called troika) enjoy full or absolute immunity from foreign jurisdiction¹.

These high-ranking officials² exercise "a number of important powers in international relations ex officio", being "the highest representatives of their states" [1, p. 392]. Thus, the immunity concerned is granted not for their "personal benefit, but to ensure the effective performance of their functions on behalf of their respective state"³. For so long as they are in office, heads of state, heads of government and ministers of foreign affairs enjoy complete personal immunity from any exercise of enforcement jurisdiction and from the proceedings before foreign domestic courts, for both private and public acts [2; 3].

States and regional international organisations don't often resort to restrictive measures in respect to troika. As it was commented by J. Earnest, a former White House press secretary, "sanctions is an extreme measure to be taken against heads of states"⁴. However, there are enough examples of cases where such measures were

imposed on foreign high-ranking officials (B. al-Asad⁵, D. Trump⁶, N. Maduro⁷, J. Montserrat⁸, R. Mugabe⁹, F. Mekdad¹⁰, M. Pompeo¹¹, J. Zarif¹², etc.).

The rationale for sanctions imposed against heads of state, heads of government and ministers of foreign affairs can be different and includes "threat to transition to democracy"¹³, "undermining democratic processes and institutions"¹⁴, "human rights violations", "grave human rights violations"¹⁵, existence of "illegitimate regime"¹⁶, "participation in terrorist and anti-human rights acts against sanctioning state and its nationals"¹⁷, "the continued lack of respect for human rights, democracy and rule of law"¹⁸, "the continued brutal repression and violation of human right"¹⁹ etc. Therefore, in general, unilateral coercive measures (UCMs) against troika are imposed in relation to allegedly committed violations of human rights by any of these high-ranking officials or the lack of democracy in the states they represent.

Taking into account an initial goal of granting personal immunity in line with the principle of sovereign equality alongside with the scope of personal immunity that troika enjoys abroad, it's unclear whether unilateral

¹Case concerning the arrest warrant (the Democratic Republic of Congo v. Belgium). Judgment // Annual Reports of Internatl. Court of Justice. 2020. P. 3. Para 54 ; *Webb P.* International judicial integration and fragmentation. Oxford : Oxford Univ. Press, 2013. P. 544.

²The present research understands the term "high-ranking official" as covering those holding such offices as head of state, head of government and minister of foreign affairs.

³Case concerning the arrest warrant (the Democratic Republic of Congo v. Belgium). Judgment // Annual Reports of Internatl. Court of Justice. 2020. P. 3. Para. 53.

⁴В Белом доме объяснили, почему не ввели санкции против президента РФ [Электронный ресурс]. URL: <https://tass.ru/mezhdunarodnaya-panorama/3921882> (дата обращения: 12.04.2021).

⁵Council implementing regulation (EU) No. 504/2011 of 23 May 2011 implementing Regulation (EU) No. 442/2011 concerning restrictive measures in view of the situation in Syria // Official Journ. of the Europ. Union. Series Legislation. 2011. No. 136. P. 91.

⁶Tehran sanctions high-ranking US officials for their role in terrorism, anti-Iran measures [Electronic resource]. URL: <https://en.irna.ir/news/84191002/Tehran-sanctions-high-ranking-US-officials-for-their-role-in> (date of access: 13.04.2021).

⁷Sanctions list search [Electronic resource]. URL: <https://sanctionssearch.ofac.treas.gov/Details.aspx?id=22790> (date of access: 13.04.2021).

⁸Treasury sanctions Venezuelan minister of foreign affairs [Electronic resource]. URL: <https://home.treasury.gov/news/press-releases/sm670> (date of access: 13.04.2021).

⁹Sanctions list search [Electronic resource]. URL: <https://sanctionssearch.ofac.treas.gov/Details.aspx?id=7480> (date of access: 13.04.2021).

¹⁰Szucs A. EU puts new Syrian foreign minister to sanctions list [Electronic resource]. URL: <https://www.aa.com.tr/en/europe/eu-puts-new-syrian-foreign-minister-to-sanctions-list/2111546> (date of access: 13.04.2021).

¹¹Tehran sanctions high-ranking US officials for their role in terrorism, anti-Iran measures [Electronic resource]. URL: <https://en.irna.ir/news/84191002/Tehran-sanctions-high-ranking-US-officials-for-their-role-in> (date of access: 13.04.2021).

¹²Treasury designates Iran's foreign minister Javad Zarif for acting for the supreme leader of Iran [Electronic resource]. URL: <https://home.treasury.gov/news/press-releases/sm749> (date of access: 13.04.2021).

¹³Proclamation 8015 – suspension of entry as immigrants and nonimmigrants of persons responsible for policies or actions that threaten the transition to democracy in Belarus [Electronic resource]. URL: <https://www.presidency.ucsb.edu/documents/proclamation-8015-suspension-entry-immigrants-and-nonimmigrants-persons-responsible-for> (date of access: 13.04.2021).

¹⁴Zimbabwe-related sanctions [Electronic resource]. URL: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/zimbabwe-related-sanctions> (date of access: 13.04.2021) ; Belarus sanctions [Electronic resource]. URL: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/belarus-sanctions> (date of access: 13.04.2021).

¹⁵Syria sanctions [Electronic resource]. URL: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/syria-sanctions> (date of access: 13.04.2021).

¹⁶Executive order 13857 of 25 January 2019 taking additional steps to address the national emergency with respect to Venezuela.

¹⁷Iran imposes sanctions on Trump, senior US officials [Electronic resource]. URL: <https://www.aljazeera.com/news/2021/1/19/iran-designates-senior-us-officials-including-trump-terrorists> (date of access: 13.04.2021).

¹⁸Council decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus // Official Journ. of the Europ. Union. Series Legislation. 2012. No. 285. P. 1–52.

¹⁹Council regulation (EU) No. 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No. 442/2011 // Official Journ. of the Europ. Union. Series Legislation. 2012. No. 16. P. 1–32.



coercive measures (UCMs), adopted against these foreign state officials, are in conformity with international legal norms on immunity.

It's worth noting, that personal immunity of heads of state, heads of government and ministers of foreign affairs is not codified yet. There is also no treaty, which specifically deals with restrictive measures. As A. Douhan underlined, these measures can be differently qualified under international law [4, p. 68]. As a result, there is no common understanding neither of the concept of immunity of foreign state officials nor possible scope, limitations and legal basis for the imposition of unilateral coercive measures as such and, in particular, those taken against troika.

Another important issue that can arise in the context of the topic discussed is the impact of recognition on personal immunity and consequently on legal qualification of UCMs imposed against high-ranking officials of partially recognised states. In fact, states

tend to provide immunity for high-ranking officials of the states and governments they recognise²⁰. Thus, any UCM taken against a head of state, head of government or minister of foreign affairs of partially recognised state can potentially impede their possibility to enter into international relations with those actors that consider their government legitimate.

Seizure of power by rebellion groups, whose members are in the sanctions lists, and an issue of immunities that might be raised in this situation could be also of particular academic interest²¹.

The issues of immunity and UCMs have usually been addressed separately in academic publications. This emphasises the topicality and novelty of the present research.

In this regard, the article concerns legal qualification of UCMs imposed against troika in the light of existing international rules on the immunity of state officials from foreign jurisdiction.

The scope of personal immunity of troika

Immunities provided to foreign public officials are crucial for interstate relations and are conferred upon state officials by virtue of international law to ensure the proper functioning of particular state services, to guarantee effective communication between states and prevent any intervention in the domestic affairs of the state represented by those officials [1, p. 381; 6]. However, this legal protection should be considered only as a procedural bar from foreign jurisdiction²². It is temporary in nature, "since immunity *ratione personae* ends at the moment when the person ceases to hold the office that conferred immunity"²³. In fact, it means that the issue of immunity should be analysed primarily within the exceptions to adjudication and enforcement jurisdiction of the state.

As it has been mentioned before, there is no comprehensive treaty on immunities. Immunities mainly are regulated by international customary law [7, p. 77–89]. There are several treaties, which partly address this matter and mostly refer to diplomatic and consular immunity, as well as, immunity of special missions²⁴. In particular, the Convention on diplomatic relations of 1961 can't be applicable to the area discussed as

such. However, its certain norms of customary nature are "necessarily applicable to heads of state", heads of government and ministers of foreign affairs²⁵.

The UN Convention on jurisdictional immunities of states and their property doesn't address the matter under consideration, since it grants immunity *ratione materiae* for acts of state officials, excluding "the immunity *ratione personae* enjoyed by high ranking officials of the state by virtue of their office" [1, p. 350].

The issue of "immunity of state officials from foreign criminal jurisdiction" has a place in the long-term programme of the International Law Commission (ILC) work since 2006²⁶. However, immunity from foreign civil and administrative jurisdiction doesn't fall within the scope of work of the ILC on this matter. Therefore, the legal framework for immunity of troika includes international customary norms and treaty provisions on the immunity of special missions.

Before outlining the scope of personal immunity of high-ranking officials, it's necessary to reveal the offices that can confer such immunity.

Domestic legislation usually establishes the structure of the state and defines offices connected with

²⁰Immunity of state officials from foreign criminal jurisdiction. Document A/CN.4/601. Para 122 [Electronic resource]. URL: https://legal.un.org/ilc/documentation/english/a_cn4_601.pdf (date of access: 13.04.2021).

²¹Krauss J. Taliban take over Afghanistan: what we know and what's next [Electronic resource]. URL: <https://apnews.com/article/taliban-takeover-afghanistan-what-to-know-1a74c9cd866866f196c478aba21b60b6> (date of access: 13.04.2021).

²²Case concerning the arrest warrant (the Democratic Republic of Congo v. Belgium). Judgment // Annual Reports of Internatl. Court of Justice. 2002 P. 3. Para 60.

²³Immunity of state officials from foreign criminal jurisdiction. Document A/CN.4/654 [Electronic resource]. URL: https://legal.un.org/ilc/documentation/english/a_cn4_654.pdf (date of access: 13.04.2021).

²⁴Vienna convention on diplomatic relations of 18 April 1961. 500 UNTS 95 ; Vienna convention on consular relations of 24 April 1963. 596 UNTS 261 ; Convention on special missions of 8 December 1969. 1400 UNTS 231 ; Vienna convention on the representation of states in their relations with international organisations of a Universal character of 14 March 1975. UN Doc. A/CONF.67/16.

²⁵Certain questions of mutual assistance in criminal matters (Djibouti v. France). Judgment // Annual Reports of Internatl. Court of Justice. 2008. P. 177. Para 174.

²⁶Summaries of the work of the International Law Commission [Electronic resource]. URL: https://legal.un.org/ilc/summaries/4_2.shtml (date of access: 13.04.2021).



the representation of state or the performance of state functions²⁷. Thus, it's up to national legislation (more often to the Constitution) of a state to define an office which is associated with the exercise of powers of the head of state or the head of government and to allocate the powers conferred.

As for the minister of foreign affairs, he (she) is “in charge of his or her government's diplomatic activities and generally acts as its representative in international negotiations and intergovernmental meetings. Ambassadors and other diplomatic agents carry out their duties under his or her authority, his or her acts may bind the state represented, and there is a presumption that a minister of foreign affairs, simply by virtue of that office, has full powers to act on behalf of the state”²⁸.

In certain countries a head of State is viewed only as a symbol of the nation and doesn't possess any considerable authority [8, p. 420]. Nevertheless, as Chudakov emphasises “a representative capacity is the most common power of head of state” [8, p. 420]. So, it belongs to any head of State regardless the scope of its authority in accordance with domestic law.

Heads of state, heads of government and ministers of foreign affairs have exclusive powers in relation to external relations of their state. For example, in virtue of their functions, they perform all acts relating to the conclusion of a treaty (art. 7 (2) (a) of the Vienna convention on the law of treaties²⁹); formulate unilateral declarations that bind the state internationally (art. 4 of the Guiding principles applicable to unilateral declarations of states capable of creating legal obligations, with commentaries thereto³⁰). Thus, the component of state sovereignty related to external relations is implemented through the fulfilment of representative functions by troika.

It's worth noting, that domestic law usually confers considerable powers upon heads of state, heads of government and ministers for foreign affairs. Heads of state or heads of government or, sometimes, both are granted non-delegable powers in the most sensitive areas of politics (external relations, military and security areas, powers to appoint other high-ranking officials, certain powers to participate in legislative process etc.). It means that a state can't normally function if its head or head of government can't exercise their authority freely and without any interference. The International Court of Justice (ICJ) clarified, that immunity and invio-

lability “protect the individual concerned against any act of authority of another state which would hinder him or her in the performance of his or her duties”³¹. Therefore, it's a sovereign capacity to enter into relations with other states is threatened when personal immunity of troika is challenged.

The ICJ in the Arrest warrant case held that “head of state, head of government and minister of foreign affairs, enjoy immunities from jurisdiction in other states, both civil and criminal”³². Nevertheless, this doesn't entail impunity for those high-ranking officials who committed crimes. Personal immunity can't be invoked in their state and international criminal tribunals; it can be waived by their state itself; and finally, it stops after the expiry of office. Further, it doesn't not apply in respect of acts committed prior or subsequent to the term of office and acts committed during that period of office in a private capacity [9, p. 867].

It's also worth noting that troika enjoys absolute inviolability and shall not be liable to any form of arrest or detention on the territory of a foreign state³³. It means that any “measures of constrains” shouldn't be applicable with due respect to the immunity of such high-ranking officials.

In fact, personal immunity from civil and administrative jurisdiction is not absolute³⁴. As M. N. Shaw claims “international law has traditionally made a distinction between the official and private acts of a head of state” [10, p. 657]. This difference is usually considered in the context of civil and administrative jurisdiction.

It's widely accepted that heads of state, heads of government and ministers of foreign affairs enjoy personal immunity at least to the same extent that provided for members of special missions in accordance with the UN Convention on special missions [11, p. 40]. Art. 31 of the UN Convention on special mission contains four exceptions from immunity from civil and administrative jurisdiction in the case of following:

- a real action relating to private immovable property situated in the territory of the receiving state, unless the person concerned holds it on behalf of the sending state for the purposes of the mission;
- an action relating to succession in which the person concerned is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending state;

²⁷Blaškić case. Judgement on the request of the Republic of Croatia for review of the decision of Trial Chamber II of 18 July 1997. Para 41. [Electronic resource]. URL: <https://www.icty.org/x/cases/blaskic> (date of access: 14.04.2021).

²⁸Case concerning the arrest warrant (the Democratic Republic of Congo v. Belgium). Judgment // Annual Reports of Internatl. Court of Justice. 2002. P. 3. Para. 53.

²⁹Vienna convention on the law of treaties of 23 May 1969. 1155 UNTS 331.

³⁰Guiding principles applicable to unilateral declarations of states capable of creating legal obligations, with commentaries thereto 2006 [Electronic resource]. URL: https://odireitointernacionalpublico.files.wordpress.com/2019/10/9_9_2006.pdf (date of access: 14.04.2021).

³¹Certain questions of mutual assistance in criminal matters (Djibouti v. France). Judgment // Annual Reports of Internatl. Court of Justice. 2008. P. 177. Para 170.

³²Case concerning the arrest warrant (the Democratic Republic of Congo v. Belgium). Judgment // Annual Reports of Internatl. Court of Justice. 2002. P. 3. Para 53.

³³Certain questions of mutual assistance in criminal matters (Djibouti v. France). Judgment // Annual Reports of Internatl. Court of Justice. 2008. P. 177. Para 174 ; Immunities from jurisdiction and execution of heads of state and of government in international law. Art. 1 [Electronic resource]. URL: https://www.idi-iiil.org/app/uploads/2017/06/2001_van_02_en.pdf (date of access: 13.04.2021).

³⁴Ibid.



- an action relating to any professional or commercial activity exercised by the person concerned in the receiving state outside his official functions;
- an action for damages arising out of an accident caused by a vehicle used outside the official functions of the person concerned³⁵.

Moreover, no measures of execution may be taken in respect of a representative of the sending state in the special mission or a member of its diplomatic staff except in the cases indicated below and provided that the measures concerned can be taken without infringing the inviolability of his (her) person or his (her) accommodation.

However, the UN Convention on special missions stipulates that "the head of the government, the minister for foreign affairs and other persons of high rank, when they take part in a special mission of the sending state, shall enjoy in the receiving state or in a third state, in addition to what is granted by the present convention, the facilities, privileges and immunities accorded by international law"³⁶. This allows to assume that the scope of personal immunity of troika having official visits to foreign states is broader than that prescribed by the Convention on special missions.

The scope of such immunity might be deduced from the Resolution of the Institute of International Law on immunities from jurisdiction and execution of heads of state and of government in international law (resolution). In accordance with the resolution heads of state, heads of government may not be given immunity from foreign administrative and civil jurisdiction in respect of a counterclaim and if a conduct under consideration is not performed in the exercise of his or her official functions³⁷. However, any court proceedings with regard to the head of state or head of government can't be held while he or she is in the territory of that state, in the exercise of official functions.

It means that when a head of state or head of government visits the country for official purposes he (she) should enjoy absolute immunity from administrative and civil jurisdiction [1, p. 379–411]. As M. Dixon notes, describing the domestic regulation on immunities in the UK, if the head of State visits the UK for public purposes the law "provides for immunity in the same circumstances as the state simply because the head is "the state" in such cases" [12, p. 206].

Any criminal investigation initiated against high-ranking officials before they took office would not have any effect on their ability to make visits to foreign countries, including the country in which the investigation was started. In July 2001, the Prosecutor General's Office of the Russian Federation opened a criminal case against Yu. Tymoshenko. In 2005 Prosecutor General of the Russian Federation declared that Yu. Tymoshenko could visit the Russian Federation since she would have a personal immunity as a prime minister of Ukraine during her official visit to Moscow³⁸.

The resolution also addresses the acts in relation to property belonging to the head of state or head of government in time he (she) is not present in the territory of the foreign state. Art. 4 of the resolution stipulates that such property located in the territory of a foreign state, first of all, "may not be subject to any measure of execution except to give effect to a final judgement, rendered against such head of state or head of government"³⁹. Secondly, it can be subjected to provisional measures with respect to those funds or assets, as are necessary for the maintenance of control over them while the legality of the appropriation remains insufficiently established when a serious doubt arises as to the legality of the appropriation of a fund or any other asset held by, or on behalf of, the head of state or head of government⁴⁰.

The types of UCMs imposed against troika and their legal qualification

States and international organisations take a wide range of UCMs (arms embargoes, restrictions on imports and exports, restrictions on engaging in commercial activities, etc.). However, only a few of

them can potentially be applicable to individuals. The contemporary list of UCMs being imposed on troika includes travel restrictions and freezing of assets⁴¹.

³⁵Convention on special missions of 8 December 1969. 1400 UNTS 231.

³⁶Ibid. Art. 21(2).

³⁷Immunities from jurisdiction and execution of heads of state and of government in international law [Electronic resource]. URL: https://www.idi-iil.org/app/uploads/2017/06/2001_van_02_en.pdf (date of access: 13.04.2021).

³⁸Порошенко: "Визит Тимошенко в Россию состоится в ближайшее время" [Электронный ресурс]. URL: https://vsluh.ru/novosti/obshchestvo/poroshenko-vizit-timoshenko-v-rossiyu-sostoitsya-v-blizhayshee-vremya_48359/ (дата обращения: 13.04.2021).

³⁹Immunities from jurisdiction and execution of heads of state and of government in international law [Electronic resource]. URL: https://www.idi-iil.org/app/uploads/2017/06/2001_van_02_en.pdf (date of access: 13.04.2021).

⁴⁰Ibid.

⁴¹Treasury designates Iran's foreign minister Javad Zarif for acting for the supreme leader of Iran [Electronic resource]. URL: <https://home.treasury.gov/news/press-releases/sm749> (date of access: 13.04.2021); Proclamation 8015 – suspension of entry as immigrants and nonimmigrants of persons responsible for policies or actions that threaten the transition to democracy in Belarus [Electronic resource]. URL: <https://www.presidency.ucsb.edu/documents/proclamation-8015-suspension-entry-immigrants-and-nonimmigrants-persons-responsible-for> (date of access: 13.04.2021); Zimbabwe-related sanctions [Electronic resource]. URL: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/zimbabwe-related-sanctions> (date of access: 13.04.2021); Belarus sanctions [Electronic resource]. URL: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/belarus-sanctions> (date of access: 13.04.2021); Syria sanctions [Electronic resource]. URL: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/syria-sanctions> (date of access: 13.04.2021); Council decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria // Official Journ. of the Europ. Union. Series Legislation. 2013. No. 147. P. 14–45; Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus // Official Journ. of the Europ. Union. Series Legislation. 2012. No. 285. P. 1–52, etc.



Before giving legal qualification of specific UCMs adopted against high-ranking officials it's necessary to define the legality of UCMs, in general, since "the legal status of specific unilateral sanctions is not always clear from the standpoint of international law"⁴².

Firstly, UCM is a very broad term that can encompass a range of measures adopted by states [4, p. 69]. Each measure imposed by a state as a part of UCMs should be addressed and qualified separately with due respect to all the circumstances of a certain case.

Secondly, UCMs are measures of pressure aimed at certain objectives (promotion of democracy or human rights in third countries etc.). However, as A. Douhan explains, "the application of pressure will correspond to the requirements of the UN Charter only if it is legal under international law; it is taken with prior explicit authorisation of the UN Security Council; or its illegality is excluded on other grounds, e. g. in the course of countermeasures" [4, p. 69].

The illegality of USMs is excluded when they are adopted under the consent of state or countermeasures. In their turn, the consent and the countermeasures should also meet certain requirements set forth in international law, namely formulated in the Draft articles on responsibility of states for internationally wrongful acts of 2001.

When it comes to lawful UCMs in accordance with international law, they mainly include the measures within a sovereign right of state to choose areas and partners for possible international cooperation and retortions.

Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are prohibited by international law⁴³.

Therefore, from international law perspective all measures adopted against "troika" can be qualified as following:

- lawful measures since they don't fall within the scope of personal immunity (those taken against former high-ranking officials, exercised in accordance with the UN Security Council resolutions, taken in accordance with art. 89 of the Rome statute of the ICC etc.);
- lawful measures that fall within the scope of immunity, but are adopted on lawful grounds (e. g., countermeasures);
- lawful by nature, but unlawful on the grounds on which they are imposed (e. g., taken against former high-ranking officials in order to interfere in internal affairs of a state);
- unlawful measures since they don't comply with international obligations as such (e. g., taken in breach of a peremptory norm of international law or obligations in accordance with the UN Charter);
- unlawful since they are covered by personal immunity of high-ranking officials.

If it's quite clear that states should refrain from taking unlawful UCMs, there is still questionable whether lawful UCMs should be structured in a way that takes into account personal immunities of troika. This issue mostly concerns a delisting process, which usually starts from a delisting petition⁴⁴. Thus, UCMs don't terminate automatically when a person from a sanctions list is elected or appointed as a head of state, head of government or minister for foreign affairs. In this situation, the delisting procedure with respect to a member of troika might be considered as a violation of sovereign equality of states or in some cases as an intervention into domestic affairs of a state.

Status of travel bans as a restrictive measure

Travel bans are frequently used in international practice, as such. Any state is free to restrict the appearance of undesirable persons on its territory, including those exercising external relations (art. 23 of the Vienna convention on consular relations, art. 9 of the Vienna convention on diplomatic relations, art. 12 of the convention on special missions). Such actions are usually considered as unfriendly, but lawful measures in accordance with international law. It's worth mentioning that the procedure of declaring *persona non grata*

does not apply to the head of state, head of government or minister of foreign affairs, when they participate in a special mission⁴⁵.

As the European Court of Justice (ECJ) held in the case Hungary v Slovak Republic "the fact that a union citizen performs the duties of a head of state is such as to justify a limitation, based on international law, on the exercise of the right of free movement conferred on that person by art. 21 of Treaty on the functioning of the European Union (EU)"⁴⁶.

⁴²Negative impact of unilateral coercive measures: priorities and road map. Report of the special rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights [Electronic resource]. URL: <https://undocs.org/en/A/HRC/45/7> (date of access: 19.04.2021).

⁴³Declaration on principles of international law concerning friendly relations and co-operation among states in accordance with the Charter of the United Nations [Electronic resource]. URL: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/25A1C8E35B23161C852570C4006E50AB> (date of access: 13.04.2021).

⁴⁴Leñez A. How to get off the sanctions list: comparing OFAC and EU [Electronic resource]. URL: <https://sanctionsassociation.org/how-to-get-off-the-sanctions-list-comparing-ofac-and-eu/> (date of access: 13.09.2021).

⁴⁵Draft articles on special missions with commentaries [Electronic resource]. URL: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_3_1967.pdf (date of access: 17.04.2021).

⁴⁶Hungary v. Slovak Republic : judgment of the Court (Grand Chamber) of 16 Oct. 2012. Para 51 [Electronic resource]. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62010CJ0364&qid=1620593767773> (date of access: 17.04.2021).



At the same time, such a ban may hinder the ability of the state to exercise one of the functions of the state (for instance, to implement its external policy). When determining the extent of the immunities of the incumbent minister for foreign affairs the ICJ indicated that “in the performance of his (her) functions, he or she is frequently required to travel internationally, and thus must be in a position freely to do so...”. The court further observed that a minister for foreign affairs, responsible for the conduct of his or her state’s relations with all other states, occupying a position such that, like the head of state or the head of government, he or she is recognised under international law as representative of the state solely by virtue of his or her office⁴⁷. The court accordingly concluded that the functions of a minister of foreign affairs are such that, throughout the duration of his (her) office, he (she) when abroad enjoys full immunity from foreign criminal jurisdiction. That immunity... protects the individual concerned against any act of authority of another state which would hinder him or her in the performance of his or her duties⁴⁸. This can be applicable mutatis mutandis to immunity from foreign administrative jurisdiction when the act of public authority has the same effect as described in the decision of the ICJ.

Travel restrictions adopted as UCMs include measures taken to prevent the entry into or transit through the territory (territories) of a state (states) that impose this kind of restrictive measure⁴⁹.

As it has been stated in the previous section, any measure including travel restrictions should correspond to international obligations. Domestic law or acts of international organisations can provide for exceptions from the travel restrictions imposed against individuals.

General exceptions to travel restrictions can include those deriving from applicable international obligations of a state that imposes sanctions (e. g., the Agreement regarding the headquarters of the UN, between the UN

and the US⁵⁰; any multilateral agreement conferring privileges and immunities; the Treaty of conciliation (Lateran pact) concluded by the Holy See (State of the Vatican City) and Italy and also obligations of a host country of an international intergovernmental organisation or to an international conference convened by or under the auspices of the UN)⁵¹.

Exceptions to travel bans may also contain other grounds such as urgent humanitarian need, or grounds of attending intergovernmental meetings, including those promoted by the EU, or hosted by a member state holding the chairmanship in the office of the Organisation for security and co-operation in Europe (OSCE), where a political dialogue is conducted that directly promotes democracy, human rights and the rule of law in (country)⁵².

Moreover, what is more important, such exceptions can derive directly from the UN Charter (namely art. 105 (2))⁵³ and the Convention on the privileges and immunities of the UN (art. IV, section 11(d))⁵⁴.

At the same time, national legislation on sanctions is often to a wide extent fragmented⁵⁵ and may not include even those exceptions that have been indicated below⁵⁶.

All the exceptions concerned are fully relevant to high-ranking officials. As D. Akande stresses there is “no exception to the principle that the host state is obliged to permit entry to state representatives wishing to attend UN meetings” [5].

Moreover, there are some special grounds on which broader exceptions to travel restrictions against troika should be provided.

The UN Charter envisages the cases where all states are obliged to cooperate (obligation to settle disputes peacefully (art. 2(3)), to comply with the decisions of the UN Security Council (art. 25), to provide every assistance in any action the UN takes in accordance with the present Charter (art. 2(5)). The obligations under the UN Charter prevail over any other international

⁴⁷Case concerning the arrest warrant (the Democratic Republic of Congo v. Belgium). Judgment // Annual Reports of Internatl. Court of Justice. 2002. P. 3. Para 53.

⁴⁸Ibid. Para 54.

⁴⁹Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU common foreign and security policy of 4 May 2018. Para 68 [Electronic resource]. URL: <https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf> (date of access: 17.04.2021) ; Zimbabwe sanctions regime [Electronic resource]. URL: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/zimbabwe-sanctions-regime> (date of access: 17.04.2021).

⁵⁰Global Magnitsky human rights accountability act of 18 April 2016. Sec. 284 [Electronic resource]. URL: <https://www.govtrack.us/congress/bills/114/s284/text> (date of access: 17.04.2021).

⁵¹Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU common foreign and security policy of 4 May 2018. Para 80 [Electronic resource]. URL: <https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf> (date of access: 17.04.2021).

⁵²Ibid.

⁵³Charter of the United Nations of 24 October 1945.

⁵⁴Convention on the privileges and immunities of the United Nations of 13 February 1946 [Electronic resource]. URL: <https://www.refworld.org/docid/3a6b3902.html> (date of access: 29.07.2021).

⁵⁵Types of sanctions. Government of Canada [Electronic resource]. URL: <https://www.international.gc.ca/world-monde/international-relations-relations-internationales/sanctions/types.aspx?lang=eng> (date of access: 17.04.2021).

⁵⁶Autonomous sanctions act No. 38 of 2011 [Electronic resource]. URL: <https://www.legislation.gov.au/Details/C2011A00038> (date of access: 17.04.2021) ; Autonomous sanctions regulations No. 247 of 2011 [Electronic resource]. URL: <https://www.legislation.gov.au/Details/F2017C00637> (date of access: 17.04.2021) ; Justice for victims of corrupt foreign officials act (Sergei Magnitsky law) SC 2017, c 21 [Electronic resource]. URL: <https://www.canlii.org/en/ca/laws/astat/sc-2017-c-21/latest/sc-2017-c-21.html> (date of access: 17.04.2021).



obligations (art. 103 of the UN Charter). The duties to co-operate with one another in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from any discrimination are also reiterated as core principles of international cooperation in the Declaration on principles of international law friendly relations and cooperation among states in accordance with the Charter of the UN of 24 October 1970 and the Helsinki final act of the Conference on security and co-operation in Europe of 1975.

All states also are under a positive duty to cooperate in order to bring to end serious breaches in the sense of art. 40 of the Articles on state responsibility for internationally wrongful acts. As the ILC comments “such cooperation must be [carried out] through lawful means, the choice of which will depend on the circumstances of the given situation. It is, however, clear that the obligation to cooperate applies to states whether or not they are individually affected by the serious breach”⁵⁷. The ILC also underlines that such cooperation should be carried in the framework of competent international organisations and, in particular, the UN⁵⁸.

However, states do not always allow those under sanctions to attend an international meeting held on their territory. For instance, in 1988 the USA denied “Palestinian leader Yasser Arafat a visa to give a speech at the UN because of his links to terrorism”⁵⁹. The UN General Assembly condemned this decision and regarded it as a violation of international law⁶⁰. At the same time, in September 2019 the USA issued visas for Iran’s minister for foreign affairs Rouhani Zarif to travel to UN meeting despite the fact they had imposed travel restrictions against him in July 2019⁶¹. However, the main ground for that was not a personal immunity enjoyed

by the minister for foreign affairs, but section 11 of the Agreement between the United Nations and the United States of America regarding the headquarters of the United Nations of 1947⁶². Nevertheless, the US practice in the area discussed is quite inconsistent⁶³. This is also fair with respect to other states⁶⁴.

Since troika grantees of non-delegable powers in sensitive areas of politics, state functions in the external area often can’t be performed by other officials. In this situation, travel bans imposed against such high-ranking officials can be considered as serious impediments for targeted states to fulfil their obligations in accordance with the UN Charter or peremptory norms of international law. Therefore, travel bans shouldn’t be applied to heads of state, heads of government and ministers of foreign affairs when the obligation to cooperate derives from the UN Charter or *jus cogens* norms.

It means, that high-ranking should be allowed to travel not only to take part in the meetings conducted within or under the auspices of the UN or the OSCE, but also in any events commensurate to the UN Charter or peremptory norms of international law (e. g., to take part in the mediation process to settle a dispute which is likely to endanger the maintenance of international peace and security).

High-ranking officials should also have a possibility to take part in the work of any international intergovernmental organisations, otherwise, the host state violates its international obligations under its treaty (treaties) concluded with such organisation(s). However, such exceptions are almost not provided by contemporary legislation of states.

At the same time, all the aforementioned exceptions can be applicable only with respect to in-person participation in the work of international organisations. Due to the COVID-19 pandemic meetings at the UN⁶⁵

⁵⁷ Draft articles on responsibility of states for internationally wrongful acts. Art. 40, 41 [Electronic resource]. URL: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf (date of access: 17.04.2021).

⁵⁸ Ibid.

⁵⁹ World leaders are gathering at the U.N. Yes, U.S. sanctions can make this complicated [Electronic resource]. URL: <https://www.washingtonpost.com/politics/2019/09/20/world-leaders-are-gathering-un-heres-why-us-sanctions-can-make-this-complicated/> (date of access: 17.04.2021).

⁶⁰ Report of the Committee on Relations with the Host Country 43/48 of 30 November 1988 [Electronic resource]. URL: https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/43/48&Lang=E&Area=RESOLUTION (date of access: 17.04.2021).

⁶¹ Treasury designates Iran’s foreign minister Javad Zarif for acting for the supreme leader of Iran [Electronic resource]. URL: <https://home.treasury.gov/news/press-releases/sm749> (date of access: 17.04.2021) ; U.S. issues visas for Iran’s Rouhani Zarif to travel to U.N. meeting [Electronic resource]. URL: <https://www.reuters.com/article/us-usa-iran-rouhani/u-s-issues-visas-for-irans-rouhani-zarif-to-travel-to-u-n-meeting-idUSKBN1W42PG> (date of access: 17.04.2021).

⁶² Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, signed at Lake Success of 26 June 1947 [Electronic resource]. URL: <https://treaties.un.org/doc/Publication/UNTS/Volume%2011/volume-11-I-147-English.pdf> (date of access: 17.04.2021).

⁶³ U.S. denies visas to Iran officials for U.N. meeting [Electronic resource]. URL: <https://www.reuters.com/article/us-iran-usa-idUSBRE8AG0F320121117> (date of access: 17.04.2021) ; Campisi J. Russia: US denied visas to UN delegation members [Electronic resource]. URL: <https://thehill.com/policy/international/russia/462723-russia-us-denied-visas-to-un-delegation-members> (date of access: 17.04.2021).

⁶⁴ Mugabe food talks trip “obscene” [Electronic resource]. URL: <http://news.bbc.co.uk/2/hi/7430421.stm> (date of access: 17.04.2021) ; Власти Чехии отказались выдать визу Лукашенко [Электронный ресурс]. URL: <https://www.pravda.com.ua/rus/news/2002/11/15/4370400/> (дата обращения: 17.04.2021).

⁶⁵ The week ahead at the United Nations [Electronic resource]. URL: <https://www.un.org/sg/en/content/the-week-ahead-the-united-nations> (date of access: 17.04.2021) ; UNSC to meet online to discuss post-COVID global security threats on Sept 24 [Electronic resource]. URL: <https://www.businesstoday.in/latest/world/story/unsc-to-meet-online-to-discuss-post-covid-global-security-threats-on-sept-24-271947-2020-09-02> (date of access: 17.04.2021) ; UN General Assembly to be held online [Electronic resource]. URL: <https://www.globaltimes.cn/content/1191309.shtml> (date of access: 17.04.2021), etc.



and other international organisations (the WHO⁶⁶, the OSCE⁶⁷, the EU⁶⁸, the EEU⁶⁹, etc.) often take place remotely. Thus, despite any travel restrictions imposed any representative of a foreign state can take part in such meetings remotely.

A non-delegable character of many powers conferred upon heads of states, heads of governments and ministers of foreign affairs makes it necessary to consider any other possible circumstances for exceptions to travel restrictions that are likely to be taken against them. Such situations may include the cases when an interest of a legal nature of the target country is involved and its visit to a foreign country is crucial for the conclusion of a treaty [13, p. 167–187], pacific settlements of a dispute⁷⁰, etc. The need to ensure personal immunity for the proper functioning of a state was also reiterated by the ICJ (Arrest warrant case Djibouti v. France case). As it emanates from the ICJ decision on the Arrest warrant case, personal immunity from foreign and civil jurisdiction “is granted against any act of authority of another state which would hinder him or her in the performance of his or her duties”⁷¹. Travel restrictions may hinder the exercise of such duties and can be imposed only with due respect to personal immunity of troika. This conclusion is even more relevant to a situation when travel restrictions are imposed on the base of office that a certain person holds⁷². So, such measures

are taken not to react to a conduct of a person, but to a particular public office of a target state as such. The effect of such measures might go far beyond unfriendly actions and under certain circumstances can amount to intervention into domestic affairs of a targeted state.

Another interesting issue is whether travel bans imposed against high-ranking official correspond to legal obligation set forth in art. 89 of the Rome statute of the International Criminal Court (ICC). In particular, the first warrant for arrest of Omar Hassan Ahmad Al Bashir was issued by the ICC on 4 March 2009. At that time Al Bashir was an acting head of state of the Republic of Sudan⁷³. In accordance with art. 89 the ICC may transmit a request for the arrest and surrender of a person to any state “on the territory of which that person may be found”⁷⁴.

Remarkably, that these states avoid sanctioning those accused of an international crime by the ICC. However, the state imposed sanctions against persons that were indicted for an offence by the International Criminal Tribunal for the former Yugoslavia (ICTY) (art. 3 of the Autonomous sanction regulation 2011)⁷⁵.

Despite the fact travel restrictions don’t violate obligations deriving from the Statute of the ICTY or the Rome statute of the ICC, their enactment may complicate the ability to bring to justice high-ranking officials responsible for gross violations of human rights.

Status of assets freezing as a restrictive measure

In comparison to travel restrictions, freezing of assets is a coercive measure usually applied by states within criminal jurisdiction. Freezing of assets is recognised as interim legal step necessary prior to the confiscation of the proceeds of crime [14, p. 236].

In accordance with art. 2 (f) of the UN Convention against transnational organised crime “freezing” or

“seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority”⁷⁶. Many other suppression conventions contain similar definitions of freezing of assets⁷⁷.

⁶⁶Seventy-fourth World health assembly [Electronic resource]. URL: <https://www.who.int/about/governance/world-health-assembly/seventy-fourth-world-health-assembly> (date of access: 17.04.2021).

⁶⁷Parry N. Swedish parliamentarian Margareta Cederfelt elected Assembly President at OSCE PA remote session [Electronic resource]. URL: <https://www.oscepa.org/en/news-a-media/press-releases/press-2021/swedish-parliamentarian-margareta-cederfelt-elected-assembly-president-at-osce-pa-remote-session> (date of access: 17.04.2021).

⁶⁸Video conference of the members of the European Council, 25 March 2021 [Electronic resource]. URL: <https://www.consilium.europa.eu/en/meetings/european-council/2021/03/25/> (date of access: 17.04.2021).

⁶⁹Заседание Высшего евразийского экономического совета 21 мая 2021 года [Электронный ресурс]. URL: <https://eec.eaeunion.org/news/zasedanie-vysshego-evrazijskogo-ekonomicheskogo-soveta-ot-21-maya-2021/> (дата обращения: 17.04.2021).

⁷⁰Case of the monetary gold removed from Rome in 1943 (preliminary question). Judgment of 15 June 1954 // Annual Reports of Internatl. Court of Justice. 1954. P. 19, 32.

⁷¹Case concerning the arrest warrant (the Democratic Republic of Congo v. Belgium). Judgment // Annual Reports of Internatl. Court of Justice. 2002. P. 3. Para 54.

⁷²Executive order 13692 of 8 March 2015 blocking property and suspending entry of certain persons contributing to the situation in Venezuela. 80 FR 12747.

⁷³The Prosecutor v. Omar Hassan Ahmad Al Bashir [Electronic resource]. URL: [ICC-02/05-01/09 https://www.icc-cpi.int/darfur/albashir](https://www.icc-cpi.int/darfur/albashir) (date of access: 17.04.2021).

⁷⁴Rome statute of the International Criminal Court of 17 July 1998. 2187 UNTS 3.

⁷⁵Autonomous sanctions regulation 2011 [Electronic resource]. URL: <https://www.legislation.gov.au/Details/F2017C00637> (date of access: 17.04.2021).

⁷⁶United Nations Convention against transnational organised crime of 15 November 2000. 2225 UNTS 209.

⁷⁷United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances of 20 December 1988. 1582 UNTS 95.



For the purpose of adopting restrictive measures other terms can also be applicable. They include *freezing of economic resources, freezing of funds*⁷⁸, *blocking of property*⁷⁹. Sometimes domestic legislation on sanctions may not use any terms at all⁸⁰. The meaning of the aforementioned terms is very close to those provided by the suppression conventions. In accordance with a sample definition proposed by the EU Guidelines on implementation and evaluation of restrictive measures freezing of economic resources means “preventing their use to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them”⁸¹.

Freezing of assets might also be applicable within civil and administrative jurisdiction. It’s worth noting that UCMs are taken within administrative jurisdiction.

The measures under discussion adopted as part of UCMs are imposed against troika within administrative jurisdiction and often by a public body other than a court.

As N. Boister notes, freezing of assets restricts basic rights to property and, therefore, require substantial grounds and a proper procedure. He points out this general rule is often not complied with when states are fighting against the financing of terrorism through sanctions, even imposed by the UN Security Council [14, p. 237].

The special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism Martin Scheinin raised a special concern regarding access to justice in the practice of listing and de-listing individuals and groups as terrorist by the UN Security Council, the EU and national procedures⁸². In particular, he mentioned two possible situations of concern: 1) when the indefinite freezing of the assets of those listed currently operates without a right to be de-listed, which amounts to a criminal punishment due to the severity of the sanction; 2) when listing does not result in the indefinite freezing of assets, but holds other consequences which might fall short of

a criminal punishment, but however, should provide the right to access to courts and a fair trial⁸³.

Thus, freezing of assets is a restrictive measure that can be imposed on individuals subject to certain requirements: a possibility to be de-listed, an access to courts and a fair trial, the measure itself should be temporal in nature. However, it’s worth noting that troika might lose their immunity if they resort to means of domestic legal protection, since by doing so they express their consent to exercise foreign jurisdiction over them.

Almost the same idea concerning the need to ensure human rights while imposing freezing of assets is mentioned by D. Birkett, who notes that the principles that can be deduced from the case law of the European Court of Human Rights might also have consequences for the implementation of freezing measures executed under the auspices of UN Security Council targeted sanctions. These principles include time limits, legality, legitimate aim and proportionality [15, p. 502–525]. It means that any sanctions imposed by state parties of the European convention on human rights and its protocols (namely art. 1 of the Protocol I to the convention) should comply with obligations set forth by these treaties. The need to ensure a reasonable opportunity of putting the case to the competent authorities was indicated by the ECJ as one of the main conditions to justify sanctions⁸⁴.

The grounds for freezing of assets, in fact, are often connected with allegedly committed offences (crimes against humanity, torture, corruption, etc.)⁸⁵, which also raises several questions, especially when it comes to those offences that are not considered as international crimes.

As the special rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights A. Douhan stresses “states are free to apply means of pressure <...> the illegality of which is excluded under international law, in particular, in the course of countermeasures taken in response to violations of international law committed against it or

⁷⁸Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU common foreign and security policy of 4 May 2018. Para 14, 60 [Electronic resource]. URL: <https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf> (date of access: 17.04.2021) ; Sanctions and anti-money laundering act 2018 [Electronic resource]. URL: <https://www.legislation.gov.uk/ukpga/2018/13/contents/enacted> (date of access: 19.04.2021).

⁷⁹Global Magnitsky human rights accountability act of 18 April 2016. Sec. 284 [Electronic resource]. URL: <https://www.govtrack.us/congress/bills/114/s284/text> (date of access: 18.04.2021).

⁸⁰Justice for victims of corrupt foreign officials act (Sergei Magnitsky law) SC 2017, c 21 [Electronic resource]. URL: <https://www.canlii.org/en/ca/laws/astat/sc-2017-c-21/latest/sc-2017-c-21.html> (date of access: 17.04.2021) ; About sanctions (Australian laws) [Electronic resource]. URL: <https://www.dfat.gov.au/international-relations/security/sanctions/about-sanctions#measures> (date of access: 18.04.2021).

⁸¹Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU common foreign and security policy of 4 May 2018. Para 61 [Electronic resource]. URL: <https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf> (date of access: 17.04.2021).

⁸²Protection of human rights and fundamental freedoms while countering terrorism: report of the special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Para 16 [Electronic resource]. URL: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/451/82/PDF/N0845182.pdf?OpenElement> (date of access: 11.05.2021).

⁸³Ibid.

⁸⁴Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities : judgment of the Court (Grand Chamber) of 3 Sept. 2008. Joined cases C-402/05 P and C-415/05 P. Para 368, 370. European Court Reports 2008 I-06351.

⁸⁵Council regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses // Official Journ. of the Europ. Union. Series Legislation. 2020. No. 410I. P. 1–12.



in response to violations of *erga omnes* obligations as formulated by the ICJ⁸⁶.

Contemporary legislation of the EU as well as domestic legislation of states, among others, can contain the following possible grounds for the impositions of restrictive measures:

- human rights violations (including widespread, systematic or are otherwise of serious concern violations or abuses of freedom of peaceful assembly and of association, freedom of opinion and expression, freedom of religion or belief)⁸⁷;
- certain types of transnational crime (serious corruption⁸⁸, drug-trafficking⁸⁹, transnational organised crime⁹⁰).

Meanwhile, the ICJ mentioned the prohibition of aggression, genocide, slavery, racial discrimination, torture and also the right to self-determination and certain obligations under international humanitarian law as examples of *erga omnes* obligations⁹¹. A non-exhaustive list of *jus cogens* norms developed by the ILC contains the following examples of such norms: the prohibition of aggression, genocide, crimes against humanity; racial discrimination and apartheid, slavery, torture; the basic rules of international humanitarian law; and the right of self-determination⁹².

Thus, it's possible to assert that widespread, systematic or are otherwise of serious concern violations or abuses of freedom of peaceful assembly and of association, freedom of opinion and expression, freedom of

religion or belief are unlikely to amount to *erga omnes* obligations. The prohibition of corruption or other transnational crimes doesn't give rise to obligations *erga omnes*. Therefore, freezing of assets as a possible reaction to corruption or any other criminal offences is quite questionable under international law. However, it's absolutely justifiable within criminal jurisdiction and in the framework of mutual legal assistance in criminal matters.

Nevertheless, almost any measures taken against high-ranking officials within the criminal jurisdiction of the state are not permitted under international law, since those persons enjoy full immunity from foreign criminal jurisdiction⁹³. The only exception to this derives from legal obligations arising out from the Rome Statute of the ICC (art. 91 (1k))⁹⁴. Statutes of international criminal tribunals don't prescribe such a duty. Neither does the statute of the international residual mechanism for criminal tribunals.

Domestic laws vary in respect to exceptions provided to those whose assets have been frozen. They may be granted to satisfy the basic needs of natural or legal persons, entities or bodies, and dependent family members of such natural persons; to pay expenses associated with the provision of legal services; for extraordinary expenses; to be paid into or from an account of a diplomatic or consular mission or an international organisation enjoying immunities in accordance with international law⁹⁵; for national security reasons; for the prevention

⁸⁶Negative impact of unilateral coercive measures: priorities and road map. Report of the special rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights [Electronic resource]. URL: <https://undocs.org/en/A/HRC/45/7> (date of access: 19.04.2021).

⁸⁷Council regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses // Official Journ. of the Europ. Union. Series Legislation. 2020. No. 410I. P. 1–12 ; Global Magnitsky human rights accountability act of 18 April 2016. Sec. 284 [Electronic resource]. URL: <https://www.govtrack.us/congress/bills/114/s284/text> (date of access: 18.04.2021) ; Justice for victims of corrupt foreign officials act (Sergei Magnitsky law) SC 2017, c 21 [Electronic resource]. URL: <https://www.canlii.org/en/ca/laws/astat/sc-2017-c-21/latest/sc-2017-c-21.html> (date of access: 17.04.2021), etc.

⁸⁸Global Magnitsky human rights accountability act of 18 April 2016. Sec. 284 [Electronic resource]. URL: <https://www.govtrack.us/congress/bills/114/s284/text> (date of access: 18.04.2021) ; The Global anti-corruption sanctions regulations [Electronic resource]. URL: <https://www.legislation.gov.uk/ukxi/2021/488/regulation/6/made> (date of access: 19.04.2021) ; Executive order 13818 of 20 December 2017 blocking the property of persons involved in serious human rights abuse or corruption. 82 FR 60839 ; Justice for victims of corrupt foreign officials act (Sergei Magnitsky law) SC 2017, c 21 [Electronic resource]. URL: <https://www.canlii.org/en/ca/laws/astat/sc-2017-c-21/latest/sc-2017-c-21.html> (date of access: 17.04.2021), etc.

⁸⁹Executive order 12978 of 21 October 1995 blocking assets and prohibiting transactions with significant narcotics traffickers. 60 FR 54579.

⁹⁰Executive order 13863 of 15 March 2019 taking additional steps to address the national emergency with respect to significant transnational criminal organisations. 84 FR 10255 ; Executive order 13581 of 24 July 2011 blocking property of transnational criminal organisations. 76 FR 44757.

⁹¹Barcelona traction, light and power company. Judgment // Annual Reports of Internatl. Court of Justice. 1970. P. 3. Para 33, 34 ; Legal consequences of the construction of a wall in the occupied Palestinian territory. Advisory opinion // Annual Reports of Internatl. Court of Justice. 2004. P. 136. Para 155 ; Legality of the threat or use of nuclear weapons. Advisory opinion // Annual Reports of Internatl. Court of Justice. 1996. P. 226. Para 79, etc.

⁹²Peremptory norms of general international law (*jus cogens*): text of the draft conclusions and draft annex provisionally adopted by the Drafting Committee on first reading. A/CN.4/L.936 [Electronic resource]. URL: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G19/147/22/PDF/G1914722.pdf?OpenElement> (date of access: 11.05.2021).

⁹³Case concerning the arrest warrant (the Democratic Republic of Congo v. Belgium). Judgment // Annual Reports of Internatl. Court of Justice. 2002. P. 3. Para 54 ; Immunity of state officials from foreign criminal jurisdiction text of draft articles 1, 3 and 4 provisionally adopted by the Drafting Committee at the sixty-fifth session of the International Law Commission. A/CN.4/L.814 [Electronic resource]. URL: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G13/611/78/PDF/G1361178.pdf?OpenElement> (date of access: 19.04.2021)

⁹⁴Rome statute of the International Criminal Court of 17 July 1998. 2187 UNTS 3.

⁹⁵Council regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses // Official Journ. of the Europ. Union. Series Legislation. 2020. No. 410I. P. 1–12.



or detection of serious crime in the sanctioning state or elsewhere⁹⁶; under a discretionary right of a competent public official to cease the sanctions⁹⁷; under a discretionary right of a competent public official to grant to any person from targeting state a permit to carry out a specified activity or transaction, or class of activity or transaction⁹⁸, etc.

Unfortunately, contemporary UCMs' regimes include measures imposed within administrative jurisdiction of state and don't provide necessary temporal limits for freezing of assets (with an exception set forth in art. 9 of the Autonomous sanctions regulations of Australia⁹⁹). However, since countermeasures have temporal character, freezing of assets, in any case, should also be adopted on a limited period of time. The provisional character of these measures is a reasonable balance between public interest in the fight against crime and international interest in ensuring state sovereignty and non-interference in domestic affairs of any state. Moreover, as it has been stated before it derives from human rights law.

Notably, that any restrictive measures adopted against troika within administrative jurisdiction can be justified if only they are taken with respect to private acts of these officials. That is a minimum legal standard, deriving from art. 31 of the Convention on special missions.

As it's stipulated by art. 21 of this treaty the head of State "shall enjoy in the receiving state or in a third state the facilities, privileges and immunities accorded by international law to heads of state on an official visit", the head of the government, the minister of foreign affairs "shall enjoy in the receiving state or in a third state, in addition to what is granted by the present convention, the facilities, privileges and immunities accorded by international law"¹⁰⁰. Art. 31 of the convention on special missions is applicable to high-ranking officials only when they are on the territory of the receiving state. However, it's unclear whether this is relevant to heads of state, heads of government and ministers of

foreign affairs that are not present in the territory of the receiving state.

As it was suggested in the resolution "any state can take provisional measures with respect to funds or assets, as are necessary for the maintenance of control over them while the legality of the appropriation remains insufficiently established"¹⁰¹.

The uncertainty concerning the scope of personal immunity of heads of state, heads of government and ministers of foreign affairs from foreign administrative jurisdiction makes it possible to solve this problem through the interpretation of the conclusions on personal immunities made by the ICJ. In particular, the ICJ held that immunity *ratione personae* protects its holder "against any act of authority of another state which would hinder him or her in the performance of his or her duties"¹⁰². Thus, the determining factor in assessing whether or not there has been "an attack" on the immunity of "troika" is the existence of a constraining act of authority¹⁰³.

It's possible to conclude that since freezing of assets, by nature, is a coercive measure it can be justified if taken as countermeasures, under a resolution of the UN Security Council, under requests of international criminal tribunals, in the framework of mutual assistance in criminal matters. Moreover, any freezing of assets as such should comply with human rights obligations of a state regardless of whether they are taken within criminal or administrative jurisdiction.

As it has been indicted before, freezing of assets can't be applied against troika since they enjoy full immunity from foreign criminal jurisdiction. The same measures taken within administrative jurisdiction can't be applied if only they are prescribed by the UN Security Council, imposed as countermeasures in response to violations of international law committed against it or in response to violations of *erga omnes* obligations as formulated by the ICJ, taken in respect to private assets or funds of such high-ranking officials on a provisional basis while the legality of the appropriation remains insuf-

⁹⁶Sanctions and anti-money laundering act [Electronic resource]. URL: <https://www.legislation.gov.uk/ukpga/2018/13/contents/enacted> (date of access: 19.04.2021).

⁹⁷Global Magnitsky human rights accountability act of 18 April 2016. Sec. 284 [Electronic resource]. URL: <https://www.govtrack.us/congress/bills/114/s284/text> (date of access: 17.04.2021).

⁹⁸Justice for victims of corrupt foreign officials act (Sergei Magnitsky law) SC 2017, c 21 [Electronic resource]. URL: <https://www.canlii.org/en/ca/laws/astat/sc-2017-c-21/latest/sc-2017-c-21.html> (date of access: 17.04.2021) ; Sanctions and asset-freezing (Jersey) law [Electronic resource]. URL: https://www.jerseylaw.je/laws/enacted/Pages/L-02-2019.aspx#_Toc4140013 (date of access: 19.04.2021) ; Autonomous sanctions regulations 2011 [Electronic resource]. URL: <https://www.legislation.gov.au/Details/F2011L02673#:~:text=These%20Regulations%20facilitate%20the%20conduct,targeting%20those%20entities%20or%20persons> (date of access: 19.04.2021) ; Sanctions and anti-money laundering act [Electronic resource]. URL: <https://www.legislation.gov.uk/ukpga/2018/13/contents/enacted> (date of access: 19.04.2021).

⁹⁹Autonomous sanctions regulations 2011 [Electronic resource]. URL: <https://www.legislation.gov.au/Details/F2011L02673#:~:text=These%20Regulations%20facilitate%20the%20conduct,targeting%20those%20entities%20or%20persons> (date of access: 19.06.2021).

¹⁰⁰Convention on special missions of 8 December 1969. 1400 UNTS 231.

¹⁰¹Immunities from jurisdiction and execution of heads of state and of government in international law [Electronic resource]. URL: https://www.idi-ii.org/app/uploads/2017/06/2001_van_02_en.pdf (date of access: 13.04.2021).

¹⁰²Case concerning the arrest warrant (the Democratic Republic of Congo v. Belgium). Judgment // Annual Reports of Internatl. Court of Justice. 2002. P. 3. Para 53.

¹⁰³Certain questions of mutual assistance in criminal matters (Djibouti v. France). Judgment // Annual Reports of Internatl. Court of Justice. 2008. P. 177. Para 170.



ficiently established. The latter should not constitute a constraint to a sovereign act of authority.

All the aforementioned makes it possible to come to the following conclusions:

1. Travel bans and freezing of assets taken against heads of state, heads of governments or ministers of foreign affairs taken as UCMs are adopted within the administrative jurisdiction of states. All these measures should be imposed in the light of obligations under international law on immunity. However, contemporary international law doesn't define precisely the scope of personal immunity from foreign administrative jurisdiction.

2. Travel bans as such are unfriendly but legal measures under international law. However, a sovereign right of any state to restrict the presence of undesirable foreigners on its territory is limited when it comes to troika. High-ranking officials should be allowed to

travel not only to take part in the meetings conducted within or under the auspices of the UN and the OSCE, but also in any events commensurate to the UN Charter or peremptory norms of international law.

3. Freezing of assets is a coercive measure. It can be justifiable as a UCM if taken as a countermeasure or in accordance with a binding resolution of the UN Security Council.

Freezing of assets taken within administrative jurisdiction can be applied against heads of state, heads of government and ministers of foreign affairs not present in the territory of a foreign state if only they are imposed on a provisional basis in respect to private assets or funds of such high-ranking officials while the legality of the appropriation remains insufficiently established. The latter should not constitute a constraint to a sovereign act of authority and hinder high-ranking officials in the performance of their duties.

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