DOI: https://doi.org/10.24833/0869-0049-2025-3-6-23

Research article
UDC: 341.225
Received 20 April 2025
Approved 25 August 2025

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ARE EUROPEAN UNION "SANCTIONS" AGAINST RUSSIA COMPATIBLE WITH INTERNATIONAL LAW?

INTRODUCTION. *The adoption of unfriendly measures against third States as a way to force a policy change is not new between States and can be legally acceptable in specific cases dictated by the United Nations Security Council or when in accordance with international law. When lacking a linking element between both the punishing and the punished States, sanctions are unilateral, which, in the end, equates to a violation of the customary principles of sovereign equality and non-intervention, thus violating international law. The European Union seeks the pursuance of a distinct approach against several States, including the Russian Federation. In the end, the main goal of this study is to be able to provide an answer to the following question: are EU sanctions against Russia compatible with international law?*

MATERIALS AND METHODS. *This study begins with the characterisation of the concept of "sanctions", its typologies, its different ways of expression and the framework of sanctions under international law. It will be followed by an assessment on the political and legal position of the European Union on sanctions to then finalize with the specific case of the sanction's regime adopted by Brussels against Russia. This work takes into account as main sources the instruments adopted by the United Nations' Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, as well as legal doctrine, jurisprudence and normative elements.*

RESEARCH RESULTS. *The result of the research conducted demonstrates the development of a trend within the European Union towards a concentration of powers in the Council of the European Union through vague and arbitrary normative instruments in order to adopt sanctions against third States. This trend gained more traction and legitimacy after the Treaty of Lisbon and is driven by the ambition of the European Union to directly influence the most significant international events and push for political changes in the targeted States, attempting to force the latters' sovereign bodies to embrace the same values and principles as the Brussels based organization.*

DISCUSSION AND CONCLUSIONS. *The notion of "sanctions" comprises two different mechanisms: decisions which, although may be unfriendly, are in accordance with international law; and unilateral coercive measures, which constitute breaches of international law. Despite the fact that the European Union's sanctions regime is publicly presented under the name of "restrictive measures", in the end, such measures are adopted outside the United Nations Security Council environment and lack a factual basis enough to justify such decisions, thus fitting in the scope of unilateral coercive measures, forbidden by international law.*

KEYWORDS: *sanctions, unilateral coercive measures, restrictive measures, European Union, economic warfare, sovereign equality*

FOR CITATION: Guerreiro A. Are European Union "Sanctions" against Russia Compatible with International Law? – *Moscow Journal of International Law.* 2025. No. 3. P. 6–23. DOI: https://doi.org/10.24833/0869-0049-2025-3-6-23

The author declares the absence of conflict of interest.

ВОПРОСЫ ТЕОРИИ

DOI: https://doi.org/10.24833/0869-0049-2025-3-6-23

Исследовательская статья
УДК: 341.225
Поступила в редакцию: 20.04.2025
Принята к публикации: 25.08.2025

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СООТВЕТСТВУЮТ ЛИ «САНКЦИИ» ЕВРОПЕЙСКОГО СОЮЗА ПРОТИВ РОССИИ МЕЖДУНАРОДНОМУ ПРАВУ?

ВВЕДЕНИЕ. *Принятие недружественных мер против третьих государств как способ принуждения к изменению политики не является чем-то новым для государств и может быть юридически приемлемым в конкретных случаях, определяемых Советом Безопасности Организации Объединенных Наций (далее – ООН) или соответствующих международному праву. При отсутствии связующего элемента между наказывающим и наказуемым государствами санкции являются односторонними, что в итоге равнозначно нарушению обычных принципов суверенного равенства и невмешательства, тем самым нарушая международное право. Европейский союз (далее – ЕС) стремится к применению особого подхода в отношении нескольких государств, включая Российскую Федерацию. Главная цель исследования – дать ответ на следующий вопрос: совместимы ли санкции ЕС против России с международным правом?*

МАТЕРИАЛЫ И МЕТОДЫ. *Исследование начинается с характеристики понятия «санкции», его типологий, различных способов выражения и международно-правовой базы санкций. Далее последует оценка политической и правовой позиции ЕС в отношении санкций, которая завершается рассмотрением конкретного случая санкционного режима, принятого Брюсселем против России. В качестве основных источников в этой работе рассматриваются документы, принятые Специальным докладчиком ООН по вопросу о негативном воздействии односторонних принудительных мер на осуществление прав человека, а также правовая доктрина, судебная практика и нормативные акты.*

РЕЗУЛЬТАТЫ ИССЛЕДОВАНИЯ. *Результаты проведенного исследования демонстрируют развитие в ЕС тенденции к концентрации полномочий в Совете ЕС посредством неопределенных и произвольных нормативных актов для принятия санкций против третьих государств. Эта тенденция приобрела большую популярность и легитимность после Лиссабонского договора и обусловлена стремлением ЕС напрямую влиять на важнейшие международные события и добиваться политических изменений в государствах, против которых направлены санкции, пытаясь заставить их суверенные органы принять те же ценности и принципы, что и брюссельская организация.*

ОБСУЖДЕНИЕ И ВЫВОДЫ. *Понятие «санкции» включает в себя два различных механизма: решения, которые, хотя и могут быть недружественными, соответствуют международному праву; и односторонние принудительные меры, которые представляют собой нарушение международного права. Несмотря на то что режим санкций ЕС публично представлен под названием «ограничительные меры», такие меры принимаются вне рамок Совета Безопасности ООН и не имеют достаточной фактической базы для обоснования таких решений, тем самым попадая под действие односторонних принудительных мер, запрещенных международным правом.*

КЛЮЧЕВЫЕ СЛОВА: *санкции, односторонние принудительные меры, ограничительные меры, Европейский союз, экономическая война, суверенное равенство*

ДЛЯ ЦИТИРОВАНИЯ: Геррейро А. 2025. Соответствуют ли «санкции» Европейского союза против России международному праву? – *Московский журнал международного права*. № 3. С. 6–23. DOI: https://doi.org/10.24833/0869-0049-2025-3-6-23

Автор заявляет об отсутствии конфликта интересов.

1. Legal nature of coercive measures

1.1. Concept

Unilateral decision-making by States in response to sovereign decision-making by one or more states has long reflected an alternative to the use of force by states as a way of pressuring for a change in that State's behaviour or policy without resorting to the use of force. A popular concept in the political world is "sanctions", which corresponds to "measures taken by one State to compel a change in policy of another State"[1].

This policy change may ultimately involve a change in the governmental structure of the targeted State [Carter 2011:§1, 33]. In other words, in practice, the expression "sanctions" highlights what has long been criticized as a "punishment-oriented attitude", that is, a policy that prioritizes the attempt to punish rather than seeking non-hostile mechanisms and bases of understanding between parties with different positions [Galtung 1967:380]. Despite the fact that sanctions have been present practically since the existence of interstate relations, the concrete scope of application of this concept still remains open [Bogdanova 2022:15, 157].

Considering the primacy of the *principle of sovereign equality* as a customary principle abundantly codified by means of numerous international instruments that have declared it, including the Charter of the United Nations, the requirement of a vertical relationship in the relationship between the *sanctioning* and the *sanctioned* parties does not apply in relations between sovereign States. It is therefore clear that *sanctions* are only applied in the context of States that are part of international organizations, an environment in which members accept the possibility of being subject to sanctions by specific bodies of these organizations in light of the rules enshrined in the treaties that constitute these entities [Combacau 1986:338-340].

Also for this reason, the sanction implies a decision that is not *unilateral*, that is, it cannot constitute an unlawful act. The sanction must therefore be the corollary of a unanimity or a significant consensus – preferably that of humanity as a whole – and not the mere reflection of the geopolitical agenda of a minority group of States. The sanction is, furthermore, due to the above, a *collegiate* decision representing different sensibilities and not the position of a single State or group of States with common characteristics. There is, therefore, a sovereign and individual *centralization* and abstract consent in the application of sanctions [Forlati 2004:107, Sellers 2004:480-481].

In this context, the use of the term *sanction* is more appropriate in the context of international organizations, with special emphasis on the UN, since there is an acceptance by States to submit to the reaction and discipline of a specific body if they threaten international peace and security. The ILC decided

[1] UN General Assembly Human Rights Council: Thematic study of the Office of the United Nations High Commissioner for Human Rights on the impact of unilateral coercive measures on the enjoyment of human rights, including recommendations on actions aimed at ending such measures. 1 November, 2012. Para. 2. URL: https://docs.un.org/en/A/HRC/19/33 (accessed date: 24.08.2025).

in this sense, for example, in the preparatory work of the *Draft Articles on the Responsibility of States for Internationally Wrongful Acts* (hereinafter *Draft Articles*)[2]. Even within the framework of other international organizations, these continental or regional entities lack the legitimacy to apply sanctions if they adopt any measure that exceeds the predictable consent of the targeted State or that proposes to replace what is or is not foreseen by the Security Council [Pellet, Miron 2013:§63-64].

Now, it turns out that in relations (i) between States and (ii) between international organizations and third States, *sanctions* are never a legally admissible option given the absence of a vertical relationship between the sanctioning entity and the sanctioned party, in light of the customary principle *pacta tertiis nec nocent nec prosunt,* also enshrined in Article 34 of the Vienna Convention on the Law of Treaties. In the latter case, it is not possible to speak of *adoption of sanctions,* but, eventually, reprisals or hostile acts, the latter being able to constitute *contra legem* measures capable of generating international liability [Pellet, Miron 2013:§6-9].

1.2. Scope and distinction from other concepts

A possible approach to the so-called "sanctions" consists of breaking them down into two types of actions that are distinguished between lawful and unlawful in light of international law[3]. Lawful measures are *retorsion* and *reprisals*. *Retorsion* corresponds to acts by States intended to respond to acts directed against themselves and unfriendly in nature, but lawful, by a third State. *Reprisals* are actions by States intended to respond to an unlawful act committed by another State and directed at them. With due proportions, both are accepted in International Law [Shaw 2021:991].

A third figure that has seen increasing support from Western bloc countries are the traditionally called "unilateral coercive measures" [Douhan 2024:291-292]. Unlike retorsion and reprisals, which are lawful, *unilateral coercive measures* are always, by nature, unlawful, insofar as they are adopted in defiance of or exceed the sanctions determined by the Security Council.

The controversy, however, concerns whether retorsion, reprisals and unilateral coercive measures are effectively "sanctions". The issue is not new and the ILC already spoke out on it in 1979, expressly opting for the term *countermeasures* to designate unfriendly actions taken by States against other States, since "sanctions" presuppose decisions taken by international organizations[4]. As for unilateral coercive measures, these are not countermeasures, since the expression countermeasure assumes a reaction motivated by a prior action by a third State.

Therefore, unilateral coercive measures applicable by States are not truly "sanctions", as there is no vertical relationship between one State and another [Hofer 2021:199], but they are also not comparable to reprisals if there is no unlawful act that justifies the perpetration of a revengeful act. Therefore, the expressions *retorsion* or *countermeasures* must also be rejected, given that they presuppose an action or omission by one party that may, hypothetically, have been committed negligently or, simply, this State may have limited itself to exercising its sovereign powers, which, ultimately, would make the coercive measure unilateral in nature.

Ultimately, *unilateral coercive measures* are distinguished from *retorsion* and *reprisals* because they reflect active (rather than reactive) approaches by states to third-party policies that are not directly directed at the former. These are, therefore, actions without prior basis, and therefore unilateral, as it is not possible to establish a causal link between them. However, any measures taken against a State will only truly be "sanctions" if they are adopted within the framework of the UN Security Council or within the framework of a regional organization between its member states.

1.3. Typologies

The use of *unilateral coercive measures* is, as a rule, part of a strategy of interstate *economic warfare*. We are not referring to economic warfare in the context of armed conflict, but rather to economic warfare in times of peace, as an alternative means to the use of force as a way of influencing the sovereign decision-making of others by exerting pressure on the target

[2] International Law Commission. – *Yearbook of the International Law Commission – 1980*. Vol. I. New York: United Nations. 1981. P. 57-63.

[3] Office of the United Nations High Commissioner for Human Rights: Guiding Principles on Sanctions, Business and Human Rights. February 6, 2025. (hereinafter Guiding Principles). URL: https://www.ohchr.org/sites/default/files/documents/issues/ucm/events/international-conf-sanctions-business-hr/gps-sanctions-business-hr.pdf (accessed date: 24.08.2025).

[4] International Law Commission. – *Yearbook of the International Law Commission – 1980*. Vol. I. New York: United Nations. 1981. P. 57-63.

through the economy. We are, therefore, in the domain of the "free exercise of economic sovereignty" [Forlati 204:103].

A variation of these measures are the so-called smart or *targeted* sanctions, which extend unilaterality to asset freezing and travel bans for individuals who are deemed to hold positions that could influence political decision-making in the targeted State [Timofeev, Arapova, Nikitina 2024:156-178]. In addition to these types of unilateral coercive measures, it is also worth highlighting the initiatives of some States with a view to the extraterritorial application of their criminal jurisdictions in relation to individuals and holders of political functions of third States, based on strictly internal legal and ideological criteria and unrelated to the dynamics of the UN Security Council [Guerreiro 2023:77-94].

Finally, it is important to emphasize the so-called *secondary unilateral coercive measures*, that is, measures applied reflexively by a State against other States or against natural or legal persons of these and which, in some way, do not express solidarity with the State applying these measures and, consequently, may affect the effectiveness of its measures. These measures act as "multipliers" for primary sanctions, producing completely unpredictable effects due to the lack of definition of their scope of application [Ruys, Ryngaert 2020:8]. They also contribute to the "weaponization of interdependence", that is, a way for one or more states to reach out and exert pressure or coercion through the connections that the targeted states maintain with each other [Farrell, Newman 2019:42-79].

Therefore, if global economic networks are, on the one hand, instruments of cohesion, they can also reveal themselves as elements that expose vulnerabilities given the interdependence created and which contaminates States that would not be affected if they maintained their autonomy. *Weaponization* is thus built on commercial relations, with the economy serving to condition political decisions taken en bloc or even individually by each State.

A clear example of this type of measure are the sanctions adopted by the US, which constitute a deliberate way of pressuring its usual allies to adhere to compliance with coercive measures, without it being necessary for these allies to adopt their own coercive measures or even to fully support the need to impose restrictive measures in a given case [Terry 2024:142]. The persuasive factor is the mere hypothesis that these third States could harm their citizens and national companies if they do not show solidarity with the power that imposes secondary unilateral coercive measures, ending up agreeing. Ultimately, we are faced with a form of coercion with an aggravated degree of illegality, insofar as it spreads the effects of the coercive measure to third parties without any connection to the sources of tension.

2. Status of coercive measures under international law

In a context in which the unlawfulness of interference increasingly takes on more forms in current International Law [Guerreiro 2022:6-26], unilateral coercive measures correspond to attempts to interfere in the internal politics of States par excellence. This reality, however, has long deserved to be addressed by the UNGA and points to the illicit nature of unilateral coercive measures.

The central element of the approach to sanctions within the UN framework was the exercise of the right to self-determination, not only in the colonial context, through which independence was guaranteed to many peoples, radically changing an international context that went from a reduced set of sovereign founding States of the UN to the current 193. The emergence of new States, most of which have decades or even centuries of civilizational regression, has forced the adaptation of the legal and political framework to a situation with profound asymmetries.

Despite being sovereign *de jure*, many of the new States continued (and still continue today) under the sphere of influence or domination of the former dominant powers. Thus, the only way to change the paradigm of *de facto* interference in the internal politics and economy of new States involved the promotion and adoption of instruments that ensured the adequate interpretation of the United Nations Charter and general international law without distorting the spirit of the values openly pursued by the community of States.

It was therefore no surprise that, following Resolution 523 (VI) of 30 January 1952, peripheral economies, aware of the *de facto* inequality that existed in relation to nuclear economies, promoted initiatives at the UN with the aim of ensuring that each State freely explored its economic potential without remaining hostage to third States or foreign non-State actors that could determine sovereign decision-making by the political bodies of the State in which they operated and take advantage of the existing dependence of these economic agents for the survival and development of the economy.

This important UN Resolution was adopted following the adoption of Resolution 380 (V) of 17 November 1950, by which the General Assembly reiterated its opposition to what it described as "aggression" whether direct or through the fomentation of civil strife in a State in the interests of a foreign power "whatever of the weapons used"[5]. The Resolution went further, stating that such conduct corresponds to the "gravest of all crimes against peace and security throughout the world"[6], thus concurring with the idea that intervention compromises global peace and security.

In 1965, with the adoption of Resolution 2131 (XX) of 21 December 1965[7], named *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty,* UN Member States have recognised that absolute compliance with the principle of the non-intervention in the internal and external affairs of other States is essential for the achievement of the purposes and principles of the UN and that "direct intervention, subversion and all forms of indirect intervention are contrary to these principles"[8]. Therefore, States expressed their condemnation of the use or encouragement of economic measures to coerce another State into subordinating the exercise of its sovereign rights[9], a prohibition that was declared to the same effect in Resolution 2625 (XXV)[10].

There was also a significant change in the ways in which intervention can be expressed. On the one hand, all States were recognised as having an "inalienable right" to decide on their political, economic, social and cultural systems and to do exercise such right without any kind of interference from any other State in any form[11]. On the other hand, the Resolution also emphasized that no State may resort to or encourage the resort to mechanisms of economic, political or other nature and which, in the end, may lead to the subservience of another State and the subordination of the exercise of its sovereign rights or even to guarantee any type of advantage that would not be given in case that State decided freely[12].

The evolution of the UN approach to unilateral coercive measures had one of its highlights the adoption of Resolution 3201 (S-VI), of 1 May 1974, which proclaimed the *Declaration on the Establishment of a New International Economic Order*[13]. This *Declaration*, which proposed to end an international economic order considered to be in conflict with "developments in international political and economic relations"[14], determined that the then new international economic order shall be founded, among others, in the principles of sovereign equality, of self-determination of all peoples and of noninterference in the internal affairs of other States[15]. Finally, it was recognised that this *Declaration* shall be one of the most elementary and important sources to regulate the economic relations between all peoples[16].

Later, the UN General Assembly adopted Resolutions 36/102 (1981) of 9 December, which implemented the *Declaration on the Strengthening of International Security, and 36/103 (1981) of 9 December, which adopted the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States*[17]. The States that voted favourably Resolution 36/102 intended to reinforce the duty to refrain from any kind of threat or use of force, interference, interference as well as the prohibition of pursuance of political and economic coercion measures able to violate the sovereignty, territorial integrity, independence and even the security of other States[18]. As for Resolution 36/103, it is recognised the duty of

[5] Para. 1.
[6] Para. 1.
[7] This Resolution was approved with no votes against, 109 votes in favor and only the abstention of the United Kingdom, leaving no doubt as to the unanimity and compromise reached around its value.
[8] Preamble.
[9] See para. 2 of UNGA Resolution 2131 (XX) of 21 December 1965.
[10] Principle III.
[11] This rule is exemplary in nature. It is thus possible to identify from the text possible domains through which sovereignty is pursued without disturbances or limitations.
[12] Para. 2.
[13] The *Declaration on the Establishment of a New International Economic Order* was adopted without a vote.
[14] Preamble of Resolution 3201 (S-VI).
[15] Under subpara. a) of para. 4.
[16] Para. 7.
[17] The draft Resolution was adopted with 127 votes in favor and 20 abstentions, and therefore obtained the approval of 86.39% of voting states.
[18] As set out in subpara. a) of para. 3.

States to abstain from measures that may be demonstrations of intervention in the internal or external affairs of other States[19].

From here, the UN General Assembly began to adopt similar Resolutions every two years, which reinforces the global commitment to combat unilateral coercive measures. These resolutions incorporate the prohibition of resorting to unilateral economic coercive measures as part of the *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*[20].

Resolution 38/197 of 20 December 1983 stressed that some peripheral economies are a frequent target of threats or the application of *coercive measures* as a form of exercise of political pressure[21], condemning the conduct of economic measures by certain Powers as a way to condition other countries on the exercise of their sovereign powers[22]. It also reaffirmed the obligation to abstention from threat or application of commercial restrictions, blockages, embargoes and other hostile measures of an economic nature that violates the provisions of the United Nations Charter, in particular, the *principle of non-intervention*[23].

In the same way, Resolutions 39/210 of 18 December 1984, 40/185 of 17 December 1985, 41/165 of 5 December 1986 and 42/173 of 11 December 1987, were later adopted. The last three first emphasized Resolution 152 (VI) of 2 July 1983, from the *United Nations Conference on Trade and Development* (UNCTAD), which reiterated the obligation of all states to refrain from the application of hostile economic measures. It should be recalled that UNCTAD's Resolutions have no binding effects to the same extent as the resolutions of the UN Security Council, although, as with the resolutions of the UN General Assembly, they may have declarative effects on international customary law and constitute proof of international law, either through the amplitude of the interpretation of general principles and norms, or through the recognition of new principles, standards and rules [Schwartz 1977:531].

Finally, these Resolutions accompanied the Report of the Secretary-General published in 1984, which confirmed the violation of the principle of non-intervention through the use of hostile measures in the economic domain, due to the harmful effects they cause for the targeted States in the economic and social spheres and because they end up coercing them in the exercise of sovereign powers, and disputes and disagreements should be resolved by peaceful means[24].

Regarding some specific instruments, Resolution 42/22 (1987), which approved the *Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations,* does not appear to replace Resolution 36/102 (1981), but rather complements it and dispels some doubts caused by the lack of consensus that occurred when covering a set of realities that are likely to degenerate into the threat or use of force. These instruments emerged in addition to Resolution 31/91 (1976), which already denounced any form of interference through any economic act, regardless of the bilateral relations conducted and the economic and social systems[25].

All these Resolutions thus assist in the interpretation of the application of the provisions of the United Nations Charter relating to the principle of non-intervention and, in the specific case of Resolution 42/22, its paragraph 7 even places armed interventions at the level of other forms of interference or attempted threats against the political, economic and cultural elements of the State[26]. In this context, it is worth highlighting that the principles of *sovereign equality* and s*elf-determination* correspond to

[19] As it derives from para. k) of part II of point 2.

[20] See Resolutions 44/215 of 22 December 1989, 46/210 of 20 December 1991, 48/168 of 21 December 1993, 50/96 of 20 December 1995, 52/181 of 18 December 1997, 54/200 of 22 December 1999, 56/179 of 21 December 2001, 58/198 of 23 December 2003, 60/185 of 22 December 2005, 62/183 of 19 December 2007, 64/189 of 21 December 2009, 66/186 of 22 December 2011, 68/200 of 20 December 2013, 70/185 of 22 December 2015, 72/201 of 20 December 2017, 74/2000 of 19 December 2019, 76/191 of 17 December 2021 and 78/135 of 19 December 2023.

[21] Preamble.

[22] Para. 1.

[23] Para. 4.

[24] UN General Assembly: Report of the Secretary-General: Economic measures taken by developed countries for coercive purposes, including their impact on international economic relations. October 16, 1985. URL: https://digitallibrary.un.org/record/99968/files/A_40_596-EN.pdf (accessed 24.08.2025).

[25] Para. 3.

[26] This position had already been adopted, for example, in para. 3 of Resolution 31/91.

the right of all peoples to self-determination freely and without external interference, and it is the duty of States to respect the exercise of this right. It should also be underlined that no State may use or encourage the use of economic, political or other measures to force another State to subvert the exercise of its sovereign rights[27].

Thus, it can be observed that the UN Security Council, driven by the resolutions of the UN General Assembly until the beginning of the 1970s, took a position with regard to the principle of non-intervention, strengthening the assertion of this principle in instruments with unquestionably binding effects, such as Resolutions, and recognising coercive measures as an expression of unlawful interference. Indeed, it is imperative to recognise that, despite the difficulties of the UNSC in reaching consensus with a view to approving Resolutions related to current international affairs, texts such as Resolution 387 (1976) of 31 March, which recalls, in the preamble, the principle that "no State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State", were nevertheless approved.

Previously, Resolution 330 (1973) of 21 March had already been approved with 12 votes in favour and abstentions from France, the United Kingdom and the United States, in which the UN Security Council took a firm stand against the activities of companies that deliberately attempt to coerce foreign countries and requested that all States refrain from using or encouraging the use of any type of coercive measures against States[28]. Although this Resolution was adopted in the context of Latin American countries, it nevertheless declares the interpretation to be made of international law in relation to the entire international community.

In short, the UN Security Council recognised the manifestation of acts of interference through economic means, with Resolution 330 (1973) ending up following the understanding already expressed at the General Assembly regarding the various types of interference[29]. By adopting this instrument, the UN Security Council required all States to demonstrate their good faith in complying with the *principle of non-intervention* and paved the way for holding State Governments accountable for actions carried out by private agents abroad aimed at coercing States that, because they are in a position of dependence on foreign investment, could end up exercising their sovereignty in a conditional manner.

It is also worth noting, although little explored by the International Court of Justice in the *case concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America),* the fact that the Court defended, in the abstract, that the non-continuation of economic support and the imposition of *unilateral coercive commercial measures* by a State on a third State may not always represent a violation of the *principle of non-intervention*[30]. However, by noting that this understanding is based on the description of specific facts reported by Nicaragua, the ICJ left open the hypothesis that certain unilateral coercive measures may constitute acts of interference contrary to international law if they are intended and capable of conditioning the free exercise of sovereignty by the authorities of the State in question.

Indeed, in the abstract, the ICJ considered that a State is not obliged to maintain commercial relations for longer than it understands it should do, in the absence of a treaty of commitment or other specific obligation. However, in the event of such an agreement coming into force, an abrupt cessation of commercial relations could constitute a violation of the *principle of non-intervention*[31].

In this regard, it is important to remember that the draft UN Security Council Resolution S/17172 of 9 May 1985, presented by Nicaragua, was submitted to a vote paragraph by paragraph due to the risk of the initiative being vetoed by the United States, as Washington recognised that the trade embargo and other coercive economic measures would be inconsistent with the principle of non-intervention in the internal affairs of States and, consequently, would be obliged to cease its policy towards Nicaragua.

The first seven paragraphs from the preamble were adopted – always with no votes against but with some abstentions, – but the 8th paragraph, where it was proposed that the UN Security Council would

[27] Paras. 8, 15 and 16 of the Declaration annexed to Resolution 42/22 of 18 November 1987.
[28] Para. 1, 2.
[29] The Resolution refers directly to the UNGA Resolution 2625 (XXV).
[30] International Court of Justice: Case concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America). Judgment of 27 June 1986 (hereinafter Nicaragua v USA). Para. 245, 276. URL: https://www.icj-cij.org/public/files/case-related/70/070-19860627-JUD-01-00-EN.pdf (accessed 24.08.2025)
[31] Nicaragua v USA. Para. 245, 276.

express concern about the US trade embargo and other coercive economic measures against Nicaragua, had 13 votes in favour, the United Kingdom abstained and the US vetoed. Regarding the provisions condemning the situation and calling on States to refrain from actions of this nature, practically all Member States voted in favour, but they were rejected, once again, by the US veto[32].

The remaining paragraphs were adopted and, thus, Resolution 562 (1985) was approved, in which the UN Security Council also recognised the inalienable right of States to sovereign equality. Despite the US veto, it is not possible to take value from the relatively unanimous understanding of States that economic coercive measures constitute acts of unlawful interference under International Law, binding the States that have spoken out in this sense and contributing to the confirmation or, at least, the formation of an international customary norm.

In the end, in the abstract, it is imperative to distinguish two distinct forms of economic interference. Firstly, direct interference in the economic system of a State, with the interfering State defining or influencing the characteristics of that system. The second involves the possibility of exercising economic interference through indirect interference in the economic system of a State, due to the latter being exposed to a set of unilateral coercive measures imposed by the interfering State, which are likely to significantly affect the performance of an economy and the living conditions of the population of the targeted State.

More recently, in 2025, the UN Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights adopted the *Guiding Principles on Sanctions, Business and Human Rights* (hereinafter *Guiding Principles*). Although this is a *soft law* instrument, it still has a significant level of enforceability, as it can be useful in declaring and contributing to the clarification of State practices and contributing to the affirmation of relevant customary law in this field, increasing predictability and legal certainty.

Simultaneously, the *Guiding Principles* have the added benefit of reflecting an attempt to codify legal concepts and principles to be observed by all States, business enterprises and the UN and all international organizations, following several autonomous reports previously issued by the UN Special Rapporteur. Considering this, the *Guiding Principles* are a unique and important instrument considering the greater difficulty to adopt a UN-sponsored treaty on the matter, especially having in mind the protection of human rights, as well as the development of standards to avoid over-compliance and minimize side effects for the populations of the countries affected by unilateral coercive measures.

According to the *Guiding Principles*, the concept of *unilateral coercive measure* corresponds to any type of measures adopted by States or regional organizations against third States without or beyond any UNSC decision and which are not in conformity with obligations deriving from any source of international law or are able to fit the notion of "wrongful act" and entail international responsibility for the perpetrator of such act, regardless of the announced intention or objective[33].

Thus, this notion offered by the *Guiding Principles* opposes an understanding prevailing within the EU that both the Union and the UNSC have legitimacy to impose sanctions on States in order to pursue international peace and security [Portela, Meissner 2022:84]. In fact, there is no legal basis in international law attributing the EU legitimacy to adopt any restrictive measures outside the scope of what international customary norms, in general, and the *Draft Articles*, in particular, recognise as legally accepted.

Some doctrine considers that interference is lawful under international law only in cases where it is accompanied by the threat of the use of force or other forms of coercion [Ronzitti 2016:39]. However, as is clear from the above, political propaganda intended to subvert or alter the political situation in a State, actions intended to contaminate the representative agents of a State in order to subvert the sovereign will of the people and direct or indirect support for the emergence and activity of pressure groups or movements and associations of a political nature constitute manifestations of a prohibition of intervention, which includes, as demonstrated, the inadmissibility even of defamatory campaigns against a State because they are likely to generate instability.

Finally, some of the principles established by the UN Special Rapporteur are totally innovative and may increase awareness and deterrence towards

[32] UN Security Council: 2580th meeting. May 10, 1985. URL: https://digitallibrary.un.org/record/144417/files/S_PV-2580-EN.pdf (accessed 24.08.2025).
[33] Guiding Principles. P. 12.

States who make use of unilateral coercive measures. If, on the one hand, the Principles of Proportionality[34] and Due Diligence[35] appear to be too vague and may open the way for broader understandings of their application, on the other hand, the Principle of Humanity foresees the recognition of criminal and civil liability for the adoption of unilateral coercive measures that impact on human rights and affect humanitarian concerns[36] and even if and the Accessibility of humanitarian assistance may easily be accepted as having an instrumental legal value and complements the Hague Conventions of 1899 and 1907 and the Geneva Conventions of 1949 and their Additional Protocols[37].

3. The European Union's "restrictive measures"

Within the framework of the European Union, unilateral coercive measures are called "restrictive measures", a semantic clarification that intentionally excludes the word unilateral, but which, in practice, does not remove the illicit nature of EU decisions, since they are hostile measures that Brussels intends to apply to third States and which exceed or are extraneous to any decisions taken within the framework of the Security Council. As we shall see, the purpose of restrictive measures is the same as that of unilateral coercive measures: to force a change in policy by a third State without it having carried out lawful or unlawful acts against the Union or any Member State [Portela 2010:105-106].

Another distinctive feature between UN Security Council sanctions and the unilateral coercive measures of the European Union is that, while the former result from an agreement of different sensibilities and wills, in the European Union, the dynamics in the decision-making process suggest the instrumentalization of the Union for the universalization of agendas of the dominant economies. All this reflects a long-rooted trend within the European Union and already justified by the realist tradition: the use of international organizations to impose the decisions and interests of States with greater prominence, dragging the remaining States along under the justification of a supposed common cause [Kropatcheva 2022:452].

Among the most emblematic cases, it is worth noting the fact that the European Economic Community (EEC), for example, had already been used by the United Kingdom, in the early 1980s, to reinforce the credibility of British punitive claims against Argentina [Martin 1992:150]. More recently, in the 2010s, Sweden launched a similar campaign regarding Rwanda, although in practice there is no truly coherent criterion in decision-making [Saltnes 2017:560].

These actions were not pursued by mere chance, starting by being deepened at a structural level in the European Union. In the case of this organization, the path was more intensely followed after the commitment made in the *London Report* of 13 October 1981. In this document, the then 10 EEC member states recognised that the Ten were far from having expression proportional to the combined power they had in an international reality marked by a world of growing uncertainty and global tension, which is why the organization had the "need for a coherent and united approach to international affairs"[38].

The subsequent European integration treaties did nothing more than materialize a 'principle of uniformity', in light of which States reduce their autonomy in order to reinforce a common position. In terms of unilateral coercive measures, Article 29 of the *Treaty on European Union* (hereinafter TEU), in the version of the Treaty of Lisbon, constitutes the legal basis for decision-making, since it provides that the Council of the European Union "shall adopt decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature", hence all Member States "shall ensure that their national policies conform to the Union positions".

There is no doubt that this decision is binding, since it derives from general obligations the duty to promote Union objectives, one must have in mind the prohibition of *venire contra factum proprium* and, under Article 288, paragraph 4, of the *Treaty on the Functioning of the European Union* (hereinafter TFEU), "a decision shall be binding in its entirety". Although the Union's positions are adopted by unanimous vote of the Council, the Member States are de-

[34] Guiding Principles. P. 14, 15. Para. 15.
[35] Ibid. P. 23, 24. Para. 24.
[36] Ibid. P. 11. Para. 10.6.
[37] Ibid. P. 12. Para. 11.
[38] CVCE: Report on European Political Cooperation (London. 13 October 1981). December 18, 2013. URL: https://www.cvce.eu/content/publication/2002/1/18/869a63a6-4c28-4e42-8c41-efd2415cd7dc/publishable_en.pdf (accessed date: 24.08.2025).

prived of the autonomy to decide on sanctions alone if the Union is responsible for the matter in question [Geiger 2015b:135].

Here too, the Union has shown resistance to the pluralism of positions. The qualified majority required between 1997 and 2002 is now effectively converted into unanimity, which is seen, in theory, as a way of preventing a Member State from being bound by a decision against its will [Geiger 2015a:95]. However, as already happened with Hungary, the Union has already admitted resorting to Article 7, paragraph 1, of the TEU, in 2024, a solution that would follow what happened on 15.12.2023 when Viktor Orbán was convinced to leave the voting room to ensure unanimity.

It could therefore be fallacious to make believe that the unanimity rule in the way the Council operates reflects an intention to give greater value to the individual positions of each State, since, in theory, any type of solution is admissible to make a position prevail, without the Union's constitutional treaties providing for effective control mechanisms [Voinikov 2024:60].

Indeed, it is interesting to look at the evolution of the EU's approach to unilateral coercive measures and see how the Union has not only normalised but also aggravated its stance on the measures, moving closer to the hostile approach of the US towards third States. This perspective is justified by the intention of, more than having a position on a subject, aiming to interfere and shape an event or subject to its own needs: in 1981, the EU strategy aimed at adopting common positions; in 1996, a concept was adopted that already admitted the adoption of sanctions; in 2007, the rule and legal basis were established and the regime of unilateral coercive measures was coined with the name "restrictive measures".

The *Treaty establishing the European Community* began to mention, after 1997, the urgent measures necessary to "interrupt or to reduce, in part or completely, economic relations with one or more third countries" (Article 301). Although back then there were already in force EU decisions on the adoption of unilateral coercive measures, until June 2004 there was no official EU strategy on this subject and the concept of "restrictive measures" only came into existence three years later.

Note that the *Treaty establishing the European Community,* between 1997 and 2002, with the amendments introduced by the Treaties of Amsterdam and Nice, referred to a "common position", while the Treaty of Lisbon brought the notion of a "position of the Union". The position ceased to be that of the States ("common") and was replaced by the position of an international organization ("of the Union"). The latter, together with other elements that have been imposing themselves on the functioning of the institutions of the European Union, reflects a drift of the Union towards a federal State model, which still generates controversy today, but is recognised as a reality [Larsen 2021:23, 191].

Therefore, the position that for decades and since the foundation of the European integration project was a minority (federalism), after the defeat of the infamous Constitution project for the European Union, adjusted itself with the Treaty of Lisbon and developed through the institutions an increasing *de facto* federalism with losses for the until then prevailing intergovernmental position. In the end, discussing, negotiating and defining a common position among the 10, 12, 15 or 27 became irrelevant: the Member States lost the autonomy and decentralization of the past and became a mere instrument that concentrates power and legitimacy in the European Union.

It must be admitted that this drift, which has as a practical corollary the EU's increasing prioritization of the adoption of unilateral coercive measures, is due to the inability of the Union to create its own military force, which is why the EU invested heavily on the possibility of sanctions playing a role in international crises and has accepted the increasing dependence on this mechanism over time [Giumelli, Hoffmann, Książczaková 2021:2]. In this way, the EU continues what was already predicted in the *London Report,* having long been motivated by the need to "seek increasingly to shape events and not merely to react to them".

Having all this in mind, it seems quite clear that the EU's motivation when adopting restrictive measures is more based on pursuing geopolitical interests, rather than, how some EU scholars consider, a consequence of "humanitarian concerns" [Kreutz 2015:195, 214]. And such decisions on adopting sanctions come, most of the times, in reaction to US unilateral coercive measures [Meissner 2022:81], which also reflects lack of independence from the EU to pursue its own foreign policy and demonstrates the significant impact of US administrations in EU bodies, using the latter to extend and expand its influence to third States in Europe [Lonardo 2023b:75].

Therefore, the EU, attempting to affirm itself as a *normative power,* has been relying on unilateral coercive measures to assert the Union as a relevant actor in the international system. To this end, it has developed a set of legal instruments that, at first glance, appear to be intended to comply with international

law, such as the *Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy* (hereinafter *Guidelines*)[39] and the Basic Principles on the Use of Restrictive Measures (Sanctions)[40].

However, this regulatory process does not shy away from presenting serious flaws. By way of example, *Council Regulation (EC) No. 2271/96 of 22 November 1996*, which implemented the Union's *blocking statute* against third parties' legislation, is the clearest sign of the inconsistency that characterises the EU's international projection through normative instruments: the criterion for determining the lawfulness of unilateral coercive measures by third parties is not really based on any legal principles, but depends exclusively on the potential negative impact that the measures adopted by the USA have, in the abstract, for the Union itself.

At the same time, the *Guidelines*, in their 2018 update, state that the adoption and the implementation of restrictive measures must always comply with international law and must respect human rights and fundamental freedoms[41]. However, strictly political and arbitrary motivations outside the UN Security Council's decisions, the typical opacity in the decision-making process and the absence of guarantees and reaction mechanisms for the targeted individuals are recurrent in the EU sanctions adoption processes, denouncing the unilateralism of the so-called "restrictive measures".

3.1. The European Union's unilateral coercive measures against Russia

The features identified above are evident in the EU's approach to Russia. If the Council's position were legally sound and consistent with international law, the reasons underlying the adoption of the *Council Regulation (EC) No. 2271/96 of 22 November 1996* would remain as regards the EU's position towards Russia, given that the Community proposes to contribute to the development of world trade in a harmonious way and it also commits to progressively pursue the abolishment of restrictions on international trade. In the end, in the absence of a UNSC decision that enables the Union to adopt "restrictive measures" against the Russian Federation, it is important to understand whether such measures are not, in fact, examples of unilateral coercive measures or whether they fit into any of the concepts already provided for in the *Draft Articles*.

Indeed, the coup d'état carried out in Ukraine and which resulted in the removal of Viktor Yanukovych from power in February 2014 opened the door to threats against Russian-speaking communities and against the Russian Federation. The materialization of the self-determination of the Republic of Crimea and its consequent integration into the Russian Federation, on 17 March 2014 were not welcomed by the *collective West,* whose States launched, individually or as a whole, a hostile campaign against Moscow, through the adoption of normative instruments that, to this day, continue to constitute the basis of policies of unilateral coercive measures.

In practice, this event helped the dominant powers in the EU to align their position on Russia and to drag along the Member States with less prominence, thus putting pressure on the formation of common positions on the approach to the Russian Federation. For decades, much thought has been given to what the Union's interests would be for Russia, and Russia's approach has been determined on an individual level based on the interests of each state [Fernandes 2022:43].

The first mechanism adopted by the European Union was *Council Decision 2014/145/CFSP of 17 March 2014,* which imposes restrictive measures in respect of actions considered by the Union as undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. The fact that this instrument has registered an average of 6 amendments per year since it was implemented (66 amendments as of 24.08.2025) is, in itself, significant, as it allows us to interpret the constant dynamics of the Union's institutions as a reflection of the inability of the Council of the European Union to take a minimally solid, coherent position, in accordance with international law and capable of providing legal certainty to its recipients.

[39] Council of the European Union: Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy. December 3, 2003. URL: https://data.consilium.europa.eu/doc/document/ST%2015579%202003%20INIT/EN/pdf (accessed date: 24.08.2025).

[40] Council of the European Union: Basic Principles on the Use of Restrictive Measures (Sanctions). June 7, 2004. URL: https://data.consilium.europa.eu/doc/document/ST-10198-2004-REV-1/en/pdf (accessed date: 24.08.2025).

[41] Council of the European Union: Sanctions Guidelines – update. May 4, 2018. URL: https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf (accessed date: 24.08.2025).

The constant updating of measures to be taken and people to be sanctioned attests to the instability of the European Union's leadership in terms of certainty about the results that these measures will produce. This evidence is likely to generate such legal uncertainty for individuals to such an extent that it can only be exceeded by the *obiter* provided by the UK Court of Appeal expanding the scope of the UK's sanctions regime against the Russia Federation to any Russian citizen because it considered that President Putin "could be deemed to control everything in Russia" since the Russian Head of State is, according to this Court, "at the apex of a command economy"[42].

It should be noted that, as can be seen from the first version of Article 6 of *Decision 2014/145/CFSP,* the European Union anticipated that the restrictive measures initially contemplated would be sufficient to prevent the Russian Federation from exercising its sovereign powers until 17 September 2014, and would therefore be in force conditionally until this date. However, more than 60 amendments later and countless structural changes to *Decision 2014/145/CFSP,* it is now expected that this instrument will be in force until 15 September 2025[43].

Another instrument adopted was *Council Regulation (EU) No. 269/2014 of 17 March 2014,* which imposes restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. It should be noted that what was initially a legal instrument aimed at applying restrictive measures to 21 Russian citizens has quickly undergone changes, has become endless and covers, as of 24.08.2025, a group of 1958 individuals and 641 legal persons.

More recently, the EU adopted *Council Regulation (EU) 2024/2642 of 8 October 2024,* concerning the application of restrictive measures in view of what is considered to be "Russia's destabilizing activities". As of 24.08.2025, this instrument was amended five times, covering a total of 47 individuals and 15 legal persons, and its scope of application is so wide (from "information manipulation" to the "instrumentalization of migrants") that it can technically address any phenomenon or threat felt within a EU Member State.

In the end, the successive sanctions packages inspired the Russian Federation to reconfigure its economy, its domestic and foreign policies and even the national legal framework, ultimately putting Russia on a pace of permanent adaptation that already allows the country to anticipate any sanctions packages that will likely be adopted in the future [Timofeev 2024:154]. The case of Western sanctions against Russia confirms the thesis that unilateral restrictive measures imposed by some States today do not have any standard or form and do not follow any specific and scientific criteria [Boklan, Koval 2024:21].

However, it should be noted that the way in which the EU designs its sanctions policy against Russia is primarily based on a strategy aimed at areas and targets with strictly political motivations and as general and abstract as possible, in order to avoid, in a considerable number of measures, the intervention of the CJEU [Lonardo 2023a:4-5]. After all, the greater the individualization and detail of the measure, the greater the need for the Council's discretionary power to be subject to judicial scrutiny by citizens affected by the measures. And, with the consequent challenge of the measure, the possible effectiveness and shielding of the arbitrary political action of the Council becomes more exposed, since the more objective the restrictive measures are designed, the more they risk being challenged by those targeted before the community justice system.

It can therefore be said that the constitutional basis on which the European Union was built and on which it operates favours the use of discretionary decisions as a way for the competent body of the Union to ensure effective compliance with the measures it approves. This approach exposes a paradox that is easy to understand but difficult to conform to: instead of seeking to support the restrictive measures adopted in the Union's guiding normative instruments, as a way of reinforcing legitimacy, the Council tends to avoid judicial oversight by the TFEU and internal jurisdictions by favouring restrictive measures based on generic and abstract criteria.

This characteristic form of action by the Council has resulted in the annulment of several sanctions against individuals, due to the lack of sufficient con-

[42] Court of Appeal: Mints -v- PJSC National Bank Trust & PJSC Bank Okriteie Financial Corporation. October 6, 2023. URL: https://www.judiciary.uk/wp-content/uploads/2023/10/Mints-v-PJSC-judgment-061023.pdf (accessed date: 24.08.2025).
[43] As of 24.08.2025.

nection between the targeted person and the situation it intends to combat[44] or because they are based solely on their family relationship[45]. These cases reinforce the conviction of arbitrariness and lack of rigor of the EU Council in taking decisions on sanctions and in proving the allegations made for listing a person or entity [Alì 2024:337].

At the same time, the conduct already described suggests the fear that the restrictive measures adopted may not correspond to the standards of legality inherent to the existence of the Union itself, generating doubts among those applying the law and in the community itself. After all, unlike the Member States, where political decisions can be disputed by judicial bodies, in the European Union, in terms of sanctions, the Union aims to assume *de facto* exclusivity over the application of restrictive measures, thus avoiding the need for national parliaments and internal courts to take a position and summarizing decision-making to the representatives of each Member State in the EU in the competent political bodies.

Based on the above, it seems naive to us to say that the "adoption of sanctions is justified by norms and values rather than by particular interests that the EU holds" [Giumelli, Hoffmann, Książczaková 2021:5]. As already demonstrated, the use of normative instruments to apply unilateral coercive measures does not, in itself, generate any conviction of legality; on the contrary, it serves to disguise the EU Council's inability to legally justify the choice of the targeted individuals and entities. In the end, it is concluded that these measures are part of a set of actions adopted with strictly political motivations but "under the guise of the international legal construct" [Vylegzhanin, Nefedov, Voronin, Magomedova, Zotova 2021:51].

Hence, it seems simplistic to evaluate the adoption of unilateral coercive measures by the EU against the Russian Federation based on the principle of proportionality and to conclude that such measures are disproportionate "due to their impact on third parties" [Hofer 2023:19]. In fact, although Hofer identifies what States can do when a serious breach of a peremptory norm of international law occurs, the scholar does not refer that such breaches foreseen on articles 40 and 41 are applied only for norms "accepted and recognized by the international community of States"[46] and whose application shall be addressed, in particular, by the competent international organizations where the States involved have membership status, following the principle *pacta tertiis nec nocent nec prosunt,* or, in general, by the United Nations.

And here, although Hofer quoted the commentary of the ILC on the *Draft Articles,* the same document expressly recognises that the serious breaches dealt with in articles 40 and 41 shall be addressed by the "competent international organizations", including the UNSC and the UNGA[47]. And, with the exception of the jurisdiction of the International Criminal Court towards some States Parties to the Rome Statute, in the case of aggression, the Security Council is the only legitimate entity that can define the scope of aggression, qualify an event as aggression and take decisions on the matter[48].

This means that, even if, as Hofer recognises, the prohibition of aggression is both a *jus cogens* norm and an *erga omnes* obligation, the Russian Special Military Operation was never declared as aggression by the UNSC and hence such qualification cannot be made by an isolated group of States – which don't even compose the majority of the international community, as is the case of the combined West. This way, not only the EU is not in a vertical position towards the Russian Federation, but only the UNSC is in the case of aggression, reason why the EU has no legal powers to impose unilateral restrictive measures, thus making Hofer's concern "regarding how far States can go when adopting sanctions" senseless: when articles 40 and 41 of the *Draft Articles* establish that "States shall cooperate to bring to an end through lawful means any serious breach", they mean, as ILC clearly stated, through the United Nations and not through entities with no hierarchy towards a third State and, thus, never through economic warfare (unilateral coercive measures), which are unlawful as already demonstrated.

[44] Case T-304/22 Fridman v. Council. ECLI:EU:C:2024:31.
[45] Case T-212/22 Prigozhina v. Council. ECLI:EU:C:2023:98, 105.
[46] Article 53 of the Vienna Convention on the Law of Treaties.
[47] International Law Commission. – *Yearbook of the International Law Commission – 2001*. Vol. II. Part Two. New York/Geneva: United Nations. 2007. P. 113.
[48] Ibidem.

4. Are the EU's "restrictive measures" against Russia legal?

In the economic domain, a State may perceive the unlawfulness of a behaviour from the exercise of sovereign powers by another State through the degree of protectionism that the latter imposes on its economy and having in mind the implementation of policies that favour greater State participation in the economy and reduce private initiative or through resistance to the entry of economic agents from a State with a nuclear economy and the capacity to assume control of strategic assets. Thus, the fact that most economic relations depend on the participation of private law entities places the responsibility of the State where they operate on making decisions that are assumed to be potentially harmful to the interests of the States of origin of these economic agents, which, under no circumstances, is to be confused with the expropriation regime [Zavershinskaia, Boklan 2025:74].

In this context, coercive measures may constitute violations of the principle of non-intervention if they are unilateral in nature, a characteristic that cannot be set aside by mere political considerations by the institutions of the Union. In order for *unilaterality* to be excluded, it is necessary to demonstrate the existence of a direct causal link between the conduct of the State concerned and the interests of the Union.

Naturally, the Union, in the *Sanctions Guidelines,* supports a broad approach that allows it to extend restrictive measures in situations where links exist with the EU based on a notion that allows it to cover a broad notion of territory of the European Union, which includes not only aircraft and vessels of Member States, but also citizens, companies and other entities incorporated or constituted under Member States' law and even any business celebrated, even if in part, within the European Union[49].

However, it is not enough for an event to occur in a Member State or for any entity or legal act to simply be present in a EU Member State. Indeed, the mere solidarity of the European Union with a lawful or unlawful act against a Member State or the attempt to claim legitimacy by means of an official document does not justify the intervention of the Union, and it is imperative to demonstrate that the EU as a whole is also affected by the event that justifies the adoption of sanctions [Geiger 2015c:778]. Outside this context, the issue is not particularly controversial at present, and the ILC has decided it in determining Articles 49 to 54 of the *Draft Articles:* "restrictive measures" will only be lawful if they meet the conditions of the international law on reprisals and the right to resort to countermeasures was restricted to the directly injured State [Dawidowicz 2007:334].

In the specific case of the restrictive measures adopted against the Russian Federation, the set of events invoked by the EU to justify the approval of hostile mechanisms against Russian interests reveal the absence of a causal link, either with the EU or with any Member State. The facts described to support the adoption of sanctions do not have any direct or indirect link with the Union, and only cover aspects between the Russian Federation and Ukraine. *Geoeconomic* [Luttwak 1990:17] ambitions over Ukraine cannot therefore be accepted as sufficient to justify the adoption of reprisals by the EU.

At the same time, the resolutions of the General Assembly, including the most important Declarations on intervention, reinforce the thesis that hostile economic policies, including those aimed at unilateral economic sanctions against third States, may not only be capable of diminishing their independence but may even produce unmeasurable harmful effects, insofar as they affect nearly all categories of human rights, from civil and economic to social, cultural and right to development [Douhan 2024:294]. It was in this context of growing sensitivity of the international community to the direct and collateral effects of sanctions that the Report of the UN Secretary-General, dated 01.08.2018, entitled *Towards a New International Economic Order*[50].

Here, it was recognised that the spirit and principles already enshrined in the *Declaration on the Establishment of a New International Economic Order* of 1974 help, among others, to mitigate risks to sustained economic growth, as well as to combat injustices and inequalities and to promote equitable growth[51]. Likewise, the potential and challenges presented by the Declaration and the added value it represents for humanity were listed, which attests to the evident relevance of a legal instrument that, despite having been adopted more than 50 years ago,

[49] P. 19, para. 51.
[50] UN General Assembly: Report of the Secretary-General: Towards a New International Economic Order. August 1, 2018. URL: https://digitallibrary.un.org/record/4062933/files/A_79_320-EN.pdf (accessed date: 24.08.2025).
[51] Preamble.

was not an isolated act, reinforcing its influence on the foreign policy of UN Member States, having been referred to in other subsequent resolutions, such as Resolution 42/165 of 11 December 1987 or Resolution 73/240 of 16 January 2019.

All the instruments identified to date and adopted within the UN framework are sufficiently clear in demonstrating a global intention that recognises the need for the international community to eliminate the unilateral use of economic, financial or trade measures that are not authorized by relevant UN bodies or that violate the basic principles of the unilateral trading system and affect, in particular, but not exclusively, developing countries.

In view of the above, given the nature, characteristics and implementation of the European Union's sanctions against the Russian Federation, it is possible to conclude that the so-called "restrictive measures" correspond, in fact, to unilateral coercive measures, the unlawfulness of which arises from the Union's illegitimacy to adopt sanctioning mechanisms against third States and which were not subject to UN Security Council sanctions nor did they carry out acts directly against any EU Member State. The disproportion and uncertainty of these measures, as well as the opacity and arbitrariness in the decision-making process are elements that aggravate the illicit nature of the so-called "restrictive measures".

5. Final remarks

Unless a UN Security Council Resolution authorises and grants relative freedom in defining *sanctions* – since the term sanction presupposes a decision by a global collegiate body with primacy in exercising jurisdiction to recognise illegal acts and consequently apply sanctions as a way of avoiding *unilateralism* – any other initiative is a unilateral coercive measure against a State, since the particular justice underlying retaliation for failure to comply with an obligation towards the sanctioning State is not to be confused with the latter assuming the role of avenger of the community of States. It is assumed that the sanction, due to its coercive nature, does not depend on arbitrary factors and ideological and geopolitical sensitivities that could increase hostility between States, so that it is only accepted in the event of contractual non-compliance and in due proportionality.

The purpose of sanctions is clear: to bring a State back to what a higher authority considers to be *legality*. However, this notion of *legality* cannot be assessed individually by each State or by a regional organization, reason why the community as a whole should define sanctions, where the UN finds legitimacy. *Legality* cannot have multiple faces or interpretations, and a State or a minority group of States cannot impose their vision of legality on the State actors with whom they maintain a horizontal relationship, under penalty of not being *de facto* legal.

In the end, we clearly disagree that, as some authors put it, unilateral coercive measures are a "widely recognized pressure valve in international relations" supported by a "relative absence of strong legal constraints" given, among other reasons, that the ICJ (in Nicaragua v USA) considered that "even a comprehensive embargo does not breach customary international law" [Chachko, Heath 2022:137]. Contrary to such conclusions, the ICJ, first, admitted that any debate over a given customary norm should be discarded if there was a special treaty provision in force on the same issue, and, second, never mentioned the specific case of unilateral coercive measures[52]. Thus, the above-described legal framework demonstrates that, yes, sanctions can work as a central mechanism to enforce the international legal order and consolidate its post-1945 essence against unilateral use of force, however, only when such sanctions are adopted under the UN environment and not by the United States and the EU, as the as the same authors advocate [Chachko, Heath 2022:138].

The international community has made a significant progress in adopting a set of instruments that support the recognition of the prohibition of economic interference, including through trade relations, so that unilateral coercive measures, as they may affect the economic, political and social situation of a third State, are illicit in nature. Currently, the work carried out by the OHCHR concludes that two elements must be verified in determining the unlawfulness of a coercive measure: coercion and the intention to force a change in a State's policy that should be freely defined by it in the exercise of its sovereign rights[53]. And these are the two characteristics that are present in the European Union's policies towards Russia.

Thus, the Union's motivations for adopting sanctions against Russia are, in essence, wrong: the EU tries to justify itself with Russia's violation of interna-

[52] Nicaragua v. USA. Para. 274.
[53] Para. 19.

tional law, but does so outside of any decisions of the UN Security Council. In practice, the Council of the European Union legitimizes itself and, consequently, imposes sanctions on the Russian Federation without any UN resolution, convention or treaty granting it such powers or enabling the Union, which, in itself, allows its restrictive measures to be attributed a unilateral, and therefore unlawful, nature.

Simultaneously, the Council has also started to adopt unilateral coercive measures that clearly fall within the definition of secondary sanctions. *Council Regulation (EU) 2024/2642 of 8 October 2024* is a clear sign of that by adding to the list of sanctioned entities with no ties to the Russian Federation, like the *Groupe Panafricain pour le Commerce et l'Investissement, the AFA Media,* the *Voice of Europe,* the *Stark Industries Solutions Ltd.* and *the BRICS Journalist Association.* The latter case is, eventually, the most serious example of the violation of the Principle of Proportionality enshrined in the *Guiding Principles:* it reflects not only an attempt to put pressure on journalists but also to target and undermine BRICS countries as a whole.

For all these reasons, there is no doubt that the European Union's "sanctions" on Russia are incompatible with international law. In the end, the consolidation of the status of unilateral coercive measures as unlawful in nature could be a very positive step to refrain States, isolated groups of States and international organizations to continue adopting "sanctions" against third States based on ideologies or geopolitical ambitions. This way, the continued adoption of resolutions in the UNGA environment, the issuance of more reports by the OHCHR and regional organizations on specific countries' situations and the approval of declarations and resolutions within international and regional organizations or groups of States (as the BRICS, the Eurasian Economic Union, the African Union, MERCOSUR and others) would definitely enhance the need to address unilateral coercive measures. Nonetheless, all these steps could be complemented with the opportunity for the ICJ to have a say on the matter.

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