БЕЛОРУССКИЙ ГОСУДАРСТВЕННЫЙ УНИВЕРСИТЕТ

ЖУРНАЛ
БЕЛОРУССКОГО ГОСУДАРСТВЕННОГО УНИВЕРСИТЕТА

# МЕЖДУНАРОДНЫЕ ОТНОШЕНИЯ

JOURNAL
OF THE BELARUSIAN STATE UNIVERSITY

# INTERNATIONAL RELATIONS

Издается с 2017 г.
Выходит один раз в полугодие

2 2021

МИНСК
БГУ

*UDC 327.7*

# COORDINATION OF THE EURASIAN ECONOMIC UNION MEMBER STATES DIPLOMACY IN THE UNITED NATIONS

***O. N. LESHENYUK***[a]

[a]*The Council of the Republic of the National Assembly of the Republic of Belarus, 9 Čyrvonaarmejskaja Street, Minsk 220016, Belarus*

This article offers recommendations for optimising the coordination of diplomacy of the Eurasian Economic Union member states within the United Nations system. Significant changes in the modern diplomatic activities of the Ministry of Foreign Affairs of the Republic of Belarus have occurred which caused changes in the forms of diplomatic interaction. Currently, diplomatic interactions acquire a network character. The article also provides examples of new opportunities for negotiations and initiatives considering the networked nature of international relations and shows the forms of network interaction of the Ministry of Foreign Affairs of the Republic of Belarus, as well as current examples of network diplomacy. The necessity to complicate the forms of coordination and introduce them into international organisations into the United Nations system is pointed out. Recommendations are given to the EEU member states, as well as to Eurasian integration associations. An analysis of the work shows that for the effective activities of the subjects of international relations it is necessary to integrate into complex network interactions. This can be implemented basing on the existing structure of the Union State, the EEU, the CIS, the CSTO, as well as Eurasian non-profit and commercial organisations.

***Keywords:*** Republic of Belarus; the UN system; foreign policy; diplomacy; Eurasian Economic Union; international networks; networking; network interactions; international relations; negotiations; ministry of foreign affairs.

**Образец цитирования:**
Лешенюк ОН. Координация дипломатии государств – членов Евразийского экономического союза в Организации Объединенных Наций. *Журнал Белорусского государственного университета. Международные отношения*. 2021;2:3–8 (на англ.).

**For citation:**
Leshenyuk ON. Coordination of the Eurasian Economic Union member states diplomacy in the United Nations. *Journal of the Belarusian State University. International Relations*. 2021;2:3–8.

**Автор:**
***Олег Николаевич Лешенюк*** – помощник члена Совета Республики Национального собрания Республики Беларусь седьмого созыва.

**Author:**
***Oleg N. Leshenyuk***, assistant of a member of the Council of the Republic of the National Assembly of the Republic of Belarus of the 7th convocation.
*leshenyuk.oleg@gmail.com*

Журнал Белорусского государственного университета. Международные отношения. 2021;2:3–8
Journal of the Belarusian State University. International Relations. 2021;2:3–8

# КООРДИНАЦИЯ ДИПЛОМАТИИ СТРАН – ЧЛЕНОВ ЕВРАЗИЙСКОГО ЭКОНОМИЧЕСКОГО СОЮЗА В ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ

***О. Н. ЛЕШЕНЮК***[1)]

[1)]*Совет Республики Национального собрания Республики Беларусь, ул. Красноармейская, 9, 220016, г. Минск, Беларусь*

Предлагаются рекомендации по оптимизации координации дипломатии стран – членов Евразийского экономического союза в системе ООН. Основу исследования составили значительные изменения в современной дипломатической деятельности белорусского внешнеполитического ведомства и, как результат, изменение форм дипломатического взаимодействия, приобретающих сетевой характер. Приведены примеры новых возможностей для проведения переговоров и предложения инициатив через призму активизации глобальных процессов с учетом сетевизации международных отношений. Показаны формы сетевого взаимодействия Министерства иностранных дел Республики Беларусь, а также приведены актуальные примеры сетевой дипломатии. Делается вывод о необходимости усложнить формы координации и внедрить их в международные организации, в частности в систему ООН. Даны рекомендации государствам – членам ЕАЭС, а также евразийским интеграционным объединениям. Анализ проведенной работы показывает, что для результативной деятельности субъектов международных отношений необходимо встраиваться в сложные сетевые взаимодействия. Это можно произвести на базе существующей структуры Союзного государства, Евразийской экономической комиссии, Содружества Независимых Государств, Организации Договора о коллективной безопасности, а также евразийских некоммерческих и коммерческих организаций.

***Ключевые слова:*** Республика Беларусь; система ООН; внешняя политика; дипломатия; Евразийский экономический союз; международные сети; сетевизация; сетевые взаимодействия; международные отношения; переговоры; министерство иностранных дел.

## Introduction

The purpose of this article is to make recommendations on strengthening the coordination of diplomacy of the member states of the Eurasian Economic Union in the United Nations system. The complication of cooperation forms between the EEU states in the UN organisation system has become a research problem. Since these forms acquire a network character, the achievement of the priorities of the EEU member states depends on the diplomatic integration of the states into complex networks of the UN system [1]. Not only absolute indicators such as demography, military power, economic well-being, the presence of the diplomatic corps, etc. should be achieved but also relative indicators of centrality in the communication networks of the UN system (information exchange). Consequently, if access to information determines the competitive advantages of states in international organisations, then in order to obtain this access, it is necessary to be integrated into the complex networks of the UN system [2–4].

The complex networks of the UN system include states, non-profit and profit, governmental and non-governmental organisations, foundations, advisory structures of regional economic integration organisations, international organisations, etc. Accordingly, to be integrated into the complex networks of the UN system, the diplomatic practices of the states take on complex forms: from holding cultural, academic, and scientific and leisure activities at the UN venues, to economic, political and social network initiatives. The final progress of the global agenda of our countries depends on how coordinated such initiatives of the EEU member states are. The following tasks were solved to achieve the goal.

Firstly, the analysis of the network forms' development of Belarusian diplomatic practices in the UN system has been carried out.

Secondly, Belarusian diplomatic practices of integrating into the complex networks of the UN system have been compared with the Eurasian international processes. The potential of the member states of the Eurasian integration associations, the Union State, the Eurasian Economic Union, and the Collective Security Treaty Organisation (CSTO) has been assessed.

Thirdly, based on the results of the study, the recommendations to the EEU member states and to the Eurasian integration associations have been developed in order to strengthen their role in the complex networks of the UN.

The structure of the article includes three main sections corresponding to the objectives of the study.

## Development of the diplomatic practice of the Republic of Belarus in the UN system

The activities of the BSSR on the international vector were developing within the frameworks of the coordinated foreign policy of the USSR. One of the main directions of the state foreign affairs establishment was

its representation in the United Nations. In June 1945, in San Francisco, the Belarusian delegation together with the delegations of other countries, representing the original members of the organisation, signed the UN Charter. The admission of Belarus, which was not an independent state at that time, to the newly created global organisation was a recognition by the international community of the huge role played by the Belarusian people in the victory over fascism during the World War II[1].

After gaining the status of a sovereign and independent state in 1991, a new stage in the formation of the Belarusian statehood began. At that time, it was strongly important to gain the status of an independent and sovereign state in the world arena, and one of the means of achievement became the implementation of Belarusian policy towards the United Nations. The necessity to work in the UN structures and related specialised agencies (the United Nations Educational, Scientific and Cultural Organisation, the World Health Organisation, the Food and Agriculture Organisation of the United Nations, the United Nations Industrial Development Organisation, the World Intellectual Property Organisation, the International Labour Organisation, etc.) was beyond the shadow of a doubt, since these international organisations were considered to be a universal tool for maintaining a balanced system of international relations and solving priority problems of global development. In addition, Belarus' participation in the United Nations contributed to the formation of a more equitable world order based on the universally recognised principles of the UN Charter and the norms of international law [5].

The UN universal principles became a coordinated priority for the statehood formation [6]. The USSR and the Ukrainian SSR, as separate UN members, took an active part in their development as well. Currently, the principles also play a key role in the balanced UN system. The Republic of Belarus and the Russian Federation recognise the preservation of the UN as one of the main priorities; promote the principles of an equitable world order in the UN system through coordination within the framework of the Programme of coordinated actions in the field of the Union State's foreign policy and the annual Plan of consultations.

It is noteworthy that the states approach the implementation of these actions in a comprehensive manner, which suggests that there is a "network" reserve for complicating the organisational forms of multilateral cooperation in the United Nations system. According to the Priority directions and priorities for the further development of the Union State for 2018–2022, the coordination has a multidisciplinary character, aimed at including non-governmental organisations, businesses and groups of people in international affairs. Thus, the priority of Russian-Belarusian cultural and humanitarian cooperation includes the establishment of network links not only between states, but also between theaters, museums, libraries, circuses and educational institutions[2].

The official Minsk sees the most important priority of its participation in the United Nations in strengthening the role of the organisation in the world political arena, taking into account the main approaches of the Republic of Belarus to the processes of globalisation that are gaining momentum in recent years, the growth of conflict factors and instability in international relations. In this regard, the diplomatic practice is undergoing significant changes.

Forms of diplomatic interaction acquire the so-called network character. Such networking of international relations, as well as the complication of these forms, opens up new platforms for negotiations for the foreign ministries of various states, including the Republic of Belarus.

This type of networking is most evident in the UN system, a complex system that unites states, non-profit organisations, business communities, representatives of civil society, etc. during the implementation of various initiatives. In particular, the "network" Belarusian initiative was put forward at the first session of the UN General Assembly in 1946. At the suggestion of the BSSR delegation, the General Assembly approved the resolution "On the extradition and punishment of war criminals". The resolution demanded that the UN member states take the most energetic measures to search for war criminals, arrest them and extradite them to the countries in whose territory they committed crimes[3].

The Belarusian delegation proposed to continue consideration of this topic in 1968, when approved a resolution by the Belarusian initiative on the non-application of the statute of limitations to war crimes and war criminals at the 23rd session of the UN General Assembly. These initiatives have made a historic contribution to the development of relations between civil society institutions and global actors in world politics. A sensitive attitude to historical memory even then laid the foundation for modern initiatives in the field of the World War II history's preventing falsification[4].

[1]Charter of the United Nations and Statute of the International Court of Justice [Electronic resource]. URL: https://treaties.un.org/doc/Publication/CTC/uncharter-all-lang.pdf (date of access: 11.06.2021).

[2]Постановление Высшего Государственного Совета Союзного государства № 3 от 19 июня 2018 г. «О выполнении Приоритетных направлений и первоочередных задач дальнейшего развития Союзного государства на среднесрочную перспективу (2014–2017 годы) и дальнейшем развитии Союзного государства на 2018–2022 годы [Электронный ресурс]. 2018. URL: https://www.postkomsg.com/documentation/document/1780/ (дата обращения: 11.06.2021).

[3]Resolutions adopted by the General Assembly at its 1st session [Electronic resource]. URL: https://research.un.org/en/docs/ga/quick/regular/1 (date of access: 11.06.2021).

[4]Resolutions adopted by the General Assembly at its 23rd session [Electronic resource]. URL: https://research.un.org/en/docs/ga/quick/regular/23 (date of access: 11.06.2021).

At the 28th session of the UN General Assembly in 1973, a resolution was adopted by the initiative of the BSSR on the use of scientific and technological progress in the interests of peace and social development. The relevant UN declaration and resolutions concerning the prohibition of production of new types of weapons of mass destruction were subsequently worked out on this resolution's basis. In the same year, the BSSR was elected to the seat of a non-permanent member of the UN Security Council and successfully performed this function in the main body of the UN during the period 1974–1975. This initiative has already emphasised the importance of the right to independent development, which today has become almost the only alternative to the ultra-liberal interpretation of the humanitarian component in world politics[5].

In addition, Belarus is the initiator of the Chernobyl direction in the activities of the UN and its organisations. In 1990, the 45th session of the UN General Assembly approved the resolution "On strengthening international cooperation and coordination of efforts to study, mitigate and minimize the consequences of the Chernobyl disaster", which was put forward by the Republic of Belarus. The UN "Chernobyl" secretariat was created, and the work of the UN inter-agency group was organised. Subsequently, the General Assembly confirmed and developed the provisions of the resolution at its regular sessions, which indicated broad interregional support. Such support was the result of a complex negotiation process, and participation in the main negotiating coalition of the Commonwealth of Independent States members allowed us to form an interregional group of co-authors[6].

In connection with the above, it is obvious that the initiatives of the Republic of Belarus in the United Nations system are aimed not only at the goals of an individual state or group of states, or at the interests of individual commercial enterprises, but also at the interests of the population, including the case of combating human trafficking. Due to the fact, that these initiatives are directly related to the interests of people, they affect socio-demographic groups not only in the Republic of Belarus, but also in the Russian Federation and other member states. On the one hand, it contributes to ensuring pluralism in the Eurasian integration associations and demonstrates the priority of equality in the decision-making process in the Eurasian Economic Union. On the other hand, in the absence of a proper level of network coordination, the focus of both Belarus and Russia can lead to excessive rivalry between states on the interests of the region. A high degree of inter-state and network coordination, as well as a timely "division of labour", will help to mitigate these risks. Let us consider how it has already been done on the example of the network potential of the Eurasian integration processes.

## Network capacity of Eurasian international processes

The so-called network foundation was formed within the framework of Minsk negotiations between the leaders of the Normand format talks, offered by the President of the Republic of Belarus A. Lukashenko in order to ensure security in Eastern Europe, as well as to provide decent living conditions for the population in the conflict zone. The Normand format initiative of the official Minsk and its relative success was the first example when the representatives of the "non-state participants" of the Lugansk People's Republic and Donetsk People's Republic were present at the negotiating table, which is undoubtedly the result of the efforts and activities of the employees of the Ministry of Foreign Affairs of the Republic of Belarus. In addition, there were proposals for the introduction of a Belarusian peacekeeping contingent to the conflict region within the framework of the trilateral contact group's work, which is an example of a network form of diplomatic interaction, i. e. networking.

The initiative of the Belarusian leader on the new Helsinki process, announced during the session of the Parliamentary Assembly of the Organisation for Security and Co-operation in Europe, held in the capital of the Republic of Belarus in 2017, deserves attention as the example of networking. The essence of this initiative, called Helsinki-2, is to start a new dialogue of all interested parties, primarily major geopolitical players, similar to the Helsinki process of restructuring the European system of international relations, which ended in 1975[7].

This initiative was actively discussed by the high-level segment of the 40th session of the United Nations Human Rights Council. In particular, the session was attended by deputy foreign ministers of the Republic of Belarus and the Russian Federation A. Dapkyunas and S. Vershinin. These initiatives and their broad support demonstrate the leadership of Belarus and Russia in international affairs, which, however, is actively opposed by Western states and global human rights groups[8].

[5]Resolutions adopted by the General Assembly at its 28th session [Electronic resource]. URL: https://research.un.org/en/docs/ga/quick/regular/28 (date of access: 11.06.2021).

[6]Resolutions adopted by the General Assembly at its 45th session [Electronic resource]. URL: https://research.un.org/en/docs/ga/quick/regular/45 (date of access: 11.06.2021).

[7]Conference on security and co-operation in Europe. Final act [Electronic resource]. URL: https://www.osce.org/helsinki-final-act?download=true (date of access: 11.06.2021).

[8]40th session of the Human Rights Council (25 February – 22 March 2019) [Electronic resource]. URL: https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session40/Pages/40RegularSession.aspx (date of access: 11.06.2021).

At the same time, it should be emphasised that much has been done in this direction, but not enough. There are also other forms of network interaction – youth non-profit organisations, Eurasian consultative structures, etc. The inclusion of such formats in regional international processes has already gained momentum, as evidenced, for example, by the Priorities for the development of the Union State until 2022 (networking of the non-governmental sector), the Eurasian technology platforms of the Eurasian Economic Commission (networking of commercial and scientific and technical organisations), the reports of the International Institute for Monitoring Democracy Development of the CIS Interparliamentary Assembly (networking of the monitoring institute), as well as the development of youth forums, exercises and interdepartmental coordination of the CSTO[9].

The Belarusian initiative to combat human trafficking, which is one of the priority areas of our country's activities in the international arena, also deserves attention. In particular, at the 2005 United Nations summit, the President of the Republic of Belarus put forward an initiative to intensify international efforts to combat human trafficking. In addition, Belarus is a party to all UN universal conventions aimed at combating smuggling and trafficking in persons and related crimes, including the United Nations Convention against transnational organised crime and its complementary Protocol on the prevention, suppression and punishment of trafficking in persons, especially women and children, as well as the Council of Europe Convention on action against trafficking in human beings. This fact once again underlines our country's commitment to the basic international principles in the field of human rights and freedoms and serves as a convincing example of network diplomacy with the assistance of the United Nations system [1, p. 70].

In general, it is important to note that in view of the changing principles of global development, the question arises of the need to complicate the form of coordination of international cooperation and the introduction of so-called network diplomacy in the activities of international organisations in the UN system. Such cooperation will allow us to optimally solve the problems of the world agenda with the involvement of non-governmental organisations, the commercial sector, as well as representatives of scientific, technical, and other organisations.

The networking of international relations implies the complication of forms of multilateral cooperation. The analysis of the diplomatic practice of the Republic of Belarus has shown that if in the 20th century the forms of multilateral cooperation were mainly of interstate nature; at the present stage, these forms include both interstate cooperation and cooperation through non-governmental organisations, international organisations, the business community, parliaments, and other entities.

Thus, the state occupies a central role in these networks, since due to the state the functioning of these networks is maintained, but at the same time, the competitive advantages of states in these complex forms depend on how central the position of a particular state will be built in the complex networks. This centrality will be determined by the extent to which states can ensure participation in international networks of non-governmental organisations, regional structures, businesses, parliaments, and communities.

The example of the Republic of Belarus and the cooperation of the member countries of the Eurasian region shows a significant potential for strengthening the centrality of the Eurasian countries and associations in the complex networks of international relations. The realisation of this potential is often seriously opposed: the lack of negotiations on the EU–EEU line, on the line of the Office for democratic institutions and human rights – International Institute for Monitoring Democracy Development of the CIS Interparliamentary Assembly, through the interaction of the Eurasian youth associations with the youth associations of the EU.

In the case of Eurasian regional integration associations, the network coordination potential is not fully utilised, especially in international intergovernmental organisations. Thus, the Eurasian Union has an international legal personality, which has allowed it to strengthen its position in the UN system. This platform of the United Nations Conference on trade and development is successfully used by the Eurasian Economic Commission in order to be included in the UN complex networks through regional integration associations. However, it has not yet received observer status at the United Nations General Assembly.

The Union State, as an integration association, does not have an international legal personality, although its potential is huge. The statutes of the Union State show the urgency of complicating the international cooperation's forms, since there is a Commission of the Union State on Human Rights and the Public Chamber of the Union State, as well as a number of advisory structures. There are similar advisory structures in the CIS and the CSTO. On the one hand, it seems that joint activities will duplicate their functions, but on the other hand, with proper organisation of the process, their functioning will allow the countries of the Eurasian region to increase their centrality in complex forms of international relations, to improve communication in international complex networks and contribute to the overall democratisation of international relations and the formation of the Eurasian region as one of the attractive centres of international cooperation and investments in the world.

[9]Union State [Electronic resource]. URL: https://www.postkomsg.com/documentation/?withSearch=Y (date of access: 11.06.2021).

Considering the abovementioned, one should make recommendations to the EU member states and Eurasian integration associations. Proper coordination of consular officials in key cities of multilateral cooperation will allow establishing interaction with citizens of the EEU member states working in international organisations. Obtaining the EEU observer status at the UN General Assembly will strengthen the coordination and representation capabilities of the EEU member states. The inclusion of a full range of actors and participants of international relations in the activities of the Standing Committee of the Union State will increase the competitive advantages of domestic commercial and non-commercial structures, which will increase the level of their expertise in international affairs. The coordination of parliaments together with youth associations in the Interparliamentary union will be able to bring cultural and humanitarian priorities to the normative level of international organisations, expand the circle of allies and partners through "informal" thematic groups in the UN.

Thus, it is necessary to provide the following recommendations to the EEU member states, as well as to the Eurasian integration associations:

• main consular offices of the foreign ministries of the CIS countries should ensure the interaction of consular officials in the main "points" of multilateral cooperation (New York, Brussels, Geneva, Paris, Vienna) in organising work with citizens abroad by creating so-called consular clubs to provide legal and other assistance to compatriots;

• Eurasian Economic Commission is to consider the possibility to receive the status of an observer at the UN General Assembly;

• for the Permanent Committee of the Union State, it would be desirable to develop an analytical report on the advantages and disadvantages of giving the status of international legal entity to the Union State. One more suggestion is to develop recommendations on the establishment of the Union State Commission on Human Rights, as well as the Public Chamber of the Union State;

• such institutions as CIS Interparliamentary Assembly, parliaments of the EEU member states, Youth Interparliamentary Assembly of Member Nations of the CIS, youth unions and historical associations should address the Assembly of the Interparliamentary Union in Geneva with a joint statement on the inadmissibility of revising the results of the World War II;

• International Institute for Monitoring Democracy Development of the CIS Interparliamentary Assembly should prepare an analytical report on the monitoring methods of international organisations and present this report to the attention of the academic community and non-profit organisations;

• the Centre for international studies of the faculty of international relations of the Belarusian State University is to develop a roadmap for network-based external actions of the EEU member states, Eurasian economic entities, and non-profit organisations. It is necessary to establish non-governmental structures at key points of multilateral cooperation (Brussels, Geneva).

## References

1. Leshenyuk O. Coordination of the secretariats of the Eurasian structures in the process of extending their powers. *Eurasia. Expert*. 2021;2:57–61. Russian. DOI: 10.18254/S271332140015790-6.
2. Goddard S. Embedded revisionism: networks, institutions, and challenges to world order. *International Organisation*. 2018;72(4):763–797.
3. Hafner-Burton E, Kahler M. Network analysis for international relations. *International Organisation*. 2009;63(3):559–592.
4. Hafner-Burton E, Montgomery A. International organisations, social networks, and conflict. *Journal of Conflict Resolution*. 2006;50(1):3–27. DOI: 10.1177/0022002705281669.
5. Tikhomirov AV. [Interaction of the Republic of Belarus with the UN (1991–2015)]. *Aktual'nye problemy mezhdunarodnykh otnoshenii i global'nogo razvitiya*. 2015;3:261–276. Russian.
6. Pilgun EV, Leshenyuk ON. Public administration in the Republic of Belarus: principles for sustainable development. *Journal of Law and Administration*. 2021;17(3):27–40. DOI: 10.24833/2073-8420-2021-3-60-27-40.
7. Boyashov A. Task expansion of the CIS in pumanitarian sphere: potential of Eurasian integration in human rights. *Eurasia. Expert*. 2021;1:70–74. Russian. DOI: 10.18254/S271332140014651-3.

## Библиографические ссылки

1. Лешенюк О. Координация секретариатов евразийских структур в процессе расширения их полномочий. *Евразия. Эксперт*. 2021;2:57–61. DOI: 10.18254/S271332140015790-6.
2. Goddard S. Embedded revisionism: networks, institutions, and challenges to world order. *International Organisation*. 2018;72(4):763–797.
3. Hafner-Burton E, Kahler M. Network analysis for international relations. *International Organisation*. 2009;63(3):559–592.
4. Hafner-Burton E, Montgomery A. International organisations, social networks, and conflict. *Journal of Conflict Resolution*. 2006;50(1):3–27. DOI: 10.1177/0022002705281669.
5. Тихомиров АВ. Взаимодействие Республики Беларусь с ООН (1991–2015 гг.). *Актуальные проблемы международных отношений и глобального развития*. 2015;3:261–276.
6. Pilgun EV, Leshenyuk ON. Public administration in the Republic of Belarus: principles for sustainable development. *Journal of Law and Administration*. 2021;17(3):27–40. DOI: 10.24833/2073-8420-2021-3-60-27-40.
7. Бояшов А. Расширение функций СНГ в гуманитарной области: потенциал евразийской интеграции в области прав человека. *Евразия. Эксперт*. 2021;1:70–74. DOI: 10.18254/S271332140014651-3.

*Received by editorial board 01.10.2021.*

*UDC 316.485.6*

# THE POSITION OF BRICS TOWARDS THE SYRIAN CRISIS

***E. I. HUSSEIN***[a]

[a]*Alexandria University, 22 El-Gaish Road, Alexandria 21526, Egypt*

By the beginning of this century, an international economic grouping called BRICS has emerged, consisting of five countries from the rising powers: Brazil, Russia, India, China and South Africa. There are some attempts and developments within the BRICS grouping aiming to increase the coordination of their stances and foreign policies towards some crises in various regions, especially the crises in the Middle East. Accordingly, this article aims to identify the roles of BRICS as a whole towards the Syrian crisis as one of the most prominent regional crises, and to review and investigate the constants of the positions of BRICS, and to monitor the behaviour and approach of BRICS towards this crisis that represents one of the existing challenges, and to assess the effectiveness of BRICS as some claim that the features of the BRICS grouping as a whole have begun to become clear politically toward the Syrian crisis in particular.

***Keywords:*** Middle East; MENA; Arab spring revolutions; Syria; Bashar al-Assad; international security; regional crises; United Nations; Security Council; UNSC Resolution 2254.

# ПОЗИЦИЯ БРИКС ПО СИРИЙСКОМУ КРИЗИСУ

***Э. И. ХУСЕЙН***[1)]

[1)]*Александрийский университет, Эль-Гаиш роуд, 22, 21526, г. Александрия, Египет*

В начале нынешнего века сформировалось международное экономическое объединение БРИКС, в состав которого входят пять стран: Бразилия, Россия, Индия, Китай и ЮАР. Внутри БРИКС предпринимаются попытки и действия, направленные на улучшение координации позиций объединения и внешней политики в отношении некоторых кризисов в различных регионах, особенно на Ближнем Востоке. Целью данной статьи является определение позиции БРИКС по вопросу сирийского кризиса как одного из наиболее заметных региональных кризисов, а также обзор и исследование основополагающих позиций объединения, отслеживание деятельности и подходов БРИКС по рассматриваемому кризису, представляющему собой одну из актуальных проблем. Важна также оценка эффективности работы БРИКС с учетом существующих мнений о политической позиции объединения в целом и в отношении сирийского кризиса в частности.

***Ключевые слова:*** Ближний Восток; Ближний Восток и Северная Африка (БВСА); революции «арабской весны»; Сирия; Башар аль-Асад; международная безопасность; региональные кризисы; ООН; Совет Безопасности; Резолюция Совета Безопасности ООН 2254.

## Introduction

The first to coin the term *BRICS* was Jim O'Neill, an economist at *Goldman Sachs*, in 2001 in his report on the growth prospects for the economies of Brazil, Russia, India and China [1, p. 13], and then they officially formed their own economic bloc in 2009, by holding the first summit of BRIC, which turned into the BRICS after the

**Образец цитирования:**
Хусейн ЭИ. Позиция БРИКС по сирийскому кризису. *Журнал Белорусского государственного университета. Международные отношения*. 2021;2:9–16 (на англ.).

**For citation:**
Hussein EI. The position of BRICS towards the Syrian crisis. *Journal of the Belarusian State University. International Relations*. 2021;2:9–16.

**Автор:**
***Эслам Ибрагим Хусейн*** – аспирант кафедры политологии факультета экономических исследований и политологии.

**Author:**
***Eslam Ibrahim Hussein***, postgraduate student at the political science department, faculty of economic studies and political science. Scientific supervisor – Safaa Saber Khalifa, PhD (political science).
*eslamibrahim2001@gmail.com*

state of South Africa officially joined it in 2011, crowning its political endeavours to join this promising new born grouping that aims to reach a multipolar system [2, p. 4].

This grouping has an important economic role in the existing international system, which raises questions about the possibility of the evolution of its economic role as a major economic power into a political and strategic influence to confront the current economic, political and security challenges in the international system, and the possibility that BRICS gathering becomes a major economic and political player in the future in light of an international environment full of many security threats with the emergence of a number of international variables such as cross-border terrorism and the exacerbation of international crises, like the Arab spring revolutions.

## BRICS position towards the Libyan crisis

It is important to know the constants of the BRICS positions towards some regional crises, mainly the Arab spring revolutions since 2011. Since the beginning of the Arab spring, BRICS countries have formed a united front at the United Nations against Western countries; in order to prevent a vote on resolutions likely to infringe the sovereignty of their allies strikingly, as BRICS questioned Western motives for intervention [3, p. 626], and the BRICS abstention from voting can initially be understood as a form of claiming the restoration of state sovereignty on the basis of invoking the concept of *responsibility to protect* (R2P) at the United Nations, which was previously adopted since the mid-2000s, at the United Nations World summit, and later formalised by UN Security Council Resolution 1674 of 2006 as a normative framework for the Security Council to take a decision on the use of force under chapter VII of the United Nations Charter [4, p. 112], the BRICS also identified some common principles, on top of these principles, is the common respect for the principle of avoiding the use of force, and stresses respect for the independence, sovereignty, unity and territorial integrity of each country [5, p. 457].

The importance of the Libyan crisis lies in the fact that it has been the first major international crisis to be discussed within the BRICS, which coincided with the presence of all BRICS countries as members of the UN Security Council in 2011 and 2012. That gave the grouping potential influence on the diplomatic arena [6, p. 61], and all BRICS countries voted in favour of Resolution 1970, which imposed sanctions on Libya, and was passed unanimously [7, p. 8], but after several weeks, the four BRIC (with the exception of South Africa) with Germany abstained from the decisive voting on the Security Council Resolution 1973 [3, p. 626], which imposed a no-fly zone on Libya, and paved the way for NATO's military intervention in Libya in 2011 [5, p. 455].

The 2011 Sanya summit represented the first attempt of BRICS to coordinate their positions on a particular conflict, namely the conflict in Libya [8, p. 80]. South Africa modified its position by including it at the BRICS summit in Sanya in the same year [9, p. 97], and the heads of the five BRICS countries jointly expressed their desire to continue the cooperation in the UN Security Council on Libya[1], and after the 2011 BRICS Sanya summit, Russian president Dmitry Medvedev commended South African president Jacob Zuma for his efforts as head of the African Union mission in the conflict [9, p. 97].

It could be said that their vision is summed up in their opposition to the use of force in Libya and their conviction that all warring parties must reach a solution to their differences through peaceful means. They called for a peaceful solution to the conflict based on dialogue, through the mediation of the United Nations and regional organisations and mechanisms, in which they should play their assigned role, and expressed their support in particular for the initiative of the African Union High-Level Panel (HLP) on Libya emphasising the urgent need to protect the country's sovereignty and its territorial integrity, and the need to overcome differences between Libyan political forces and reach agreement on the formation of a government of national unity as soon as possible, and in this context, they expressed their support for the efforts made to promote the inter-Libyan dialogue by the Secretary-General of the United Nations and his special representative for Libya Bernardino Leon and by the neighbouring countries and the African Union[2].

The BRICS countries have clearly criticised the Western military intervention in Libya in 2011, explicitly stating that it led to the collapse of the integrated state institutions, the active army and law enforcement agencies, which in turn contributed to the rise of the activities of terrorist and extremist groups, in the context of highlighting the negative consequences of the escalation of the conflict. The armed forces in Libya invaded the Middle East, North Africa and the Sahel region after only four years since that intervention[3].

In seeking to resolve the Libyan crisis, BRICS leaders at the Brazil summit in November 2019 commended the efforts of the African Union and subregional organisations in addressing regional issues and managing conflicts in the interest of peace and security on the continent, reiterating the importance of cooperation and coordination between the United Nations and the

[1]Sanya declaration. Art 10 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/110414-leaders.html (date of access: 15.09.2021).
[2]VII BRICS summit: 2015 Ufa declaration. Art. 44 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/150709-ufa-declaration_en.html (date of access: 15.09.2021).
[3]Ibid.

African Union, and urging all parties to immediate cessation of all military action in Libya and engagement with the United Nations, the African Union High-Level Panel on Libya and relevant stakeholders to ensure a comprehensive and sustainable solution through a Libyan-led and Libyan-owned political process [4]. The BRICS countries continue to oppose any resolution that might resemble the UN Security Council Resolution 1973. They also refuse to vote in favour of any resolution similar to Resolution 1970 in the Syrian case because of the fear of falling into a loop as in Libya [7, p. 9].

Chinese president Hu Jintao described the BRICS countries as defenders of the interests of developing countries and as a force for defence and maintaining international peace and security [10, p. 21]. The BRICS countries have pursued a policy of opposing the American hegemony projects, by using the veto power by Russia and China in order to prevent the passing of any resolution in international forums, especially in the UN Security Council and the United Nations General Assembly that contradicts the interests of the BRICS. One evident example is the Russian-Chinese veto for many times regarding the Syrian crisis since its inception in 2011. This is one of the most important indicators and factors that indicate the BRICS countries' dissatisfaction with the existing international system, and their quest to influence and change it and share interests among the BRICS countries, as evidence of the beginning of a change in the structure of the international system, and an attempt to move to a new international system. On several occasions, the five BRICS countries agreed on a unified position on major international issues. For example, the BRICS countries emphasised the need for a comprehensive reform of the United Nations and the UN Security Council in order to better represent the voices and interests of emerging economies. So, if these countries, especially Russia and China, had not been united in one international organisation BRICS, they would not have been able to influence world politics [5, p. 455].

## Constants of BRICS towards the Syrian crisis

Since March 2011, Syria has constituted a regional conflict zone and an international crisis, which has escalated from being an internal armed conflict, where many internal, regional and international parties have overlapped in a complex manner. The Syrian crisis is a very complex and thorny issue at the same time due to the geographical, political, economic and international position that Syria represents, and the ethnic and cultural diversity it holds and an important geographical location [11, p. 167].

While referring to conflicts at BRICS summits are often succinct and symbolic to some extent, the BRICS countries pay more detailed attention in the case of the Syrian crisis [6, p. 14], as the sections on Syria were particularly prominent and detailed in the final statements of their summits.

Syrian President Bashar al-Assad sent a letter to the Durban summit in March 2012 urging the leaders of the BRICS countries to work for an immediate cessation of violence that would ensure the success of a political solution in Syria [12], and the BRICS countries have expressed their deep concern about the deteriorating security situation and the humanitarian situation in Syria since the beginning of the BRICS addressing to the crisis in the Delhi declaration of 29 March 2012[5], as well as the growing threat of international terrorism and extremism in the region by all parties to the conflict[6], and the BRICS strongly condemned the increasing violations of human rights and international humanitarian law; as a result of the continuing violence[7].

It can be said that there are a set of constants of the BRICS grouping towards the Syrian crisis.

**Peaceful solutions to the crisis.** In the 2013 summit, the BRICS countries declared their opposition to the militarisation of the Syrian conflict[8], rejecting external military intervention and considering it unacceptable, and stressing the need to stop it through peaceful solutions [13, p. 83], as the BRICS call for an immediate end to all acts of violence and human rights violations, and to encourage broad national dialogues that meet the legitimate aspirations of all segments of the Syrian people, based on the firm commitment of the BRICS to the importance of respecting the rights of the sovereignty of the Syrian Arab Republic and protecting its independence, unity and territorial integrity[9], and calling on the Syrian government and all segments

[4]Brasilia declaration of 14 November 2019. Art. 48 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/191114-brasilia.html (date of access: 15.09.2021).

[5]4th BRICS summit: Delhi declaration of 29 March 2012. Art 21 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/120329-delhi-declaration.html (date of access: 15.09.2021).

[6]VII BRICS summit: 2015 Ufa declaration of 9 July 2015. Para 1, art. 36 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/150709-ufa-declaration_en.html (date of access: 15.09.2021).

[7]BRICS and Africa: partnership for development, integration and industrialisation. eThekwini declaration of 27 March 2013. Art. 26 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/130327-statement.html (date of access: 15.09.2021).

[8]Ibid.

[9]Brasilia declaration of 14 November 2019. Art. 42 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/191114-brasilia.html (date of access: 15.09.2021).

of Syrian society to demonstrate the political will to embark on such a process, which alone can create a new environment for peace[10].

The main point of the BRICS approach to Syria is launching a comprehensive and peaceful political settlement process for all political forces, which must be led by the Syrians themselves and subordinate to Syria[11], leading to a transitional phase[12], and calling on all parties to stop violence, not just president Bashar al-Assad, and the BRICS also support the mediating role played by the United Nations, and emphasise that foreign interference will not be allowed; this is partly due to the common position of the BRICS countries that Vladimir Putin's initiative regarding the disposal of chemical weapons in Syria under international supervision was successful and helped to prevent foreign interference in the country [9, p. 97].

BRICS supports international efforts aiming at promoting a political and diplomatic settlement of the crisis in Syria through a comprehensive national dialogue between all concerned Syrian parties that reflects the aspirations of all sectors of Syrian society, and guarantees the rights of all Syrians regardless of their ethnic affiliation or confession[13], on the basis of the Geneva final communiqué issued on 30 June 2012 without preconditions or external interference, and work towards the full implementation of relevant UN Security Council resolutions, especially Resolution 2254 of 2015 and Resolution 2268 of 2016[14]; as UN Security Council Resolution 2254 that was issued on 18 December 2015 stated its support for a Syrian-led political process facilitated by the United Nations [14, p. 143], and the need for all parties in Syria to take confidence-building measures in order to contribute to the chances of a political process and a permanent ceasefire, and calls on all states to use its influence with the Syrian government and the Syrian opposition to advance the peace process, confidence-building measures, and steps towards a ceasefire [14, p. 145].

BRICS supports Russia's steps aimed at promoting a political settlement in Syria, in particular the organisation of two rounds of consultations between the Syrian parties in Moscow in January and April 2015[15], and welcomes the joint efforts of the United Nations and the League of Arab States to this end, and the appointment of Kofi Annan as joint special envoy for the Syrian crisis, and supports him in continuing to play a constructive role in reaching a political solution to the crisis[16], and also supports the joint statement of the Geneva working group, providing the basis for resolving the Syrian crisis[17], and it also supports the efforts of the United Nations Secretary-General and his special envoy to Syria Staffan de Mistura and other international and regional efforts aimed at a peaceful solution to the Syrian conflict[18].

BRICS strongly supported the peace talks in Geneva and the Astana process and welcomed the establishment of de-escalation zones in Syria, which contributed to reducing violence levels and generating positive conditions and momentum for making tangible progress in peace talks under the auspices of the United Nations[19], taking into account the outcomes of the Syrian national dialogue conference in Sochi and also reiterated its support for the Geneva process and the mediation provided by the United Nations, as well as the Astana process, which showed signs of positive developments on the ground, stressing on the complementarity between the two initiatives, and opposed measures that contradict the Charter of the United Nations and the authority of the Security Council that does not contribute to advancing the political process [20].

It also expressed its support for the establishment of the Constitutional Committee, thanks to the efforts of the United Nations, the guarantors of Astana and all countries involved in efforts to address the conflict by political means, and the need for the full implementation of a sustainable ceasefire in the Idlib region, which does not include terrorist groups and entities that have

[10]4th BRICS summit: Delhi declaration of 29 March 2012. Art. 21 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/120329-delhi-declaration.html (date of access: 15.09.2021).

[11]BRICS leaders Xiamen declaration of 4 September 2017. Art. 41 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/170904-xiamen.html (date of access: 15.09.2021).

[12]BRICS and Africa: partnership for development, integration and industrialisation. eThekwini declaration of 27 March 2013. Art. 26 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/130327-statement.html (date of access: 15.09.2021).

[13]VII BRICS summit: 2015 Ufa declaration of 9 July 2015. Para 1, art. 36 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/150709-ufa-declaration_en.html (date of access: 15.09.2021).

[14]8th BRICS summit: Goa declaration of 16 October 2016. Art. 14 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/161016-goa.html (date of access: 15.09.2021).

[15]VII BRICS summit: 2015 Ufa declaration of 9 July 2015. Para 5, art. 36 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/150709-ufa-declaration_en.html (date of access: 15.09.2021).

[16]4th BRICS summit: Delhi declaration of 29 March 2012. Art. 21 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/120329-delhi-declaration.html (date of access: 15.09.2021).

[17]BRICS and Africa: partnership for development, integration and industrialisation. eThekwini declaration of 27 March 2013 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/130327-statement.html (date of access: 15.09.2021).

[18]VII BRICS summit: 2015 Ufa declaration of 9 July 2015. Para 5, art. 36 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/150709-ufa-declaration_en.html (date of access: 15.09.2021).

[19]BRICS leaders Xiamen declaration of 4 September 2017. Art. 41 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/170904-xiamen.html (date of access: 15.09.2021).

[20]BRICS in Africa: collaboration for inclusive growth and shared prosperity in the 4th industrial revolution. 10th BRICS summit Johannesburg declaration of 26 July 2018. Art. 46 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/180726-johannesburg.html (date of access: 15.09.2021).

been designated as such by the UN Security Council, and welcomed efforts to alleviate the crisis in Northeastern Syria, in particular the memorandum of understanding signed between Russia and Turkey on 22 October 2019[21], and also welcomed the signing of the additional protocol to the Memorandum of stabilisation of the situation in the Idlib de-escalation zone[22].

During the 12th BRICS summit that was held on 17 November 2020, BRICS' leaders reaffirmed their strong commitment to support a Syrian-led, owned, and facilitated political process, in accordance with UN Security Council Resolution 2254, aimed at constitutional reform and free and fair elections. They also emphasised the importance of the Constitutional Committee in Geneva, which was launched with the decisive participation of the guarantor states of the Astana process and all the countries participating in the efforts made to address the conflict by peaceful means, and welcomed the efforts of the special envoy of the United Nations Secretary-General to Syria to ensure the sustainability and effectiveness of the committee. We are convinced that in order to reach an international agreement, members of the Constitutional Committee must be guided by the obligation to reach compromises and to cooperate constructively without outside interference[23].

**The necessity of confronting terrorism.** The BRICS pointed out the role of terrorism in the Syrian conflict, and the growing threat of international terrorism and extremism in the region, as the Ufa declaration of the 7th summit in Russia on 8–9 July 2015 included a focus on relevant United Nations resolutions, calling for the strict implementation by the international community of all provisions of UN Security Council Resolution 2170, Resolution 2178 and Resolution 2199, especially those dealing with cutting off funding and other forms of support for terrorists, and for compliance with the universally recognised rules of international law with regard to combating terrorism and extremism, including the principles of respect for the sovereignty of states [4, p. 122], and also referred to the indirect effects of instability in Iraq and Syria, which led to an increase in terrorist activities in the region, and urged all parties to address terrorist threats, especially Resolution 2170 of 2014, which condemns the massive and widespread violations of human rights by extremist groups in Iraq and Syria, and the need to include the issue of terrorism in the discussions and initiatives of the United Nations [4, p. 123].

The BRICS also condemned terrorism in all its forms and manifestations, and called for the support of the Syrian society in the face of this serious threat[24], and for the continuing the vigorous pursuit of terrorist groups identified by the UN Security Council, including ISIS and Jabhat al-Nusra[25]. Therefore, the BRICS expressed their deep concern about the dangers of terrorist dispersal[26], and stressed the importance of unity in the fight against terrorist organisations in Syria, taking into account the relevant Security Council resolutions[27].

BRICS' leaders also reaffirm international obligations to combat terrorism in all its forms and highlight the importance of unity in combating terrorist organisations in Syria, as defined by the UN Security Council[28].

**Condemning the use of chemical weapons.** The BRICS grouping took a firm stand against the use of chemical weapons in the conflict [6, p. 14], as it expressly opposed their use in Syria by any party for any purpose and under any circumstance[29], and commended the imposition of international control on the Syrian arsenals of chemical weapons or the transfer of toxic materials from the Syrian territory in accordance with the Security Council Resolution 2118 under the Chemical weapons convention, stressing that the success of these efforts is the result of the constructive cooperation of the Syrian authorities with the special mission of the Organisation for the Prohibition of Chemical Weapons to the United Nations and the UN Security Council[30], and called for comprehensive, objective and independent investigations into all alleged incidents[31].

[21]Brasilia declaration of 14 November 2019. Art. 42 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/191114-brasilia.html (date of access: 15.09.2021).

[22]XII BRICS summit Moscow declaration of 17 November 2020. Art. 23 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/201117-moscow-declaration.html (date of access: 15.09.2021).

[23]Ibid.

[24]VII BRICS summit: 2015 Ufa declaration of 9 July 2015. Para 2, art. 36 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/150709-ufa-declaration_en.html (date of access: 15.09.2021).

[25]8th BRICS Summit: Goa declaration of 16 October 2016. Art. 14 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/161016-goa.html (date of access: 15.09.2021).

[26]Brasilia declaration of 14 November 2019. Art. 42 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/191114-brasilia.html (date of access: 15.09.2021).

[27]BRICS in Africa: collaboration for inclusive growth and shared prosperity in the 4th industrial revolution. 10th BRICS summit Johannesburg declaration of 26 July 2018. Art. 46 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/180726-johannesburg.html (date of access: 15.09.2021).

[28]XII BRICS summit Moscow declaration of 17 November 2020. Art. 23 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/201117-moscow-declaration.html (date of access: 15.09.2021).

[29]BRICS leaders Xiamen declaration of 4 September 2017. Art. 41 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/170904-xiamen.html (date of access: 15.09.2021).

[30]VII BRICS summit: 2015 Ufa declaration of 9 July 2015. Para 3, art. 36 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/150709-ufa-declaration_en.html (date of access: 15.09.2021).

[31]BRICS in Africa: collaboration for inclusive growth and shared prosperity in the 4th industrial revolution. 10th BRICS summit Johannesburg declaration of 26 July 2018. Art. 46 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/180726-johannesburg.html (date of access: 15.09.2021).

The Syrian crisis has represented an arena for indirect conflict between the United States of America and its allies from the European countries on one hand and the BRICS countries, led by Russia and China on the other hand, with evidence that these countries have become an obstacle to taking any international decision to intervene in Syria [11, p. 178], as Russia's growing assertiveness in the Syrian conflict, centred around the stability of the country on the basis of defending the Assad government, contradicts the US policy and the policy of its allies aimed at overthrowing the Assad regime [15], and the BRICS countries have condemned unilateral military interventions, citing some statements and behaviours of US president Donald Trump [15], and the position of the BRICS was based on rejecting the external military intervention in the Syrian conflict, their lack of support for granting Syria's seat in the Arab League to the Syrian opposition, and their refusal to send weapons to the opposition, and the most important manifestation of coordination in the Syrian crisis was when the Russian Federation used its veto in the UN Security Council many times to stand up against the military intervention in the Syrian crisis in a way that prompted political analysts to talk about a new cold war between the Russian Federation and the United States of America [16, p 86].

The Syrian crisis, with its regional and international repercussions, has provided an opportunity for Russia and China to enhance their political standing in international forums and confirm the compatibility between the Russian and Chinese positions towards the Syrian crisis and continue to provide support and assistance to the Syrian state in international forums [11, p. 180], and the Indian position converges with them, which opposes the external military intervention in the conflict by Western powers, and believes that resolving the conflict through force is not possible but must be resolved through dialogue, and since the beginning of the Syrian crisis, the official position of the Indian government has been closer to supporting president Bashar al-Assad than to standing on the neutral side at least, and Brazil also agrees with its counterparts, the heads of state of the BRICS grouping, that the solution in Syria can only be through dialogue and rejects any external military intervention in Syria, and considers that the Geneva communiqué constitutes one of the most important principles involved in resolving the crisis in Syria, and it rejects categorically to arm the terrorist organisations that take the Syrian crisis as a single path to impose their agenda and the agenda of their financiers [11, p. 180–181].

For its part, South Africa supported the steadfastness of the Syrian people in their continued fight against takfiri terrorism and its brutal crimes, and stressed the need to resolve the crisis peacefully, and that the only option to end this war is peace and negotiations, as Syria belongs to the Syrians and it is up to them alone to solve the problems under the supervision of Syria as an independent and sovereign state, and South Africa had previously experienced a great experience of incompatibility and differences between its segments, and this was resolved politically in 1994, and it became a unified, civil, democratic state where there is no discrimination or racism [11, p. 182].

Civil society has been systematically involved in BRICS security issues, as in October 2016, 19 BRICS scholars, diplomats and politicians wrote an open letter to BRICS leaders at the Goa summit urging an end to the Syrian conflict [8, p. 84], and we find the position of BRICS countries is broadly aligned or compatible towards the Syrian crisis, based on the assertion that the only permanent solution to the crisis lies in dialogue based on the independence of the Syrian state and the protection of its territorial integrity and sovereignty; in line with United Nations resolutions, and that there is no alternative to a peaceful settlement of the conflict[32], and its conviction that there can be no military solution to the Syrian conflict[33]. While it is clear that the position of the BRICS countries deviates significantly from those of the United States and its supporters, the declarations of the summits do not explicitly attack the Western alliance but instead choose language that relates to generally accepted international law and the UN Charter [6, p. 14].

At the last 13th summit in September 2021, BRICS leaders talked about the situation of the Syrian crisis in the context of expressing their concern at the continuing conflicts and violence in different parts of the world and reaffirming their commitment to the principles of non-interference in the internal affairs of states and reiterate that all conflicts must be resolved by peaceful means and through political and diplomatic efforts in line with international law, in particular the UN Charter. We underscore the inadmissibility of the threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the purposes and principles of the United Nations and endorsing the position taken by BRICS' foreign ministers at their last meeting on the situation in different regions and countries, among them the Syrian Arab Republic[34].

The ministers stressed the constants of their countries towards the crisis during the past decade, as they reaffirmed their strong commitment to a Syrian-led and Syrian-owned, UN-facilitated political process in full compliance with UN Security Council Resolution 2254.

[32]VII BRICS summit: 2015 Ufa declaration of 9 July 2015. Para 1, art. 36 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/150709-ufa-declaration_en.html (date of access: 15.09.2021).

[33]Brasilia declaration of 14 November 2019. Art. 42 [Electronic resource]. URL: http://www.brics.utoronto.ca/docs/191114-brasilia.html (date of access: 15.09.2021).

[34]XIII BRICS summit New Delhi declaration of 9 September 2021. Art. 22 [Electronic resource]. URL: http://www.news.cn/english/2021-09/10/c_1310178656.htm (date of access: 15.09.2021).

They noted in this context the importance of the Constitutional Committee in Geneva, launched with the decisive participation of the countries-guarantors of the Astana process and all states engaged in efforts to address the conflict through political means, and welcomed the efforts of Geir Pedersen, who is special envoy of the UN Secretary-General for Syria, in order to ensure the sustainability and effectiveness of the Constitutional Committee that should be guided by the commitment to compromise and cooperate constructively without foreign interference. They also emphasised the fundamental importance of allowing unhindered humanitarian aid in accordance with the UN humanitarian principles and the post-conflict reconstruction of Syria that would create conditions for the safe, voluntary and dignified return of Syrian refugees and internally displaced persons to their places of permanent residence thus contributing to achieving long-term stability and security in Syria and the region in general[35].

## Conclusion

BRICS always affirms its commitment to calling for action for a peaceful and comprehensive political solution to the conflict in Syria. In one way or another, all BRICS countries have expressed the view that NATO has exceeded the powers conferred upon it by Security Council Resolution 1973 in Libya, as well as they also expressed their fear of repeating this pattern in Syria, and at the same time, they did not offer a single alternative solution, but rather they decided only the strong opposition to vote on any resolution that might undermine Syrian sovereignty.

It was noted that the BRICS summit in 2019 avoided mentioning the Venezuelan crisis in their joint declarations, in light of the support of some countries Russia, China, India and South Africa for Nicolas Maduro, while Brazil stands in solidarity with opposition leader Juan Guaido, as the BRICS failed to crystallise a unified position towards the Venezuelan crisis, and dealing with it with a kind of negative neutrality. On the other hand, the Syrian crisis has received great attention from the BRICS and occupied a large part of its leaders' discussions and meetings at the level of summits. The Syrian crisis has turned into an arena for geostrategic interactions and the future ambitions of international powers and has also contributed to bringing about a change in the roles of actors on the international scene, and in the absence of the United States, Russia has been the most effective and influential international player in the crisis; which intervened militarily in the Syrian civil war in order to face the western intervention there, and despite the BRICS opposition at first to militarise the Syrian conflict, they have understood later the importance of the Russian intervention to avoid a repetition of the Libyan scenario, then they have supported this step. For example, we found the use of the Russian-Chinese veto.

There are a number of regional and international factors that the BRICS grouping takes into account, as it monitors as much as possible the various developments that have affected various regions of the world. For example, the BRICS grouping supports the settlement of the situation in Syria and calls for the use of political and diplomatic means and a complete and immediate ceasefire, but BRICS has been unable to provide initiatives through which to put an end to the crises in Libya or Syria.

## References

1. Kurečić P, Bandov G. The contemporary role and perspectives of the BRIC states in the world-order. *Electronic Journal of Political Science Studies*. 2011;2(2):13–32.

2. Laila Ashour Hajem, Sally Mowaffaq Abdel Hamid. The rising economic powers conglomerate: the BRICS group as a model. *Al-Nahrain University Journal*. 2016;45:1–47. Arabic.

3. Laïdi Z. BRICS: sovereignty power and weakness. *International Politics*. 2012;49:614–632.

4. Abdenur AE. Rising powers and international security: the BRICS and the Syrian conflict. *Rising Powers Quarterly*. 2016;1(1):109–133.

5. Khaled Al-Masry, Manaf Muhammad Amoush. The role of international economic blocs in changing the structure of the international system BRICS as a model. *Tishreen University Journal for Research and Scientific Studies, Economic and Legal Sciences Series*. 2016;3:443–460.

6. Brosig M. *The role of BRICS in large-scale armed conflict building a multi-polar world order*. London: Palgrave Macmillan; 2019. 205 p.

7. Laïdi Z. *The BRICS against the West?* Paris: Centre d'études et de Recherches Internationales; 2011. 13 p.

8. Abdenur AE. Can the BRICS cooperate in international security? *International Organisations Research Journal.* 2017;12(3): 73–93.

9. Panova V. The BRICS security agenda and prospects for the BRICS Ufa summit. *International Organisations Research Journal*. 2015;10(2):119–139.

10. Adawy J. *The impact of the BRICS group on the international system* [dissertation]. Algeria: Mohamed Boudiaf University of M'sila; 2019. 121 p.

11. Sarah Qassem Abdel Reda, Alaa Jabbar Ahmed. The international role of the BRICS caucus. *Political and International Journal*. 2019;42:155–216.

[35]Media statement. Meeting of the BRICS ministers of foreign affairs. Art. 19 [Electronic resource]. URL: https://bit.ly/3nGhZxY (date of access: 15.09.2021).

12. Gross E. BRICS – what's in a name? [Internet; cited 2021 September 15]. Available from: https://www.iss.europa.eu/content/brics-%E2%80%93-what%E2%80%99s-name.

13. Sidhom L. *BRICS group* [dissertation]. Algeria: Mohamed Khider University of Biskra; 2019. 83 p. Arabic.

14. Khaled Moftah Eshtewi Al-Shubaily. *The course of the Syrian crisis between international and regional organisation – the United Nations and the League of Arab States: a comparative study* [dissertation]. Ismailia: Suez Canal University; 2017. 143 p. Arabic.

15. Ramos L, Garcia A, Pautasso D, Rodrigues F. A decade of emergence: the BRICS' institutional densification process. *Journal of China and International Relations.* 2018;special issue:1–15.

16. Abdul Rahman Ali Abdul Rahman. The strategic importance of the BRICS group. *Al-Mustansiriya Journal for Arab and International Studies, University of Basra*. 2019;16:80–101. Arabic.

*Received by editorial board 08.10.2021.*

*UDC 331.109.3*

# PASTORALISTS AND FARMERS CONFLICT: RIGHTS OR GREEDINESS

***O. I. ALUKO***[a]

[a]*Ajayi Crowther University, Oyo Town P. M. B 1066, Oyo State, Nigeria*

Pastoralists are basically migrants who do not have a permanent abode but migrates from one graze land to the other. The migration may be across international borders. Farmers on the other hand have a quasi-permanent abode. However the farmland crops are so precious to the farmers while getting grasses including crops on the farmland just for the cattle to survive is the priority of the pastoralists. This conflict of interests between the pastoralists and the farmers is a major crisis goalpost in West Africa among other violence such as ethno-religious violence. The focus of this paper is to examine the extent of damages caused due to claims of right or greediness by the pastoralists and the farmers in the society. The relative deprivation theoretical framework is used to examine the question of the place of mutual respect, peaceful co-existence and good neighbourliness. The paper concludes on the premise of respecting boundaries between the graze and the farmland and the use of modern husbandry ranching instead of a nebulous nomadic system.

***Keywords:*** conflict; land dispute; pastoralism; rule of law; urban violence.

# КОНФЛИКТ СКОТОВОДОВ И ФЕРМЕРОВ: ПРАВА ИЛИ АЛЧНОСТЬ

***О. И. АЛУКО***[1)]

[1)]*Университет Аджайи Кроутер, P. M. B 1066, г. Ойо, штат Ойо, Нигерия*

Скотоводы – это в основном мигранты, которые не имеют постоянного места жительства и перемещаются с одного пастбища на другое. Миграция может происходить через международные границы. Фермеры же имеют относительно постоянное место жительства. Хотя сельскохозяйственные культуры и высоко значимы для фермеров, в то же время заготовка трав для выживания крупного рогатого скота (включая урожай на сельскохозяйственных угодьях) является приоритетом для скотоводов. Данный конфликт интересов скотоводов и фермеров является главной причиной кризисов в Западной Африке наряду с насилием, например, на этнорелигиозной почве. Основное внимание в статье уделяется изучению степени ущерба, причиняемого обществу конфликтом скотоводов и фермеров. В качестве теоретической базы используется теория относительной депривации, объектами изучения которой выступают вопросы взаимного уважения, мирного сосуществования и добрососедства. В заключении делается вывод о важности соблюдения границ между пастбищами и сельскохозяйственными угодьями и использования современных животноводческих хозяйств вместо неопределенной кочевой системы.

***Ключевые слова:*** конфликт; земельный спор; скотоводство; верховенство закона; насилие в городах.

**Образец цитирования:**
Алуко ОИ. Конфликт скотоводов и фермеров: права или алчность. *Журнал Белорусского государственного университета. Международные отношения*. 2021;2:17–25 (на англ.).

**For citation:**
Aluko OI. Pastoralists and farmers conflict: rights or greediness. *Journal of the Belarusian State University. International Relations*. 2021;2:17–25.

**Автор:**
***Опейеми Идову Алуко*** – кандидат политических наук; преподаватель кафедры политологии.

**Author:**
***Opeyemi Idowu Aluko***, PhD (political science); lecturer at the political science department.
*opealukoheavenprogress@gmail.com*

## Introduction

Every country with diverse ethnic groups and religious groups is bound to make several provisions for harmonious intergroup relationships. Whenever the provisions are seen from favouritism, nepotism or biased pair of eyes then the country will be in repeated crises and diverse ethno-religious violence. Africa is a continent with several ethnic and religious groups. Many diverse ethnic and religious groups are lumped together in almost incompatible confinement. This had led to various degrees of communal crises and unimaginable impending future crises. Often than not, crises erupt from such ethno-religious lines. More so when an ethnic group migrates to another location in search of "greener pasture" violent altercations are usually visible.

The migration is seen as a major trespass to the sovereignty of the receiving country due to the mal-futuristic colonial border in Africa and many developing countries [1]. A prominent ethnic group migrating is the pastoralist, nomadic from East and Central Africa towards West Africa and the Atlantic Ocean. This international migration or trans-border movement had led to Fulani herdsmen and farmers violence in Africa. This violence centres on the migration of pastoralists from various parts of Africa especially from central and Eastern Africa to West Africa and indeed Nigeria.

Unlike other parts of the world that have some level of compatible ethnic groups, the ethnically and religiously diverse states in Africa has propelled recurrent epidemic of violence over the past four decades [1; 2]. In Nigeria, the migration of the Fulani herdsmen from other countries into the hinterland for the survival of their livestock is at the peril and expense of the farm land [2]. The disagreements include over the use of land for farmland and or grazing areas and stock routes of access to water points for both animals and households among others.

There are various factors that fuel these crises, a major factor is the blur claims of rights to graze or farm by the parties. Other factors include increased competition for land motivated by desertification, climate change, human and cattle's population growth, lack of clarity around the demarcation of pasture and stock routes, the breakdown of traditional relationships and informal agreements between pastoralists and farmers [2–4]. This has led to severe political, economic and social losses to the country.

The economic toll has also been huge. According to Mercy Corps study[1], the federal government was losing 13.7 bln US dollars in revenue annually because of herder-farmer conflicts in Benue, Kaduna, Nasarawa and Plateau states. The study found that on average these four states lost 47 % of their internally-generated revenues. In March 2017 and 2018 respectively, Benue state governor Samuel Ortom asserted that attacks by herders coming from more northerly states, and possibly also from Cameroon and Niger, had cost his state over 200 bln naira between 2012 and 2018 [5].

The focus of this work is to examine the extent of damages caused by either the right or greediness exhibited by the pastoralists and the farmers. No doubt that these conflicts had slowed down the development and economic growth of Nigeria and indeed Africa by destroying productive age groups which are invaluable assets for political growth and economic developments. It has eroded trust and social cohesion thereby reducing the maximum political and economic potential output level in Nigeria. Moreover, many pastoralist and farmer conflicts have taken a sharp turn from the right to land tussle to the right to life and existence tussles. These are seen in the group and guerrilla warfare attacks pursued along ethnic and religious lines [5]. These groups are not stranger to Nigeria because their sources have inventory [6].

Nigeria has an inventory of pastoral peoples, the Fulani, the Kanuri-related groups, the Shuwa, the Yedina and the Uled Suleiman are on top of the list [7]. The most numerous and widespread are the Fulani who have expanded eastwards from the Gambia river over the last thousand years and probably entered Nigeria in the 14$^{th}$ century [8]. The consequences of this were forceful interactions between all parties and considerable space for misunderstandings and protracted conflicts. However, if Fulani herders are unable to build up exchange relations with their host communities, particularly farmers, they can only survive either by settling and by flexible movement patterns that involve encountering new arable communities every year, or by intimidation of the farmers [7; 8].

Unfortunately, increased competition of pastoralists for a limited stock of grazing land has pitched the Fulani herders and wonderers against the indigenous farmers. The conflict between farmers and Fulani herdsmen has become so rampant. For instance, a total of about 15 000 people have lost their lives and properties worth billions of naira had been destroyed over a period of four decades till recent times. However, this conflict is usually attributed to environmental resource scarcity, greed, who gets what when and how and claim of right to land and its embedded resources. Saidu, a pastoralist from Wase district of Plateau state reaffirms this statement: "Our herd is our life because to every nomad life is worthless without his cattle. What do you expect from us when our source of existence is threatened? The encroachment of grazing fields and routes by farmers is a call to war… Wherever we turn we find the land reserved for our cattle to feast, taken over by farmers…

[1]The economic costs of conflict in Nigeria [Electronic resource]. URL: https://www.mercycorps.org/research-resources/economic-costs-conflict-nigeria (date of access: 17.08.2021).

It becomes difficult for our herd to move and graze without veering into crop fields… Once that happens, the farmers confront us and we have no option but to fight back"[2].

Relative deprivation theory is used to examine the question of the place of mutual respect, peaceful coexistence, discord and good neighbourliness in the central states in Nigeria. Conceptual clarifications of pastoralists' violence and urban violence are examined, the anatomy of the states in central Nigeria is revealed so as to assess the peculiar geopolitical nature of the region. The paper also dived into the pool of pastoralists and farmers crises in the central Nigeria state which examines the timeline of violence in the region and examines the implication for the country. The chapter goes further to assess the failed recommendations and then makes alternative suggestions. The paper concludes on the premise of respecting boundaries between the grassland and the farmland so as to prevent violence reoccurrence in central Nigeria.

## Conceptual clarification

This section creates the atmosphere to explore the various notions of urban violence and pastoralists' violence in the extant literature. This shows different perspectives which scholars held on the concept of urban violence and pastoralists' violence.

**Urban violence.** It is a popular concept in social sciences. M. Harroff-Tavel [9] and O. I. Aluko [10] in their views posited that urban violence is different from violence that it is purely criminal. They opined that different forms of urban violence including social and political uprising, hunger riots, identity-based violence among ethnic or religious groups and clashes between territorial gangs, terrorism and acts of xenophobic violence directed against migrants. However, urban violence has intertwined with different forms of violence in urban areas. M. Harroff-Tavel goes further to say that "armed urban violence between groups that are generally considered as criminal (drug dealers, territorial gangs, mafia-type groups, etc.), or between those groups and government forces or private militias, raises some complex legal (and political) problems. This is particularly the case when that fighting is between groups engaged in a collective confrontation of major intensity, which testifies to a high degree of organisation" [9].

T. Gurr [11], F. A. Aremu and O. I. Aluko [12] as well opined that violence has different categories and it is a complex phenomenon. Its categories may include but not limited to the following:

- turmoil which consists of low-scale violence such as relatively spontaneous, unorganised political violence with substantial popular participation, including violent political strikes, riots, political clashes, and localised rebellions;
- conspiracy which consists of medium-scale violence such as highly organised political violence with limited participation, including organised political assassinations, small-scale terrorism, small-scale guerrilla wars, coup d'états and mutinies.
- internal war which consists of higher scale violence such as highly organised political violence with widespread popular participation, designed to overthrow the regime or dissolve the state and accompanied by extensive violence, including large-scale terrorism and guerrilla wars, civil wars, and revolution.

A. Akinwale and A. Aderinto [13], O. I. Aluko, A. Isiaq, and F. Aremu [14] agreed that all forms of violence in urban areas constitute a serious social problem irrespective of their nomenclatures. Any form of violence that constitutes a threat to the security of lives and property of a large number of people in an urban area is considered an urban violence. This conceptualisation is based on recognition of the fact that urban violence can be more devastating compared to violence in a rural setting. Urban violence is also expressed in terms of ethnic and religious conflicts and often centred upon concerns with transgression to the urban settings norms and conducts.

S. Kunkeler and K. Peters [15] argues that urban violence is generally framed and interpreted as criminal violence. Within a context of state failure or the inability of state representatives to provide security, the lives of inhabitants of cities such as Rio de Janeiro and Johannesburg are constituted by a culture of fear that is attached to issues of crime [16]. K. Krause, R. Muggah and E. Gilgen [17] distinguish direct forms of urban violence which result in physical and psychological harm including intentional fatalities, assault and sexual violence and indirect manifestations that negatively affect other aspects of livelihoods, social relations and wellbeing. This concept agrees with the same trend of violence in general which may manifest in either the urban area or the rural area.

**Pastoralists' violence.** This concept has little reference in the extant literature. This section of the paper dived into some cogent concepts of what pastoralists' violence is. Pastoralists' violence is a form of violence which emanates from farmland crop protection tussles by the farmers against the graze land claims of the herdsmen. This implies that the resultant violence from the clash of interest on the use of lands either for cropping by the farmers or for grazing by the herdsmen constitutes pastoralists' violence [3; 18].

Pastoralists' violence is also the violence that emanates from fixing the priority between the rights of

[2]Farmer-pastoralists' clash leaves 32 dead [Electronic resource]. URL: http://www.irinnews.org/report.aspx?reportid=87525 (date of access: 17.08.2021).

animals (cattle) over the rights of humans on a piece of land. This shows the violence that results from the personal or group egocentric list of preference over another group regardless of the superior rights, land ownership rights and other traditional agreements on land uses.

In other words, pastoralist violence is the act of killing of humans, destruction of farmhouses, farmers' personal houses, maiming or inflicting injuries on innocent humans, burning of farm produce and forcefully possessing a grassland by the pastoralists on behave of their cattle and other herds. This is a violent act that transcends the mere struggling for the farmland but cut into the criminal act of forcefully ejecting the owners of farmland to abandon their land for the cattle to graze.

## Theoretical framework

**Relative deprivation.** It is a theory that was born out of feelings and perceptions of individuals and groups. It was first articulated by S. Stouffer and his group [19] to explain feelings of satisfaction and perceptions on one's position in the army. The main premise of relative deprivation theory is that people generally experience dissatisfaction and resentment when their own outcomes do not match the outcomes of other people with whom they compare [11; 20]. Thus, the emergence of deprivation feelings is the result of comparative judgments, rather than being determined by the objective outcome. As a result, those who are objectively least well off are not necessarily the ones who feel most deprived [21; 22].

When taking a closer look at the different ways in which the value of one's outcomes can be assessed, a basic distinction can be made between interpersonal and intergroup comparisons. Unfavourable interpersonal comparisons may result in feelings of individual deprivation, while unfavourable intergroup comparisons may lead people to conclude that their social group is deprived, relative to other groups. This is an important distinction because egoistical (individual) and fraternal (group level) deprivation are predicted to have fundamentally different behavioural consequences [11; 23].

Fraternal deprivation is seen as an important precursor of political protest and intergroup social conflict, while the experience of egoistical deprivation has been associated with social isolation and individual maladjustment. A critique of relative deprivation theory, however, is that it does not specify the circumstances under which people are likely to interpret their situation as individuals.

F. Tougas and A. Beaton [24] also considered relative deprivation as personal, group and deprivation felt on behave of others. The latter is the experience of the advantageous group acting for the interest of the disadvantaged group. This may be against the advantaged group's personal interest or group interest. Relative deprivation had also been used to address gender disparity. M. Crosby, K. Ozawa and F. Crosby [25] opined that countries that are essentially individualistic (such as America) will easily implement affirmative action to remedy gender relative deprivation while countries that are collectivistic (such as Japan) will hardly implement affirmative action to remedy gender relative deprivation. Others that are between individualistic and collectivistic like Nigeria will only embark on selective implementation which may endanger conflicts.

**Tyre burning theory.** The process and sequence of conflict ensuing are explained by the tyre burning theory which was propounded by O. I. Aluko (2016). Tyre burning theory gives the indication that the burning of tyre phenomenon is the indicator of chaotic violence occurrence in a community. It is an aftermath indication or sign of chaotic violent attacks and breakdown of law and order in the society [26]. The theory focuses on the burning of substances most importantly tyres; others substances destroyed may include vehicles and other abandoned wreckages of broken shops, windows, houses and also to the extent of the killing of human beings. Also, in the process of violence leading to the burning of substances, the commuters got invoked by perceived political, economic, social or geographical favouritism, nepotism, aggrandisement, patron-client, patrimonial politics, ethnicity and negligence by the government and law enforcement agencies [11; 27].

In this paper, relative deprivation is intertwined with tyre burning theory to give a clear perspective on the rationale behind the incessant violence between the farmers and herders in Nigeria. Ethnic chauvinism, favouritism and nepotism of the dominant politically and economic favoured groups over other perceived smaller groups are most of the causes of this continuous violence. Most of the political, economic and social justice largesse meant for all the groups are prebend by the bigger groups. The result of long time relative deprivation builds up into gradual confrontation. The peaceful confrontation leads to violent altercation to the extent of burning of tyres as a symbol of violence and destruction of lives and properties.

## Pastoralists and farmers crises in Nigeria

Crises are phenomena that are ubiquitous among human communities. The primary cause of crises is unequal interaction and perceived infringement on an individual or a group's fundamental rights. The land is a common factor to all humans. The difference is the level of accessibility and values. The migration of Fu-

lani herdsmen from Central Africa to West Africa for adequate pasture due to climate change crises is a major cause of the violence over land accessibility[3] [1; 3–5]. The Nigeria's land use act of 1978 granted equal rights and opportunities for Nigerians to live in any part of the country un-deterred and regards all citizens as Nigerians and not natives, unlike the previous Land tenure act of 1962 that did not spell this out [28]. This implies that the Federal government has the capacity to redraw the boundaries between any state, region, cattle routes, range lands and farmlands accordingly and envisage co-existence of various groups following due process. The Nigerian grazing reserve act of 1964 was passed for the purpose of accessing grazing lands to the pastoralists, thereby encouraging free movement and addressing the conflict which may arise from it with a plan to improve productivity and social amenities [29; 30].

The primary cause of crises between the pastoralists and the farmers is the level of accessibility to farmland. To the pastoralists, the lands are grazing terrain for their cattle while the farmers see the land as a fertile ground for cropping. The pastoralist in most cases permits their cattle to pass the imaginary boundaries between the grassland and the farming land to destroy the crops which is the sweat and labour of the farmers. These usually lead to a breakdown of laws and order to the extent of killing both humans and animals (cows). A major perception of the crises is the political undertone of ethic superiority and dominance of the Fulani groups over every other ethnic group in Nigeria. As such the political mechanisms that control the state security apparatus, monetary backups and legal statuesque are skewed towards the Fulani crises. To this end, regardless of their anti-human rights activities such as killing and destruction of farmland and produce, they are hardly prosecuted or proscribed as terrorist group. These make them embolden to perpetuate all forms of atrocities against their host communities.

Another major issue leading to the crises in central Nigeria is the sporadic increase in the livestock (cows) population to the humans' population. It is shown in the table below.

**Livestock and human population in Nigeria**

| Year | Livestock population, mln cows | Human population, mln people |
|---|---|---|
| 1961 | 8 | 48 |
| 1970 | 15 | 57 |
| 1980 | 32 | 75 |
| 1990 | 50 | 97 |
| 2000 | 84 | 125 |
| 2008 | 104 | 151 |

Source: [31].

Another dimension to the causes of the crises in Nigeria is the expansion of the cultivated areas due to human population growth and daily food requirement for food security. The conflicts, through provocative claims over access rights to farmland and cattle routes, have become ubiquitous and seem to have defied solutions [32]. Since the 1980s there has been a marked expansion of cultivation of the Fadama areas. This has therefore heightened the struggle between livestock and agricultural production which results in the escalation of conflicts [33]. Hence, as the population grows, more land is being cultivated and less is available for pasture. This forced the Fulani to migrate and trample on crops cultivated by farmers.

The resultant effect is that both the farmers and pastoralists clash in fierce struggles for access to such valuable lands which, more often than not, result in increased conflicts. Social and economic factors continue to provoke violent conflicts among the Fulani pastoralists and farmers. The intensity and variations of the conflicts largely depend on the nature and type of the user groups where the herdsmen graze. These conflicts have constituted serious threats to the means of survival and livelihoods of both the farmers and pastoralists and what both groups are tenaciously protecting.

The incessant conflicts in Nigeria between Fulani pastoralists and farmers are also caused by climate change. The grasslands over time had become unfruitful

[3]The economic costs of conflict in Nigeria [Electronic resource]. URL: https://www.mercycorps.org/research-resources/economic-costs-conflict-nigeria (date of access: 17.08.2021).

and depleted of nutrients coupled with fluctuations in rainfall, the herdsmen simply find a means for their cattle to survive. The surviving strategies include the forceful invasion of the farmland and a defence strategy of using violence against the target community. This strategy works a lot because the judiciary system which tries the cases and litigations often take a long time or is simply overlooked. Moreover, the crops destroyed can never be replanted by the cattle or their heardsmen. This, therefore, makes the concerned communities to resort to the killing and rustling of the cattle to avenge the lost farmland. However, this rustling compensation strategy does not bring peace to the community but reprisal attacks from the herdsmen. This usually results in urban violence, destruction of lives and properties.

## Effects of pastoralists and farmers crises

Every crisis in the human community does have a series of effects on the social, political and economic lives of the people. This might be of a short term effect or a long term effect. The herdsmen and farmers conflict in Central, East and West Africa and Nigeria as a case study holds critical implications for the progress of the region in particular and Nigeria in general[4] [1–7; 29; 33–37]. There are some of the effects that the crises in the central Nigeria have both on the region and on the country as a sovereign entity.

**Political instability.** This is a direct consequence of any form of crisis. The political regime in the region is under threat and might collapse into a pariah or failed state. A state of emergency could also result and the whole political terrain will be shut down. Political instability makes all other governmental processes to be slowed down or stopped out-rightly. This could force the military junta to cut abruptly the democratic system to an autocratic regime.

**Economical stagnation.** This is the phenomenon of stagnation in the means of production and distribution of goods and services in the state. When crises are prevalent in a state, no one will be able to participate in legitimate commerce which contributes to the economy of the state at large. This means that the resources which the state needs to sustain itself will be scarce or simply unavailable and eventually the state might shut down economically. Although there might be some other illegal trade in the state such as illegal sales of small and light weapons in the state. This illegal business is a means of sustaining such violence.

**Social bigotry.** The social effect of violence in the community include rape, an increase in the number of internally displaced persons, refugees, theft, burglary and the death of loved ones. Individuals in the community will neglect their good social characters to adopt a survival strategy against their fellow man. The social bonds between different social groups are broken down and hatred and bitterness become evident among group interactions.

**Ethnical chauvinism.** This is a form of polarity along ethnic lines in the state. Each ethnic group will withdraw into the shell of their ethnicity at the expense of the state hegemony and survival. Violence makes the individual take solace in the small groups at the expense of the large state. Therefore the crises will linger as the groups become stronger than the state. Ethnic solidarity instead of national unity leads to the disintegration of such a country.

**Psychological trauma.** This is the effect of disrupted thought as a result of the sudden or multiple deaths of loved ones. The psychological trauma may lead a state to loss of coordination for any political, economic or social activities. The resultant effect of psychological trauma is mental dementia. This is a situation of persistent disorder of behaviour and intellectual dysfunctions, change in personality, deterioration in personal care, impaired reasoning ability and disorientations. Individuals in such condition cannot effectively contribute to the growth of the country but instead will be seeking vengeance.

**Physically weaking.** These are the permanent scars of violence on the human body. There may be loss of sight causing blindness, or loss of the limbs (hands or legs). This will result in the dependency of such group of people. The economy and social activities of such people are simply strained and perhaps permanently confined to a nonproductive level. If any of such people exist as a result of a violent situation, then the economics activities of the states will be affected because the bulk of the persons who should contribute to the state growth had become dependent on others.

**Educational backwardness.** It is certain that in a crisis-ridden area, the schools and other institutions of learning are shut down, some structures are vandalised while others will be completely destroyed. This has a long term effect on the future of society's development. Therefore, for education to continue in these areas the structures need to be improved and secured. Moreover, with this educational backwardness, there is also a higher chance of the youth to indulge in other anti-community development vices.

**Spiritually unstable.** Just like the educational backwardness effect of violence in a community, there will be imbalanced and unstable spiritual commitments. This implies that the freedom of worship and association

[4]The economic costs of conflict in Nigeria [Electronic resource]. URL: https://www.mercycorps.org/research-resources/economic-costs-conflict-nigeria (date of access: 17.08.2021).

formally enjoyed by the community is affected and the worshippers are apparently cut off from their collective fellowships. This is due to the fear of strategic attacks on worship centres mostly perpetrated by religious bigots faction of the warring syndicates.

**Developmental haphazardness.** This is a resultant effect of violence in any community. The developmental process will not be consistent. In the long run, the state will be found backward in the list of developed nations. All the indices of development will be on the negative side because the people who should build up the state are deeply divided over such matters which can be solved amicably. The limited available resources of human capital and technology which should be used for developmental purposes will be channelled to the violence either to mitigate it or to aggravate it.

**Unfavourable historical precedent.** Every country with crisis-ridden records is apparently in the "black book" of history. Years after the violence, the incident will still be discussed as if it were new and fresh. This may also prevent some major investors from investing their resources into such regions and the level of development will be at a slower pace than the actual capacity the state had. Mutual suspicion and distrust may be a nurse for a long time among the groups in society. This is a negative or unfavourable historical antecedent that may result in lingered fear of interaction in the post crises period.

## Conclusion

Migration in Africa especially from East and Central Africa to the West Africa had been a major problem in the continent. The primary causes of crises are relative deprivation with human or naturally caused which leads to tyre burning phenomenon. The farmers' right and greediness of the herdsmen in the daily interaction in Africa and indeed in Nigeria may linger because of the unequal interaction and perceived infringement on individual or a group's fundamental rights. Land is a common factor to all humans. The difference is the level of accessibility and values. However, the traditional lands in Africa are jealously guarded. The primary cause of crises between the pastoralists and the farmers is the level of accessibility to farmland or graze land. To the pastoralists, the lands are grazing terrain for their cattle while the farmers see the land as their natural inheritance and a fertile ground for cropping. The migrating nomadic herdsmen's seldom allows the cattle to pass through the farming land thereby leading to trespassing and destroying the farmers' crops.

The sporadic increase in number of livestock (cows) population ration to the humans' population is a major issue leading to the crises in central Nigeria. This poses a great competition between humans and cattle over land, water and vegetations. For the pastoralists and farmers conflict in Nigeria and other countries to reduce gradually the government should take into cognisance the population growth rate and modern ranching techniques instead of the brutal nomadic pastoralism. Also, the cattle population is higher than previous years to the extent of competing with the population of humans in Nigeria thereby competing for land, food and water. There should be a ready channel to effectively and economically dispose the cattle in such a way that will keep the cattle population relatively constant and at the same time lucrative for the herdsmen.

Therefore, industries of reputable standards should be established in strategic places where cattle products such as meat, milk, hide and skins can be processed in large quantity and high quality so as to reduce cattle population and unnecessary competitions between man and animals. Local industries should be improved to international standards so as to enhance export value for cattle products and at the same time provides employment for the people who will improve the economy. In order to achieve this, educational strategy must be employed by the government. Workable educational policy should be implemented for the nomadic with a reasonable punishment for any erring one neglecting the education. This will make the herdsmen understand the essence of human life as more valuable to cattle's life, instead of frequent communal clashes between the pastoralists and herdsmen.

The reduction of the rampant conflict between farmers and Fulani herdsmen in Nigeria is of great importance to the food security of the country and Africa at large. Nigeria is a potential food basket for the continent. Obnoxious laws on land use must be repelled by the government so as to promote peaceful coexistence and reduce conflict altercation in the country. These measures will reduce or permanently exterminate the notion of rights or greediness exhibited by the pastoralists and or the farmers. The expected peace, trust and social cohesion required for rapid political development and economic growth will be attained.

## References

1. Cline LE. Jihadist movements in the Sahel: rise of the Fulani? *Terrorism and Political Violence*. 2021;33:1–17. DOI: 10.1080/09546553.2021.1888082.

2. Aluko OI. The "under carpet" syndrome of urban violence management in developing countries. *Humanities, Arts and Social Sciences Studies*. 2021;21(1):139–149.

3. Aluko OI. Agricultural policy and food security in Nigeria: a rational choice analysis. In: Osabuohien E, editor. *The palgrave handbook of agricultural and rural development in Africa*. London: Palgrave Macmillan; 2020. p. 457–491.

4. Aluko OI. Radicalising pastoralists and farmers in sustained violence: a theoretical construct [Internet; cited 2021 August 17]. Available from: https://dousingtensions.org/benuevalley.php.

5. Aluko OI. Working within the laws: crop farming-pastoralism conundrum and convalescence in Nigeria [Internet; cited 2021 August 17]. Available from: https://dousingtensions.org/benuevalley.php.

6. Aluko OI. Backdoor politics: permitting informalities for formal development in African democracy. *TEME: Journal for Social Sciences*. 2020;XLIV(1):209–229.

7. Topher M, Talia H, Lisa I, Caitriona D, Stone C. The effect of farmer-pastoralist violence on state-level internal revenue generation in Nigeria: a modified synthetic control analysis approach [Internet; cited 2021 August 17]. Available from: https://www.researchgate.net/publication/279515083_The_Effect_of_Farmer-Pastoralist_Violence_on_State-Level_Internal_Revenue_Generation_in_Nigeria.

8. Blench RM. "You can't go home again": pastoralism in the new millennium [Internet; cited 2021 August 17]. Available from: https://www.researchgate.net/publication/228379032_'You_can't_go_home_again'_Pastoralism_in_the_new_millennium.

9. Harroff-Tavel M. Violence and humanitarian action in urban areas: new challenges, new approaches [Internet; cited 2021 August 17]. Available from: https://international-review.icrc.org/sites/default/files/irrc-878-harroff-tavel.pdf.

10. Aluko OI. Gang and urban violence prevalence on democratic sustenance. *ABAC Journal*. 2018;38(1):133–143.

11. Gurr T. *Why men rebel.* Princeton: Princeton University Press; 1970. 440 p.

12. Aremu FA, Aluko OI. Tension in the paradise: a paradigm shift in urban violence in Nigeria. *Silpakorn University Journal of Social Sciences, Humanities, and Arts*. 2017;17(1):81–96.

13. Akinwale A, Aderinto A. Crisis of governance and urban violence in Nigeria. *African Journal of Criminology and Justice Studies*. 2011;5(1–2):49–77.

14. Aluko O, Isiaq A, Aremu F. Urban violence in Nigeria: the paradox and dimensions. In: Aytac O, Ozden O, editors. *Political science and international relations, mass communication, law: proceeding book of the 3rd International conference on social sciences; 2017 May 10–11; Abuja, Nigeria*. Abuja: Nile University of Nigeria; 2017. p. 80–98.

15. Kunkeler J, Peters K. "The boys are coming to town": youth, armed conflict and urban violence in developing countries. *International Journal of Conflict and Violence*. 2011;5(2):277–291. DOI: 10.4119/ijcv-2873.

16. Koonings K, Kruijt D. *Fractured cities: social exclusion, urban violence and contested spaces in Latin America*. London: Zed; 2007. 176 p.

17. Krause K, Muggah R, Gilgen E. *Global burden of armed violence 2011*. Cambridge: Cambridge University Press; 2011. 175 p.

18. Aluko OI. Urban violence dimension in Nigeria: farmer and herders. *AGATHOS*. 2017;8(1):187–206.

19. Stouffer S, Suchman E, de Vinney L, Starr S, Williams R. *The American soldier: adjustment to army life*. Princeton: Princeton University Press; 1949. 12 p.

20. Cook D, Crosby J, Henningan M. The construct validity of relative deprivation. In: Sul JM, Miller RL, editors. *Social comparative process: theoretical and empirical perspectives*. Washington: Hemisphere; 1977. p. 307–333.

21. Crosby J. A model of egocentric relative deprivation. *Psychological Review*. 1976;83(2):85–113.

22. Walker I, Smith H. Fifty years of relative deprivation research. In: Walker I, Smith H, editors. *Relative deprivation: specification, development and integration*. Cambridge: Cambridge University Press; 2002. p. 3–10.

23. Tyler T, Linder A. Understanding the nature of fraternalistic deprivation: does group base deprivation involve fair outcome or fair treatments? In: Walker I, Smith H, editors. *Relative deprivation: specification, development and integration*. Cambridge: Cambridge University Press; 2002. p. 44–68.

24. Tougas F, Beaton A. Personal and group relative deprivation: connecting the "I" to the "We". In: Walker I, Smith H, editors. *Relative deprivation: specification, development and integration*. Cambridge: Cambridge University Press; 2002. p. 119–135.

25. Crosby M, Ozawa K, Crosby F. Japanese and American reaction to gender discrimination. In: Walker I, Smith H, editors. *Relative deprivation: specification, development and integration*. Cambridge: Cambridge University Press; 2002. p. 185–199.

26. Aluko O. Policing election and electoral violence in developing democracies. *Indian Philosophical Quarterly*. 2016; 37(1–4): 183–207.

27. Aluko O. Security agents public perception in Nigeria: a study on the police and the vigilante (neighbourhood watch). *Journal of Political Studies*. 2016;23(2):481.

28. Muhammed I, Ismaila A, Bibi U. An assessment of farmer-pastoralist conflict in Nigeria using GIS. *International Journal of Engineering Science Invention*. 2015;4(7):23–33.

29. Awogbade M. Grazing reserves in Nigeria. *Nomadic Peoples*. 1987;23:18–30.

30. Ibrahim A. Linking vision with reality in the implementation of policy framework for pastoralism in Nigeria [Internet; cited 2021 August 17]. Available from: https://pastoralismjournal.springeropen.com/track/pdf/10.1186/2041-7136-2-7.pdf.

31. Earth Policy Institute. Livestock and human population in Nigeria from 1961–2008. *FAOStat*. 2012. November 26:52.

32. Abbas M. No retreat no surrender conflict for survival between Fulani pastoralists and farmers in Northern Nigeria. *European Scientific Journal*. 2009;8(1):331–346.

33. Nyong A. Climate related conflicts in West Africa [Internet; cited 2021 August 17]. Available from: https://www.wilsoncenter.org/sites/default/files/media/documents/publication/ReportFromAfrica12.pdf.

34. Odoh A, Chilaka C. Climate change and conflict in Nigeria: a theoretical and empirical examination of the worsening incidence of conflict between Fulani herdsmen and farmers in Northern Nigeria. *Arabian Journal of Business and Management Review*. 2012;2(1):110–124.

35. Okoli C, Atelhe A. Nomads against natives: a political ecology of herder/farmer conflicts in Nasarawa state, Nigeria. *American International Journal of Contemporary Research*. 2014;4(2):76–88.

36. Aluko OI. Re-caging the Leviathan: of elephant, lion and cockroach. *Nigerian Forum: Journal of the Nigerian Institute of International Affairs*. 2019;40(12):528–539.

37. Bello U. Herdsmen and farmers conflicts in North-Eastern Nigeria: causes, repercussions and resolutions. *Academic Journal of Interdisciplinary Studies*. 2013;2(5):129–140.

*Received by editorial board 17.09.2021.*

# Международное право

# International law

*UDC 341.018*

## UNILATERAL COERCIVE MEASURES: NOTION AND QUALIFICATION

***A. F. DOUHAN***[a]

[a]*Belarusian State University, 4 Niezależnasci Avenue, Minsk 220030, Belarus*

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

***Е. Ф. ДОВГАНЬ***[1)]

[1)]*Белорусский государственный университет, пр. Независимости, 4, 220030, г. Минск, Беларусь*

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-

**Образец цитирования:**
Довгань ЕФ. Односторонние принудительные меры: понятие и квалификация. *Журнал Белорусского государственного университета. Международные отношения*. 2021;2:26–48 (на англ.).

**For citation:**
Douhan AF. Unilateral coercive measures: notion and qualification. *Journal of the Belarusian State University. International Relations*. 2021;2:26–48.

**Автор:**
***Елена Федоровна Довгань*** – доктор юридических наук, профессор; профессор кафедры международного частного и европейского права факультета международных отношений.

**Author:**
***Alena F. Douhan***, doctor of science (law), full professor; professor at the department of international private law and European law, faculty of international relations.
*alena.f.douhan@gmail.com*

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. Neshataeva[1], 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 Council[3] and the UN General Assembly[4], states prefer to present their unilateral activities as not constituting unilateral coercive measures and to use therefore other terms, like "sanctions", "restrictive measures"[5],

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

[2] EU 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).

[3] Human 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.

[4] Human 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.

[5] Guidelines 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", "special economic measures", "enforcement measures"[8], "autonomous sanctions"[9], "autonomous" financial targeted sanctions and "travel bans"[10]. Compliance companies classify sanctions as unilateral, multilateral and global[11]. 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 cases[12]. States involved are also identified in various ways, including as sanctioning or sanctioned, targeting or targeted, sender or source states[13].

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], punishment[14] [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 comply[15] [8, c. 19], negative consequences of a violation [2, p. 9, 12, 14; 14, p. 309], measures to protect the international legal order[16] [14, p. 13], measures not involving the use of armed force to maintain or restore international peace and security[17], a means of implementation of international responsibility[18] [6, p. 49, 51; 13, p. 306, 308], countermeasures 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-

[6]Human 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.

[7]Unilateral 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).

[8]О 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).

[9]Alleged 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).

[10]Call 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).

[11]*Piatetsky 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).

[12]Ibid.

[13]See: 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).

[14]This 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).

[15]*Ronzitti 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…

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

[17]Supplement 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).

[18]The 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.

[19]Draft 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 case[20] [16, p. 126–127] as well as in the General comment No. 31 of International covenant on civil and political rights of 1996[21] (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 law[22], and further advancing universal values for all[23]. 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

[20]Barcelona 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).

[21]General 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).

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

[23]Council 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)

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

[25]Council 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).

[26]Executive 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).

[27]Executive 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).

[28]Executive 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).

[29]A rule by the Treasury department 79 FR 38248 of 7 Jule 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).

[30]Executive 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).

[31]Executive 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 Zimbabwe[48].

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, Soudan, Syria, South Sudan, Ukraine (Crimea), Venezuela, Yemen and Zimbabwe[49].

[32]Proclamation 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).

[33]Executive 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).

[34]Executive 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).

[35]Executive 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).

[36]Executive 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).

[37]Executive 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).

[38]Executive 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).

[39]Executive 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).

[40]Executive 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).

[41]Executive 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).

[42]Executive 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).

[43]Executive 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).

[44]Executive 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).

[45]Executive 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).

[46]Executive 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).

[47]Executive 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).

[48]UK 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).

[49]Sanctions [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 regimes[50].

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 act[51], 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 action[54] 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 intervener[56].

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

[50]European 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).

[51]Council 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).

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

[53]Alleged 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).

[54]Country 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).

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

[56]In 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 Federation[58] [28] "to impose costs… for its aggression in Ukraine"[59]. Sectoral sanctions are also imposed by the United States in the gold[60], oil and financial sectors of the Venezuelan economy, and against the state-owned airline and TV industries[61]. 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 Sevastopol[62].

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 companies[63]. At the same time, the use of targeted sanctions is expanding (in particular, the EU's financial sanctions include several thousand individuals and companies[64], and far more are listed by the United States[65]). 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 banks[66].

[57]United 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).

[58]See: 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).

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

[60]Executive 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).

[61]Venezuela 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).

[62]EU 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).

[63]Guidelines 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).

[64]Consolidated 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).

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

[66]Call 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 abovementioned 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, investment[70], human rights and fundamental freedoms[71], including the possibility of appeal[72], regular review[73] and humanitarian exceptions[74].

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 law[75]. 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

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

[68]Official 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…

[69]Draft 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…

[70]Extraterritorial 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 (date of access: 17.08.2021).

[71]Basic 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).

[72]Consolidated 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).

[73]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 6 [Electronic resource]. URL: https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf (date of access: 17.08.2021).

[74]Ibid. Para 25–27, 68–69.

[75]Draft 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…

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

[77]Ibid. 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 suffered[80], with due account for the requirements of humanity and the rules of good faith[81], and implemented in accordance with the rules of art. 52 of DARS[82] and art. 54 of the Draft articles on the responsibility of international organisations[83].

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 politicians[84], have no grounds in international law. As reaffirmed by the International Court of Justice in numerous cases, disproportionate countermeasures are prohibited by international law[85].

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 interpretating "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 interests, 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 individual[87]. 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,

[78]Barcelona 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.

[79]Art. 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.

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

[81]See: 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).

[82]Draft 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.

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

[84]Position 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).

[85]Portuguese 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 (date of access: 17.08.2021).

[86]General 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).

[87]Art. 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 factors[88]. UN organs, reaching the same conclusions, also reported on the low efficacy and high negative humanitarian impact of sanctions[89] [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 corruption[91] 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 states[92]. 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 1997[93].

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 ineffective[94]. Thematic and country visit reports of the special rapporteur illustrate the devastating humanitarian impact of unilateral sanctions[95], which are sometimes called a peaceful tool that substitutes for military action and wars[96].

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 situations[97]. These resolutions affirm that people should not be deprived of their means of subsistence, and that the extraterritorial application of laws is inadmissible[98].

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

[88]Iraq 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).

[89]UN 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).

[90]Secretary-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).

[91]Ibid.

[92]Ibid.

[93]General 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).

[94]See: 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).

[95]Reports 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).

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

[97]Human 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.

[98]Human 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.

[99]Human 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 relations[100].

**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 sanctions[101] [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 cooperation[102], 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 goods[103].

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 connectivity[104] 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 States[105], 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 pandemic[106]. 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 app[107], and Iranian doctors cannot access a medical database (PubMed) after its server was transferred to Google[108]. Citizens of Iran, Sudan and Venezuela cannot use online platforms for educational purposes, potentially affecting school enrolment and the dropout rate[109].

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 companies[110] for fighting COVID-19[111]. All of these facts illustrate examples of limitations im-

[100]The 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).

[101]Executive 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).

[102]Countering 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).

[103]Negative 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).

[104]Executive 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).

[106]Bloqueo 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).

[107]Responses 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.

[109]Submission 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).

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

[111]On 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 programme[112], 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 protection[113], 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 accused[114].

**Targeted sanctions.** Targeted sanctions can be qualified today as an integral feature of the contemporary system of unilateral sanctions. They started to be applied 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 governance[116]; or to protect national security or other interests, often via the announcement of a state of emergency[117]. 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 (Venezuela[118], 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

[112]See: 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).

[113]CCPR 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).

[114]General 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).

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

[116]EU restrictive measures.

[117]Mandates 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).

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

[119]Executive 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 freedoms[120], to provide the possibility of appeal[121], regular review[122] , and to develop mechanisms for humanitarian exceptions[123]; 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 borders[125]. Financial sanctions are viewed as violating the rights to privacy, family life, health and property[126], 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 guarantees[127], 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 administrative 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 activity[128] 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 2020[129] 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 adjudication[130]. Moreover, it under-

[120]Basic 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).

[121]Consolidated 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.

[122]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 6 [Electronic resource]. URL: https://www.globalpolicy.org/global-taxes/42501-the-adverse-consequences-of-economic-sanctions.html (date of access: 18.08.2021).

[123]Ibid. Para 25–27, 68, 69.

[124]It 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.

[125]Mandate 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).

[126]See: 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).

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

[128]Art. 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].

[129]Executive 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).

[130]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).

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 emergencies[131] 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 personality[132]).

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 process[133] and the right not to be held guilty for any offense that was not an offense at the moment of its commission[134] are considered inalienable by human rights institutions[135], legal scholars[136] [47, p. 305] and international treaties[137]. Violating these rights is qualified even in time of war as a serious breach of international humanitarian law[138]. 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

[131]Executive 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).

[132]International 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).

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

[134]Ibid. Art. 15(1).

[135]General 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).

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

[137]Principles 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/atrocity-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).

[138]Geneva 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/atrocity-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 persons[139], 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 overcompliance.** 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 sanctions[141] [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 exempted[142].

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 Federarion, 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 sanctions[143].

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 terrorists[144]. 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 payments[145]. 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

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

[140]Call 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).

[141]Ibid.

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

[143]Council 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).

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

[145]Call 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 sanctions[146]. 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 conflict[147].

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 Iran[148]; for Venezuela as for the reported threats to private business and third-country donors, partners and humanitarian organisations[149] 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 sanctions[150] and many others.

General consent about the illegality of applying extraterritorial sanctions exists today both in the legal doctrine[151] and political discourse of the directly targeted states (Iran, Belarus, Gayana[152], China, etc.) and countries which traditionally are viewed as imposing sanctions[153]. 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 states[154] [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 crimes[155]. Therefore, the EU member states and their partners emphasise that their sanctions are non-extraterritorial and are to be applied within their respected jurisdictions only[156]. The EU insists that its sanctions are not extraterritorial and believes that extraterritoriality is against international law[157].

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

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

[147]Mandates 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).

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

[149]Preliminary 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).

[150]Virtual 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).

[151]Call 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…

[152]Ibid.

[153]Key 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).

[154]Extraterritorial 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 (date of access: 17.08.2021).

[155]Ibid. Supra note 206, p. 52–54.

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

[157]Ibid.

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 countries[159].

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 therefrom[161]; 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 it[162]. 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 sanctions[163] [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 sanctions[164], 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 aid[165].

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

[158]Call 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…

[159]*Douhan 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).

[160]Resolution 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).

[161]Council 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).

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

[163]Commission 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).

[164]Call 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).

[165]See: 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 companies[166] [57] and trade partners[167] 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 consumer[168].

**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 rights[169].

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

[166]See: 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).

[167]Call 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…

[168]See: 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).

[169]Call 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.

## References

1. Sparrow G. *Sanctions*. London: Knightly Vernon; 1972. 58 p.
2. Nephew R. *The art of sanctions. A view from the field*. New York: Columbia University Press; 2018. 216 p.
3. Ruys T. Sanctions, retorsions and countermeasures: concepts and international legal framework. In: Herrik L, editor. *Research handbook on UN sanctions and international law*. Cheltentam: Edward Elgar Publishing; 2017. p. 19–51.
4. Puma G. The principle of non-intervention in the face of the Venezuelan crisis. *Questions of International Law*. 2021;79: 5–26.
5. Kovalev AA, Chernichenko SV, editors. *Mezhdunarodnoe pravo* [International law]. Moscow: Prospekt; 2008. 824 p. Russian.
6. Abass A. *Regional organisations and the development of collective security*. London: Hart Publishing; 2004. 272 p.
7. Thakur R. *The United Nations, peace and security*. Cambridge: Cambridge University Press; 2016. 428 p.
8. Nincic M, Wallensteen P, editors. *Dilemmas of economic coercion: sanctions in world politics*. New York: Praeger Publishers; 1983. 250 p.
9. Ignatenko GV, Tiunov OI, editors. *Mezhdunarodnoe pravo* [International law]. Moscow: Norma; 2013. 752 p. Russian.
10. Kalamkaryan RA, Migachev YuI. *Mezhdunarodnoe pravo* [International law]. Moscow: Eksmo; 2004. 688 p. Russian.
11. Shibaeva EA. [International organisations in the system of international legal regulation]. *Sovetskii ezhegodnik mezhdunarodnogo prava*. 1980;21:214–224. Russian.
12. Grünfeld F. The effectiveness of United Nations economic sanctions. In: van Genugten WJM, de Groot GA, editors. *United Nations sanctions: effectiveness and effects, especially in the field of human rights. A multi-disciplinary approach*. Antwerpen: Intersentia; 1999. p. 113–134.
13. Lukashuk II. *Pravo mezhdunarodnoi otvetstvennosti* [Law of international responsibility]. Moscow: Walters Kluwer; 2004. 404 p. Russian.
14. Barnhizer D, editor. *Effective strategies for protecting human rights: economic sanctions, use of national courts, and international fora and coercive power*. New York: Routledge; 2001. 294 p.
15. Felbermayr G, Kirilakha A, Syropoulos C, Yalcin E, Yotov VY. The global sanctions data base [Internet; cited 2021 January 3]. Available from: https://drive.google.com/file/d/11djwEIr96SFt6YpMzo9gaB6ZJrOer8AX/view.
16. Simma B. Does the UN Charter provide an adequate legal basis for individual or collective responses to violations of obligations erga omnes? In: Delbruck J, editor. *The future of international law enforcement: new scenarios – new law?* Berlin: Duncker and Humblot; 1993. p. 126–127.
17. Nyun TM. Feeling good or doing good: inefficacy of the US unilateral sanctions against the military government of Burma/Myanmar. *Washington University Global Studies Law Review*. 2008;7(3):455–518.
18. Lillich RB. Economic coercion and the international legal order. *International Affairs*. 1975;51:358–372.
19. Bowett DB. Reprisals involving recourse to armed force. *American Journal of International Law*. 1972;66:3–7.
20. Giumelli F. The purposes of targeted sanctions. In: Biersteker TJ, Eckert SE, Tourino M, editors. *Targeted sanctions: the impacts and effectiveness of United Nations action*. New York: Cambridge University Press; 2016. p. 38–59.
21. Tzanakopoulos A. We who are not as others: sanctions and (global) security governance. In: Geiß R, Melzer N. *The Oxford handbook on the international law of global security*. Oxford: Oxford University Press; 2020. p. 32–48.
22. Kern A. *Economic sanctions. Law and public policy*. New York: Palgrave Macmillan; 2009. 359 p.
23. Rathbone M, Jeydel P, Lentz A. Sanctions, sanctions everywhere: forging a path through complex transnational sanctions' laws. *Georgetown Journal of International Law*. 2013;44(3):1071–1074.
24. Exclusive: Venezuela asks Bank of England to sell its gold to UN for coronavirus relief [Internet; cited 2021 August 18]. Available from: https://www.reuters.com/article/us-health-coronavirus-venezuela-gold-exc-idUSKBN22B30X.
25. Crawford J. *Brownlie's principles of public international law*. Oxford: Oxford University Press; 2012. 803 p.
26. Warbrick C. States and recognition in international law. In: Evans MD, editor. *International law*. Oxford: Oxford University Press; 2006. p. 253–256.
27. Dunn G. Mid-year sanctions and export controls update [Internet; cited 2021 January 4]. Available from: https://www.gibsondunn.com/wp-content/uploads/2020/08/2020-mid-year-sanctions-and-export-controls-update.pdf.
28. Strosnider K, Addis D. New sanctions targeting Russian financial and energy sectors [Internet; cited 2021 August 18]. Available from: https://www.globalpolicywatch.com/2014/07/new-sanctions-targeting-russian-financial-and-energy-sectors/.

29. O'Toole B. Don't believe the SWIFT China sanctions hype [Internet; cited 2021 August 18]. Available from: https://www.atlanticcouncil.org/blogs/new-atlanticist/dont-believe-the-swift-china-sanctions-hype/.

30. SWIFT says it "has no authority" to unplug Russia or Israel [Internet; cited 2021 August 18]. Available from: https://www.pymnts.com/in-depth/2014/swift-says-it-has-no-authority-to-unplug-russia-or-israel/.

31. Economist: disconnecting from SWIFT will be a bomb for the regime [Internet; cited 2021 August 18]. Available from: https://charter97.org/en/news/2020/11/25/401835/.

32. Pinto RA. Digital sovereignty or digital colonialsim? *Sur – International Journal on Human Rights*. 2018;27:15–27.

33. Gotlieb AE. Extraterritoriality: a Canadian perspective. *Northwestern Journal of International Law & Business*. 1983;5(3):449–461.

34. Geyrhalter B. *Friedenssicherung durch Regionalorganisationen ohne Beschluß des Sicherheitsrates*. Cologne: LIT; 2001. 239 S.

35. Malkawi BH. Collective sanctions through the lenses of international economics law: the case of the League of Arab States trade boycott of Israel [Internet; cited 2021 August 18]. Available from: https://webcache.googleusercontent.com/search?q=cache:cu9D2kXfbDMJ:https://www.ohchr.org/Documents/Issues/UCM/ReportHRC48/Academia/submission-malkawi-bashar-h.doc+&cd=1&hl=ru&ct=clnk&gl=by.

36. Hahn MJ. Vital interests and the law of GATT: an analysis of GATT's security exception [Internet; cited 2021 August 18]. Available from: https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1653&context=mjil.

37. Bruderlein C. Coping with the humanitarian impact of sanctions: an OCHA perspective [Internet; cited 2021 January 4]. Available from: https://reliefweb.int/sites/reliefweb.int/files/resources/677CE646930621C7C1256C22002C7B7F-OCHA_dec1998.pdf.

38. Reisman WM, Stevick DL. The applicability of international law standards to United Nations economic sanctions programmes. *European Journal of International Law*. 1998;9(1):86–141.

39. Petrescu IM. The humanitarian impact of economic sanctions. *Europolity – Continuity and Change in European Governance. New Series*. 2016;10(2):205–246.

40. Romano SM. Guerra psicológica recargada: cibersanciones, Venezuela y geopolítica. *Revista Internacional de Pensamiento Politico*. 2017;12:105–124.

41. O'Sullivan D, Moshtaghian A. Instagram says it's removing posts supporting Soleimani to comply with US sanctions [Internet; cited 2021 August 18]. Available from: https://edition.cnn.com/2020/01/10/tech/instagram-iran-soleimani-posts/index.html.

42. Tickle J. Chechen leader Kadyrov banned from Instagram again, loses account with 1.4 million followers [Internet; cited 2021 August 18]. Available from: https://www.rt.com/russia/488533-kadyrov-banned-instagram-again/.

43. Cameron I. Protecting legal rights: on the (in)security of targeted sanctions. In: Wallensteen P, Staibano C, editors. *International sanctions: between words and wars in the global system*. London: Frank Cass; 2005. p. 181–206.

44. Bianchi A. Assessing the effectiveness of the UN Security Council's anti-terrorism measures. *European Journal of International Law*. 2006;17(5):881–919.

45. van den Herik L. The Security Council's targeted sanctions regimes: in need of better protection of the individual. *Leiden Journal of International Law*. 2007;20(4):797–807.

46. Arnold R. Human rights in times of terrorism. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*. 2006;66:297–321.

47. Dandurand Y. *Handbook on criminal justice and responses to terrorism, criminal justice*. New York: United Nations; 2009. 136 p.

48. Right to live without a blockade [Internet; cited 2021 August 19]. Available from: https://oi-files-cng-prod.s3.amazonaws.com/lac.oxfam.org/s3fs-public/file_attachments/bp-cuba-blockade-women-250521-en.pdf.

49. BNP Paribas to pay $9bn to settle sanctions violations [Internet; cited 2021 August 19]. Available from: https://www.bbc.com/news/business-28099694.

50. Faghihi R. Millions of Iranians at risk as US sanctions choke insulin supplies [Internet; cited 2021 January 27]. Available from: https://www.middleeasteye.net/news/iran-insulin-medicine-us-sanctions-millions-risk.

51. Stoll T, Blockmans S, Hagemejer J, Hartwell CA, Gött H, Karunska K, Maurer A. Extraterritorial sanctions on trade and investments and European responses policy department for external relations [Internet; cited 2021 January 4]. Available from: https://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_STU(2020)653618.

52. Mallard G, Sabet F, Sun J. The humanitarian gap in the global sanctions regime. *Global Governance: a Review of Multilateralism and International Organisations*. 2020;6(1):121–153.

53. Timofeev IN. "Sanctions for sanctions violation": US Department of Treasury enforcement sactions against the financial sector. *Polis. Political Studies*. 2020;6:73–90. Russian. DOI: 10.17976/jpps/2020.06.06.

54. Boyle D. Extra-territoriality and US economic sanctions. *International Enforcement Law Reporter*. 2020;36(3):101–103.

55. Bennis Ph. Sanctions in the era of pandemic [Internet; cited 2021 August 19]. Available from: https://www.aljazeera.com/opinions/2020/5/12/sanctions-in-the-era-of-pandemic.

56. MilánY. R.La historia no contada de cómo un avión con suministros médicos desde China no ha podido entrar a Cuba [Internet; cited 2021 August 19]. Available from: http://www.granma.cu/cuba-covid-19/2020-04-01/por-que-las-cosas-para-cuba-siempre-son-mas-dificiles.

57. Adding to the evidence: the impacts of sanctions and restrictive measures on humanitarian action [Internet; cited 2021 August 18]. Available from: https://voiceeu.org/publications/adding-to-the-evidence-the-impact-of-sanctions-and-restrictive-measures-on-humanitarian-action.pdf.

58. Economic sanctions and COVID-19 pandemic [Internet; cited 2021 August 18]. Available from: https://www.cetim.ch/25648-2/.

59. Debarre A. Making sanctions smarter: safeguarding humanitarian action [Internet; cited 2021 August 18]. Available from: https://www.ipinst.org/wp-content/uploads/2019/12/1912_Making-Sanctions-Smarter.pdf.

60. Chidiebere CO. Targeted or restrictive: impact of US and EU sanctions on education and healthcare of Zimbabweans. *African Research Review*. 2017;11(3):31–41. DOI: 10.4314/afrrev.v11i3.4.

## Библиографические ссылки

1. Sparrow G. *Sanctions*. London: Knightly Vernon; 1972. 58 p.
2. Nephew R. *The art of sanctions. A view from the field*. New York: Columbia University Press; 2018. 216 p.
3. Ruys T. Sanctions, retorsions and countermeasures: concepts and international legal framework. In: Herrik L, editor. *Research handbook on UN sanctions and international law*. Cheltentam: Edward Elgar Publishing; 2017. p. 19–51.
4. Puma G. The principle of non-intervention in the face of the Venezuelan crisis. *Questions of International Law*. 2021;79:5–26.
5. Ковалев АА, Черниченко СВ, редакторы. *Международное право*. Москва: Проспект; 2008. 824 с.
6. Abass A. *Regional organisations and the development of collective security*. London: Hart Publishing; 2004. 272 p.
7. Thakur R. *The United Nations, peace and security*. Cambridge: Cambridge University Press; 2016. 428 p.
8. Nincic M, Wallensteen P, editors. *Dilemmas of economic coercion: sanctions in world politics*. New York: Praeger Publishers; 1983. 250 p.
9. Игнатенко ГВ, Тиунов ОИ, редакторы. *Международное право*. Москва: Норма; 2013. 752 с.
10. Каламкарян РА, Мигачев ЮИ. *Международное право*. Москва: Эксмо; 2004. 688 с.
11. Шибаева ЕА. Международные организации в системе международно-правового регулирования международных отношений. *Советский ежегодник международного права*. 1980;21:214–224.
12. Grünfeld F. The effectiveness of United Nations economic sanctions. In: van Genugten WJM, de Groot GA, editors. *United Nations sanctions: effectiveness and effects, especially in the field of human rights. A multi-disciplinary approach*. Antwerpen: Intersentia; 1999. p. 113–134.
13. Лукашук ИИ. *Право международной ответственности*. Москва: Волтерс Клувер; 2004. 404 с.
14. Barnhizer D, editor. *Effective strategies for protecting human rights: economic sanctions, use of national courts, and international fora and coercive power*. New York: Routledge; 2001. 294 p.
15. Felbermayr G, Kirilakha A, Syropoulos C, Yalcin E, Yotov VY. The global sanctions data base [Internet; cited 2021 January 3]. Available from: https://drive.google.com/file/d/11djwEIr96SFt6YpMzo9gaB6ZJrOer8AX/view.
16. Simma B. Does the UN Charter provide an adequate legal basis for individual or collective responses to violations of obligations erga omnes? In: Delbruck J, editor. *The future of international law enforcement: new scenarios – new law?* Berlin: Duncker and Humblot; 1993. p. 126–127.
17. Nyun TM. Feeling good or doing good: inefficacy of the US unilateral sanctions against the military government of Burma/Myanmar. *Washington University Global Studies Law Review*. 2008;7(3):455–518.
18. Lillich RB. Economic coercion and the international legal order. *International Affairs*. 1975;51:358–372.
19. Bowett DB. Reprisals involving recourse to armed force. *American Journal of International Law*. 1972;66:3–7.
20. Giumelli F. The purposes of targeted sanctions. In: Biersteker TJ, Eckert SE, Tourino M, editors. *Targeted sanctions: the impacts and effectiveness of United Nations action*. New York: Cambridge University Press; 2016. p. 38–59.
21. Tzanakopoulos A. We who are not as others: sanctions and (global) security governance. In: Geiß R, Melzer N. *The Oxford handbook on the international law of global security*. Oxford: Oxford University Press; 2020. p. 32–48.
22. Kern A. *Economic sanctions. Law and public policy*. New York: Palgrave Macmillan; 2009. 359 p.
23. Rathbone M, Jeydel P, Lentz A. Sanctions, sanctions everywhere: forging a path through complex transnational sanctions' laws. *Georgetown Journal of International Law*. 2013;44(3):1071–1074.
24. Exclusive: Venezuela asks Bank of England to sell its gold to UN for coronavirus relief [Internet; cited 2021 August 18]. Available from: https://www.reuters.com/article/us-health-coronavirus-venezuela-gold-exc-idUSKBN22B30X.
25. Crawford J. *Brownlie's principles of public international law*. Oxford: Oxford University Press; 2012. 803 p.
26. Warbrick C. States and recognition in international law. In: Evans MD, editor. *International law*. Oxford: Oxford University Press; 2006. p. 253–256.
27. Dunn G. Mid-year sanctions and export controls update [Internet; cited 2021 January 4]. Available from: https://www.gibsondunn.com/wp-content/uploads/2020/08/2020-mid-year-sanctions-and-export-controls-update.pdf.
28. Strosnider K, Addis D. New sanctions targeting Russian financial and energy sectors [Internet; cited 2021 August 18]. Available from: https://www.globalpolicywatch.com/2014/07/new-sanctions-targeting-russian-financial-and-energy-sectors/.
29. O'Toole B. Don't believe the SWIFT China sanctions hype [Internet; cited 2021 August 18]. Available from: https://www.atlanticcouncil.org/blogs/new-atlanticist/dont-believe-the-swift-china-sanctions-hype/.
30. SWIFT says it "has no authority" to unplug Russia or Israel [Internet; cited 2021 August 18]. Available from: https://www.pymnts.com/in-depth/2014/swift-says-it-has-no-authority-to-unplug-russia-or-israel/.
31. Economist: disconnecting from SWIFT will be a bomb for the regime [Internet; cited 2021 August 18]. Available from: https://charter97.org/en/news/2020/11/25/401835/.
32. Pinto RA. Digital sovereignty or digital colonialsim? *Sur – International Journal on Human Rights*. 2018;27:15–27.
33. Gotlieb AE. Extraterritoriality: a Canadian perspective. *Northwestern Journal of International Law & Business*. 1983;5(3):449–461.
34. Geyrhalter B. *Friedenssicherung durch Regionalorganisationen ohne Beschluß des Sicherheitsrates*. Cologne: LIT; 2001. 239 S.
35. Malkawi BH. Collective sanctions through the lenses of international economics law: the case of the League of Arab States trade boycott of Israel [Internet; cited 2021 August 18]. Available from: https://webcache.googleusercontent.com/search?q=cache:cu9D2kXfbDMJ:https://www.ohchr.org/Documents/Issues/UCM/ReportHRC48/Academia/submission-malkawi-bashar-h.doc+&cd=1&hl=ru&ct=clnk&gl=by.
36. Hahn MJ. Vital interests and the law of GATT: an analysis of GATT's security exception [Internet; cited 2021 August 18]. Available from: https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1653&context=mjil.
37. Bruderlein C. Coping with the humanitarian impact of sanctions: an OCHA perspective [Internet; cited 2021 January 4]. Available from: https://reliefweb.int/sites/reliefweb.int/files/resources/677CE646930621C7C1256C22002C7B7F-OCHA_dec1998.pdf.

38. Reisman WM, Stevick DL. The applicability of international law standards to United Nations economic sanctions programmes. *European Journal of International Law*. 1998;9(1):86–141.

39. Petrescu IM. The humanitarian impact of economic sanctions. *Europolity – Continuity and Change in European Governance. New Series*. 2016;10(2):205–246.

40. Romano SM. Guerra psicológica recargada: cibersanciones, Venezuela y geopolítica. *Revista Internacional de Pensamiento Politico*. 2017;12:105–124.

41. O'Sullivan D, Moshtaghian A. Instagram says it's removing posts supporting Soleimani to comply with US sanctions [Internet; cited 2021 August 18]. Available from: https://edition.cnn.com/2020/01/10/tech/instagram-iran-soleimani-posts/index.html.

42. Tickle J. Chechen leader Kadyrov banned from Instagram again, loses account with 1.4 million followers [Internet; cited 2021 August 18]. Available from: https://www.rt.com/russia/488533-kadyrov-banned-instagram-again/.

43. Cameron I. Protecting legal rights: on the (in)security of targeted sanctions. In: Wallensteen P, Staibano C, editors. *International sanctions: between words and wars in the global system*. London: Frank Cass; 2005. p. 181–206.

44. Bianchi A. Assessing the effectiveness of the UN Security Council's anti-terrorism measures. *European Journal of International Law*. 2006;17(5):881–919.

45. van den Herik L. The Security Council's targeted sanctions regimes: in need of better protection of the individual. *Leiden Journal of International Law*. 2007;20(4):797–807.

46. Arnold R. Human rights in times of terrorism. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*. 2006;66:297–321.

47. Dandurand Y. *Handbook on criminal justice and responses to terrorism, criminal justice*. New York: United Nations; 2009. 136 p.

48. Right to live without a blockade [Internet; cited 2021 August 19]. Available from: https://oi-files-cng-prod.s3.amazonaws.com/lac.oxfam.org/s3fs-public/file_attachments/bp-cuba-blockade-women-250521-en.pdf.

49. BNP Paribas to pay $9bn to settle sanctions violations [Internet; cited 2021 August 19]. Available from: https://www.bbc.com/news/business-28099694.

50. Faghihi R. Millions of Iranians at risk as US sanctions choke insulin supplies [Internet; cited 2021 January 27]. Available from: https://www.middleeasteye.net/news/iran-insulin-medicine-us-sanctions-millions-risk.

51. Stoll T, Blockmans S, Hagemejer J, Hartwell CA, Gött H, Karunska K, Maurer A. Extraterritorial sanctions on trade and investments and European responses policy department for external relations [Internet; cited 2021 January 4]. Available from: https://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_STU(2020)653618.

52. Mallard G, Sabet F, Sun J. The humanitarian gap in the global sanctions regime. *Global Governance: A Review of Multilateralism and International Organisations*. 2020;6(1):121–153.

53. Тимофеев ИН. "Санкции за нарушение санкций": принудительные меры Министерства финансов США против компаний финансового сектора. *Полис. Политические исследования*. 2020;6:73–90. DOI: 10.17976/jpps/2020.06.06.

54. Boyle D. Extra-territoriality and US economic sanctions. *International Enforcement Law Reporter*. 2020;36(3):101–103.

55. Bennis Ph. Sanctions in the era of pandemic [Internet; cited 2021 August 19]. Available from: https://www.aljazeera.com/opinions/2020/5/12/sanctions-in-the-era-of-pandemic.

56. MilánY. R.La historia no contada de cómo un avión con suministros médicos desde China no ha podido entrar a Cuba [Internet; cited 2021 August 19]. Available from: http://www.granma.cu/cuba-covid-19/2020-04-01/por-que-las-cosas-para-cuba-siempre-son-mas-dificiles.

57. Adding to the evidence: the impacts of sanctions and restrictive measures on humanitarian action [Internet; cited 2021 August 18]. Available from: https://voiceeu.org/publications/adding-to-the-evidence-the-impact-of-sanctions-and-restrictive-measures-on-humanitarian-action.pdf.

58. Economic sanctions and COVID-19 pandemic [Internet; cited 2021 August 18]. Available from: https://www.cetim.ch/25648-2/.

59. Debarre A. Making sanctions smarter: safeguarding humanitarian action [Internet; cited 2021 August 18]. Available from: https://www.ipinst.org/wp-content/uploads/2019/12/1912_Making-Sanctions-Smarter.pdf.

60. Chidiebere CO. Targeted or restrictive: impact of US and EU sanctions on education and healthcare of Zimbabweans. *African Research Review*. 2017;11(3):31–41. DOI: 10.4314/afrrev.v11i3.4.

*Received by editorial board 29.09.2021.*

*UDC 341.735*

# PERSONAL IMMUNITY OF STATE OFFICIALS AND APPLICATION OF UNILATERAL COERCIVE MEASURES

***N. O. MOROZ***[a]

[a]*Belarusian State University, 4 Niezależnasci Avenue, Minsk 220030, Belarus*

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

***Н. О. МОРОЗ***[1)]

[1)]*Белорусский государственный университет, пр. Независимости, 4, 220030, г. Минск, Беларусь*

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.

**Образец цитирования:**
Мороз НО. Личный иммунитет должностных лиц и применение односторонних принудительных мер. *Журнал Белорусского государственного университета. Международные отношения*. 2021;2:49–61 (на англ.).

**For citation:**
Moroz NO. Personal immunity of state officials and application of unilateral coercive measures. *Journal of the Belarusian State University. International Relations*. 2021;2:49–61.

**Автор:**
***Наталия Олеговна Мороз*** – кандидат юридических наук, доцент; доцент кафедры государственного управления юридического факультета.

**Author:**
***Nataliya O. Moroz***, PhD (law), docent; associate professor at the department of state management, faculty of law.
*nataliya.maroz@gmail.com*

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 jurisdiction[1].

These high-ranking officials[2] 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-Assad[5], D. Trump[6], N. Maduro[7], J. Montserrat[8], R. Mugabe[9], F. Mekdad[10], M. Pompeo[11], J. Zarif[12], 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

[1]Case 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.

[2]The 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.

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

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

[5]Council 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.

[6]Tehran 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).

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

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

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

[10]*Szucs 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).

[11]Tehran 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).

[12]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: 13.04.2021).

[13]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).

[14]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).

[15]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).

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

[17]Iran 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).

[18]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.

[19]Council 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.

coersive 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 recognise[20]. 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 interest[21].

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 jurisdiction[22]. 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 missions[24]. 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 affairs[25].

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 2006[26]. 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

[20]Immunity 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).

[21]*Krauss 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).

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

[23]Immunity 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).

[24]Vienna 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.

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

[26]Summaries 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 functions[27]. 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 treaties[29]); 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 thereto[30]). 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 inviolability "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 state[33]. 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 absolute[34]. 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;

[27]Blaškić 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).

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

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

[30]Guiding 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).

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

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

[33]Certain 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-iil.org/app/uploads/2017/06/2001_van_02_en.pdf (date of access: 13.04.2021).

[34]Ibid.

• 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 concerned[35].

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 functions[37]. 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 Moscow[38].

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 government[40].

## 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 assets[41].

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

[36]Ibid. Art. 21(2).

[37]Immunities 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).

[38]Порошенко: "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).

[39]Immunities 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).

[40]Ibid.

[41]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: 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 law[43].

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 petition[44]. 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 mission[45].

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].

[42]Negative 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).

[43]Declaration 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).

[44]*Leáñez 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).

[45]Draft 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).

[46]Hungary 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 office[47]. 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 duties[48]. 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 measure[49].

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 US[50]; 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 extend fragmented[55] and may not include even those exceptions that have been indicated below[56].

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

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

[48]Ibid. Para 54.

[49]Guidelines 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).

[50]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: 17.04.2021).

[51]Guidelines 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).

[52]Ibid.

[53]Charter of the United Nations of 24 October 1945.

[54]Convention on the privileges and immunities of the United Nations of 13 February 1946 [Electronic resource]. URL: https://www.refworld.org/docid/3ae6b3902.html (date of access: 29.07.2021).

[55]Types 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).

[56]Autonomous 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 UN[58].

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 law[60]. 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 2019[61]. 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 1947[62]. Nevertheless, the US practice in the area discussed is quite inconsistent[63]. This is also fair with respect to other states[64].

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 UN[65]

[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 WHO[66], the OSCE[67], the EU[68], the EEU[69], 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 dispute[70], 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 holds[72]. 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 Sudan[73]. 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 assets[77].

[66]Seventy-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).

[67]*Parry 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).

[68]Video 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).

[69]Заседание 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).

[70]Case 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.

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

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

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

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

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

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

[77]United Nations Convention against ilicit 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 all[80]. 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 procedures[82]. 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 trial[83].

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 sanctions[84].

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

[78]Guidelines 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).

[79]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).

[80]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) ; 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).

[81]Guidelines 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).

[82]Protection 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).

[83]Ibid.

[84]Yassin 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.

[85]Council 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 ICJ[86].

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 corruption[88], drug-trafficking[89], transnational organised crime[90]).

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* obligations[91]. 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-determination[92].

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 jurisdiction[93]. 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 law[95]; for national security reasons; for the prevention

[86]Negative 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).

[87]Council 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.

[88]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) ; The Global anti-corruption sanctions regulations [Electronic resource]. URL: https://www.legislation.gov.uk/uksi/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.

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

[90]Executive 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.

[91]Barcelona 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.

[92]Peremptory 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).

[93]Case 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)

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

[95]Council 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 elsewhere[96]; under a discretional right of a competent public official to cease the sanctions[97]; under a discretional 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 transaction[98], 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 Australia[99]). 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 authority[103].

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-

[96]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).

[97]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: 17.04.2021).

[98]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) ; 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).

[99]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: 19.06.2021).

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

[101]Immunities 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).

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

[103]Certain 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.

## References

1. Evans MD, editor. *International law*. Oxford: Oxford University Press; 2014. 873 p.
2. Schmitt M. *Tallinn manual 2.0 on the international law applicable to cyber operations*. Cambridge: Cambridge University Press; 2017. 569 p.
3. Webb P. *International judicial integration and fragmentation*. Oxford: Oxford University Press; 2013. 778 p.
4. Douhan AF. Fundamental human rights and coercive measures: impact and interdependence. *Journal of the Belarusian State University. International Relations*. 2017;1:67–77.
5. Akande D. Can the United States deny sudanese president Bashir a visa to attend the UN General Assembly or arrest him? [Internet; cited 2021 April 17]. Available at: https://www.ejiltalk.org/can-the-united-states-deny-sudanese-president-bashir-a-visa-to-attend-the-un-general-assembly-or-arrest-him/.
6. Šturma P. How to limit immunity of state officials in relation to grave violations of human rights? Between the definition of official acts and exceptions. *ESIL Conference paper series.* 2016;8(8):1–15.
7. Vereschetin VS, Le Mon CJ. Immunities of individuals under international law in the jurisprudence of the International Court of Justice. *Yearbook of International Law and Jurisprudence*. 2004;1:77–89.
8. Chudakov MF. *Konstitutsionnoe (gosudarstvennoe) pravo zarubezhnykh gosudarstv* [Constitutional (state) law of foreign states]. Minsk: Novoe znanie; 2001. 576 p. Russian.
9. Cassese A. When may senior state officials be tried for international crimes? Some comments on the Congo v. Belgium case. *European Journal of International Law*. 2002;13(4):855–875.
10. Shaw MN. *International law*. Cambridge: Cambridge University Press; 2003. 1288 p.
11. Wood M. The immunity of official visitors. *Max Planck Yearbook of United Nations Law*. 2012;16:35–98.
12. Dixon M. *Textbook on international law*. Oxford: Oxford University Press; 2013. 393 p.
13. Lukashuk II. *Sovremennoe pravo mezhdunarodnykh dogovorov. Tom 1. Zaklyuchenie mezhdunarodnykh dogovorov* [Contemporary law of international treeties. Volume 1. Conclusion of international treeties]. Moscow: Wolters Cluver; 2004. 658 p. Russian.
14. Boister N. *An introduction to transnational criminal law*. Oxford: Oxford University Press; 2021. 301 p.
15. Birkett DJ. Asset freezing at the European and inter-American courts of human rights: lessons for the International Criminal Court, the United Nations Security Council and states. *Human Rights Law Review*. 2020;20(3):502–525.

*Received by editorial board 25.07.2021.*

## CONTENTS

### INTERNATIONAL RELATIONS



### INTERNATIONAL LAW

## СОДЕРЖАНИЕ

### МЕЖДУНАРОДНЫЕ ОТНОШЕНИЯ



### МЕЖДУНАРОДНОЕ ПРАВО

*Журнал включен Высшей аттестационной комиссией Республики Беларусь в Перечень научных изданий для опубликования результатов диссертационных исследований по историческим, политическим и юридическим наукам.*

*Журнал включен в библиографическую базу данных научных публикаций «Российский индекс научного цитирования» (РИНЦ).*

**Журнал Белорусского государственного университета. Международные отношения. № 2. 2021**

Учредитель:
Белорусский государственный университет

Юридический адрес: пр. Независимости, 4, 220030, г. Минск.
Почтовый адрес: пр. Независимости, 4, 220030, г. Минск.
Тел. 259-70-74, 259-70-75
E-mail: jintrel@bsu.by
URL: https://journals.bsu.by/index.php/internationalRelations

«Журнал Белорусского государственного университета. Международные отношения» издается с 2017 г.

Редактор английского текста *М. Натуркач*
Редактор *А. С. Люкевич*
Технический редактор *Д. Ф. Когут*
Корректор *А. С. Люкевич*

Подписано в печать 10.12.2021.
Тираж 100 экз. Заказ 550.

Республиканское унитарное предприятие «Информационно-вычислительный центр Министерства финансов Республики Беларусь».
ЛП № 02330/89 от 03.03.2014.
Ул. Кальварийская, 17, 220004, г. Минск.



**Journal of the Belarusian State University. International Relations. No. 2. 2021**

Founder:
Belarusian State University

Registered address: 4 Niezaliežnasci Ave., Minsk 220030.
Correspondence address: 4 Niezaliežnasci Ave., Minsk 220030.
Tel. 259-70-74, 259-70-75.
E-mail: jintrel@bsu.by
URL: https://journals.bsu.by/index.php/internationalRelations

«Journal of the Belarusian State University. International Relations» published since 2017.

English text editor *M. Naturkach*
Editor *A. S. Lyukevich*
Technical editor *D. F. Kogut*
Proofreader *A. S. Lyukevich*

Signed print 10.12.2021.
Edition 100 copies. Order number 550.

Republican Unitary Enterprise «Informatsionno-vychislitel'nyi tsentr Ministerstva finansov Respubliki Belarus'».
License for publishing No. 02330/89, 3 March, 2014.
17 Kal'variiskaya Str., Minsk 220004.