Unilateral economic measures and their impact on the development of cross-border cooperation: an international legal aspect

R Galiev[1,2*], K Cheprasov[2] and T Volcogon[2]

[1] Barnaul Law Institute of the Ministry of Internal Affairs of Russia, 49 Chkalova str., Barnaul 656038 Russia
[2] Altai State University, 61 Lenina str., Barnaul 656049 Russia

E-mail: galiev.barnaul@gmail.com

Abstract. The article is devoted to the legal analysis of unilateral measures of an economic nature, which are commonly identified with the term "sanctions." It has been established that modern unilateral economic measures often have an extraterritorial nature, thereby causing damage to the third states and cross-border cooperation. From the position of generally recognized principles of international law and special principles and norms of the law of international responsibility, unilateral measures of an economic nature can be viewed as countermeasures. They cannot be identified with sanctions in their international legal understanding and must meet a number of requirements in order to be declared as lawful.

Keywords: unilateral measures, legal regulation, law, cross-border cooperation, norms

1. Introduction

The practice of applying unilateral measures of an economic nature that has become widespread in recent decades has become particularly relevant for the Russian Federation after the annexation of the Crimean Peninsula. The economic activities of many countries that are driven by the United States and the European Union have become an instrument of political and geopolitical influence. It is fair to note that the Russian Federation applies "mirror" unilateral economic measures.

Today, unilateral economic measures have a significant impact not only on the alleged offending state, but also on a number of third countries. Of course, this is detrimental to cross-border cooperation. At the same time, from the point of view of the norms of international law, unilateral economic measures of states and regional international organizations are countermeasures. They are not sanctions in their international legal understanding, i.e. non-military measures introduced by the UN Security Council, and do not always meet the requirements for countermeasures.

2. Materials and Methods

The contemporary International Law does not contain norms prohibiting the use of restrictive measures by a state, group of states or international organization not related to the use of armed forces against another state. In particular, international law does not prohibit the use of restrictive measures against a non-member state of an international organization that applies such measures.

Currently, 36 unilateral economic regimes apply to the Russian Federation, with the most significant impact of measures taken by the European Union and the United States.

These states apply unilateral economic measures based on domestic law. For example, in the United States, the regulatory framework for the application of economic measures includes the following laws: Trading with the Enemy Act, TWEA 1917; National Emergencies Act, NEA, 1976; International Emergency Economic Powers Act, IEEPA, 1977; Chemical and Biological Weapons Control and Warfare Elimination Act, CBWCWEA, 1991; Countering America's Adversaries Through Sanctions Act, CATSAA, 2017. These laws give the President of the United States the right to adopt decrees aimed at imposing restrictive measures in response to a threat to national security, foreign policy, or the US economy from a source outside the United States. Also, the listed US laws give the Office of Foreign Assets Control (OFAC), a part of the US Treasury Department, the authority to administer and enforce restrictive measures. Certain laws provide for the competence of the US Department of State. Its role has been increasing in the administration of foreign economic and political measures lately.

The Russian legislation also provides for the possibility of introducing restrictive economic measures by the President and the Government of the Russian Federation in the following laws: the Federal Law on the Basics of State Regulation of Foreign Trade Activity No. 164-FZ of December 8, 2003; the Federal Law on Special Economic Measures No. 281-FZ of December 30, 2006; the Federal Law on Security No. 390-FZ of December 28, 2010.

At the same time, the generally recognized principles and norms of international law establish quite clear rules for the states to impose restrictive measures of a different nature against each other, including sanctions (countermeasures). So, based on the principles of the sovereign equality of states and non-interference in the internal affairs, each state acting within its sovereign powers may impose certain restrictions in relations with other states. At the same time, such restrictions should not affect the interests of third states, i.e. should not be extraterritorial in nature and be applied strictly within the framework of "horizontal" relations, which exclude a subordinate approach. This thesis is equally applicable to international organizations.

When introducing extraterritorial measures of an economic nature, the subordinated ("vertical") nature of the relationship is necessary between the actor applying such measures and the addressee of these measures. And in this case, such a character of legal relations can emerge only with the application of collective measures by the UN Security Council in the interests of the entire international community. In accordance with Chapter VII of the UN Charter, the UN Security Council is authorized to decide which measures not related to the use of armed forces should be applied to implement its decisions. And the UN Security Council may require UN Member States to apply these measures. These measures may include a full or partial interruption of economic relations, rail, sea, air, postal, telegraph, radio, or other means of communication, as well as the break of diplomatic relations. In this case, we are talking about sanctions in their international legal understanding.

Thus, the imposition of sanctions is appropriate when it is carried out on the basis of a collective decision of the international community. And the UN is the only international body with the authority to express the general opinion of the international community. Only decisions of the UN Security Council are binding. Accordingly, irrespective of the beneficiaries of the breach of obligations *erga omnes* (obligations to the entire international community), only the UN Security Council is authorized to decide on the use of coercive non-military measures against the offender.

The presented thesis is confirmed by the documents of the Special Committee on the Charter of the United Nations and the strengthening of the role of the Organization. In particular, the 2007 Report discusses the next revised working paper submitted by the Russian Federation "Basic Conditions and Standard Criteria for the Introduction and Application of Sanctions and Other Coercive Measures by the United Nations." This document emphasizes that only the UN Security Council can impose sanctions when determining whether there is a threat to peace, a breach of peace, or an act of aggression [1]. It is also important to note that earlier, the UN Security Council developed the practice of applying "smart sanctions" aimed at persons directly responsible for unlawful policies. The

maintenance of "smart sanctions" was due to the general criticism of comprehensive sanctions [2], which partly excludes the impact on cross-border cooperation involving the violator's state.

In the soft law norms (norms of international soft law that are of a recommendatory nature), primarily in resolutions of the UN General Assembly, the terms "countermeasures", "unilateral economic measures," and "unilateral sanctions" are applied to describe unilateral economic measures. For example, the UN General Assembly Resolution A/RES/56/83 of 12 December 2001 *Responsibility of States for Internationally Wrongful Acts* [3] uses the term "countermeasures." In addition, this Resolution also contains materials from the report of the International Law Commission on the work of its fifty-third session. In some resolutions, the terms "unilateral sanctions" and "unilateral economic measures" are used synonymously, for example, in the Resolution of the UN General Assembly A /RES/72/201 of December 20, 2017 *Unilateral Economic Measures as a Means of Political and Economic Coercion of Developing Countries* [4]. Thus, even within the framework of the UN General Assembly, a single terminological approach with respect to the phenomenon being studied is not developed.

At the same time, despite the lack of a common terminological understanding, the UN General Assembly in these resolutions expresses concern that the use of unilateral coercive economic measures adversely affect the economy and development efforts, especially of developing countries. And that the use of unilateral economic measures has a general negative impact on international economic cooperation and on global efforts to create a non-discriminatory and open multilateral trading system. It is noted that such measures constitute a flagrant violation of the principles of international law set forth in the UN Charter, as well as the basic principles of the multilateral trading system. And the UN General Assembly urges the international community to take urgent and effective measures to put an end to the practice of using unilateral coercive economic measures against developing countries. Measures that are not authorized by the relevant UN bodies or incompatible with the principles of international law.

3. Results

The analysis of the international legal regulation of the institution of sanctions allows us to state the conclusions regarding the legality of the introduction of unilateral economic measures and the legal regulation of their application.

1. Sanctions are the measures of responsibility imposed to maintain or restore peace and security, which follows from the analysis of the UN Charter. The only authority responsible for their use is the UN Security Council. Unilateral economic measures will be sanctions only if they are applied in the framework of the sanctions of the UN Security Council and to the extent not exceeding the last.
2. International Law does not explicitly prohibit unilateral economic measures, and the legal regulation of their application is carried out at the domestic level. At the same time, based on the position of the UN General Assembly, unilateral economic measures should be authorized by the relevant UN bodies and should not contradict the principles of international law.
3. Unilateral economic measures imposed without the authorization of the UN Security Council are not a form of international responsibility. They are measures of influence based on the individual representations of particular states and / or international organizations about whether the action of another state is an offense or not. And such measures of action should be qualified as countermeasures, applied only against the violating state and not have an extraterritorial nature.
4. Despite the mechanisms stipulated by the powers of the UN Security Council and the International Court of Justice for determining the presence of an offense, within the framework of international legal regulation, the need has matured for the development and adoption of a universal international agreement. An agreement that would regulate the issues of applying measures of responsibility against states and international organizations, as well as the measures of influence against the alleged violator of international law at the convention level. The

adoption of such an agreement is necessary to prevent the abuse of countermeasures, to reduce the negative impact of coercive measures on third countries, to observe the principles of international multilateral trade and the principles of international law in general.

4. Discussion

In the Western doctrine, from 1960 to 1985, the unilateral economic measures were called economic coercion [5; 6]. In 1985, the first edition of the work entitled Economic Sanctions Reconsidered [7] was published. In this work, "sanctions" were understood as unilateral coercive economic measures. This trend in the Western literature can be traced today [8].

The Russian doctrine of international law states that in order to designate the measures applied by the injured state to the state responsible for the internationally wrongful act, in order to induce it to fulfill the obligations imposed by the legal responsibility, the concept of "countermeasures" should be used [9].

The draft articles of the UN International Law Commission on State Responsibility introduced in 2001 established the concept and criteria for the legality of countermeasures. In particular, the draft articles pointed to the possibility of the counterparty taking countermeasures against the state responsible for the internationally wrongful act [3]. As noted above, countermeasures are not a form of responsibility, because the fact of the offense is established by the injured state itself. And often, the assessment of certain actions of the counterparty state is based on the political situation and tendentiousness.

At the same time, without focusing on the theoretical issues of the classification of coercive measures in international law, in our opinion, the key point is to apply countermeasures against the violating state. That is, even without assessing certain events of international life in the context of qualifying them as an internationally wrongful act, it should be stated that the countermeasures currently used against the Russian Federation definitely have a negative impact on third countries. For example, countermeasures have a negative impact on countries not participating in the dispute regarding the ownership of the Crimean Peninsula or the events in Eastern Ukraine. And first of all, these are the states engaged in cross-border cooperation with the Russian Federation. Thus, the extraterritorial nature is attached to such unilateral economic measures, and these measures should be qualified as unlawful.

5. Conclusion

In the absence of a universal international agreement regulating the issues of state responsibility, the practice of applying unilateral economic measures is becoming increasingly politicized, moving into the wrong direction. Today, there are no more effective instruments for regulating international relations (including conflicts) than the UN. In this regard, it is the UN Security Council that should be the center that, on the basis of mutual trust and agreement, will impose sanctions on states violating the principles of the UN Charter. In those cases where political and economic conflicts between states result in mutual exchange of countermeasures, it is the UN that should actively intervene in such conflicts, trying to stop the conflict by relying on the opinion of the international community, introducing it into the legal framework.

References

[1] General Assembly UN 2007 *Report of the Sspecial Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization* New York, NY: UN Available at: https://undocs.org/pdf?symbol=ru/A/62/33(SUPP) (Accessed 28 02 2018)

[2] General Assembly UN 2004 *Report of the high-level panel on threats, challenges and change "A Safer World: Our Shared Responsibility"* New York, NY: UN Availableat: https://undocs.org/ru/A/59/565 (Accessed 28022018)

[3] General Assembly UN 2001 *Resolution "Responsibility of States for Internationally Wrongful Acts"* (December 12, 2001 No. A/RES/56/83) Available at: https://undocs.org/ru/A/RES/56/83 (Accessed 28 02 2018)

[4] General Assembly UN 2017 *Resolution "Unilateral Economic Measures as a Means of Political and Economic Coercion of Developing Countries"* (December 20, 2017 A/RES/72/201) Available at: https://undocs.org/ru/A/RES/72/201 (Accessed 28 02 2018)
[5] Mc Dougal M S, and Feliciano F P 1958 International coercion and world public order: the general principles of the law of war *Yale Law Journal* **67**
[6] Bowett D 1972 Economic coercion and reprisals by states V*irginia Journal of International Law* **13**(1)
[7] Hufbauer G C, and Schott J J 1985 *Economic Sanctions Reconsidered: History and Current Policy* (Washington, DC)
[8] Marossi A Z, and Bassett M R 2015 Economic Sanctions under International Law. Unilateralism, Multilateralism, Legitimacy, and Consequences *Springer journal* p 249
[9] Lukashuk I 2002 The law of international responsibility *International Public and Private Law* **2** pp 30-43