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Protecting the Right to Health under Sanctions and Unilateral Restrictive Measures: International Legal Aspects

Aslan K. Abashidze

Doctor of Law, Professor,

Head of the Department of International Law, RUDN University – The Peoples' Friendship University of Russia,
Moscow, Russian Federation.

e-mail: aslan.abashidze@gmail.com

ORCID: 0000-0003-0012-8795; JEL-code: K33 International law

Vladislav S. Malichenko

PhD, Senior Researcher,

Department of Social Legislation, Institute of Legislation and Comparative Law under the Government of the Russia,
Moscow, Russian Federation.

e-mail: vlad.malichenko@gmail.com

ORCID: 0000-0003-3136-8054; JEL-code: K33 International law

Abstract: In recent decades, humanity has faced a rapid increase in the frequency of "sanctions" and "unilateral restrictive measures" imposed on states in various regions of the world. Foreign doctrinal sources have gradually equated the normative content of these concepts, which contradicts the principles of international law and hinders the protection of fundamental human rights by limiting access to healthcare technologies, food, and social services. The application of unilateral restrictive measures leads to catastrophic humanitarian consequences, especially in developing countries, reducing the income levels of ordinary citizens, increasing poverty and hunger, and lowering healthcare system indicators. This study presents an analysis of "sanctions" and "unilateral restrictive measures" legal concepts and their differences. The authors consistently examine the positions of international organizations, domestic and foreign researchers regarding the legality of using unilateral restrictive measures in accordance with international law. The article systematizes the results of scientific research assessing the impact of sanctions and unilateral restrictive measures on ensuring the right to health. Special attention in the study is given to the application of the humanitarian exceptions mechanism to mitigate the consequences of sanctions and unilateral restrictive measures. The authors review the main measures implemented by the Russian Federation to minimize the negative impact of unilateral restrictive measures on the functioning of the national healthcare system.

Keywords: sanctions, right to health, access to healthcare technologies, unilateral restrictive measures, humanitarian exceptions.

Санкциялар мен біржақты шектеу шаралары жағдайында денсаулыққа құқықты қорғау: халықаралық-құқықтық аспектілер

Абашидзе А. Х.,

Заң ғылымдарының докторы, профессор, Ресей халықтар достығы университеті халықаралық құқық кафедрасының меңгерушісі (Мәскеу, Ресей Федерациясы).

e-mail: aslan.abashidze@gmail.com

ORCID: 0000-0003-0012-8795; JEL-code: K33 International law

Маличенко В. С.,

заң ғылымдарының кандидаты, әлеуметтік заңнама бөлімінің аға ғылыми қызметкері, Ресей Федерациясы Үкіметі жанындағы Заңнама және салыстырмалы құқықтану институты, Мәскеу, Ресей Федерациясы.

e-mail: vlad.malichenko@gmail.com

ORCID: 0000-0003-3136-8054; JEL-code: K33 International law

Аннотация: соңғы онжылдықтарда адамзат әлемнің әр аймағында мемлекеттерге қатысты «санкциялар» мен «біржақты шектеу шараларын» жиі қолданыла бастауына тап болды. Шетелдік доктриналық дереккөздерде бұл ұғымдардың нормативтік мазмұны біртіндеп бір-бірімен бірдей болғызылды, бұл халықаралық құқық қағидаттарына қайшы келеді және денсаулық сақтау технологияларына, азық-түлікке, әлеуметтік қызметтерге қолжетімділікті шектей отырып, адамның негізгі құқықтарын қорғауды қамтамасыз етуге кедергі келтіреді. Біржақты шектеу шараларын қолдану, әсіресе дамушы елдерге қолдану қарапайым азаматтардың табыс деңгейін төмендетуге, кедейлік, аштық және денсаулық сақтау жүйесінің көрсеткіштерін төмендетуге әкеледі, бұл ауыр гуманитарлық салдар тудырады. Зерттеу аясында «санкциялар» мен «біржақты шектеу шаралары» ұғымдарының мазмұнын және олардың айырмашылықтарын талдау жасалды. Авторлар халықаралық ұйымдардың, отандық және шетелдік зерттеушілердің халықаралық құқыққа сәйкес біржақты шектеу шараларын қолданудың заңдылығына қатысты ұстанымдарын дәйекті түрде қарастырады. Мақалада санкциялар мен біржақты шектеу шараларының адамның денсаулыққа құқығын қамтамасыз етуге әсерін бағалайтын ғылыми зерттеулердің нәтижелері жүйеленеді. Зерттеу санкциялар мен біржақты шектеу шараларының салдарын азайту үшін гуманитарлық ерекшеліктер тетіктер қолдану мәселелеріне ерекше назар аударады. Авторлар ұлттық денсаулық сақтау жүйесінің жұмысына біржақты шектеу шараларын енгізудің жағымсыз салдарын азайту үшін Ресей Федерациясы жүзеге асырып отырған негізгі шараларға шолу жасады.

Түйін сөздер: санкциялар, денсаулыққа құқық, денсаулық сақтау технологияларына қол жетімділік, біржақты шектеу шаралары, гуманитарлық ерекшеліктер.

Защита права на здоровье в условиях санкций и односторонних ограничительных мер: международно-правовые аспекты

Аслан Х. Абашидзе

Доктор юридических наук, профессор,
Заведующий кафедрой международного права, РУДН – Российский университет дружбы народов,
г. Москва, Российская Федерация.
e-mail: aslan.abashidze@gmail.com
ORCID: 0000-0003-0012-8795; JEL-code: K33 Международное право

Владислав С. Маличенко

Доктор PhD, старший научный сотрудник,
Кафедра социального законодательства Института законодательства и сравнительного правоведения при Правительстве Российской Федерации,
г. Москва, Российская Федерация.
e-mail: vlad.malichenko@gmail.com
ORCID: 0000-0003-3136-8054; JEL-code: K33 Международное право

Аннотация. В последние десятилетия человечество столкнулось со стремительным ростом частоты применения «санкций» и «односторонних ограничительных мер» в отношении государств различных регионов мира. В зарубежных доктринальных источниках произошло постепенное отождествление нормативного содержания представленных понятий, что противоречит принципам международного права и препятствует обеспечению защиты основополагающих прав человека, ограничивая доступ к технологиям здравоохранения, продуктам питания, социальным услугам. Применение односторонних ограничительных мер приводит к катастрофическим гуманитарным последствиям, особенно в развивающихся странах, снижая уровень дохода простых граждан, увеличивая масштабы бедности, голода и снижая показатели систем здравоохранения. В рамках проведенного исследования представлен анализ содержания понятий «санкции» и «односторонние ограничительные меры» и их отличий. Авторами последовательно рассматриваются позиции международных организаций, отечественных и зарубежных исследователей в отношении правомерности использования односторонних ограничительных мер в соответствии с международным правом. В статье систематизируются результаты научных исследований, оценивающих влияние санкций и односторонних ограничительных мер на обеспечение права человека на здоровье. Отдельное внимание в исследовании уделяется особенностям применения механизма гуманитарных исключений для уменьшения последствий санкций и односторонних ограничительных мер. Авторами проведен обзор основных мер, реализуемых Российской Федерацией с целью минимизации негативных

последствий введения односторонних ограничительных мер на функционирование национальной системы здравоохранения.

Ключевые слова: санкции, право на здоровье, доступ к технологиям здравоохранения, односторонние ограничительные меры, гуманитарные исключения.

Introduction

Through the past decades international law scholars have not managed to develop a unified approach to define the concepts of "sanctions" and "unilateral restrictive measures." In the documents of international organizations and scientific literature, terms such as "unilateral coercive measures," "unilateral restrictive measures," "unilateral sanctions," "international sanctions," or simply "sanctions" are frequently mentioned. Influenced by the media and the positions of foreign researchers, these concepts are often equated, indicating existing normative and ideological differences in their perception.

In the Russian doctrine of international law, a clear distinction has been made between the concepts of "sanctions" and "unilateral restrictive measures," according to which the legitimacy of sanctions is based on the coordinated actions of the international community and the binding decisions of the UN Security Council (UNSC), while unilateral restrictive measures are applied by one sovereign subject of international law against another, legally equal in status [4].

Materials and methods

The article is prepared based on the analysis of the following documents: resolutions of international organizations, legal positions of UN specialized agencies, as well as professional scientific associations. The theoretical basis of the research are the scientific works of national and foreign scientists in the field of international law and international relations. The article was prepared using the following methods: formal logical, situational method, private law methods, such as comparative, historical and formal legal methods.

Discussion

1. Definition of "sanctions" and "unilateral restrictive measures" in international law.

In the Dictionary of International Law, sanctions are defined as "measures applied by decision of the UN Security Council (hereinafter UNSC) to eliminate threats to peace, breaches of peace, or acts of aggression." [7] In the paper of prof. Kritsky, devoted to the normative differences between the concepts of "international sanctions" and "unilateral restrictive measures," it is stated that the term "sanctions" is appropriately used in relation to collective restrictive measures adopted by the UNSC to maintain peace and security [1]. The same approach is formulated by prof. Pellet, who emphasized that the term "sanctions" should be used only to refer to restrictions issued by the UNSC in accordance with Chapter VII of the UN Charter [17]. Professor Lukashuk also noted that the UN International Law Commission

identifies coercive measures taken by international organizations empowered to apply such measures as international legal sanctions [6].

The statements mentioned above appear to be valid, as Article 39 of the UN Charter defines the exclusive right of the UNSC to determine the existence of any threat to peace, breach of peace, or act of aggression, as well as to decide on measures necessary to maintain peace and security. Even though the term "sanctions" does not appear in the UN Charter, the UNSC qualifies the coercive measures it adopts under Article 41 of the Charter as sanctions. This is also confirmed by the UN General Assembly, which has stated that the term "multilateral economic sanctions" encompasses measures sanctioned by the UNSC. In the report of the Special Rapporteur on the issue of unilateral coercive measures, it was also confirmed that only measures adopted by the UNSC under Article 41 of the UN Charter are multilateral sanctions, and any other measures should be classified as unilateral coercive measures.

In the study by M.A. Keshner, it is noted that the emerging freedom in terminological interpretations contributes to the improper use of the term "sanctions" in relation to unilateral restrictive measures. Unilateral restrictive measures have certain distinctive features: they are applied by decision of state authorities; they are primarily directed at the economic sector; they are intended to protect state interests; they are "extraterritorial," as they are applied by a state beyond its own territories or jurisdiction. Furthermore, the subjects of unilateral restrictive measures are usually states or groups of states, while the objects are states, individual physical and legal entities that engage in actions deemed undesirable or unlawful from the perspective of the implementing state [11]. The objects of unilateral restrictive measures can also include third countries that have refused to join these measures against another state.

In foreign doctrinal sources, there is a gradual conflation of "sanctions" and "unilateral restrictive measures" concepts. In the study by J. Combaco, sanctions are defined as "measures taken by a state acting alone or in cooperation with others in response to the behavior of another state that it deems contrary to international law." B. Carter, having thoroughly examined the legislation and practice of the United States usage of unilateral "sanctions," speaks on the possibility of using both terms interchangeably [12]. German professor M. Bothe also proposed calling any measures taken by subjects of international law in response to undesirable or possibly unlawful actions of another state as sanctions.

To support the position of foreign legal scholars, we turn to the documents of the United States International Trade Commission, which uses the term "unilateral economic sanctions" to mean "any unilateral restriction or condition on economic activity concerning a foreign state or foreign entity, applied in the context of foreign policy factors or the need to ensure national security." The European Parliament's Committee on International Trade also uses the term "sanctions" to describe unilateral economic restrictions by individual states.

Based on the scale of the imposed restrictions, sanctions and unilateral measures in scientific literature and documents of international organizations are

conventionally divided into comprehensive and targeted, also known as "smart" sanctions [9]. Comprehensive measures are aimed at the entire economic or financial system of a state, while targeted or restrictive sanctions allow minimizing the undesirable consequences of their application, particularly avoiding the risk of human rights violations.

Based on the reviewed doctrinal sources and documents of international organizations, two approaches to the classification of restrictive measures applied to states should be highlighted today. According to the first approach, unilateral restrictive measures are understood as measures applied based on the decision of one or a group of states in accordance with national law and having extraterritorial impact, while sanctions should be considered as collective restrictive economic measures adopted by the decision of the UN Security Council in accordance with Article 41 of the UN Charter. The second approach combines all existing restrictive measures applied both unilaterally by states and by international organizations under the concept of sanctions.

2. The position of international organizations on unilateral restrictive measures.

The issue of the legality of unilateral restrictive measures use by states is receiving increasing attention in the activities of international organizations. The UN General Assembly (UNGA) has adopted numerous resolutions condemning the application of unilateral restrictive measures. In the UNGA Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty 1965 it is indicated that "no state has the right to use or encourage the use of economic, political, or any other measures to coerce another state in order to obtain subordination in the exercise of its sovereign rights or to gain any advantage" (paragraph 2). This position was further confirmed in Article 32 of the 1974 Charter of Economic Rights and Duties of States. The 1981 Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States further specifies possible areas affected by restrictive measures, such as trade, economy, technological development, and social welfare. Notably, it emphasizes the need to prevent the use of transnational corporations under the jurisdiction of states "as instruments of political pressure or coercion against another state, in violation of the UN Charter." The 1993 Vienna Declaration and Programme of Action also highlights the need for states to refrain from any unilateral measures that create obstacles to the development of trade relations and hinder the full realization of human rights as set out in universally applicable international treaties.

The UNGA regularly develops and adopts two groups of resolutions addressing various aspects of the negative impact of unilateral restrictive measures, repeatedly emphasizing the need to refrain from economic restrictions that are incompatible with the provisions of the UN Charter and violate obligations established under bilateral and multilateral agreements. Since 1983, the UNGA has annually adopted resolutions considering unilateral restrictive measures as a means of political and economic coercion of developing countries, and since 1996, separate resolutions have been

dedicated to the impact of unilateral restrictive measures on the protection of human rights.

The development of the UN Millennium Development Goals, and their successor, the Sustainable Development Goals (SDGs), has only increased the international community's attention to the negative impact of unilateral restrictive measures on the socio-economic well-being of states. Specifically, UNGA Resolution 70/1 of September 25, 2015, which endorses the SDGs, includes a recommendation to refrain from using unilateral restrictive measures that do not comply with international law and the UN Charter and that hinder the full economic and social development.

The problem of unilateral restrictive measures was also addressed in the Draft Articles on Responsibility of States for Internationally Wrongful Acts, prepared by the International Law Commission (ILC), which formulated the legal framework for cases where a state is responsible for violating an international obligation and taking countermeasures between states.

At the same time, it should be noted that during the period from the 1960s to the 1980s, the UNGA also systematically adopted resolutions calling for the use of restrictive measures against other states. In particular, it is worth mentioning UNGA Resolution 2107 of 1965, recommending a series of restrictive measures against the Government of Portugal, UNGA Resolution 2383 of 1968 against Southern Rhodesia, and Resolution 1899 of 1963 against South Africa. In response to Israel's military operations in the 1980s, the UNGA called on states to cease supplying Israel with "any military, economic, financial, and technological assistance, as well as human resources for conducting aggressive policies against Arab countries and the Palestinian people."

The role of unilateral restrictive measures in creating barriers to the protection of human rights has been repeatedly addressed in the work of the Office of the UN High Commissioner for Human Rights (OHCHR). The High Commissioner for Human Rights has emphasized the obligation of states to refrain from adopting unilateral coercive measures that violate their human rights obligations under treaty or customary international law.

The Sub-Commission on the Promotion and Protection of Human Rights (hereinafter referred to as the Sub-Commission), in its Resolution 1997/35 of August 28, 1997, "Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights," expressed concern about the impact of economic sanctions on the observance of the UN Charter, the Universal Declaration of Human Rights, and other international human rights treaties. It outlined important aspects of their application: the need to limit their duration; the consequences for the most vulnerable populations; the exacerbation of income distribution disparities; and the generation of illegal and unethical business practices. In 2000, the Sub-Commission prepared a report containing a systematic analysis of the legitimacy of sanctions and unilateral restrictive measures under international law, and formulated recommendations to mitigate their impact on the observance of human rights obligations. The report

emphasized that the primary idea of using economic sanctions to create economic pressure on the population as a tool for subsequent political changes is impractical and only exacerbates their suffering.

In response to the increasing use of unilateral restrictive measures, the Human Rights Council (HRC) attempted to systematically study and address this issue. In Resolution 27/21, the HRC decided to organize a biennial panel discussion on unilateral coercive measures and human rights with the participation of member states, relevant UN bodies, and other stakeholders, and requested the OHCHR to prepare and present a report on such discussions to the HRC. The HRC also decided to establish the mandate of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights. Special Rapporteurs have repeatedly stated the illegitimacy of unilateral restrictive measures and their negative consequences. For instance, in a report following a visit to the Russian Federation in 2017, the Special Rapporteur noted that sanctions could have led to economic losses in the European Union and the Russian Federation amounting to a total of \$155 billion, without achieving the intended results.

Non-governmental organizations and the expert community have also attempted to understand the impact of unilateral restrictive measures on the protection of human rights. On September 28, 2011, Maastricht University and the International Commission of Jurists organized a conference that resulted in the adoption of the Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social, and Cultural Rights. These principles prescribe full compliance by states with their human rights obligations when "designing, implementing, and terminating any sanctions regime" and the avoidance of embargoes on "goods and services necessary to fulfill basic obligations."

In Russian doctrinal sources, there is also a critical view of the legitimacy of unilateral restrictive measures. According to M.V. Keshner, unilateral coercive measures lack legitimacy and are unjustifiably called sanctions, as the principle of sovereign equality of states excludes the possibility of one state lawfully applying sanctions against another state or group of states unilaterally [3]. In the research of K.V. Kritsky, it is stated that unilateral measures by one state against another are inconsistent with fundamental international legal principles, primarily the principle of sovereign equality of states and the inadmissibility of interference in the internal affairs of states [2].

3. The consequences of "sanctions" and "unilateral restrictive measures" on the protection of the right to health.

Since the application of UNSC sanctions and unilateral restrictive measures, numerous scientific studies and documents from international organizations have noted their negative impact on the socio-economic sector. UN Secretary-General Kofi Annan, in his speech, noted that despite the importance of sanctions as a means of enforcing the will of the international community, they remain a "blunt" instrument that harms a large number of people who are not their target. In the "Millennium Report" dedicated to the role of the UN in the 21st century, the UN Secretary-General

emphasized the detrimental impact of economic sanctions on the population, noting that their application often only strengthens the positions of the existing authorities. Concerns about the humanitarian consequences of sanctions were also expressed in the UNSC.

In the resolutions of the Commission on Human Rights on the issue of unilateral coercive measures, it was stated that some countries, using their dominant position in the global economy, continue to intensify the adoption of unilateral coercive measures against developing countries, clearly contrary to international law, such as trade restrictions, blockades, embargoes, and asset freezes, with the aim of preventing these countries from fully exercising their right to determine their political, economic, or social system.

The effectiveness of sanctions as measures to ensure peace and security has been repeatedly questioned. In particular, packages of sanctions imposed by the UNSC achieved the expected result in only 10% of cases, but led to a reduction in life expectancy in the target countries by 1.2–1.4 years [14]. UNICEF reported that infant mortality in certain areas of Iraq doubled after the imposition of sanctions [10]. A study of the impact of sanctions on life expectancy indicators from 1995 to 2018 confirmed their negative impact [16].

The use of sanctions, directly or indirectly affecting the social sphere, leads to the restriction of the right to health, which has been repeatedly noted in the activities of the Committee on Economic, Social and Cultural Rights (CESCR). General Comment No. 14 of the CESCR calls on states to "refrain" from sanctions that restrict access to medicines and medical equipment. The issue of the impact of "economic sanctions" on the protection of human rights is addressed in General Comment No. 8 of the CESCR (1997). The document summarizes the consequences of UNSC sanctions on the implementation of the ICESCR provisions, including their significant impact on the disruption of medicine supplies. Paragraph 12 of the Comment emphasizes the need to create a list of goods that should be exempt from sanctions to mitigate possible consequences for the rights defined in the ICESCR.

The imposition of unilateral restrictive measures and sanctions not only leads to widespread restriction of the right to health but also to discrimination against vulnerable populations in terms of access to medical and social assistance. The main provisions on the prohibition of discrimination on various grounds are formulated in universal international human rights instruments, in particular, Article 7 of the UDHR, Article 26 of the International Covenant on Civil and Political Rights (ICCPR), and Article 2, paragraph 2 of the ICESCR, which formulates the obligation to combat discrimination in the realization of the right to the highest attainable standard of health. General Comment No. 20 of the CESCR emphasizes that non-discrimination and equality are fundamental components of human rights and are of great importance in the realization of economic, social, and cultural rights.

Particular attention should be paid to the confirmation of state responsibility for the extraterritorial consequences of unilateral restrictive measures, as highlighted by the International Court of Justice in the 2018 case concerning alleged violations of

the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v. USA), which ruled that sanctions should not affect medical supplies and equipment, food storage, and agricultural products.

The consequences of sanctions and unilateral restrictive measures have become especially pronounced in the context of infectious pandemics. The COVID-19 pandemic, which erupted in 2020, affected almost every country within a few months, regardless of their level of prosperity, causing catastrophic socio-economic damage, unprecedented GDP loss, rising unemployment, and the collapse of healthcare systems [6]. Sanctions and unilateral restrictive measures only exacerbated the healthcare crisis and increased the helplessness of states in the face of the threat. UNGA Resolution A/RES/77/214 "Human Rights and Unilateral Coercive Measures" emphasizes that medicines, including vaccines, should not be used as a mechanism of political coercion, especially during global public health emergencies.

The CESCRC Statement on the COVID-19 pandemic and economic, social, and cultural rights pays special attention to the impact of unilateral measures on the availability of medical equipment. It states that "any restrictions imposed on domestic supplies must be proportionate and take into account the urgent needs of other countries." Paragraph 22 of the CESCRC Statement specifically addresses the negative impact of "unilateral economic and financial sanctions" on healthcare systems, particularly regarding the procurement of necessary medical equipment and materials.

On May 11, 2020, the European Commission prepared recommendations to simplify the delivery of humanitarian aid to combat COVID-19 to countries subject to EU sanctions: EU sanctions should not hinder the delivery of humanitarian aid; each EU state should appoint a contact person to discuss the provision of funds to combat COVID-19; EU sanctions should have humanitarian exceptions, and in the case of COVID-19, limited activities not covered by exceptions may be permitted; humanitarian organizations must demonstrate compliance with the exceptions.

Consequences of unilateral restrictive measures on the healthcare sector is illustrative through various cases across the world. Since 1961, the USA has imposed unilateral economic restrictive measures against Cuba, including a complete trade embargo on the import of medicines and medical devices. These restrictions have significantly impacted the availability of medical care, posing a direct threat to the public health system [13]. The number of medicines available in Cuba has decreased from 1,297 to 889 items. Considering that most essential medicines are developed by pharmaceutical TNCs located in the USA, Cuban doctors have access to less than 50% of new innovative medicines. For example, a Swedish pharmaceutical manufacturer operating in Cuba since 1970 ceased supplying medicines after being acquired by an American company in 1994. Sanctions against Yugoslavia led to a 50% reduction in the availability of essential medicines, largely due to restrictions on the import of production components [18]. These restrictions resulted in a 10% increase in overall mortality and the rapid spread of infectious diseases such as typhus, measles, and tuberculosis [8,15].

Analyzing the consequences of sanctions and unilateral restrictive measures, it is essential to note the fundamental role of international relations actors, who are not traditional subjects of international law, in ensuring the right of every person to the highest attainable standard of health. Transnational corporations (TNCs) in the medical and pharmaceutical industries, as the main drivers of technological development, significantly influence both the expansion of access to life-saving diagnostic and treatment methods and the restriction of access, especially among vulnerable populations. Even when unilateral restrictive measures against a state do not imply restrictions on the supply of medicines or medical devices, or the cancellation of any cooperation in research or technology transfer, TNCs may decide to cease their activities in the state. The issue of TNCs' responsibility for ensuring the right to health has been systematically addressed in the special procedures of the HRC and human rights treaty bodies.

4. The Impact of Humanitarian Exemptions on Ensuring the Right to Health.

The use of sanctions or unilateral restrictive measures implies that the state subjected to them has obligations to protect economic, social, and cultural human rights to the maximum extent of available resources, in accordance with Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). In General Comment No. 3 of 1990, the Committee on Economic, Social and Cultural Rights (CESCR) stated that even in situations of evident resource scarcity, the state must ensure at least the minimum essential level of each of the rights enshrined in the ICESCR. In the context of the right to health, this obligation implies access to a minimum of essential medicines, medical devices, and services as defined by the WHO.

As noted earlier in this article, the application of any restrictive measures against a state hinders the full realization of social guarantees for the population. However, such situations should not lead to discrimination, requiring states to take all possible measures, including negotiations with other states and the international community, to minimize the adverse impact of sanctions on the rights of vulnerable groups in society. Similar obligations to implement measures aimed at protecting human rights arise for the state or international organizations responsible for imposing restrictive measures.

To ensure the protection of human rights, any sanctions regime or unilateral restrictive measures generally include exceptions for certain economic activities, referred to in academic literature and international organization documents as "humanitarian exceptions." Recognizing the consequences of implementing sanctions regimes, the UN Security Council has consistently adopted resolutions that place certain activities aimed at implementing humanitarian programs in specific countries. Examples include UN Security Council resolutions regarding Somalia and Afghanistan. In practice, according to the Office of the UN High Commissioner for Human Rights, the UN Security Council resolution did not lead to the expected improvement in the availability of humanitarian aid, largely due to the freezing of

Afghanistan's foreign assets by the US and the cautious stance of banks on resuming activities with organizations in the region.

Various UN institutions prepared studies demonstrating that humanitarian exemptions are generally ambiguous and interpreted arbitrarily and inconsistently. A study conducted by the UN Office for the Coordination of Humanitarian Affairs (OCHA) demonstrated the inefficiency of procedures for approving exemptions for the supply of various goods, leading to increased poverty, resource shortages, the development of black markets, illegal trade, and corruption. The President of the International Federation of Red Cross and Red Crescent Societies emphasized that humanitarian aid should reach countries regardless of sanctions, noting that the procedures for obtaining humanitarian exemptions are extremely lengthy and require additional funding. It is important to note that as of March 2023, UN sanctions are applied to nine out of the ten main countries receiving aid from the International Committee of the Red Cross, including Syria, the Democratic Republic of Congo, and Yemen.

The ambiguity, arbitrary nature, and inconsistent interpretation of humanitarian exemptions in the application of sanctions and unilateral restrictive measures have led to delays, confusion, and, in some cases, the rejection of requests for the export of humanitarian goods. Procedural difficulties in obtaining permissions for the supply of tax-exempt goods and the fear of legal prosecution related to sanctions compliance complicate the work of multinational corporations and international organizations.

To enhance the effectiveness of humanitarian exemptions, a number of practical recommendations have been formulated by international organizations. For instance, the CESCR proposes "the creation of a mechanism for forecasting and monitoring the impact of sanctions within the UN framework; the development of more transparent principles and procedures based on the concept of respect for human rights; the expansion of the list of goods and services supplied under sanctions exemptions; and granting established technical institutions the authority to determine necessary exemptions themselves."

The practice of implementing sanctions, particularly adherence beyond the specified measures, significantly affects the fulfillment of humanitarian exemptions. This trend is especially evident in the banking sector, as banks seek to minimize the risks of conducting business with organizations under sanctions or unilateral restrictive measures. Such banking practices are driven by the fear of "secondary sanctions," which are applied to states and organizations that engage with countries under sanctions and unilateral restrictive measures. Foreign companies subject to secondary sanctions may be denied access to business in the sanctioning country, while foreign individuals may be denied entry and have their assets frozen.

Restrictions on banking transfers have significantly impacted the availability of various goods and services, including healthcare technologies. The duration of banking transfers in Syria and Venezuela has increased from 2 to 45–60 days, and the fee for a single transfer has risen from 0.25–0.5% to 5–10%. This practice reduces the efficiency of humanitarian programs, which use part of their funding to cover

banking transfer costs. Another example is the refusal of the Portuguese bank Banco Novo to process payments for the purchase of vital medicines and medical supplies by the Bolivarian Republic of Venezuela due to US sanctions, highlighting the destructive impact of sanctions on the right to health in Venezuela.

The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury issued a general license allowing financial transactions involving the Central Bank of the Islamic Republic of Iran for the supply of medicines, medical equipment, and other goods to combat COVID-19. However, during a visit to the Islamic Republic of Iran, the Special Rapporteur noted obstacles in acquiring and delivering essential medicines and medical devices for treating rare and severe diseases due to foreign companies' compliance with sanctions beyond the prescribed restrictions. Insurance companies are reluctant to insure cargo flights to Iran, and there are significant delays, causing the delivered batches of medicines to be close to expiration.

To establish a systematic approach to the application of humanitarian exemptions, the UN Security Council adopted a resolution in 2022 for the first time, affirming the obligation of states, international organizations, and other subjects of international and national law to confirm the possibility of their use for all countries under UN Security Council sanctions. Specifically, the resolution stated that "the provision, processing, and payment of funds, other financial assets or economic resources, and the provision of goods and services necessary to ensure the timely delivery of humanitarian assistance or to support other activities that meet basic human needs" does not violate the obligations imposed on states to freeze funds and other assets.

5. Ensuring Access to Healthcare Technologies in the Russian Federation under Unilateral Restrictive Measures

Unilateral restrictive measures imposed on the Russian Federation affect various spheres of state and human activity, creating a range of socio-economic risks, including healthcare sector.

Specific measures to ensure socio-economic stability and protect the population in the Russian Federation, including those aimed at protecting human health were developed by Presidential Decree No. 121 of March 16, 2022. The main goal identified by the document was to maintain the availability of social services for citizens of the Russian Federation; conduct operational monitoring of retail prices for essential goods, medicines, medical devices, and their availability in trade organizations; ensure the uninterrupted functioning of social infrastructure, healthcare, and social services.

One of the first legislative initiatives to overcome the negative impact of unilateral restrictive measures imposed by foreign states on Russia was Federal Law No. 46-FZ of March 8, 2022, "On Amendments to Certain Legislative Acts of the Russian Federation." Special attention was paid to minimizing the risks of creating a shortage of essential medicines. In particular, in the event of a shortage of medicines and medical devices, the Government of the Russian Federation is empowered to

establish a separate procedure for their registration, as well as to establish special licensing conditions for pharmaceutical activities, the production of medicines, and the maintenance of medical devices to stimulate the creation and development of the production of medicines or medical devices in the Russian Federation that do not have registered analogues. The Government of the Russian Federation is also empowered to form a list of goods for which certain provisions of the Civil Code of the Russian Federation on the protection of exclusive rights to the results of intellectual activity cannot be applied, which effectively strengthens the mechanism of compulsory licensing to protect the health of citizens.

To prevent the formation of a shortage of medicines, Order No. 339n of the Ministry of Health of Russia dated May 19, 2022, established an Interdepartmental Commission. The document defines 10 grounds for the decision of the interdepartmental commission on the shortage or risk of a shortage, based on which a conclusion is issued on the possibility of issuing a permit for the temporary circulation of a batch of a medicine that has registered analogues in the Russian Federation by INN or the import of a medicine in foreign packaging.

Changes in the national currency exchange rate and global economic shocks, as well as the complication of logistics chains, create risks of a significant increase in the cost of medicines. One of the mechanisms for containing costs and obtaining guarantees on the volume of supplies is the conclusion of "long-term government contracts" (execution period extending to the next year). The possibility of concluding a long-term contract is not directly provided for by Federal Law No. 44-FZ of April 5, 2013, but it is permissible in accordance with Article 72 of the Budget Code of the Russian Federation. Government contracts are concluded within the limits of budgetary obligations, which are brought to the customer within the framework of the budget for the current year and the planned period, thus the maximum execution period can reach three years. Over the past year, the Federal Center for Planning and Organization of Drug Provision for Citizens of the Ministry of Health of the Russian Federation has concluded several long-term contracts for the procurement of medicines within the framework of the implementation of federal drug provision programs.

Conclusion

The analysis of national and foreign doctrinal sources reveals fundamentally different approaches to assessing the legitimacy of unilateral restrictive measures imposed by a state or group of states to influence the political development of certain countries. The presented arguments support the position, dominant among domestic legal scholars, that the use of unilateral restrictive measures is unlawful and that sanctions should be applied in accordance with UN Security Council resolutions and the UN Charter.

Healthcare technologies should be excluded from sanction regimes. Additionally, based on the definition of health in the WHO Constitution, it is necessary to assess the impact of restricting access to goods that indirectly affect the right to health.

Sanctions and unilateral restrictive measures significantly impact the protection of fundamental economic, social, and cultural rights by limiting technological development, the availability of medicines and medical devices, and the fulfillment of social guarantees. This collectively leads to humanitarian disasters in specific countries and undoubtedly constitutes a violation of fundamental human rights as outlined in the UDHR and ICESCR.

The international community has consistently attempted to create legal mechanisms, such as "humanitarian exceptions," to exclude certain categories of goods and services from imposed restrictions. However, the fear of "secondary sanctions" against entities interacting with sanctioned states prevents the full utilization of these mechanisms. In such conditions, the proposal for continuous monitoring by states imposing unilateral restrictive measures on the activities of organizations ensuring the availability of vital healthcare technologies and socially significant goods becomes highly practical. Special attention should be given to the banking sector, where transaction restrictions are a major cause of reduced access to medicines and food.

It is also worth noting that the establishment of the mandate of the Special Rapporteur on unilateral coercive measures has undoubtedly highlighted the growing issue of the use of such measures against developing countries. However, despite the consistent work of two Special Rapporteurs over the years, practical mechanisms to minimize the consequences of their application have not been formulated.

Summarizing numerous scientific studies and documents from international organizations assessing the legitimacy of unilateral restrictive measures, it can be stated that despite the predominant condemnation of such measures and substantial evidence of their catastrophic consequences for human well-being, there are international legal mechanisms that can fully mitigate the consequences of this practice.

References

1. Крицкий К.В. Термины «международные санкции» и «односторонние ограничительные меры». // Московский журнал международного права. 2016. № 2 (102). С. 204-213.
2. Крицкий К.В. Санкции и односторонние ограничительные меры в современном международном праве: дис. канд. юр. наук / Крицкий Кирилл Владимирович; Московский государственный институт международных отношений. – Москва, 2019. – 186 с.
3. Кешнер, М. В. Легитимность санкций в отношении Российской Федерации: международно-правовой анализ // Журнал российского права. 2015. № 7(223). С. 141-152.
4. Калинин А.В. Экономические санкции ООН и односторонние экстерриториальные меры экономического принуждения: сравнительный анализ // Юрист-международник. 2005. № 4. С. 34.;

5. Лукашук И.И. Право международной ответственности // Международное публичное и частное право. 2002. № 2. С. 30-43.
6. Маличенко В.С. Международно-правовые механизмы противодействия чрезвычайным ситуациям в сфере здравоохранения // Право. Журнал Высшей школы экономики. 2021. № 1. С. 174–197
7. Словарь международного права / Отв. ред.: Клименко Б.М.; Редкол.: Клименко Б.М., Петровский В.Ф., Рыбаков Ю.М. - М.: Междунар. отношения, 1982. 248 с.
8. Avramov S. Sanctions in the post-cold war era // Review of International Affairs. 1993. Vol. 94. №1. P.7-9.
9. Biersteker T. Scholarly participation in transnational policy networks: the case of targeted sanctions. In: Scholars, policymakers, and international affairs: finding common cause. - Baltimore: Johns Hopkins University Press, 2014. - P. 137-154
10. Crossette B. Children's Death Rates Rising in Iraqi Lands, UNICEF Reports. New York Times. 1999.
11. Combacau C. 1992. Sanctions//Encyclopedia of Public International Law/Ed. by R. Bernhardt. 1992
12. Carter B. International economic sanctions: Improving the haphazard US legal regime // Calif. L. Rev. 1987. Vol. 75. №4. P.1159-1278.
13. Eisenberg L. The sleep of reason produces monsters - human costs of economic sanctions // New England Journal of Medicine. 1997. Vol. 336. №17. P.1248-1250
14. Gutmann J, Neuenkirch M, Neumeier F. Sanctioned to death? The impact of economic sanctions on life expectancy and its gender gap. The Journal of Development Studies. 2021. Vol.57. №1. P. 139–62.
15. Jakovljevic B. Protection of the population of Yugoslavia under embargo and international law // Review of International Affairs. 1993. Vol. 94. №1. P.12-23.
16. Ha L.T., Nam P.X. An investigation of relationship between global economic sanction and life expectancy: do financial and institutional system matter? // Development Studies Research. 2022. Vol. 9. №1. P. 48-66.
17. Pellet A., Miron, A. Sanctions. In Max Planck Encyclopedia of Public International Law. Oxford University Press. 2012. // URL: https://okina.univ-angers.fr/publications/ua17160/1/2013_epil_sanctions.pdf.
18. Scharf M., Dorosin J. Interpreting UN sanctions: the rulings and the role of the Yugoslavia sanctions committee // Brooklyn J International Law. 1993. Vol. 19. №3. P. 771-827.