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## THE NEGATIVE IMPACT OF UNILATERAL COERCIVE MEASURES ON HUMAN RIGHTS, DEVELOPMENT, COOPERATION, INTERNATIONAL RELATIONS

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This paper presents abstracts of Prof. Abashidze's speech at the International Seminar on the Impact of Economic and Financial Sanctions on the Enjoyment of Human Rights (Islamic Republic of Iran, Tehran, 15 December 2014). The main conclusion, made by the author is the following: in frames of globalization, the more interrelatedness and interdependence of States, the unilateral application of coercive measures (sanctions) of economic and financial character by States or group of States and the consequences of these sanctions should be qualified as a factor undermining the pillars of the system of collective security based on the UN Charter.

**Key words:** unilateral sanctions, unilateral coercive measures, international law, human rights, violation of the UN Charter, Security Council.

Having a speech in my personal capacity, as a professor of public international law, including international human rights law, I would like first to stress the high professional level and comprehensive character of the Report on «The Negative Impacts of Economic and Financial Sanctions on the Full Enjoyment of Human Rights of People of the OIC Targeted Countries» [6], in spite of its childhood age. This report includes the analysis of the main international acts on this issue and correct and clear international legal qualifications. Therefore, there is no need to repeat them.

I would like to draw your attention to the aspects of the issue that are of a particular importance in the view of the peremptory norms of contemporary international law and major tendencies of the world's development.

In frames of globalization, the more interrelatedness and interdependence of States and peoples, the unilateral application of sanctions of economic and financial character by States or group of States and the consequences of these sanctions should be considered as a factor undermining the pillars of the system of collective security based on the UN Charter.

Article 41 of the UN Charter says that the Security Council may decide itself what measures not involving the use of the armed force are to be employed to give effect to its decisions and it may call upon the Members of the United Nations to apply such measures.

This article strictly deals with cases which, according to the opinion of the UN Security Council, can put a threat to the international peace and security.

It should be further stressed that under the UN Charter only the Security Council may determine whether the existing situation constitutes threat to the international

peace and security or not. This itself supposes the dialogue between States, first of all permanent Member States, as USA, Russia, China, Great Britain and France.

The abovementioned means that any actions beyond the scope of activities of the Security Council including the unilateral sanctions of economic and financial character are not only inappropriate and unjustified but unlawful in accordance with the UN Charter.

This is clearly indicated i.a. in the preamble of the Resolution 24/14 adopted by the Human Rights Council (HRC): «Stressing that unilateral coercive measures and legislation are contrary to international law, international humanitarian law, the Charter and the norms and principles governing peaceful relations among States» [5].

Therefore, it should be pointed out that any unilateral coercive measures including economic and financial sanctions are contrary to modern international law.

Just the same qualification is given in the Resolution of the Council of Foreign Ministers of OIC (№ 21/39-POL), on «The rejection of the unilateral US sanctions imposed on the Syrian Arab Republic», which contains «Expressing surprise and concern over the adoption by the American Congress of the Syria Accountability Act, and the Executive Order signed by the US president on 11 May 2004 imposing unilateral sanctions, outside international legitimacy» [7].

We, thus, are facing the analogy with international humanitarian law (IHL). It is to be reminded that IHL is part of *jus in bello* (the law on how force may be used as legitimate in accordance with UN Charter), which has to be distinguished and separated from *ius ad bellum* (the law on the legitimacy of the use of force).

The use of force is prohibited under the UN Charter, apart from three exceptions.

IHL is a set of rules which seek for humanitarian reasons, to limit the effects of armed conflict. It protects civilians and restricts the means and methods of warfare.

Once again let me stress that only in the context of abovementioned we may talk about the negative effects of unilateral coercive measures and possible coordinated steps to limit or even as it is said in the UN General Assembly Resolution 51/22 on «Elimination of coercive economic measures» for the purpose of mitigating negative effects of coercive measures [4].

Not clarifying conceptual and normative basis of the unlawfulness of unilateral coercive measures, we are misleading the public in stating that some unilateral coercive measures may be lawful. As an example we may cite, in my view, a very important statement included in the final document of the sixteenth summit of the Heads of State and Government of the Non-Aligned Movement held in Teheran in August 2012, in which the States Members of the Movement decided to refrain from recognizing, adopting or implementing extraterritorial or unilateral coercive measures or laws including economic sanctions, other intimidating measures or laws, including measures that seek to exert pressure on non-aligned countries where such measures or laws constitute flagrant violations of the Charter, international law, the multilateral trading system as well as the norms and principles governing friendly relations among States.

Therefore, one may wrongly interpret not only these provisions, which we just cited, but also the relevant provisions of the final document of the World Conference

on Human Rights held in Vienna from 14 to 25 June 1993 calling upon States to refrain from any unilateral measures not in accordance with international law and the Charter of the UN.

Despite this clear message, unfortunately, there are enough countries which are against formulating of clear transparent set of agreed rules dealing with unilateral coercive measures. For example, the following States Members of the HRC voted against the abovementioned HRC Resolution 24/14:

Austria, Czech Republic, Estonia, Germany, Ireland, Italy, Japan, Montenegro, Poland, Republic of Korea, Republic of Moldova, Romania, Spain, Switzerland, USA.

The resolution was adopted by a recorded vote of 31 to 15 with 1 abstention [5].

Taking account of this and other similar fact, it is explainable that unilateral coercive measures continue to be promulgated, implemented and enforced by i.a. resorting to war and militarism, with all their negative implications for the social-humanitarian activities and economic and social development including their extraterritorial effects, thereby creating additional obstacles to the full enjoyment of all human rights. In abovementioned resolution of OIC/CFM № 21/39-POL is mentioned about «the imposition of arbitrary unilateral laws» [7], which contradicts the regulations of the World Trade Organization prohibiting the adoption of measures likely to hinder international free trade and shipping.

Furthermore, everyone realizes that unilateral coercive measures constitute an obstacle to the implementation of the Declaration of the Right to Development 1986 [3].

Moving to the question of the negative impacts of sanctions on the full enjoyment of human rights we should take into consideration two important aspects:

– The globalizing world is interrelated and interdependent in all spheres of life: in economic, financial and humanitarian spheres as well as in the sphere of transport. Internet has connected the whole world as one united information community where you may not hide a single thing.

– All human rights are recognized as the universal, indivisible, interdependent and interrelated.

These two aspects imply only one way of moving — the way to development as in the spheres of cooperation of States. In its General Comment № 3 the Committee on Economic, Social and Cultural Rights [1] clarified the legal nature of the obligations of the States-Parties under the International Covenant on Economic, Social and Cultural Rights, stressing that «the full realization of the relevant rights may be achieved progressively»; which automatically excludes any unilateral coercive measures, as obstacles of development. These obligations also suppose that each of the States Parties to the Covenant has undertaken «steps, individually and through international assistance and cooperation, especially economic and technical, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means».

In these terms the application of arbitrary unilateral coercive measures in the form of economic or financial sanctions can have the negative impact on the enjoyment of human rights of the general population not only of the targeted States but

third ones as well. In this context it would be reasonable to cite the provisions of the Resolution № 22/39-POL: «Economic and financial measures should not be used as tools for political coercion and that under no circumstances should people be deprived of their own means of subsistence and development» [7].

Recent events are confirming that continued unilateral application and enforcement by certain Western powers of such sanctions are used as tools of political or economic pressure against most targeted countries.

In the view of the HRC enforcing arbitrary unilateral coercive measures as a tool of waging war and militarism against targeted peoples which have the effect of negative implications not only for the social-humanitarian activities but for the whole system of statehood gives to targeted States the possibility to use also arbitrarily the right to self-defense including using force in preventive way to eliminate the real threat to the security of the country. Such a situation may assume the character of a real threat to the international community when the sides who apply such sanctions are USA, NATO as a military bloc with the potential of the European Union, who use unilateral coercive measures as a tool of political pressure with the aim of destroying the State system of the Russian Federation — the nuclear power.

In this relation it is interesting to refer to the observation of the Secretary General of NATO, who, from one side, states that the cooperation with Russia would be useful for everyone since all the sides may benefit from it, however, he wishes that more States would take part in imposing sanctions or support them since it is necessary that such sanctions would have effect for Russia. The condition to lift sanctions lies in the fact that Russia chooses another way.

Here we have playing with fire!

I would not go into details of the efforts undertaken at universal, regional and subregional levels as well as in doctrine in order to oppose the arbitrary unilateral sanctions which are mostly of a political character and aim at mitigating their negative effects on civil population.

I would like to remind the significant provisions included in General Comment of the Committee on Economic, Social and Cultural Rights (№ 8) [2] dealing with the question of the relationship between economic sanctions and respect for economic, social and cultural rights.

The purpose of this General Comment is to emphasize that, whatever the circumstances, such sanctions should always take full account of the provisions of the International Covenant on Economic, Social and Cultural Rights. This purpose resembles the rules of IHL under which all the sides of armed conflict, regardless of their status and recognition, must observe the rules of IHL.

While the impact of sanctions varies from one case to another, the Committee is aware that they almost always have a dramatic impact on the rights recognized in the Covenant. The Committee reminds that the sanctions regimes established by the Security Council include humanitarian exemptions. However, a number of recent United Nations and other studies which have analysed the impact of sanctions have concluded that these humanitarian exemptions do not have this effect. Moreover, the exemptions are very limited in scope. The UN Secretary-General suggested in 1995 that

there was a need to assess the potential impact of sanctions before they are imposed and to enhance arrangements for the provision of humanitarian assistance to vulnerable groups. A major study, prepared for the UN General Assembly stated that «humanitarian exemptions tend to be ambiguous and are interpreted arbitrarily and inconsistently».

The abovementioned confirms one more the exclusive competence of the UN Security Council, otherwise we would face abuse.

When measures are taken which inhibit the ability of a State party to meet its obligations under the Covenant, the terms of sanctions and the manner in which they are implemented become appropriate matters for concern for the Committee. Unfortunately, the Committee does not have any practice in this relation, although more concise interpretations by the Committee are demanded.

The Committee says about a set of obligations which relates to the party or parties responsible for the imposition, maintenance or implementation of the sanctions, whether it be the international community, an international or regional organization, or a State or group of States. In this respect, the Committee considers that there are some conclusions which follow logically from the recognition of economic, social and cultural human rights.

We have mentioned two of them already: first, these rights must be taken fully into account when designing an appropriate sanctions regime. Without endorsing any particular measures in this regard, the Committee notes proposals such as those calling for the creation of a United Nations mechanism for anticipating and tracking sanctions impacts, the elaboration of a more transparent set of agreed principles and procedures based on respect for human rights. Second conclusion deals with effective monitoring, which is always required under the terms of the Covenant, should be undertaken throughout the period that sanctions are in force.

It seems that in this case the role of the UN is crucial.

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## **НЕГАТИВНЫЕ ПОСЛЕДСТВИЯ ОДНОСТОРОННИХ ПРИНУДИТЕЛЬНЫХ МЕР НА ПРАВА ЧЕЛОВЕКА, РАЗВИТИЕ, СОТРУДНИЧЕСТВО И МЕЖДУНАРОДНЫЕ ОТНОШЕНИЯ**

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**Ключевые слова:** односторонние санкции, односторонние принудительные меры, международное право, права человека, нарушения Устава ООН, Совет Безопасности.