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ОДНОСТОРОННИЕ САНКЦИИ В СООТВЕТСТВИИ С МЕЖДУНАРОДНЫМ ПРАВОМ И ЭФФЕКТИВНОСТЬ БЛОКИРОВАНИЯ

ВВЕДЕНИЕ. *В статье представлен анализ современного международно-правового подхода к односторонним санкциям. Сделан вклад в развивающуюся дискуссию о квалификации односторонних санкций в соответствии с международным правом.*

МАТЕРИАЛЫ И МЕТОДЫ. *Настоящее исследование опирается на работы как российских, так и зарубежных специалистов в области международного экономического права, а также на анализ документов и материалов международных организаций (Организации Объединенных Наций (далее – ООН), Всемирной торговой организации (далее – ВТО) и др.) с целью оценки соответствия односторонних санкций нормам международного права. В представленном исследовании использовались общенаучные методы познания (анализ, синтез, индукция и дедукция), специально-юридические методы (формально-юридический, технико-юридический, метод юридической аналогии) и сравнительно-правовой метод.*

РЕЗУЛЬТАТЫ ИССЛЕДОВАНИЯ. *Представленный анализ показал, что широко используемый термин «односторонние санкции» приводит к злоупотреблению и неправомерному использованию такого международно-правового понятия, как «санкции». Анализ совместимости односторонних санкций с другими видами мер принуждения, такими как контрмеры, санкции Совета Безопасности ООН, реторсии и репрессалии, выявил, что односторонние санкции не подпадают под определение данных мер. Кроме того, односторонние санкции не должны оправдываться исключениями по соображениям безопасности, действующим в рамках ВТО. Использование экстерриториальных односторонних санкций противоречит одному из основополагающих принципов международного права – принципу невмешательства во внутренние дела. Существующие механизмы блокирования односторонних санкций недостаточно эффективны, чтобы компенсировать негативный эффект от односторонних санкций.*

ОБСУЖДЕНИЕ И ВЫВОДЫ. *Авторы пришли к выводу, что односторонние санкции в большинстве случаев не удовлетворяют совокупным критериям легитимной контрмеры.*

Односторонние санкции не эквивалентны санкциям Совета Безопасности ООН, так как в процессе принятия решений отсутствует система «сдержек и противовесов» в виде определения степени угрозы миру и безопасности и учета гуманитарных исключений. Несмотря на то, что между односторонними санкциями и реторсиями или репрессалиями есть определенная взаимосвязь, реторсии и репрессалии должны соответствовать критериям законности и пропорциональности, в то время как односторонние санкции вводятся по усмотрению государства без каких-либо критериев. Кроме того, авторы утверждают, что во избежание злоупотреблений при использовании исключений по соображениям безопасности, действующим в рамках ВТО, третейские группы должны опираться на сбалансированный подход, использованный в деле Россия – Транзит. Этот подход показывает, что контекст исключений по соображениям безопасности следует понимать как охватывающий только военные и тесно связанные с ними вопросы и не распространять его на политические, экономические, культурные или любые другие интересы и отношения. Существующие блокирующие механизмы односторонних санкций требуют отдельной квалификации в рамках международного права, включая совместимость с легитимными контрмерами.

КЛЮЧЕВЫЕ СЛОВА: *принудительные меры, санкции, экстерриториальность, контрмеры, реторсии, невмешательство во внутренние дела, законодательство о блокировке*

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UNILATERAL SANCTIONS UNDER INTERNATIONAL LAW AND EFFECTIVENESS OF BLOCKING

INTRODUCTION. *This article discusses modern international legal concept of unilateral sanctions. The authors contribute to the emerging discussion on the qualifying of unilateral sanctions under international law.*

MATERIALS AND METHODS. *In this study we took into account the works of both Russian and foreign scholars in the field of international economic law, as well as analyzed documents and materials of international organizations (United Nations (UN), World Trade Organization (WTO) and others) in order to assess the compatibility of unilateral sanctions with international law. General scientific methods of cognition (analysis, synthesis, induction, and deduction), special legal methods (formal-legal, technical-legal, method of legal analogy) and comparative legal method were used in the presented research.*

RESEARCH RESULTS. *Presented analysis has shown that widely used term "unilateral sanctions" leads to abusive and inappropriate use of international legal term. Analysis of compatibility of unilateral sanctions with other types of coercive measures such as countermeasures, UN Security Council sanctions, retortions, reprisals have shown that unilateral sanctions do not fall under the meaning of all mentioned measures. In addition, unilateral sanctions should not be justified under the WTO security exceptions. The use of extraterritorial unilateral sanctions contradicts one of the fundamental principles of international law – principle of non-interference in internal affairs. Existing blocking unilateral sanctions mechanisms are not efficient enough to compensate negative effect posed by unilateral sanctions.*

DISCUSSION AND CONCLUSIONS. *Authors concluded that unilateral sanctions in most of the cases do not satisfy cumulative criteria of legitimate countermeasure. Unilateral sanctions are not equivalent to the United Nation Security Council sanctions, as there are no "checks and balances" in the decision-making process in the form of determining the degree of threat to peace and security and taking into account humanitarian exceptions. Although there is some correlation between unilateral sanctions and retortions or reprisals, retortions and reprisals posses criteria of legality and proportionality, while, unilateral sanctions are introduced at the state's discretion without any standard. Furthermore, the authors argue that to avoid abusive use of the WTO security exceptions WTO panels have to rely on the well-balanced approach used by the Panel in Russia – Transit case. This approach shows that the context of security exception should be understood as encompassing only military and closely related to military issues and does not cover political, economic, cultural or any other interests and relations. Existing blocking mechanisms of unilateral sanctions require separate qualification under international law including compatibility with the legitimate countermeasures.*

KEYWORDS: *coercive measures, sanctions, extraterritoriality, countermeasures, retorsions, non-interference in internal affairs, blocking law*

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1. Introduction

The "sanctions tsunami"[1], which has reached an acute phase since 2022, is one of the most unprecedented phenomena since the Cold War. In the period from 21.02.2022 to 11.06.2023, 12,594 sanctions were imposed on Russian individuals and legal entities within the framework of the lists of the main Western countries that initiated them[2]. Unilateral extraterritorial sanctions[3] have become a promi-

[1] Timofeev I. *Unprecedented Sanctions? By No Means.* Russian International Affairs Council. 2023. URL: https://russiancouncil.ru/en/analytics-and-comments/analytics/unprecedented-sanctions-by-no-means/ (accessed 05.06.2023).

[2] As of 11.06.2023. Gerasimov V. *Sanctions against Russia: results of the first half of 2023.* Materials of the report. X-Compliance network publication. Interfax.

[3] The use of the term "sanctions" to denote unilateral restrictive (coercive) measures in this paper is used in an attempt to present a consensus definition. From a legal point of view, this term should not be used in international relations, since this contradicts the foundations of international law. "Sanctions" can be used in national legal orders, since they have the function of punishment, which does not apply to unilateral measures of states.

nent and contentious issue in contemporary international relations. These unilateral sanctions, imposed by one state on entities/individuals or another state outside its jurisdiction, have increasingly been used as a foreign policy tool to influence the behavior and policies of other states. It is more of a political tool [Kritskiy 2016:204]. While proponents argue that such measures are necessary for the protection of national interests and the promotion of international peace and security, critics raise concerns about their compatibility with international law and the potential adverse consequences on innocent populations.

Unilateral sanctions represent a departure from traditional conceptions of state sovereignty and non-intervention [Keshner 2015:147], as they extend the reach of a country's laws and regulations beyond its borders. These measures typically involve trade restrictions, financial sanctions, asset freezes, or limitations on specific transactions, aiming to coerce or penalize targeted entities or individuals in third countries.

The legal basis and legitimacy of unilateral sanctions under international law are subjects of ongoing debate. Questions arise regarding their compliance with principles such as state sovereignty, non-intervention, non-interference, and the prohibition of the use of force. Concerns are also raised about the potential adverse effects on innocent populations, human rights, and the global economy. Additionally, the extraterritorial reach of these unilateral sanctions can lead to conflicts with the legal frameworks of other countries and international trade agreements. This article contributes to the mentioned discussion by analyzing interrelation between unilateral sanctions and other coercive measures under international law in section 2, sanctions as trade restrictive measures in section 3, compatibility of extraterritoriality of the unilateral sanctions regime with the principle of non-interference in the internal affairs and blocking mechanisms in section 4, section 5 concludes the analysis.

2. Unilateral sanctions and other coercive measures under international law

The Human Rights Council defines unilateral sanctions as: "the use of economic, trade or other measures taken by a State, group of States or international organizations acting autonomously to compel a change of policy of another State or to pressure individuals, groups or entities in targeted States to influence a course of action without the authorization of the Security Council"[4].

Similar definition may be found in the literature where unilateral sanctions are defined as "non-forcible (non-military) foreign policy measures adopted by states or international organizations and designed to influence other states or non-state entities or individuals to change their behavior or to take a particular course of action"[5].

Such unilateral sanctions are imposed without authorization of the United Nations Security Council. Unilateral sanctions, for instance, are considered by the European Union as a key foreign policy tool and the most effective when designed and applied alongside international partners. As well as communicating a clear political signal, sanctions can be used to constrain or help effect a change in behavior[6]. Such an approach to unilateral sanctions often explained by failure of the United Nations Security Council to effectively adopt its decisions due to frequently used veto power by the permanent members [Dasgupta 2022:417].

The present-day discussion on the use of the term "unilateral sanctions" to designate unilateral coercive measures could be the sign of a new evolution in the law of enforcement, even though no consensual rules have so far developed in this respect [Miron 2022:14]. Alongside with that it is specifically underlined in the literature that the term "sanctions" is now extensively and abusively used to designate all types of coercive measures, adopted by a State or by an international organization, either pursuant to its constitutional treaty or without any specified legal

[4] Human Rights Council, Research-based progress report of the Human Rights Council Advisory Committee containing recommendations on mechanisms to assess the negative impact of unilateral coercive measures on the enjoyment of human rights and to promote accountability. A/HRC/28/74. 2015. Para. 9.

[5] Gordon R., Smyth M., Cornell T. *Sanctions Law.* Oxford, UK; Portland, Oregon: Hart Publishing. 1st ed. 2019. 336 p.

[6] UK White Paper. "The Future Relationship between the UK and the EU". White Paper, CM 9593. July 2019. P. 65.

basis in international law. This abusive terminological conflation appears as inappropriate, since it gives to unilateral measures the anoint of the legal authority and they seem to presume that a State is entitled to adopt such measures[7]. Some scholars indicating the difference between sanctions imposed by the United Nations Security Council and unilateral sanctions define the latter as "restrictive measures" [Beaucillon 2021:6-8]. The same approach is used by some states[8]. At the same time, it looks that term "unilateral sanctions" is being widely used by both scholars and policymakers[9].

Although according to the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations "no State may use or encourage the use of economic political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from its advantages of any kind" there are no customary rules in international law prohibiting imposition of unilateral sanctions[10].

The authors of this paper agree with Alina Miron, that widely used term "unilateral sanctions" leads to abusive and inappropriate use of international legal term. Therefore, the issue of compatibility of such unilateral sanctions with other types of coercive measures such as countermeasures, UN Security Council sanctions, retortions, reprisals and trade restrictive measures is on top of the today's agenda.

a. Countermeasures and unilateral sanctions

The concept of responsibility of states under international law, refers to the legal consequences that arise when a state breaches its obligations under international law. Countermeasures are one of the mechanisms available to injured states to respond to the wrongful acts of another state [Kurdyukov, Keshner 2014:114].

The term "countermeasures" was first introduced in the decision in the Air Services Agreement case of 27 March 1946[11]. Following that decision, the International Law Commission (ILC) replaced the word "sanction" <...> with the word "countermeasure" in its Draft Articles on State Responsibility [Miron 2022:17]. Before ILC's Articles on State Responsibility were adopted (ARSIWA)[12], the International Court of Justice (ICJ) has used this term in decisions in the *Tehran Hostages case*[13], *Military and Paramilitary Activities*[14], and the *Gabčíkovo-Nagymaros Project*[15]. Today, "countermeasures" is a generally accepted concept, used even by the Dispute Settlement Body of the World Trade Organization (WTO)[16], taking into account that WTO law constitutes according to the ILC so called "self-contained" (special) regime[17]. In some cases, WTO panels have referred to ARSIWA because WTO law cannot be isolated from international law [Starshinova 2019:44]. In particular, it is noted that WTO measures should not contravene principles of general international law. For instance, retaliatory measures shall be proportionate in con-

[7] UK White Paper. "The Future Relationship between the UK and the EU". P. 70.

[8] EU Restrictive measures (sanctions). URL: https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions_en. (accessed 14.12.2023).

[9] Pellet A., Miron A. *Sanctions. Max Planck Encyclopedias of International Law.* 2013. P. 10; Kern A. *Economic Sanctions: Law and Public Policy.* London: Palgrave Macmillan London. 2009. 377 p.

[10] Carter B.E. *Economic Sanctions.* Max Planck Encyclopedias of International Law. 2011. P. 30-31.

[11] Air Service Agreement of 27 March 1946 between the United States of America and France. RIAA. Vol. XVIII. P. 417-493.

[12] UN GA: Articles on State Responsibility for the International Wrongful Act. A/RES/56/83. 2002.

[13] ICJ: United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran) (Merits). ICJ Reports. 1986. P. 53.

[14] ICJ: Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (Merits). ICJ Reports. 1986. P.14, 106.

[15] ICJ: Gabčíkovo-Nagymaros Project (Hungary/Slovakia) (Merits). ICJ Reports. 1997. P. 69.

[16] WTO: United States – Subsidies on Upland Cotton. Recourse to Arbitration by the United States under Article 22.6 of the DSU and Article 4.11 of the SCM Agreement. WT/DS267/ARB/1. Decision by the Arbitrator. 2009. P. 4.40–4.42; WTO: United States – Subsidies on Upland Cotton. Recourse to Arbitration by the United States under Article 22.6 of the DSU and Article 7.10 of the SCM Agreement. WT/DS267/ARB/2. Decision by the Arbitrator. 2009. P. 4.30–4.32.

[17] UN ILC: Fragmentation of international law: difficulties arising from the diversification and expansion of international law: report of the Study Group of the International Law Commission/finalized by Martti Koskenniemi. A/CN.4/L.682.

sistency with rules applicable to countermeasures under general international law. Similarly retaliatory measures under the WTO, like countermeasures, are aimed at forcing the offending state to fulfill its obligations; they should be temporary and reversible; they should be applied by the injured state, but not by a third party [Starshinova 2019:14]. However, there are procedural peculiarities applicable under the WTO rules, thus WTO rules on retaliatory measures serves as *lex specialis* to general international law [Starshinova 2019:42].

The ILC has interpreted the concept of countermeasures as conduct in derogation of an existing treaty obligation that is justified as a necessary and proportionate response to an internationally wrongful act of a State[18]. James Crawford following the approach used by the ICJ in *Gabcikovo-Nagymaros Project* case[19] pointed out that "countermeasures involve non-compliance by one state with an international obligation owed towards another state, adopted in response to a prior breach of international law by that other state and aimed at inducing it to comply with its obligations of cessation and reparation" [Crawford 2013:685].

There is no requirement that countermeasures relate to the same obligation that the wrongfully acting State has breached. Thus, a response to a breach of one obligation may be action taken with respect to another obligation, subject to the requirements of necessity and proportionality[20]. Moreover, countermeasures should be reversible[21].

The purpose of the application of a countermeasure may only be to induce the State to fulfil the obligations arising from the wrongful act, subject to application in such a way as to make it possible to resume the fulfilment of such obligation[22]. Furthermore, they must not affect the obligation to refrain from the threat or use of force as enshrined in the UN Charter, obligations to protect human rights, humanitarian obligations prohibiting reprisals and other erga omnes obligations[23]. Moreover, the injured state must call on the responsible state to fulfil its obligations and notify it of any decision to take countermeasures, while offering to negotiate[24]. It is worth noting that all mentioned criteria of countermeasures are cumulative. This means that to be legitimate countermeasure should satisfy all of them.

Unilateral sanctions in most of the cases do not satisfy mentioned cumulative criteria. One of the relevant examples could be unilateral sanctions imposed on Russia. Thus, UK Foreign Secretary Liz Truss stated that UK's sanctions are aimed at "tightening the screw on the Russian economy. There will be no let-up"[25]. The same approach to the purpose of unilateral sanctions may be found in the statement of finance minister of France, according to which they were taken "to cause the collapse of the Russian economy"[26]. Firstly, it could be reasonably inferred from both statements that unilateral sanctions have nothing to do with the legitimate objective of the countermeasures. It is obvious that "tightening the screw on the Russian economy" or "causing collapse of the Russian economy" could in no way be considered as legitimate objective under ARSIWA described above. Secondly, both statements show that the unilateral sanctions are unlikely to be reversible.

Also, the scale and scope of the unilateral sanctions imposed on Russia is unlikely to satisfy proportionality criterion. Russia became the most sanctioned state in the world by a wide margin from Iran,

[18] ILC: Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries. A/56/10. Yearbook of the International Law Commission. 2001. Vol. II. Part Two. P. 128-129.
[19] ICJ: Gabčíkovo-Nagymaros Project (Hungary/Slovakia) (Merits). ICJ Reports. 1997. P. 83.
[20] Supra note 18.
[21] Ibid. P. 76.
[22] ARSIWA, art. 49.
[23] Ibid. Art. 50.
[24] Ibid. Art. 52.
[25] Foreign Secretary announces 65 new Russian sanctions to cut off vital industries fuelling Putin's war machine. UK Government. Press release. 24 March 2022. URL: https://www.gov.uk/government/news/foreign-secretary-announces-65-new-russian-sanctions-to-cut-off-vital-industries-fuelling-putins-war-machine (accessed 16.10.2023).
[26] French Finance Minister Bruno Le Maire said that sanctions aim is to "cause the collapse of the Russian economy". Smith E. *The West is trying to destroy Russia's economy. And analysts think it could succeed.* CNBC. 2022. URL: https://www.cnbc.com/2022/03/03/ukraine-analysts-think-western-sanctions-may-destroy-russias-economy.html (accessed 16.10.2023); Boris Johnson promises massive sanctions to 'hobble' Russian economy. The Guardian. 2022. URL: https://www.theguardian.com/world/2022/feb/24/boris-johnson-promises-massive-sanctions-to-hobble-russian-economy (accessed 16.10.2023).

Syria, North Korea, Belarus and Venezuela. Starting from February 2022 G7 countries each imposed more than ten thousand unilateral sanctions[27].

Moreover, unilateral sanctions in most of the cases violate human rights. Thus, in a meeting on March 31 2022, more than half of the 47 members of the UN Human Rights Council voted to condemn unilateral sanctions. The resolution titled "The negative impact of unilateral coercive measures on the enjoyment of human rights"[28], was passed with 27 votes in favor (57 %), 14 votes against (30 %), and six abstentions (13 %). It also "strongly urges all States to refrain from imposing unilateral coercive measures, also urges the removal of such measures, as they are contrary to the Charter and norms and principles governing peaceful relations among States at all levels, and recalls that such measures prevent the full realization of economic and social development of nations while also affecting the full realization of human rights". According to the Human Rights Council, unilateral sanctions violate the International Bill of Human Rights. The resolution emphasized that these sanctions are particularly destructive for poor people, women, children, the elderly, the disabled, and the environment[29].

This analysis shows that unilateral sanctions in most of the cases do not satisfy cumulative criteria of legitimate countermeasure.

b. UN Security Council sanctions and unilateral sanctions

Under the United Nations Charter, international sanctions are a mechanism employed by the United Nations Security Council (UN SC) to address threats to international peace and security[30]. The UN SC has the primary responsibility for maintaining international peace and security, and it can impose sanctions on states or entities that engage in activities deemed to be a threat to peace [Ivanova 2016:185].

The latest practice shows that the UN SC takes coercive measures not only based on political decisions but also in taking into account the consequences of previous violations of international law.

In December 2022, UN SC Resolution 2664[31], provides for a standing humanitarian carveout to almost all asset freezes implemented under UN sanctions. The resolution authorizes a wide variety of specifically enumerated entities, including those entities' "grantees" and "implementing partners", to support the delivery of humanitarian assistance even if it requires transactions with designated entities. The UN SC now requires that all 193 UN member states "carve out" activities pertaining to humanitarian assistance by certain entities and people from most of the Council's asset-freeze sanctions regimes.

Unilateral sanctions are not legally equivalent to UN SC sanctions, as there are no "checks and balances" in the decision-making process in the form of determining the degree of threat to peace and security and taking into account humanitarian exceptions.

Thus, unilateral sanctions aim solely to unilaterally coerce and restrain a State. They do not take into account humanitarian regimes and do not grant maximum exemptions for humanitarian purposes. Alternatively, they impose a completely closed "licence" procedure[32], which is at the discretion of the executive branch. In addition, apart from the lack of international legal grounds, unlike the UN SC sanctions, this decision is taken in the geopolitical interests of the state, without regard to the maintenance of international peace and security.

c. Retorsions, Reprisals and unilateral sanctions

Retorsions and reprisals are two distinct concepts in international law that involve responsive actions taken by states in response to perceived violations by other states.

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[27] Russia Sanctions Dashboard. URL: https://www.castellum.ai/russia-sanctions-dashboard (accessed 07.11.2023).

[28] UN HRC. A/HRC/49/L.6. 2022.

[29] Norton B. Sanctions violate human rights and should be lifted, says UN Human Rights Council. — *Geopolitical Economy Report*. 2022. URL: https://geopoliticaleconomy.com/2022/04/04/sanctions-un-human-rights-council/ (accessed 16.11.2023).

[30] Charter of the United Nations. 1945. 1 UNTS XVI. Ch. VII.

[31] UN SC: S/RES/2664. 2022.

[32] Complying with professional and business services sanctions related to Russia. 2023. URL: https://www.gov.uk/government/publications/professional-and-business-services-to-a-person-connected-with-russia/professional-and-business-services-to-a-person-connected-with-russia (accessed 16.10.2023).

Retorsion is defined as "unfriendly conduct which is not inconsistent with any international obligation of the State engaging in it even though it may be a response to an internationally wrongful act"[33] as a measure of self-help.

Reprisals (come from the French *reprendre* ("to re-take") involve responsive actions by a state that are intended to induce compliance or seek redress for an alleged violation of international law by another state [Maleev, Rachkov, Yaryshev 2016:82]. They are considered to be measures that go beyond retorsions and involve coercive or punitive actions. Reprisals are subject to specific legal requirements and restrictions to ensure that they remain lawful and proportionate. "Reprisals, indeed, initially involved the taking of property of the wrongdoer to the extent of the injury suffered. Being grounded on notions of collective liability, reprisals could be taken against any member of the community of the wrongdoer"[34].

At present, the word "reprisals" is still used in the field of humanitarian law, as equivalent to "belligerent reprisals" [Rachkov 2014:103], i.e., "action taken in time of international armed conflict, which may consist of violations of international humanitarian law"[35].

It is important to note that reprisals, while recognized under international law, should not be confused with acts that are illegal under international law, such as the use of force or acts of aggression. Reprisals should not involve measures that violate peremptory norms (*jus cogens*) or human rights obligations.

On the one hand, there is some correlation between unilateral sanctions and retortions or reprisals, since they all represent a measure of inducement for the alleged violation of international law. On the other hand, retortions and reprisals pose criteria of legality and proportionality, while, unilateral sanctions are introduced at the state's discretion without any standard.

3. Unilateral sanctions as trade restrictive measures

In general terms, sanctions are a controversial tool in the Multilateral Trading System. In particular, they disrupt economic ties between two or more countries, which contradict the original intentions of states under the General Agreement on Tariffs and Trade (GATT) Preamble, especially with regard to ensuring stable, secure, transparent and predictable trade relations. However, it is underlined that they are allowed as part of the exceptions under Article XXI of the GATT [Smeets 2021:282]. Thus, there is a noticeable conflict between these two different approaches.

Trade restrictive measures are an expression of discrimination. They contradict the idea of reciprocity and the basic principles of trade, the national treatment and the most favored nation treatment [Choukroune, Nedumpara 2021:758]. The following grounds for imposing trade restrictive measures within the framework of the WTO are singled out: achieving a set goal by disrupting or terminating the trade relations of the target country; applying sanctions in a knowingly discriminatory manner; applying sanctions as retaliatory measures as part of the dispute settlement process within the WTO and others [Smeets 2021:283]. All of this is also at odds with the goals and principles of the WTO.

Alongside with that in adopting unilateral sanctions, many states justify them based on the presence of a "threat to security" from Russia[36]. If trade restrictive measures are designed to protect essential security interests, even being inconsistent with the WTO agreements they may be justified under so called "Security exception articles"[37], in case they fulfill criteria elaborated by the Panel in *Russia – Transit* case[38]. This dispute is historic because the WTO Panel for the first time tried to strike a balance between two opposing views on whether it had jurisdiction over

[33] Supra note 18. P. 128.

[34] Paddeu F.I. *Countermeasures*. Encyclopedia entries. Max Planck Encyclopedia of Public International Law. 2015. Oxford Public International Law. P. 4.

[35] Supra note 18. P. 128.

[36] Moret E. *Sanctions and the Costs of Russia's War in Ukraine.* 2022. URL: https://reliefweb.int/report/ukraine/sanctions-and-costs-russia-s-war-ukraine (accessed 16.10.2023).

[37] Article XXI of the GATT, XIVbis of the GATS and 73 of the TRIPS agreement. These three security exceptions articles are similarly worded and enshrine the following provision: "Nothing in this Agreement shall be construed <…> (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests <…> (iii) taken in time of war or other emergency in international relations".

[38] WTO: Russia – Measures Concerning Traffic in Transit. WT/DS512/R. 2019.

the disputes involving security interests of the WTO members and formulated an assessment standard to be applied to the security exception [Boklan, Shaubert 2019:25].

One of the key questions which the Panel was asked to address was the following: is security exception "justiciable" or "self-judging" in nature? A provision is "self-judging" when it could be assessed subjectively by the invoking country without reliance on any legal standard or test. It is non-justiciable when the issue cannot be subject to the findings of a WTO panel or the adjudicative system. On the contrary, a provision is "not self-judging" and "justiciable" if the panel can rely on objective legal standards and in this manner employ an objective approach of interpretation [Boklan, Bahri 2020:123-136]. Scholars have observed that the phrase "any action which it considers" gives great importance to a country's discretion [Lindsay 2003:1277-1313, 1282]. At the same time scholars underline that the discretion provided by this provision should be balanced with the trade interests of other WTO members. Such balance can only be achieved if the measure is reviewable by the WTO adjudicatory mechanism, the absence of which would make the provision "prone to abuse without redress"[39]. In *Russia – Transit* the Panel employed a combination of objective and subjective approach and decided that Russia in addition to satisfying the requirements of subparagraph (iii) of the security exception provision has also satisfied the conditions of the chapeau[40]. The Panel concluded that for the action to fall within the scope of security exception it must objectively be found to meet the requirements in one of the enumerated subparagraphs of that provision[41]. The Panel established the following requirements for the measure to fall under mentioned security exception. *First*, the Panel established a chronological criterion for the measure as it underlined that the phrase 'taken in time of' describes the "connection between the action and the events of war or other emergency in international relations"[42]. Therefore, in the Panel's view, whether the measure was taken in a particular period or not (meaning the period of war or other emergency in international relations) must be determined in an objective manner. *Second*, the Panel assessed the nature of "emergency" and defined the phrase "emergency in international relations". The Panel observed that "war is one example of the larger category of "emergency in international relations"[43] and that the emergency in international relations encompasses "all defense and military interests, as well as maintenance of law and public order interests"[44]. The Panel expressly excluded political and economic interests from the scope of "essential security interests", as it clarified that "political or economic differences between Members are not sufficient, of themselves, to constitute an emergency in international relations for the purposes of subparagraph (iii) <…> unless they give rise to defense and military interests, or maintenance of law and public order interests"[45]. Moreover, the Panel added that "emergency in international relations within the meaning of subparagraph (iii) of Article XXI (b) [is] a situation of armed conflict, or latent armed conflict, or heightened tension or crisis, or general instability engulfing or surrounding a state"[46]. *Third*, the Panel concluded that subjecting this exception to the unilateral will of the member and leaving its interpretation to an "outright potestative condition" would seriously undermine the security and predictability of the multilateral trading system[47]. Following this three-dimensional analysis, the Panel established its jurisdiction by employing an objective approach based on the textual and contextual restrictive interpretation[48].

Alongside with that the Panel underlined that "emergency in international relations" is a "situation of armed conflict, or of latent armed conflict, or of heightened tension or crisis, or of general instability engulfing or surrounding a state"[49]. To establish that such circumstances indeed are surrounding a state,

[39] Van den Bossche P., Werner Z. *The Law and Policy of the World Trade Organization:* Text, Cases, and Materials. Cambridge: Cambridge University Press. 2021. 5th ed. P. 596.
[40] Supra note 38. P. 7.8.1.
[41] Ibid. P. 7.82.
[42] Ibid. P. 7.70.
[43] Ibid. P. 7.72.
[44] Ibid. P. 7.74.
[45] Ibid. P. 7.75.
[46] Ibid. P. 7.111.
[47] Ibid. P. 7.79.
[48] Ibid. P. 7.83.
[49] Ibid. P. 7.76, 7.111.

the Panel relied on the factors indicated by Russia, in particular that the situation involves Ukraine (the Complainant) and that the security of Russia's border with Ukraine was affected in various ways[50]. Panel considered that the further a state is removed from armed conflict, or a situation of breakdown of law and public order (whether in the invoking Member or in its immediate surroundings), the less obvious are the defense or military interests, or maintenance of law and public order interests, that can be generally expected to arise. In such cases, a Member would need to articulate its essential security interests with greater specificity than would be required when the emergency in international relations involved, for example, armed conflict[51]. The Panel specifically underlined that obligation of good faith, applies not only to the Member's definition of the essential security interests said to arise from the particular emergency in international relations, but also, and most importantly, to their connection with the measures at issue. Thus, as concerns the application of security exception, this obligation is crystallized in demanding that the measures at issue meet a minimum requirement of plausibility in relation to the proffered essential security interests, i.e., that they are not implausible as measures protective of these interests[52].

In *Saudi Arabia – Intellectual Property Rights*[53] the Panel used similar approach and used the following facts to establish emergency in international relations: severance of all diplomatic and consular relations between Saudi Arabia and Qatar[54], accusations of Qatar by Saudi Arabia in supporting terrorism and extremism and necessity to protect territory of Saudi Arabia from such threats, and a travel ban on all Qatari nationals from entering the territory of Saudi Arabia and an expulsion order for all Qatari nationals in the territory of Saudi Arabia as part of the comprehensive measures[55].

Both Panels concluded that the phrase "which it considers necessary" in the chapeau does not extend to the determination of the circumstances in each of the subparagraphs[56]. With respect to the interpretation of the "essential security interests", the Panels found that phrase "it considers" will determine the term "essential security interests", leaving its determination largely in the hands of the invoking members[57].

This analysis shows that justification of unilateral sanctions under the WTO security exceptions is very complicated issue. Nevertheless, for instance unilateral sanctions imposed on Russia by the USA, Canada, EU, Great Britain, New Zeeland, Switzerland, Lichtenstein, Norway and Iceland in most of the cases will hardly satisfy criteria elaborated by panels in *Russia – Transit* and *Saudi Arabia – IP Rights* cases.

Firstly, because none of the sanctioning states is directly involved in the conflict with Russia. Secondly, these states do not share border with Russia (except for several EU members) and thirdly, regardless of several cases[58] of expulsion of Russian diplomats' severance of all diplomatic and consular relation is not in place.

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[50] Supra note 39. P. 7.119.
[51] Ibid. P. 7.135.
[52] Ibid. P. 7.138.
[53] WTO: Saudi Arabia – Intellectual Property Rights. WT/DS567/R. 2020.
[54] Ibid. P. 7.258-7.259, 7.266.
[55] Ibid. P. 7.263, 7.284, 7.286.
[56] Ibid. P. 7.101.
[57] Ibid. P. 7.98.
[58] Murphy F. *Austria expelling four Russian diplomats.* Reuters. 2022. URL: https://www.reuters.com/world/europe/austria-says-it-is-expelling-four-russian-diplomats-2022-04-07/ (accessed 16.10.2023); The Ministry of Foreign Affairs declared two Russian diplomats persona non grata. MFA Bulgaria. 2022. URL: https://www.mfa.bg/en/news/33191 (accessed 16.10.2023); Bulgaria declares 10 Russian diplomats persona non grata. MFA Bulgaria. 2022. URL: https://www.mfa.bg/en/news/33387 (accessed 16.10.2023); Deputy Minister of Foreign Affairs Irena Dimitrova presented a note verbale to the Ambassador of the Russian Federation Eleonora Mitrofanova. MFA Bulgaria. 2022. URL: https://www.mfa.bg/en/news/34434 (accessed 16.10.2023); Statement by Foreign Minister Baerbock on the expulsion of Russian diplomats from Germany today (4 April). MFA Germany. 2022. URL: https://www.auswaertiges-amt.de/en/newsroom/news/ausweisung-russische-diplomaten/2521128 (accessed 16.10.2023); Statement by the Ministry of Foreign Affairs regarding the declaration of 12 members of the Russian Diplomatic and Consular Missions in Greece as personae non gratae in Greece. MFA Greece. 2022. URL: https://www.mfa.gr/en/current-affairs/statements-speeches/statement-by-the-ministry-of-foreign-affairs-regarding-the-declaration-of-12-members-of-the-russian-diplomatic-and-consular-missions-in-greece-as-personae-non-gratae-in-greece.html (accessed 16.10.2023); Danmark udviser 15 russiske efterretningsofficerer. MFA Denmark. 2022. URL: https://via.ritzau.dk/pressemeddelelse/13648195/danmark-udviser-15-russiske-efterretningsofficerer?publisherId=2012662 (accessed 16.10.2023); Spain to expel around 25 Russian diplomats, foreign minister says. Reuters. 2022. URL: https://www.reuters.com/world/europe/spain-expel-around-25-russian-diplomats-foreign-minister-says-2022-04-05/ (accessed 16.10.2023); Russian response to expulsion of intelligence officers by the Netherlands. Government of the Netherlands.

Moreover, sanctions imposed on Russia in majority of cases are economic in their nature and aimed at causing harm to Russian economy but not at protection of the territory of the sanctioning states and secure their governmental functions.

Alongside with that the risk of abusing security exception to justify unilateral sanctions exists. Thus, the Panel's ruling in *United States – Origin Marking Requirement*[59] applied much broader interpretation of the security exception clause in particular regarding interpretation of the term "emergency in international relations". The Panel relaying on Oxford on-line dictionary defined "international relations" as "relations involving political, economic, social, and cultural exchanges"[60]. Moreover the Panel specially underlined that such international relations are not "exclusively bilateral relations between the invoking Member and the Member affected by the action". Such approach bears a risk of abusing of national security exception allowing a state not directly involved in particular emergency in international relations violate its obligations under the GATT, GATS and TRIPS agreement. This may lead to the idea that national security is an exception to liberalization of trade and that both values are contradictory in nature and totally destroy multilateral trading system which is already suffers from the crisis.

Therefore, the authors of this article argue that to avoid abusive use of security exception WTO panels have to rely on the well-balanced approach used by the Panel in *Russia – Transit* case. It is worth noting that this is the only one panel's report adopted by the WTO Dispute Settlement Body regarding interpretation of security exception. This approach shows that the context of security exception should be understood as encompassing only military and closely related to military issues and does not cover political, economic, cultural or any other interests and relations.

4. Extraterritoriality of the unilateral sanctions regime and blocking mechanisms and their effectiveness

According to the well-known *dictum* of the Permanent Court of international Justice (PCIJ) in the Lotus case, "the first and foremost restriction imposed by international law upon a State is that – failing the existence of a permissive rule to the contrary – it may not exercise its power in any form in the territory of another State"[61]. Thus, any action, even indirectly coercive, should be considered prohibited if it is the exercise of the prerogative of state power in a foreign territory [Miron 2022:73].

State sovereignty in protected by the principle of non-interference, which is important for maintaining the stability of the world order. The territoriality of state sovereignty implies, among other things, the exclusivity of the state's competence over its territory.

In the Peace of Westphalia, sovereignty meant a recognition by each party of other states' authorities as full and legitimate governments within their ter-

2022. URL: https://www.government.nl/latest/news/2022/04/19/russian-response-to-expulsion-of-intelligence-officers-by-the-netherlands (accessed 16.10.2023); 45 Russian 'diplomats' to be expelled. Government of Poland. 2022. URL: https://www.gov.pl/web/special-services/45-russian-diplomats-to-be-expelled (accessed 16.10.2023); 10 Russian officials declared persona non grata. Government of Portugal. 2022. URL: https://portaldiplomatico.mne.gov.pt/en/communication-and-media/press-releases/10-russian-officials-declared-persona-non-grata (accessed 16.10.2023); Declararea ca personae non gratae a 10 reprezentanți ai Ambasadei Federației Ruse în România. MFA Romania. 2022. URL: https://www.mae.ro/node/58335 (accessed 16.10.2023); Slovenia announced the expulsion of 33 Russian diplomats. RIA Novosti. 2022. URL: https://ria.ru/20220405/vysylka-1781955575.html (accessed 16.10.2023); Russia – Statement by the Ministry for Europe and Foreign Affairs spokesperson (04 Apr. 2022). MFA France. 2022. URL: https://www.diplomatie.gouv.fr/en/country-files/russia/news/article/russia-statement-by-the-ministry-for-europe-and-foreign-affairs-spokesperson-04 (accessed 16.10.2023); Sweden joins European nations in expelling Russian diplomats. Reuters. 2022. URL: https://www.reuters.com/world/europe/sweden-expel-three-russian-diplomats-foreign-minister-says-2022-04-05/ (accessed 16.10.2023); Estonia expels 14 consular staff of Russia and closes Russia's consulate general in Narva and Tartu office. MFA Estonia. 2022. URL: https://vm.ee/en/news/estonia-expels-14-consular-staff-russia-and-closes-russias-consulate-general-narva-and-tartu (accessed 16.10.2023); Japan expels eight Russian diplomats, condemns situation in Ukraine. Reuters. 2022. URL: https://www.reuters.com/world/asia-pacific/japan-expels-eight-russian-diplomats-condemns-situation-ukraine-2022-04-08/ (accessed 16.10.2023); Norway declares three Russian diplomats persona non grata. Government of Norway. 2022. URL: https://www.regjeringen.no/en/aktuelt/diplomats_nongrata/id2907589/ (accessed 16.10.2023); Statement on the Decision to Initiate the Expulsion of Russian Diplomats in New York. US Mission to the UN. 2022. URL: https://usun.usmission.gov/statement-on-the-decision-to-initiate-the-expulsion-of-russian-diplomats-in-new-york/ (accessed 16.10.2023).

[59] WTO: United States – Origin Marking Requirement. WT/DS597/R. 2022.

[60] Ibid. P. 7.280.

[61] PCIJ: The case of the S.S. Lotus (Merits). 1927. Series A. No. 10. P. 18.

ritory [Croxton 1999:570]. In the *Island of Palmas* case, arbitrator M. Huber stated that sovereignty in the relations between States signifies independence. Independence, in regard to a portion of the globe, is the right to exercise therein, to the exclusion of any other state, the functions of a state[62]. Sovereignty is regarded as an assumption about authority [Hinsley 1967:242] and implies a form of legitimation [Ruggie 1983:276]. A State is not subject to the legal power of another State or any other higher authority and stands in principle on an equal footing with other States: *par in parem non habet imperium* [Schrijver 2000:65].

The Westphalian model, for the first time, established sovereignty not just over people, which had existed before, but sovereignty over a particular territory. It was recognized that in order to protect the population, control over territory was essential. This is evident in Judge Alvarez's separate opinion in the *Corfu Channel* case wherein sovereignty is understood as the whole body of rights and attributes which a State possesses in its territory, to the exclusion of all other States, and also in its relations with other States[63].

The basis of the extraterritorial application of domestic law is the doctrine of "effects". Its application is not limited to the objectively territorial principle but only applies when a state assumes jurisdiction on the ground that the conduct of a party causes "effects" in its territory (even if the entire set of conduct is located in the territory of another state). The doctrine is practiced largely by the US[64], in the area of antitrust regulation [Crawford 2019:447], and with greater qualifications, by the EU[65]. It reflects that "any state may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders which the state reprehends"[66].

Jurisdiction and its exercise are territorial[67]. This approach has been inherently traditional in international law. On the other hand, strict adherence to the rule of territoriality can potentially complicate international relations, as the interdependence of economies has now become enormous. Globalization and the strengthening of foreign trade and economic relations, new logistical supply chains and the establishment of types of responsibility have led to a revision of the territorial jurisdictional approach.

The US then softened the approach a bit by adding a balanced criterion, the "jurisdictional rule of reason"[68]. In addition to the requirement of intent and the view that the effects must be substantial, such a balancing test would involve consideration of the interests of other states and the entire nature of the relationship between the states involved and the United States. That is, in this case, the courts have independently determined the relevance of the foreign state's interests. It is worth noting that such approaches of the courts, which applied a diplomatic function were criticized.

This policy of the United States provoked an opposing reaction from other states through the adoption of blocking laws[69]. The story of controversy began to circulate, especially after the freezing of Iranian assets and the episode with the Siberian pipeline[70] [Glandin 2018:109]. The adoption of legislation in the US imposing sanctions on Cuba[71], Iran and Libya[72] also was criticized by foreign partners, especially the UK, the EU and Canada. The Inter-American Juridical Committee of the Organization

[62] Permanent Court of Arbitration. Island of Palmas case (Netherlands v. USA). Award of 4 April 1928. UN Reports of International Arbitral Awards. Vol. II. P. 838.

[63] ICJ: Corfu Channel (United Kingdom of Great Britain and Northern Ireland v Albania). Separate Opinion of Judge Alvarez. 1949. P. 43.

[64] E.g., Restatement (Third) of Foreign Relations Law of the United States. 1987. § 402(1)(c).

[65] E.g., CJEU. Intel v Commission. T-286/09. 2014. P. 547.

[66] United States v. Aluminum Co. of America. 148 F.2d 416 (2d Cir. 1945). P. 443.

[67] Supra note 61. P. 18–19.

[68] Timberlane Lumber Co. v. Bank of America. 574 F. Supp. 1453 (N.D. Cal. 1983); Mannington Mills, Inc., Appellant, v. Congoleum Corporation. Appellee. 595 F.2d 1287 (3d Cir. 1979).

[69] E.g., the UK Shipping Contracts and Commercial Documents Act 1964, the UK Protection of Trading Interests Act 1980, the Canadian Foreign Extraterritorial Measures Act 1985, also Regulation (EC) 2271/96, amended by Regulation (EU) 2018/1100, and Regulation (EU) 2018/1101.

[70] Construction of the Soviet Urengoy-Uzhgorod trans-Siberian trunk pipeline in 1982 and amendments to the U.S. Export Control Regulations (Library of Congress. 47 Fed. Reg. 27250 (1982).

[71] E.g., the US Cuban Democracy Act of 1992, the US Helms-Burton Act of 1996.

[72] E.g., US D'Amato-Kennedy Act of 1996.

of American States noted that "the exercise of such jurisdiction <…> does not conform with the norms established by international law…"[73]. The European Community has sought to resolve jurisdictional conflicts with the US over European subsidiaries of US companies in the Agreement on the Application of Competition Laws, but the European Court of Justice (ECJ) held that the Commission had acted *ultra vires* in concluding such an agreement[74]. It is noted that it was of uncertain value since the problems were not solved [Shaw 2021:598].

The US explains the extraterritoriality of unilateral sanctions and compatibility with international law through the Helms-Burton Act which indicates that "international law recognizes that a nation has the ability to provide for rules of law with respect to conduct outside its territory that has or is intended to have substantial effect within its territory"[75]. The idea is that investments made by third-country nationals in property confiscated by the Cuban government from US citizens would jeopardize any US attempt to return it to the original owners[76]. Therefore, it will harm the interests of US citizens and, since they are located on US territory, will therefore have an impact on US territory [Kerbrat 2021:177]. The question remains as to whether this is accepted by international law.

As J. Crawford stated, the present UK approach is that "a state has enforcement jurisdiction abroad only to the extent necessary to enforce its legislative jurisdiction" [Crawford 2019:463-464], because such an approach rests on the existing principles of jurisdiction and is close to the principle of substantial connection.

Extraterritorial enforcement of legal acts through unilateral sanctions occupies a grey area in public international law[77]. The issue has also been addressed in a UN special report noting the US tendency to over-extend jurisdictional principles through changes to sanctions laws[78].

This approach of the United States from the position of many states expresses the concern of some states[79], which also consider it a violation of international law, in particular, because unilateral sanctions are illegal, their extraterritorial application is an infringement of the sovereignty of other states (violation of the principles of jurisdiction and non-interference in the internal affairs of states), and of conflicts with the obligations of sanctioning States under international trade law and international treaties[80].

In the sanctions context, extraterritoriality refers to claims by a state to enforce purely domestic restrictive acts outside its territory, as well as situations where that state makes foreign participants in proceedings with a sanctions element liable in its territory [Kritskiy 2021:101]. A current example of this is the sanctions imposed by some states – the Arab League boycott of Israel, which allows for the blacklisting of companies from third countries that do business with Israel [Ruys 2020:14]. However, only the US is now actively enforcing its extraterritorial requirements.

Some states take advantage of their position in the world economy to attempt to extend their national acts to unlimited territorial limits (in particular through unilateral as well as secondary sanctions). The use of this state's financial system serves as one of the grounds. This also illustrates a form of political pressure within the domestic legal order on the implementation and adoption of foreign policy decisions.

It is important to note that it is necessary to determine how serious coercion, through the use of unilateral sanctions, is necessary for this to constitute a violation of the principle of non-intervention. International legal doctrine still leaves this question open. However, as the ICJ noted in the *Nicaragua case*[81], intervention becomes unlawful when it uses coercive methods in relation to political, economic,

[73] Organization of American States. CJI/SO/II/doc.67/96 rev.5. 1996. P. 9.
[74] CJEU: French Republic v. Commission of the European Communities. C-327/91. 1994. ECR I-3641.
[75] US Helms-Burton Act. 1996. 22 US Code § 6081. S. 9.
[76] Ibid. S. 7.
[77] Lohmann S. *Extraterritorial U.S. sanctions: Only domestic courts could effectively curb the enforcement of U.S. law abroad.* SWP Comments 5/2019. SWP. German Institute for International and Security Affairs. P. 6.
[78] UN GA: Secondary sanctions, civil and criminal penalties for circumvention of sanctions regimes and overcompliance with sanctions. A/HRC/51/33. 2022. P. 39.
[79] Especially Russia, Belarus, Cuba and Syria.
[80] Supra note 78. P. 13.
[81] Supra note 14. P. 349, 440.

social and cultural systems and in the formulation of foreign policy, which should be free.

By analogy, then, it can be assumed that if unilateral sanctions affect the conduct of the target state's foreign policy, this could constitute a violation of this principle. For example, in March 2023, against the background of dramatic changes in the world, Russia approved a new Foreign Policy Concept[82], which classifies unilateral sanctions as unfriendly actions against which symmetric and asymmetric measures can be taken. In addition, priority is given to monitoring such actions to protect Russian citizens and organizations[83].

However, this issue needs to be worked out in more detail, which remains beyond the scope of this article. For the time being, we believe it is necessary to adopt a stricter approach to this issue.

Thus, the use of extraterritorial unilateral sanctions contradicts one of the fundamental principles of international law – non-interference in internal affairs.

Unilateral sanctions have become a tool of foreign policy for some states. Their extraterritorial reach poses a challenge to the goal of developing and maintaining a rules-based international legal order. UN rejects unilateral coercive measures with all their extraterritorial effects as tools for political or economic pressure against any country[84]. The EU is opposed to "the extraterritorial application of third country's legislation imposing restrictive measures which purport to regulate the activities of natural and legal persons under the jurisdiction of the Member States of the European Union"[85].

One of the responses to such actions by some states is domestic blocking acts. A blocking statute or regulation is a regulatory act of a state that seeks to neutralise the perceived wrongful scope of a foreign law that extends the state's enforcement jurisdiction beyond any recognised title of jurisdiction under international law. Such an act compels domestic companies, individuals or officials to disregard the law and any foreign enforcement action based on it [Ventura 2021:221].

The EU Blocking Statute[86] was developed as a countermeasure to extraterritorial sanctions by the US and other countries to avoid damage to European companies [Abdullin, Keshner 2021:80]. The main purpose of the statute is to protect EU companies engaged in international trade under EU law but in violation of the sanction regime imposed by third countries. The political objective is to demonstrate condemnation of the sanctions' regime, which the EU considered unreasonable and derogatory [Potemkina 2018:2]. The EU Blocking Statute allows European companies to make up for losses from extraterritorial measures.

There are potential problems regarding the application of the statute in practice. In the context of the Blocking Statute, European companies may find themselves in a situation of direct conflict between EU and US law.

In 2021, it was deemed ineffective[87], as a "paper tiger" [Ruys 2020:115], and the recent judicial decision[88] will serve as a new impetus for change. There are also similar examples in other states[89].

(1) Such blocking laws are ineffective (in relation to US extraterritorial sanctions) because they leave more discretion to law enforcement agencies, which can be detrimental to domestic companies. However, such acts may be relevant to mitigate some of the negative effects of unilateral sanctions [Ventura 2021:225].

This argument is based on the fact that when such a law is applied, the main role will be played by the recipient itself: it will choose which of the two legal orders is most economically beneficial for it in in-

[82] The Concept of the Foreign Policy of the Russian Federation. 2023. Para 26. URL: https://www.mid.ru/ru/detail-material-page/1860586/ (accessed 16.10.2023).

[83] Ibid. Para 15.

[84] UN GA. A/RES/51/103. 1996.

[85] EU Council: Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy. 5664/18. 2018. P. 52.

[86] EC Regulation 2271/96, amended by EU Regulation 2018/1100, and 2018/1101.

[87] European Parliament: Amendment to the Blocking Statute Regulation. 2022. URL: https://www.europarl.europa.eu/legislative-train/theme-a-stronger-europe-in-the-world/file-blocking-statute-regulation (accessed 04.02.2023).

[88] CJEU: Bank Melli Iran v Telekom Deutschland GmbH. Case No. C-124/20. 2021.

[89] E.g., Foreign Extraterritorial Measures Act (RSC, 1985, c. F-29); Russian Federal Law No. 127-FZ "On Measures (Countermeasures) against Unfriendly Actions of the United States of America and Other Foreign States" 4 June 2018; Ley de proteccion al comercio y la inversion de normas extranjeras que contravengan el derecho internacional (Ley Antídoto) [Mexican blocking statute of 1996], etc.

ternational economic relations (it will lose more by complying with the blocking law or by complying with the foreign sanctions regime). In this case, only substantial punishment can induce the choice of a single-party [Ruys 2020:99].

This was reflected in the ICJ, where lawyers for Iran demonstrated that updating the EU Blocking Regulation after the renewal of US extraterritorial sanctions against Iran did not prevent European operators from applying such foreign sanctions[90]. The Court found in the interim measures order that the application of US sanctions by foreign operators could cause irreparable harm to the rights invoked by Iran, and justified the indication of interim measures to ensure unrestricted exports to Iran of various goods and services[91].

It turns out that state bodies will punish companies of their state, thereby slowing down economic and business activity. However, this does not have any effect on the reason for such a blocking action.

(2) Another remark is the effect of secondary US sanctions, as a result of ignoring and actual inaction of the blocking mechanism.

Existing blocking statutes prohibit national courts and tribunals from recognizing or granting exequatur to these secondary sanctions. Such a principled prohibition does not deter US courts or law enforcement agencies from applying such secondary sanctions[92]. Also, judicial recognition and exequatur are of no use in cases where the operator voluntarily fulfils its obligations through settlement, given the operational risk it is exposed to in the US market.

It is highly unlikely that US courts or authorities could refrain from issuing secondary sanctions against a foreign operator based on a blocking law [Ventura 2021:233].

(3) The improbability of compensation for damages.

The most important source of losses that local companies may suffer as a result of secondary sanctions, in this case, may be US law enforcement agencies since the provisions of the blocking statutes are written in general terms, and therefore it is possible to apply *prima facie* against them in this case.

It is noted that an action for damages against any such authority would be tantamount to holding the United States responsible for acts committed in the exercise of public authority (*acta jure imperii*) [Ventura 2021:237]. However, this is unlikely to be successful. In this light, again, the compensation mechanism will be applied against individuals when their conduct is detrimental to the injured person through the application of foreign law. And as noted above, this is considered the result of free economic choice, and not the result of the application of foreign law. Thus, national blocking acts are not yet an effective remedy for domestic companies facing foreign extraterritorial sanctions regimes [Ventura 2021:237-238; Ruys 2020:99].

It is noted that the main problem with the effectiveness of blocking statutes lies in their application by national courts. In particular, under the Blocking Statute of the EU, a judge can put forward many grounds for ignoring its applicability. In this context, it is not surprising that operators may willingly comply with foreign sanctions regimes and, depending on the circumstances, make a deal with US law enforcement.

Perhaps the most effective feature of blocking statutes, and the reason for their success, lies in their legal value in terms of public international law. They represent a critical element of state practice. They express a position against the usual rule that allows the extraterritorial application of foreign sanctions regimes.

From this point of view, blocking statutes carry considerable weight in ongoing or forthcoming international litigation, in a hypothetical appeal to the advisory opinion of the ICJ.

Moreover, the blocking of extraterritorial unilateral sanctions may be regarded as the object of a "reciprocal countermeasure". In this regard, the blocking must be temporary, justified and lawful, and conditioned on the fulfilment of the purpose of its imposition, such as inducing compliance with the obligation and cessation of the internationally wrongful act with reparation to the injured State.

Thus, the limitation of extraterritorial legislation may be as a countermeasure in the case of the legality

[90] ICJ: Alleged violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v United States of America). CR 2018/16. Verbatim record. 27 August 2018. P. 71.

[91] ICJ: Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America). Provisional Measures. Order. 3 October 2018. I.C.J. Reports 2018. P. 623. P. 88-90, 98.

[92] Société Nationale Industrielle Aérospatiale v United States. 482 US 522 (1987). Restatement § 437, Reporter's Note 5, 41–2.

of its application [Keshner 2021:168-169]. However, the subject composition of the application of such a countermeasure remains controversial, since such a blocking act is directed not at the target state, but at its citizens and organizations.

5. Conclusion

Summarizing the above analysis, it can be concluded that the unilateral sanctions imposed by some States today do not have any standard or form. Such measures are not legal under UN SC sanctions. Unilateral sanctions serve as an effective foreign policy tool used as a political signal or to put pressure on another state to change its behavior [Boklan, Murashko 2022:144]. It is more an instrument of coercion, particularly inherent in the "rule-based order" approach.

Unilateral sanctions present a complex and multifaceted issue within the realm of international law. Unilateral extraterritorial sanctions pose challenges to non-intervention. By extending the jurisdiction of imposing states beyond their borders, these measures can be seen as interference in their internal affairs.

From the perspective of international law, the question remains intractable: how to determine whether the impact of economic pressure exerted by, for example, the US, is serious enough to turn it into the necessary level of coercion to violate the principle of non-intervention, or whether it remains within the normal areas of competition between sovereign actors who use economic pressure to influence the policy choices of others [Schmidt 2022:80]?

Unilateral economic sanctions cannot be considered as countermeasures, retaliation and reprisals, economic sanctions or UN SC sanctions. Such actions by States are purely politicized and have no basis or standards. Furthermore, to avoid abusive use of the WTO security exceptions as ground of justification of the unilateral sanctions, its context should be understood as encompassing only military and closely related to military issues and does not cover political, economic, cultural or any other interests and relations. Russia's Permanent Mission to the WTO has pointed out that "aggressive and politically motivated restrictions" threaten the entire world trade system with a significant impact on supply chains, which are already struggling to recover from the pandemic[93]. A broad interpretation of the national security exception by WTO DSB will lead to the opening of a "Pandora's box" and the abuse of this tool for protectionist purposes under the guise of national security [Boklan, Murashko 2022:156].

The extraterritorial application of unilateral sanctions indicates that the basic principle of non-intervention is being violated.

The adoption of blocking laws has several advantages. First, it reflects the clear position that the state does not accept the extraterritorial effect of any foreign acts, and it will block unilateral sanctions imposed either on it or on countries that have close partnerships with it. As the EU itself acknowledges, the adoption of its Blocking Regulation "sends an important political message" and was construed as a "bargaining chip" for seeking exemptions from US secondary sanctions for the benefit of EU companies[94]. Secondly, it helps companies reduce legal risks. For example, they can argue force majeure against their business partners by citing their blocking laws. Third, it may discourage foreign companies from complying with unilateral sanctions imposed by other countries. However, such blocking laws may present companies with a dilemma of whether to comply with unilateral sanctions or national blocking laws. Moreover, blocking the extraterritorial reach of unilateral sanctions can be considered a legal countermeasure under international law, but does not directly affect the target state.

Presented analysis shows that unilateral sanctions being new phenomena require clear qualification under international law as unlawful measures inconstant with international law. Such qualification is required to provide effectiveness and prevent abusive use of international law.

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[93] Communication from the Russian Federation. WT/GC/245. Doc 22-2317. 2022.

[94] Immenkamp B. *Updating the Blocking Regulation – The EU's answer to US extraterritorial sanctions.* European Parliamentary Research Service. 2018. URL: www.europarl.europa.eu/RegData/etudes/BRIE/2018/623535/EPRS_BRI(2018)623535_EN.pdf (accessed 05.02.2023).

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