

HUMANITARIAN IMPACT OF UNILATERAL SANCTIONS AND OVER-COMPLIANCE

Theoretical challenges and practical implications



ACADÉMIE DE GÉOPOLITIQUE

5 Rue Conté, 75003 Paris

Tél. : 01 42 71 57 80

Site internet : <http://www.academiedegeopolitiquedeparis.com>

E-mail : academiedegeopolitiquedeparis@gmail.com

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INTRODUCTION

Unilateral sanctions are currently frequently used by some states as a means of foreign policy. State also use the rhetoric of sanctions, with the main emphasis on the pursuit of “common goals”, without assessing, whether contemporary international law based on the Charter of the United Nations, its fundamental purposes and principles provides for any possibility to use such unilateral measures.

As a result despite the fact that principles of international law, including the principle of sovereign equality of states, principle of non-intervention into domestic affairs of states, principle of peaceful settlement of international disputes, obligation to respect its international obligations qualify as peremptory norms of international law, and contrary article 27 of the Vienna convention of the Law of international treaties, prohibiting states “to invoke the provisions of their internal law as justification for its failure to perform a treaty”, sanctioning states actively use unilateral sanctions and enforce their implementation without any assessment of their legality from the perspective of international law.

Unilateral sanctions despite their announced targeted character are traditionally interpreted broadly affecting not only designated individuals or companies, but also sectors of economy and states. As a result the whole population of the country under sanctions becomes affected by the complexity of unilateral sanctions. Humanitarian assistance are often not available or just partially available despite the de jure announced humanitarian exemptions in sanctions’ regulations.

Multiplicity of sanctions regimes and their uncertainty, extremely broad interpretation of sanctions regulations by organs of sanctioning states, severe penalties for circumvention/ alleged circumvention of sanctions’ regimes, challenges to get access to justice to appeal listing or any type of penalties results in growing de-risking policies. Consequent over-compliance exacerbates humanitarian consequences of unilateral sanctions, with the most severe effect over the most vulnerable groups: women, children, people with disabilities, people suffering from the rare or severe deceases, minorities, marginalized groups.

This book shall be viewed as an attempt to look at some theoretical and practical issues of the very notion of and challenges caused by unilateral sanctions from the perspective of international law. It also seeks to assess the impact of unilateral sanctions, means of their enforcement and human rights on groups of human rights, specific human rights (primarily those, which are affected the most), as well as impact on human rights in affected countries or the approach of such countries to the sanctions imposed.

Prof. Alena Douhan

UN Special Rapporteur on the negative impact
of unilateral coercive measures on human rights

SECTION I.

UNILATERAL COERCIVE MEASURES: NOTIONS AND CHALLENGES

CHAPTER I

Understanding of unilateral coercive measures

(Prof. A. Douhan, UN Special Rapporteur)

The world is facing the expansion of the application of new and different forms and types of unilateral sanctions. The terminology used to identify unilateral means of pressure has expanded correspondingly: unilateral coercive measures¹, sanctions, unilateral sanctions, bilateral sanctions, restrictive measures, international sanctions, autonomous sanctions, economic², sectoral or territorial sanctions³, intended or unintended⁴, etc. Moreover, today states and regional organizations are actively using different forms of sanctions enforcement, including via the use of secondary sanctions, civil, criminal and administrative penalties for circumvention/ alleged circumvention, assistance in circumvention of sanctions regimes. All the above results in de-risking and zero-risk policies, resulting in over-compliance⁵,

1. *Dynamics and unintended effects of unilateral coercive measures against the Syrian Arab Republic*, 2024, https://unescwa.org/sites/default/files/pubs/pdf/dynamics-effects-measures-syrian-arab-republic-english_1.pdf, visited on May, 2024.

2. UNGA Resolution, Unilateral economic measures as a means of political and economic coercion against developing countries, Resolution adopted by the General Assembly, A/RES/52/181, 4 February 1998, https://digitallibrary.un.org/record/251268/files/A_RES_52_181-EN.pdf, visited on May, 2024; Economic and Social Council (2000) Review of Further Developments in Fields with Which the Subcommission Has Been or May Be Concerned, E/CN.4/Sub.2/2000/33, <https://documents.un.org/doc/undoc/gen/g00/140/92/pdf/g0014092.pdf> visited on May, 2024.

3. UNGA Resolution 70/151, para. 1, and 71/193, para. 2; Council of the European Union: *Guidelines on the Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy*, 4 May 2018, doc No. 5664/18; *Unilateral Economic Measures as a Means of Political and Economic Coercion Against Developing Countries*, UNGA Resolution 52/181 of 4 February 1998, https://digitallibrary.un.org/record/251268/files/A_RES_52_181-EN.pdf, visited on May, 2024; *The Adverse Consequences of Economic Sanctions. Review of Further Developments in Fields with Which the Subcommission Has Been or May Be Concerned. The Bossuyt Report*, Economic and Social Council E/CN.4/Sub.2/2000/33, June 21, 2000, <https://archive.globalpolicy.org/component/content/article/202-sanctions/42501-the-adverse-consequences-of-economic-sanctions.html> visited on May, 2024.

4. See for details *Unilateral Coercive Measures: Notion, Types and Qualification. Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights*, Alena Douhan, 2021, para. 18, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/175/86/PDF/G2117586.pdf?OpenElement>, visited on May, 2024.

5. A/78/196, A/HRC/51/33.

which is often called self-sanctioning. As a result, uncertainty and ambiguity in the terminology impedes the possibility to identify legal regime of unilateral sanctions and unilateral coercive measures. Assessment of humanitarian impact becomes extremely complicated in the face of multiplicity of sanctions taken unilaterally, uncertainty of legal regulation, vague nature of their enforcement. Recently it affects not only people of the targeted country but rather has a transboundary spill-over effects at the neighbouring states, in the region and even for the sanctioning states.

Alongside the expansion of the use of unilateral sanctions, the scope of academic works of the problem is also expanding. At the same time the mainstream of academic studies focuses on political or general legal issues of the status, practice of application and effectiveness of unilateral primary⁶ or secondary sanctions⁷. Humanitarian impact is traditionally assessed either as concerns specific human rights⁸, human rights in specific countries⁹, on specific groups of population¹⁰ or impact of specific types of sanctions¹¹ or on specific human rights¹². That is why assessment of unilateral sanctions in their complexity is so important.

6. Mirzadeh, F., Flowe, B., Ordway, J. A., Fisher-Owens, D., Hoghooghi, B., Bechky, P.S., Gold, R., McClurg, J. A., & Turner Roberts, M., "Economic sanctions", *International Enforcement Law Reporter* 35(3) (2019): 106-109; Rathbone, M., Jeydel, P., & Lentz, A., "Sanctions, sanctions everywhere: Forging path through complex transnational sanctions laws" *Georgetown Journal of International Law* 44(3) (2013): 1055–1126.

7. Bruce Zagaris, "Economic Sanctions", *International Enforcement Law Reporter* 36, no. 9 (September 2020): 347-348.

8. Garfield R., "The Public Health Impact of Sanctions: Contrasting Responses of Iraq and Cuba" *Middle East Report (Summer 2000)*: 16-19.

9. Kokabisagh F., "Assessment of the Effects of Economic Sanctions on Iranians' Right to Health by Using Human Rights Impact Assessment Tool: A Systematic Review", *International Journal of Health Policy and Management* 7(5) (2018): 374-393.

10. Pelter Zoë, Camila Teixeira, Erica Moret, *Sanctions and their Impact on Children (UNICEF)*, 2022, , <https://www.unicef.org/innocenti/reports/sanctions-and-their-impact-children>, visited on May, 2024.

11. Charlotte Beaucillon (ed.), *Research Handbook on Unilateral or Extraterritorial Sanctions* (UK: Elgar Publishing, 2021), pp. 336-457.

12. Amanda Carucci, *Environmental Effects of Economic Sanctions: The Cuban Experience*, Honors Theses, Paper 49 (2000), pp. 96-97, 100-110, <https://digitalcommons.colby.edu/honorsthesis/49/>, visited on May, 2024; Qiang Fu, Yin E Chen, Chyi-Lu Jang, Chun-Ping Chang, *The Impact of International Sanctions on Environmental Performance*, *Science of the Total Environment* 745 (2020): 1-14; Shirin Hakim, Karen E. Makuch, *Conflicts of Interest: The Environmental Costs of Modern War and Sanctions*, Royal United Services Institute, 11 May 2022,

Numerous resolutions of the UN Human Rights Council (from resolutions 15/24 of 6 October 2010, paras. 1-3¹³; 19/32 of 18 April 2012, paras. 1-3¹⁴; 24/14 of 8 October 2013, paras. 1-3¹⁵; to 45/5 of 6 October 2020, paras. preamble¹⁶; 49/6 of 21.03.2022, para. 1-3; 54/15 of 13.10.2023, paras. 1-3; 55/7 of 3.04.2024, paras. 1-3¹⁷) and the General Assembly (resolutions 69/180 of 18 December 2014, paras. 5-6¹⁸; 70/151 of 17 December 2015, paras. 5-6¹⁹; to 75/181 of 15.12.2020, paras. 1-6²⁰; 76/202, of 23.12.2023, paras. 1-6) refer to the illegality of unilateral coercive measures.

The latter shall be viewed as any type of measure or activity applied by states, groups of states or regional organizations without or beyond the authorization of the UN Security Council, not in conformity with international obligations of the sanctioning actor or the illegality of which is not excluded on the ground of the law of international responsibility, regardless of the announced purpose or objective, including but not limited to economic, financial, political or any other sort of state-oriented or targeted measures applied to other states, individuals, companies or other non-governmental

<https://www.rusi.org/explore-our-research/publications/commentary/conflicts-interest-environmental-costs-modern-war-and-sanctions/>, visited on May, 2024.

13. *Human Rights and Unilateral Coercive Measures*, A/HRC/RES/15/24 of 6 October 2010, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/167/12/PDF/G1016712.pdf?OpenElement>, visited on May, 2024.

14. *Human Rights and Unilateral Coercive Measures*, A/HRC/RES/19/32 of 18 April 2012, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G12/131/17/PDF/G1213117.pdf?OpenElement>, visited on May, 2024.

15. *Human Rights and Unilateral Coercive Measures*, A/HRC/RES/24/14 of 8 October 2013, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/178/96/PDF/G1317896.pdf?OpenElement>, visited on May, 2024.

16. *Human Rights and Unilateral Coercive Measures*, A/HRC/RES/45/5 of 6 October 2020, <https://undocs.org/en/A/HRC/RES/45/5>, visited on May, 2024.

17. A/HRC/55/7, visited on May, 2024. *Report of the United Nations Secretary-General on the Role of Unilateral Coercive Measures in International Relations*, <https://documents.un.org/doc/undoc/gen/g23/258/03/pdf/g2325803.pdf>, visited on May, 2024.

18. *Human Rights and Unilateral Coercive Measures*, A/RES/69/180 of 18 December 2014, <https://www.ohchr.org/sites/default/files/Documents/Issues/UCM/Res/A-RES-69-180.pdf>, visited on May, 2024.

19. *Human Rights and Unilateral Coercive Measures*, A/RES/70/151 of 17 December 2015, <https://documents.un.org/doc/undoc/gen/n15/441/21/pdf/n1544121.pdf>, visited on May, 2024.

20. UNGA Resolution, Human rights and unilateral coercive measures, Resolution adopted by the General Assembly, A/RES/75/181, 15 December 2020, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/372/60/PDF/N2037260.pdf?OpenElement>, <https://undocs.org/en/A/HRC/RES/45/5>, visited on May, 2024.

entities, to change their policy or behavior, to obtain from it the subordination of the exercise of its sovereign rights, secure advantages of any kind, to signal, coerce or punish (Report 48/59, para. 100)²¹.

It shall also be mentioned that there is even no clear definition of the general notion of “sanctions” in international law today. In the international legal doctrine, sanctions have been viewed as a power (possibility) to ensure the law,²² an analog of responsibility for internationally wrongful acts,²³ punishment,²⁴ a complex of enforcement measures applied to a delinquent state,²⁵ a method to make someone comply,²⁶ negative consequences of a violation,²⁷ measures to protect the international legal order,²⁸ measures not

21. Report 48/59, <https://www.ohchr.org/en/documents/thematic-reports/ahrc4859-report-notion-characteristics-legal-status-and-targets>, visited on May, 2024.

22. G. Sparrow, *Sanctions* (London: Knightly Vernon Ltd., 1972), pp. 11-12.

23. Aleksandr Kovalev, Stanislav Chernichenko, (ed.), *International Law* (Moscow: Prospekt, 2008), pp. 237-38.

24. Ademola Abass, *Regional Organizations and the Development of Collective Security* (London: Hart Publishing, 2004), p. 49; Ramesh Thakur, *The United Nations, Peace and Security* (Cambridge: Cambridge University Press, 2016), p. 135. This approach is, however, disputed by the UN Secretary-General in the United Nations, Supplement to An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations, UN Doc. A/50/60, S/1995/1, 25 January 1995, para. 66; although the punitive nature of sanctions has been rejected by most states – see United Nations, United Nations Security Council Report, 4128th Meeting, 17 April 2000, S/PV.4128; Johan Galtung, “On the Effects of International Economic Sanctions,” in *Dilemmas of Economic Coercion: Sanctions in World Politics*, ed. M. Nincic, P. Wallenstein, (New York: Praeger Publishers, 1983), p. 19.

25. G.V. Ignatenko, O. I. Tiunov (eds.) *Mezhdunarodnoe pravo*, 6th ed. (Moscow: Norma, 2013), p. 202; R.A. Kalamkarjan, Y.I. Migachev, *International Law* (Moscow: International law, 2004), p. 182; E.A. Shibaeva, “International Organizations in the System of International Legal Regulation,” in *Soviet Yearbook of International Law*, 1978 (Moscow: Nauka, 1980), pp. 214-224; Fred Grünfeld, “The Effectiveness of United Nations Economic Sanctions,” in Willem J. M. van Genugten and Gerard A. de Groot (ed.), *United Nations Sanctions: Effectiveness and Effects, Especially in the Field of Human Rights. A Multi-disciplinary Approach* (Intersentia: Antwerpen, Groningen, Oxford, 1999), p. 115.

26. Galtung, “On the Effects of International Economic Sanctions,” 19; Natalino Ronzitti “The Report of the High-Level Panel on Threats, Challenges and Change, the Use of Force and the Reform of the United Nations,” *Italian Yearbook of International Law*, XIV (2004), (Leiden/Boston: MartinusNijhoff Publishers, 2005), p. 11; Reply from the International Alliance for Peace and Development (IAPD)’s.

27. Igor Lukashuk, *Law of International Responsibility* (Moscow: Walters Kluwer, 2004), p. 309; T.N. Neshataeva, *International Legal Sanctions of the UN Specialized Agencies*, extended abstract of PhD dissertation (Moscow: Moscow State University, 1985), pp. 9, 12, 14.

28. T.N. Neshataeva, *International Legal Sanctions of the UN Specialized Agencies*, p. 17; Effective Strategies for Protecting Human Rights: Economic sanctions, Use of National

involving the use of armed force to maintain or restore international peace and security,²⁹ a means of implementation of international responsibility³⁰, countermeasures or retorsions³¹, “equivalent to action taken against a State by a group of States or mandated by an international organization”³², enforcement measures of the UN Security Council acting under Chapter VII of the UN Charter or measures taken by international organizations toward its member states under and in accordance with their constituent documents³³.

R. Nephew puts an emphasis on national legislation and identifies sanctions as a “constellation of laws, authorities, and obligations laid out in a piece of legislation, government decree, UN resolution, or similar document that restrict or prohibit what is normally permissible conduct and against which performance will be assessed and compliance judged”³⁴.

It is also notable that the grounds for and purposes of sanctions have changed. According to the developers of the Global Sanctions Data Base, more than 40 per cent of sanctions are introduced today with reference to the need to enhance democracy, protect human rights and other similar purposes³⁵ rather than to address threats to peace, breaches of peace or acts of aggression, or in response to violations of *erga omnes* obligations as initially planned by the UN founders, and reflected by the International

Courts, and International Fora and Coersive Power (ed. by D. Barnhizer, NY, Routledge, 2001), p. 13.

29. United Nations, Supplement to An Agenda for Peace. The same approach was taken by states that participated in the discussion of the problem in the UN Security Council (UN Security Council Report, S/PV.4128).

30. Lukashuk, *Law of International Responsibility*, 306, 308; The same approach is supported by G.I. Tunkin, N.A. Ushakov, P. Kuris, cited by T.N. Neshataeva, “The Notion of Sanctions of International Organizations”, *Jurisprudence*, 6 (1984), p. 94; Abass, *Regional Organizations and the Development of Collective Security*, pp. 49, 51.

31. Tom Ruys, *Sanctions, Retorsions and Countermeasures: Coucepts and International Legal Framework*, in L. van Herrik (ed), *Research Handbook on UN Sanctions and international Law* (2017).

32. DARS with commentaries, p. 128.

33. Tom Ruys, *Sanctions, Retorsions and Countermeasures: Coucepts and International Legal Framework*, in L. van Herrik (ed), *Research Handbook on UN Sanctions and international Law* (2017).

34. Nephew R. *The Art of Sanctions. A View from the field* (Columbia University Press, 2018), p. 8.

35. Gabriel Felbermayr et al., *The Global Sanctions Data Base*, p. 60, <https://drive.google.com/file/d/11djwElr96SFt6YpMzo9gaB6ZJrOer8AX/view>, visited on May, 2024.

Court of Justice in the *Barcelona Traction* case³⁶ or addressed by the Human Rights Committee (hereafter, HR Committee) in the General Comment No. 31, para. 2.³⁷

The US sanctions in particular are viewed as a foreign policy tool “adopted to counter threats to national security posed by particular activities and countries” and enforced “to maximize their economic impact on US targets”³⁸. The EU announces the possibility to apply restrictive measures to promote its Common Foreign and Security Policy (CFSP) objectives, including peace, democracy and the respect for the rule of law, human rights and international law³⁹, and further advancing universal values for all⁴⁰. The UK Global Human Rights Act aims “to deter, and provide accountability for an activity which, if carried out by or on behalf of a State within the territory of that State, would amount to a serious violation by that State of an individual’s right to life, right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, or right to be free from slavery, not to be held in servitude or required to perform forced or compulsory labour, whether or not the activity is carried out by or on behalf of a State”⁴¹.

36. *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, International Court of Justice, February 5, 1970, p. 32, <https://www.refworld.org/cases,ICJ,4040aec74.html>, visited on May, 2024; see also B. Simma, “Does the UN Charter Provide an Adequate Legal Basis for Individual or Collective Responses to Violations of Obligations Erga Omnes,” in *The Future of International Law Enforcement: New Scenarios – New Law?*, ed. J. Delbruck (Berlin, 1993), pp. 126–127.

37. UN Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, <https://www.refworld.org/docid/478b26ae2.html>, visited on May, 2024.

38. *Economic Sanctions Policy and Implementation*, <https://www.state.gov/economic-sanctions-policy-and-implementation/>, visited on May, 2024; <https://www.refworld.org/docid/478b26ae2.html>, visited on May, 2024; see Thihan Myo Nyun, “Feeling Good or Doing Good: Inefficacy of the U.S. Unilateral Sanctions Against the Military Government of Burma/Myanmar,” *Washington University Global Studies Law Review* 7(3), 2008, p. 463.

39. Contribution to the UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions of Denmark of 16.03.2021; Submission of Ireland; EU contribution to the UCM-study on the “Notion, characteristics, legal status and targets of unilateral sanctions” by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights.

40. Conclusions of 19 November 2020 on the EU Action Plan on Human Rights and Democracy 2020-2024.

41. The Global Human Rights Sanctions Regulations 2020, No. 680.

The EU adopted the Global Human Rights Act to “*address serious human rights violations and abuses worldwide*”⁴².

All the above clearly shows that the “behavioural change paradigm” justifying the use of coercion for the *proper* purpose or motive, being traditional in the early legal doctrine⁴³, has changed a lot today. The academic approach identifies five types of purposes for sanctions: compliance, subversion, deterrence, and international and domestic symbolism; others differentiate between denial instruments (to deny goods or benefits to targets), symbolic instruments, and punitive measures⁴⁴ to constrain, coerce, signal or stigmatize⁴⁵. Some speak about the main purpose as “*ensuring compliance with the command*”⁴⁶ or changing a behavior of the target of sanctions by making the status quo too uncomfortable by causing pain⁴⁷.

Another characteristic of the last two decades is the expanding number and variability of forms of unilateral sanctions. Overall sanctions geopolitical map is rather diverse⁴⁸. In particular, the United States imposes sanctions on Belarus, Burma, Burundi, Central African Republic, China, Cuba, North Korea, Democratic Republic of Congo, Iran, Iraq, Lebanon, Lybia, Mali, Nicaragua, Somalia, Sudan, South Sudan, Syria, Venezuela, Yemen and Zimbabwe.

The UK imposes unilateral measures, sanctions or financial sanctions against Afghanistan, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Burundi, Central African Republic, China and Hong Kong, Democratic People’s Republic of Korea, Democratic Republic of Congo,

42. Council Regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses.

43. Lillich R.B. “Economic coercion and the international legal order”, *International Affairs* 51 (1975), p. 366; Bowett D.B. “Reprisals involving recourse to armed force”, *A.J.I.L.* 66 (1972): 3-7.

44. Giumelli, F., “The Purposes of targeted sanctions”, in T.J. Biersteker, S.E. Eckert, M. Tourino (ed.), *Targeted sanctions: The Impacts and Effectiveness of United Nations Action*, (CUP, 2016), p. 40; Nephew R., *The Art of Sanctions. A View from the field* (Columbia University Press, 2018), p. 9.

45. J. Biersteker, S.E. Eckert, M. Tourino (ed.), *Targeted sanctions: The Impacts and Effectiveness of United Nations Action* (CUP, 2016), p. 22.

46. Antonios Tzanakopoulos, “We Who Are Not as Others: Sanctions and (Global) Security Governance”, *Defenders*, Winter 2021: 32-48, p. 35.

47. Nephew R., *The Art of Sanctions. A View from the field* (Columbia University Press, 2018), pp.10-12.

48. Geopolitical map of sanctions, <https://observatorio.gob.ve/mapa-geopolitico-sanciones/>, visited on May, 2024.

Guinea, Republic of Guinea-Bissau, Iran, Iraq, Lebanon, Libya, Mali, Myanmar, Nicaragua, Russian Federation, Somalia, South Sudan, Sudan, Syria, Venezuela, Yemen and Zimbabwe⁴⁹.

Switzerland applies targeted or smart sanctions, economic measures, targeted financial sanctions or coercive measures to Belarus, Burundi, Central African Republic, Democratic People's Republic of Korea, Democratic Republic of Congo, Guinea, Guinea-Bissau, Iraq, Iran, Liban, Libya, Mali, Myanmar, Nicaragua, Somalia, Soudan, Syria, South Sudan, Ukraine (Crimea), Venezuela, Yemen and Zimbabwe⁵⁰.

The European Union imposes “restrictive measures”, “sanctions”, “economic and financial sanctions” or “sectoral sanctions” against Afghanistan, Belarus, Bosnia and Herzegovina, Burundi, Central African Republic, China, Democratic Republic of Congo, Guinea, Guinea-Bissau, Haiti, Iran, Iraq, Lebanon, Libya, Mali, Moldova, Montenegro, Myanmar, Nicaragua, North Korea, Russian Federation, Serbia, Somalia, South Sudan, Sudan, Syria, Tunisia, Turkey, Ukraine, Venezuela, Yemen and Zimbabwe as well as within some horizontal regimes⁵¹.

Today more and more documents provide for secondary sanctions against third country nationals, and civil, administrative and criminal penalties for circumvention of sanctions regimes to own and third country nationals.

The current practice of unilateral sanctions demonstrates their variety: political, sectoral, diplomatic, cultural, economic, trade, financial, cyber, targeted and many others. Compliance companies classify sanctions as unilateral, multilateral and global. Reference is also made to international sanctions, sectoral sanctions, targeted sanctions, counter-sanctions, direct

49. *Information on UK Sanctions Regimes Currently in Force*, <https://www.gov.uk/government/collections/uk-sanctions-regimes-under-the-sanctions-act>, visited on May, 2024; *Guidance: UK Sanctions*, <https://www.gov.uk/guidance/uk-sanctions>, visited on May, 2024.

50. State's Secretariat on Economy of the Swiss Confederation website, *Sanctions / Embargos*, https://www.seco.admin.ch/seco/fr/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos.html, visited on May, 2024; Federal Financial Market Supervisory Authority (FINMA) website, *Sanctions internationales et mesures de blocage unilatérales*, <https://www.finma.ch/fr/documentation/sanctions-internationales-et-lutte-contre-le-terrorisme/sanctions-internationales-et-mesures-de-blocage-unilatérales/>, visited on May, 2024.

51. *European Union Sanctions Map* <https://www.sanctionsmap.eu/#/main> visited on May, 2024; See A/HRC/48/59.

or indirect sanctions, primary or secondary sanctions, and intended or unintended sanctions.

Many documents and scholarly works address *economic sanctions* mostly⁵². At the same time, the term is very confusing and is usually referring to different types of sanctions. Some analytical works try to provide a notion of economic and other relevant sanctions, in particular by seeing economic sanctions as sanctions on bilateral trade flows. Trade sanctions are those aimed to reduce trade exports or imports or both. Financial sanctions are aimed to reduce trade by denying investment, foreign exchange or credit to the target country or by raising its cost of credit⁵³. Some other authors refer to economic sanctions as “withdrawal of customary trade and economic relations” and include in this definition comprehensive sanctions (blocking financial relations with the entire country), or targeted sanctions (blocking relations with specific companies, groups and individuals)⁵⁴.

It is believed here, however, that economic sanctions shall be understood much broader and refer to all types of restrictive measures which may have an economic impact on the targeted country; a sector of its economy; a specific company or individual; non-designated individuals and companies, including those in third countries; or the entire population of the country under sanctions. Quite often it is done with the use of non-economic or non-financial means⁵⁵.

Economic sanctions thus can include, but are not limited to: freezing bank accounts and property of the central bank and other banks, states, companies and nationals; political measures aimed to prevent countries from getting emergency and development loans from the WB or the IMF; prohibiting nationals and companies of a country as well as other companies and nationals doing business in the country to trade with the country

52. *Symposium: Third World Approaches to International Law (TWAIL) & Economic Sanctions* (2023), <https://www.yjil.yale.edu/symposium-third-world-approaches-to-international-law-economic-sanctions/>, visited on May, 2024.

53. G. Hufbauer, K. Elliott, T. Cyrus, E. Winston, *US Economic Sanctions: Their Impact on Trade, Jobs, and Wages*, <https://www.piie.com/publications/working-papers/us-economic-sanctions-their-impact-trade-jobs-and-wages>, visited on May, 2024.

54. Masters J. What are economic sanctions, <https://www.cfr.org/backgrounder/what-are-economic-sanctions>, visited on May, 2024.

55. See Douhan A., “Unilateral coercive measures: impact and legality issues”, YJIL online. *Symposium: Third World Approaches to International Law (TWAIL) & Economic Sanctions*, <https://www.yjil.yale.edu/unilateral-coercive-measures-effects-and-legality-issues/>, visited on May, 2024.

under sanctions in general, in specific spheres of industry, or with specific companies, goods or individuals; selling goods containing a given percentage of components or technologies produced in the sanctioning country; designating high state officials, which can prevent relations or trade with an entire sector of the economy or infrastructure including food, health, water supply, etc.; cutting off countries or their banks from SWIFT, thus preventing or limiting financial transactions for the entire population; the prohibition on getting money from / to the targeted country, its nationals and companies, even for non-designated goods, including food and medicine; threats with secondary sanctions, civil and criminal penalties for circumvention of primary sanctions regimes; blocking access to online payment instruments and fund raising platforms for study, research or humanitarian purposes and many others⁵⁶.

Trade embargoes aim to prohibit nationals/residents of the sanctioning country, or any company willing to do business in a sanctioning country or has partners in the sanctioning country from trading with the country under sanctions, their nationals or companies. **Financial sanctions** may include decisions to designate the central bank of the country under sanctions, or public or private banks to prevent any transfer of money to/from the country under sanctions. The freezing of state and private banks' assets abroad is used to put pressure on states, too, thereby preventing them from guaranteeing their citizens' basic needs. For example, the Bank of England refused to unfreeze any of the \$1 billion in gold that it held for the Central Bank of Venezuela⁵⁷.

Political influence in international institutions has started to be used as a part of sanctions tools. In April 2020, the USA opposed the efforts of Iran and Venezuela to obtain loans from the International Monetary Fund (IMF) in its fight against COVID-19. A similar situation has reportedly arisen in respect of requests by Cuba, Sudan and Zimbabwe for emergency loans from the World Bank⁵⁸.

Trade sanctions often take the form of so-called **sectoral sanctions**, which apply non-selectively to individuals and organizations in a particular sphere of the economy without any identifiable reason or violation from their side that differs significantly from those that have prompted

56. *Ibid.*

57. A/HRC/48/59, para. 29.

58. *Ibid.*, para. 30.

traditional targeted sanctions⁵⁹. Unilateral coercive measures make take different forms and include measures taken against states, sectors of economy of a state in general (gold, mining sphere in Zimbabwe, mining, wood, energy sectors in Russian federation) or of a specific region of the country (cotton, textile, tomatoes, poly-silicone industries in Xingjian in China), entities or individuals including state officials *ex officio*⁶⁰.

A special form of sectoral sanctions can be seen in the *closing of airspace for flights of air companies* registered in targeted states – such as Qatar (2017-2020), Venezuela, Belarus and Russia – and prohibiting the targeted state's air companies to enter the airspace of the sanctioning country, thereby affecting the designated state's travel industry. A similar situation exists as concerns trade with Cuba, Iran, Syria and Venezuela⁶¹.

Economic sanctions also include *measures of a targeted character*, affecting designated individuals or companies. For example, the European Union's financial sanctions include several thousand individuals and companies⁶², and far more are listed by the United States⁶³.

It shall be noted that grounds for the listing of individuals and companies have also expanded considerably. Such listings occur either to implement resolutions of the UN Security Council acting under Chapter VII of the UN Charter, often when going beyond the authorization of the Council; or autonomously to maintain international peace and security; to suppress international, transnational or national crimes; to promote and protect human rights, democracy, the rule of law and good governance⁶⁴; or to protect national security or other interests, often via the announcement of a state of emergency⁶⁵. Another tendency demonstrates the expanding policy of designating individuals *ex officio* often without accusing them of committing any wrongful act with reference to the non-recognition of a

59. *Ibid.*, para. 33.

60. A/HRC/57/55/Add.1 Country visit to China, Report <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/57/55/Add.1&Lang=E> visited in September, 2024.

61. *Ibid.*, para. 32.

62. European Union Financial sanctions consolidated list (2023), <https://webgate.ec.europa.eu/europeaid/fsd/fsf/public/files/pdfFullSanctionsList/content?token=dG9rZW4tMjAxNw>, visited on May, 2024.

63. OFAC (2023) Specially Designated Nationals and Blocked Persons List, www.treasury.gov/ofac/downloads/sdnlist.pdf, visited on 23 May 2024.

64. EU Restrictive measures https://www.eeas.europa.eu/eeas/european-union-sanctions_en, visited on 15 November, 2024.

65. OL USA/5/2021.

government or results of elections (Venezuela⁶⁶, judges of the International Criminal Court (ICC))^{67 68}.

Application of targeted sanctions to individuals and companies raises serious concerns about their legality as well as the validity of grounds for their introduction. From the point of international law, targeted sanctions as well as any other sanctions in the absence of UN Security Council authorization can only be applied if they do not breach any international obligation of states, including – especially as they are directed against specific individuals – obligations in the sphere of human rights, or if their wrongfulness is excluded in accordance with international law in the course of countermeasures.

A number of unilateral measures are taken in or relevant to the cyber area in response to “malicious cyber activity” or via operations in and access to software on online platforms, databases and online conferences, access to the Internet, information, public announcements of designated individuals as criminals, etc.⁶⁹ (*cyber and cyber-related sanctions*).

The current moment is also characterized by the expansion of so-called “*secondary sanctions*” as a means to enforce unilateral sanctions against states or key economic sectors, or to target foreign companies, organizations or individuals. Secondary sanctions are also applied extraterritorially to

66. Preliminary findings, Country visit to Venezuela, Report.

67. Exec. Order. No. 13928 on Blocking Property of Certain Persons Associated with the International Criminal Court, *Federal Register*, vol. 85, no. 115 (June 15, 2020), <https://home.treasury.gov/system/files/126/13928.pdf>, visited on May, 2024; see also *Joint Communication from Special Procedures*, AL USA 15/2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25379>, visited on May, 2024.

68. Secretary Michael R. Pompeo at a Press Availability with Secretary of Defense Mark Esper, Attorney General William Barr, and National Security Advisor Robert O'Brien, <https://2017-2021.state.gov/secretary-michael-r-pompeo-at-a-press-availability-with-secretary-of-defense-mark-esper-attorney-general-william-barr-and-national-security-advisor-robert-obrien/>, visited on May, 2024; ASP President O-Gon Kwon Rejects Measures Taken Against ICC, <https://www.icc-cpi.int/Pages/item.aspx?name=pr1527>, visited on May, 2024; *International Criminal Court Appeals Chamber, “Judgment on the Appeal Against the Decision on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan”*, No. ICC-02/17 OA4, 5 March 2020.

69. Unilateral sanctions in the cyberworld: tendencies and challenges, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, A/77/296, 17 August 2022, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/464/10/PDF/N2246410.pdf?OpenElement>, visited on May, 2024.

entities or individuals for their presumed cooperation or association with sanctioned parties or for helping them to circumvent sanctions. Foreign companies subject to secondary sanctions can be blocked from doing business in the sanctioning state, be banned from using its financial markets or be prohibited from transactions involving its currency; while foreign individuals can be refused entry to the sanctioning country and have any assets there frozen⁷⁰. Penalties can reach the level of billions of USD; criminal penalties reach up to 20 years of imprisonment⁷¹. Particular reference is made to secondary sanctions imposed against third-country individuals or entities, who may engage in what is perceived to be an unauthorized activity involving the targeted by sanctions country and its entities⁷².

Recent practice demonstrates the expanding application of *counter-sanctions*.⁷³ Counter-sanctions are usually qualified in practice and legal doctrine as countermeasures or retorsions⁷⁴. To make sure that counter-sanctions comply with international law, states are to make sure that they are taken in full conformity of the law of international responsibility.

De-risking policies refer to the behavior of states going further than the direct compliance with unilateral sanctions. Terminology used also refer to *zero-risk policies*, *risks-assessment*, *chilling or spill-over effect* etc. De-risking policies is a formal exercise of over-compliance, therefore both are based on the same reasons. De-risking policies are aimed to protect commercial activities and interests of the specific business in the face of the complexity and uncertainty of sanctions regimes, uncertainty

70. Secondary sanctions, civil and criminal penalties for circumvention of sanctions regimes and overcompliance with sanctions, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena F. Douhan, A/HRC/51/33, 15 July 2022, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/408/16/PDF/G2240816.pdf?OpenElement>, visited on May, 2024.

71. Appendix A to part 501 of the Economic Sanctions Enforcement Guidelines, https://www.ecfr.gov/cgi-bin/text-idx?SID=082b813329e2def1ecd3cadfeb66acc4&mc=true&n ode=ap31.3.501_1901.a&rgn=div9%20;%20https://www.treasury.gov/resource-center/sanctions/Programs/Documents/cyber.pdf, visited on May, 2024.

72. Довгань Е.Ф. Принуждение к соблюдению односторонних санкционных режимов и его правовые последствия // ЖМПМО. – 2024. – No. 1-2. – С. 3-12.

73. See e.g. Federal Law of Russian Federation of 30 December 2006 No.281-ФЗ “On Special Economic measures and Enforcement Measures”; Ministry of Commerce of the People’s Republic of China issued Order No.4 entitled *Provisions on the Unreliable Entity List*; *Law Countering Foreign Sanctions (China)*, 2021 – Country visit to China, Report, paras. 60-72.

74. A/HRC/48/59, para. 55.

of implementation, risks of high penalties, complicated, lengthy, expensive and ineffective appeal.

Besides that and in a view of the above reasons as well as newly introduced concepts of “presumption of legality of unilateral sanctions” and “rebuttable presumption of the presumption of wrongfulness of behavior with any nexus to specific country, region or designated individuals or companies”, requests to monitor the whole supply chain or contacts of all partners without any guarantee of immunity against responsibility even if they do it, businesses prefer to take measures to avoid or minimize any risk that often takes the form of leaving markets of countries under sanctions, withdrawing investments or stopping any cooperation with anyone which might be considered/ suspected to have any nexus with sanctions (including, country under sanctions as a destination place, projects of public schools or hospitals, place of birth, names, which sound like Russian or Iranian, names being similar to the name of the country under sanctions etc.).

Implementation of de-risking policies result in the growing feeling of fear and **over-compliance**⁷⁵. The reasons for over-compliance are rather multilevel and diverse, and include but not limited to:

- Uncertainty, broadness and non-stability of multiple over-lapping sanctions regimes;
- expansion of means of sanctions enforcement;
- fear of severe penalties,
- possible restrictions or prohibitions in gaining access to the financial system, trade routes and markets of sanctioning countries and their partners;
- absence of uniform application and interpretation of unilateral sanctions;
- proliferation of complex non-legal documents, such as guidance documents, frequently asked questions and other forms of non-normative legal acts extensively interpreting legal regulations;
- a rising number of designations, and of criminal and civil cases for sanctions violations, with extraterritorial application of sanctions regimes;
- an overlap among various jurisdictions, rendering compliance a very challenging endeavor; an expansion of the grounds for sanctions designations to include facilitation in circumvention of sanctions regimes; and the identification of sanctions as the “first resort” foreign policy;

75. A/78/196.

- refusal of sanctioning states to operate by legal means, but presenting rather unilateral sanctions as a part of foreign policy;
- expansion to monitor all supply chains or all contacts of any partner that make compliance nearly impossible;
- imposition of sanctions and means of their enforcement extraterritorially;
- challenges to pay due to financial limitations, to deliver or to ensure due to sanctions against insurance or delivery companies.

An example is a company that stops all business with a sanctioned country, including humanitarian operations that may be covered by humanitarian exemptions for the delivery of food or medicines; or banks decide to block transactions with a country under unilateral sanctions, its nationals and companies. Even monopolist producers of medicine and medical equipment refuse to sell unique life-saving medicines, equipment or spare parts.

Businesses often refer to the “chilling effects” of sanctions and their reluctance to engage in transactions (including of a humanitarian character) due to the fear of severe penalties, possible restrictions or prohibitions in gaining access to the financial system, trade routes and markets of sanctioning countries and their partners. ‘When the government passes a law, it often regulates conduct. People and organizations adjust their behavior to fit the legal rule [...]. But regulations are sometimes unclear, uncertain, or overbroad, which can lead people to refrain from engaging in permissible actions because they are unsure whether they will be legally sanctioned. This phenomenon — a law’s effect on activity outside the scope of its intended target — is called the chilling effect.’⁷⁶

Legality issues. Unilateral sanctions have become a usual means in the practice of states. Sanctioning states present it as a form of its foreign policy without any assessment of legality or humanitarian impact⁷⁷. At the same time, illegality is the main criteria for qualification of unilateral activity as unilateral coercive measures.

76. *Turn On The Light: Why Tackling Energy-Related Challenges in the Nexus of Water and Food in Syria Cannot Wait*, OXFAM Discussion Paper, <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/621586/dp-turn-on-the-light-290124-en.pdf?sequence=1>, visited on May, 2024, p. 5, para. 10.

77. See. Douhan A.F., “Filling the protection gap in the face of unilateral sanctions”, *Euroasian Journal of International Law* 1 (2023): 23-39; Douhan A.F., “Humanitarian impact of unilateral sanctions” (Chapter 23), in K. Kirkheim (ed.), *The Routledge Handbook of the Political Economy of Sanctions* (Routledge, 2024), pp. 291-303.

It shall be taken into account that articles 24-25, Chapter VII of the UN Charter provide for *unique* powers of the UN Security Council to impose enforcement measures with the purpose to maintain international peace and security. It is also generally agreed that international organizations are entitled to impose sanctions on their member states under and in accordance with their constituent documents⁷⁸ as long as they comply with peremptory norms of international law.

However, the majority of the abovementioned unilateral sanctions taken by states or regional organizations without or beyond the authorization of the UN Security Council have no grounds in international law. Naturally, not every unfriendly act or means of pressure by a state is illegal. Customary international law provides for the possibility of “unfriendly acts”, which is not inconsistent with any international obligation of the State engaging in it (retorsion⁷⁹), and for proportionate countermeasures in response to the violation of international obligations, as long as they abide by the limitations set out in the Draft articles on Responsibility of States for Internationally Wrongful Acts (DARS).⁸⁰ International law also recognizes the possibility to exercise universal criminal jurisdiction as concerns international crimes.

Customary international law provides for the possibility of “unfriendly acts” which can be qualified as **retorsions** depending on the scope of legal obligations of specific states⁸¹ and can in certain situations include “Acts of retorsion ... the prohibition of or limitations upon normal diplomatic relations or other contacts, embargoes of various kinds or withdrawal of voluntary aid programmes” if these acts are compatible with legal obligations of sanctioning states⁸². It is maintained here that assessing their legality shall concern all international obligations that are in force between states:

78. Tom Ruys, *Sanctions, Retorsions and Countermeasures: Concepts and International Legal Framework*, in L. van Herrik (ed), *Research Handbook on UN Sanctions and international Law* (2017).

79. Draft articles on responsibility of states for internationally wrongful acts with commentaries 2001 // *Yearbook of the International Law Commission, 2001*, vol. II, Part Two, p. 128.

80. *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* and corrigendum (A/56/10 and Corr.1), Chap. IV.; see also Tzanakopoulos A., “We Who Are Not as Others: Sanctions and (Global) Security Governance”, *Defenders*, Winter 2021: 32-48, p. 38.

81. See in particular, T. Ruys, 2017.

82. Draft articles on responsibility of states for internationally wrongful acts with commentaries 2001 // *Yearbook of the International Law Commission, 2001*, vol. II, Part Two, p. 128.

multilateral, bilateral and unilateral, including treaties on amity, navigation, commerce, investment⁸³, human rights and fundamental freedoms⁸⁴, including the possibility of appeal⁸⁵, regular review⁸⁶ and humanitarian exceptions⁸⁷.

In accordance with DARS, **countermeasures** can only be taken by the directly affected States in response to violations of international obligations in order to restore fulfilment of that obligation; they shall be temporary and proportionate to the violation, and shall not violate human rights, peremptory norms of international law, or humanitarian law.⁸⁸ Naturally, countermeasures can also be taken by States other than directly affected States if “*the obligation breached is owed to the international community as a whole*”⁸⁹ that means in response to the violation of *erga omnes* obligations like acts of aggression, genocide, apartheid, impediments to the right to self-determination, slavery, slave trade, racial discrimination, torture, and serious violations of international humanitarian law of a “*systematic, gross or egregious nature*”⁹⁰, if it “*involves a gross or systematic failure by*

83. *Extraterritorial sanctions on trade and investments and European responses*, Policy Department for External Relations Directorate General for External Policies of the Union PE 653.618 - November 2020, pp. 55-60.

84. *Basic Principles on the Use of Restrictive Measures (Sanctions)*, European Union, Brussels, June 7, 2004, 10198/1/04, paras. 1, 4, <https://data.consilium.europa.eu/doc/document/ST-10198-2004-REV-1/en/pdf>, visited on May, 2024; *Guidelines on the Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy*, Council of the European Union, paras. 9-11; see also *Council Decision (CFSP) 2020/1999 of 7 December 2020 Concerning Restrictive Measures Against Serious Human Rights Violations and Abuses*, OJ L 410I, 7.12.2020, pp. 13-19.

85. Consolidated version of the Treaty on the Functioning of the European Union, art. 275.

86. “Guidelines on the implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy”, Council of the European Union, para. 6.

87. *Ibid.*, paras. 25-27, 68-69.

88. DARS. EU statements on sufficiency of proportionality to the “objective they seek to achieve” does not correspond DARS (Contribution to the UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions of Denmark of 16.03.2021).

89. DARS, art. 48 (1b).

90. *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, International Court of Justice, para. 33; *Case Concerning East Timor (Portugal v. Australia)*, International Court of Justice, June 30, 1995, para. 29, <https://www.refworld.org/cases,ICJ,40239bff4.html>, visited on May, 2024. See also *Draft Articles on Responsibility of States for Internationally Wrongful Acts (DARS)*, pp. 111-113, 127.

the responsible State to fulfil the obligation”⁹¹ with the purpose to cease the internationally wrongful act and to guarantee its non-repetition⁹².

Even in the case of a breach of *erga omnes* obligations, countermeasures shall generally be restricted to addressing the “*non-performance for the time being of international obligations of the State taking the measures towards the responsible State*”⁹³, proportionate with the injury suffered⁹⁴, with due account for the requirements of humanity and the rules of good faith⁹⁵, and implemented in accordance with the rules of art. 52 of DARS⁹⁶ and art. 54 of the Draft articles on the Responsibility of International Organizations⁹⁷.

The **proportionality** of countermeasures appears to be another actively discussed element in the political and academic discourse. In particular, references to proportionality to the objective or motive rather than to the injury suffered, cited by some politicians⁹⁸, have no grounds in international law. As reaffirmed by the International Court of Justice in numerous cases, disproportionate countermeasures are prohibited by international law⁹⁹.

91. DARS, art. 40.

92. DARS, art. 48(2). See also B. Simma, “Does the UN Charter Provide an Adequate Legal Basis for Individual or Collective Responses to Violations of Obligations *Erga Omnes*?”, pp. 126-127.

93. Draft Articles on Responsibility of States for Internationally Wrongful Acts, art. 49. Even so, B. Geyrhalter, *e.g.*, claims it is possible that economic sanctions may be applied to states responsible for mass violations of fundamental human rights; see B. Geyrhalter, *Friedenssicherung durch Regionalorganisationen ohne Beschluß des Sicherheitsrates* (Cologne: LIT, 2001), p. 65.

94. DARS, art. 51.

95. See *The Naulilaa Case (Portugal vs. Germany)*, Special Arbitral Tribunal, 1928, p. 1026, https://legal.un.org/riaa/cases/vol_III/1371-1386.pdf, visited on May, 2024; *Draft Articles on Responsibility of States for Internationally Wrongful Acts (DARS)*, comments to art. 50, para. 6.

96. ILC Articles on Responsibility of International organizations with commentaries, 2011, *Yearbook of the International Law Commission*, vol. II, Part Two, pp. 94-95; ILC Articles on State Responsibility with commentaries, p. 135.

97. *Ibid.*

98. Position of Germany, Arria formula meeting, November 2021.

99. Naulilaa incident, UNRIAA, vol. II (Sales No. 1949.V.1), pp. 1011, 1028; *Gabcikovo-Nagymaros Project*, ICJ Decision of 1997, p. 56, paras. 85, 87, citing *Territorial Jurisdiction of the International Commission of the River Oder*, Judgment No. 16, 1929, P.C.I.J., Series A, No. 23, p. 27; *Extraterritorial sanctions on trade and investments and European responses*, Policy Department for External Relations Directorate General for External Policies of the Union PE 653.618 - November 2020, p. 55.

Another criteria which shall be taken into account while deciding on the legality of unilateral activity is a prohibition to violate either peremptory norms of international law or **obligations to protect fundamental human rights** and those prohibiting reprisals towards any individual¹⁰⁰. Therefore, the observance of human rights obligations as well as assessments of the humanitarian impact are vital in the course of any unilateral activity.

The humanitarian impact of sanctions started to be assessed already in early 2000 as regards comprehensive and economic sanctions of the UN Security Council. In particular, the report by 13 humanitarian non-governmental organizations on the effects of the UN Security Council sanctions against Iraq under resolution 687(1991) of 3 April 1991, prepared for the Global Policy Forum in 2002, noted chronic child malnutrition, poor food basket composition, increased child mortality, economic crisis, the destruction of electricity supplies and medical care, and many other factors¹⁰¹. UN organs, reaching the same conclusions, also reported on the low efficacy and high negative humanitarian impact of sanctions¹⁰². As a result, targeted sanctions imposed by the UN Security Council have been intended to minimize the negative humanitarian effects of sanctions against states¹⁰³. The Committee on Economic, Social and Cultural Rights (hereafter, CESCR), in General Comment No. 8, referred to the negative impact of sanctions on economic, social and cultural rights already in 1997¹⁰⁴.

Unfortunately, unlike sanctions of the UN Security Council, the expanding practice of unilateral sanctions does not provide any mechanisms for humanitarian assessment, and mechanisms of humanitarian exemptions and redress are generally insufficient, complicated, confusing, lengthy,

100. Draft Articles on Responsibility of States for Internationally Wrongful Acts, art. 50(1).

101. *Iraq Sanctions: Humanitarian Implications and Options for the Future*, Global Policy Forum, August 6, 2002, <https://www.globalpolicy.org/component/content/article/170-sanctions/41947-iraq-sanctions.html>, visited on May, 2024.

102. *UN Sanctions: Humanitarian Aspects and Emerging Challenges*, Chairperson's Report, <https://sanctionsplatform.ohchr.org/record/4881> visited on May, 2024; Claude Bruderlein, *Coping with the Humanitarian Impact of Sanctions: An OCHA Perspective*, OCHA, https://reliefweb.int/sites/reliefweb.int/files/resources/677CE646930621C7C1256C22002C7B7F-OCHA_dec1998.pdf, visited on May, 2024.

103. "Secretary-General, In address to International Rescue Committee, reflects on humanitarian impact of economic sanctions," Press Release SG/SM/7625.

104. UN Committee on Economic, Social and Cultural Rights, *General Comment No. 8: The Relationship Between Economic Sanctions and Respect for Economic, Social and Cultural Rights*, December 12, 1997, E/C.12/1997/8, paras. 10-14, <https://www.refworld.org/docid/47a7079e0.html>, visited on May, 2024.

costly and ineffective¹⁰⁵. Thematic and country visit reports of the Special Rapporteur illustrate the devastating humanitarian impact of unilateral sanctions¹⁰⁶, which are sometimes called a peaceful tool that substitutes for military action and wars¹⁰⁷.

Consequently, numerous UN Human Rights Council resolutions refer to the negative impact of unilateral coercive measures (hereafter, UCMs) on the broad scope of fundamental human rights including the rights to life, health and medical care, an adequate standard of living, food, education, work, housing, development and many other¹⁰⁸, with a special impact on women, children, the poorest, adolescents, the elderly, persons with disabilities and other persons in vulnerable situations¹⁰⁹. These resolutions affirm that people should not be deprived of their means of subsistence, and that the extraterritorial application of laws is inadmissible¹¹⁰.

105. See “*UN Expert Issues Sanctions Guidance Amid COVID-19 Aid Concerns*”, United Nations News, December 10, 2021, <https://www.ohchr.org/en/press-releases/2020/12/un-expert-issues-sanctions-guidance-amid-covid-19-aid-concerns>, visited on May, 2024.

106. *Reports Submitted to the Human Rights Council on Human Rights and Unilateral Coercive Measures*, <https://www.ohchr.org/EN/Issues/UCM/Pages/Reports.aspx>, visited on May, 2024.

107. IAPD Report.

108. Douhan A.F., “Humanitarian impact of unilateral sanctions”, pp. 291-303; Douhan A.F., “Impact of unilateral coercive measures on food security”, *Eurasian Journal of International Law* 2 (2024): 10-24.

109. HRC Resolution, *Human Rights and Unilateral Coercive Measures*, A/HRC/RES/15/24; HRC Resolution, *Human Rights and Unilateral Coercive Measures*, A/HRC/RES/19/32, preamble, para. 12; HRC Resolution, *Human Rights and Unilateral Coercive Measures*, A/HRC/RES/24/14, paras. 1-3; HRC Resolution, *Human Rights and Unilateral Coercive Measures*, A/HRC/RES/30/2, preamble, paras. 4-5; HRC Resolution, *Human Rights and Unilateral Coercive Measures*, A/HRC/RES/34/13, preamble, para. 12; HRC Resolution, *Human Rights and Unilateral Coercive Measures*, A/HRC/RES/45/5, preamble. Detailed impact can also be found in the country visit reports, https://www.ohchr.org/en/documents-listing?field_content_category_target_id%5B182%5D=182&field_entity_target_id%5B1282%5D=1282, visited on May, 2024; see also Douhan A.F., “*The Impact of Unilateral Sanctions on the Implementation of Convention on the Rights of Persons with Disabilities*”, *Journal of International Law and International Relations* 2 (2023): 3-9; Douhan A.F., “*Impact of Unilateral Sanctions on the Health of Girls and Women*”, *The New International Economic Order 1974-2024. A Collection of Reflections and Policy Proposals to Mark the 50th Anniversary of the New International Economic Order and Update it for the 21st Century*, <https://progressive.international/blueprint/c6d07cba-dd7a-40c2-bb82-049c7bbf9609-douhan-unilateral-sanctions-hurt-womens-health/en>, visited on May, 2024.

110. HRC Resolution, *Human rights and unilateral coercive measures*, A/HRC/RES/15/24, para.8; HRC Resolution, *Human rights and unilateral coercive measures*, A/HRC/

As a result, contemporary unilateral sanctions do not fit the criteria applied to countermeasures to exclude their wrongfulness in accordance with the law of international responsibility. The use of unilateral sanctions cannot be justified by mere references to the high values or the exercise of the foreign policy. As reflected above, any references to common concern can only be taken in accordance with the law of international responsibility that is not fulfilled in the case of unilateral sanctions.

Unilateral sanctions are also affecting many other areas of international law. Special attention shall be paid first of all to the *law of human rights*. As unilateral sanctions, means of their enforcement and over-compliance affect a broad scope of human rights including civil, economic, social, cultural rights and the right to development. At the same time it is a number of specific human rights are affected by unilateral sanctions too. In particular, The US is traditionally imposing unilateral sanctions via declaration of the state of national emergency¹¹¹. As noted above, states can only apply any unilateral means of pressure as a part of their foreign policy if they do not violate their international obligations. State of national emergency announced by the US cannot be used for justification or a ground for application of unilateral sanctions too.

US stipulation and announced power to impose restrictive measures due to proclamation of the state of national security, does not conform the requirements of article 4 of the International Covenant on Civil and Political Rights (ICCPR), which allows a party to derogate from some of its obligations to promote and protect human rights on the basis of declaring a public emergency only if there is a *threat to the life of the nation*. Article 4 of the ICCPR authorizes states to derogate from their obligations under the convention “(i) *n time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed,*” it shall be temporary, applied without any discrimination and continue to demonstrate full respect to a number of non-derogable human rights, such as the right to life and the right to not be subject to torture or cruel, inhuman or degrading treatment or punishment. Derogations from the ICCPR must be as narrow as possible in view of the situation, and must comply with other obligations under international law¹¹².

RES/19/32, para. 11; HRC Resolution, *Human rights and unilateral coercive measures*, A/HRC/RES/34/13, preamble, para. 11.

111. *OL USA 5/2021*, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25879>, visited on May, 2024.

112. ICCPR.

Criteria of the state of emergency under art. 4 of the ICCPR are not observed by the US, as a state of emergency is proclaimed in the situation when no threat to the life of the nation exists, it might last (to be extended) for extremely long periods of time, have extraterritorial effect and affects human rights including those which cannot be derogated even in the time of emergency.

The use of unilateral sanctions is also preventing states from any possibility to ensure protection of such rights via *access to justice*. According to the General Recommendation No. 33 of the Committee on Elimination of Discrimination against women (CEDAW), access to justice encompasses “justiciability, availability, accessibility, good quality and accountability of justice systems, and provision of remedies for victims”¹¹³. General comment No. 32 of the HR Committee includes as its integral part access to legal assistance, access to the documents, evidences and other relevant materials; access to the “duly reasoned written judgement of the trial court”; access to the tribunal at the appeal level¹¹⁴.

Guidance on the Access to justice for women additionally refers to: non-discrimination; widespread legal awareness and literacy among the population; affordable and quality legal advice and representation; accessible, affordable, timely, effective, efficient, impartial, corruption-free and trustworthy dispute settlement mechanisms; respect to the human rights standards; availability of efficient and impartial mechanisms for the enforcement of judicial decisions¹¹⁵.

The right of individuals to judicial protection of their rights is guaranteed both in international practice and legal doctrine. All procedural guarantees, including the right to due process¹¹⁶ and the right not to be held guilty for any offense that was not an offense at the moment of its commission¹¹⁷ – are considered inalienable by human rights institutions¹¹⁸, legal

113. CEDAW, General recommendation No. 33.

114. HRC, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32); A/60/147, para. 12 (c, d); 67/187. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2013), para. 3.

115. Framework for measuring access to justice including specific challenges facing women, Guidance note, 2016, p. 7.

116. ICCPR, art. 14 (2-7).

117. ICCPR, art. 15 (1).

118. HRC, CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency (CCPR/C/21/Rev.1/Add.11), para. 16.

scholars¹¹⁹ and international treaties¹²⁰. Violating these rights is qualified even in time of war as a serious breach of international humanitarian law¹²¹.

The right to access courts as an integral part of the right to fair trial shall be guaranteed in criminal cases for any individuals “*who may find themselves in the territory or subject to the jurisdiction of the State party*”¹²². The same protection shall be provided even if rights are violated extraterritorially¹²³. Despite the qualification of unilateral sanctions by sanctioning states as foreign policy tools, means to protect security, and references to their administrative rather than criminal nature, it is believed here that reasons cited by sanctioning states as a ground for unilateral sanctions do not change their status from the perspective of legal perception. Consequences of designations, criminal and civil charges for circumvention of sanctions regimes are much higher than those for minor administrative delicts, therefore sanctioning states are obliged to ensure access to justice for protection of rights affected by sanctions, civil, administrative, criminal or other penalties. Therefore, the obligation to guarantee procedural standards including the rights to be fully informed of the charges and of the decision taken; to be heard and to be able to defend oneself; to appeal; and to redress and compensation in the case of targeted sanctions.

It is very concerning that over-lapping unilateral sanctions of various types, confusing wording of sanctions regulations, the risk of severe

119. Roberta Arnold, “Human Rights in Times of Terrorism”, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 66 (2006), p. 305; Yvon Dandurand, *Handbook on Criminal Justice and Responses to Terrorism*, Criminal Justice Handbook Series (New York: United Nations, 2009), pp. 40-41.

120. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949, 75 UNTS 287, art. 72-73, 146 (4); Geneva Convention Relative to the Treatment of Prisoners of War, 1949, 75 UNTS 135, art. 105-108, 129 (4); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1977, UNTS 3, art. 75; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1977, UNTS 609, art. 76.

121. Fourth Geneva Convention, art. 147; Protocol I, art. 85 (4e).

122. HRC, General Comment No. 32, Article 14.

123. Adjudicating Economic, Social and Cultural Rights at National Level, Practitioners Guide No. 8, p. 64-67; Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, principles 8-9; O. de Schutter [et. al], Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (2012), p. 1089; see also Jessica Almqvist, “Human rights critique of European judicial review: Counter-terrorism sanctions,” *International and Comparative Law Quarterly* 57 (2) (2008), p. 308.

penalties for their violation constitute serious challenges for access to justice and redress. Designated individuals or companies are often prevented from submitting a case to the foreign court, face challenges to get proper legal assistance, to travel to present a case, to transfer money to cover legal expenses, court or commercial arbitration fees. Extraterritorial application of secondary sanctions, civil and criminal cases for circumvention of sanctions regimes results in prosecution for acts often not criminalized in the country of nationality/residence.

The above approach raises a range of legal problems, including low standards of proof, non-justiciability of cases and even extradition without any legal grounds.¹²⁴ Practitioners refer to the high risk of arbitrary interpretations of alleged circumventions of unilateral sanctions which, on a proper analysis, do not constitute any offence¹²⁵ even under sanctions regulations. In such cases, penalties for alleged circumvention, and designation of individuals as a result of such alleged conduct violate standards of fair trial, presumption of innocence, and the right to not be punished for activities which do not constitute a crime.

As a result, right to access justice, right to effective remedies and right to fair trial not for the directly designated individuals only, but for all those affected by unilateral sanctions including the general population. Non-directly designated individuals are nearly deprived of any possibility to protect their right in the face of unilateral coercive measures.

It is also very concerning that unilateral create substantial challenges for lawyers, when dealing with sanctions cases, including but not limited to:

- the need to get a license for every sanctions-related case. General license issued for lawyers in the UK e.g. is qualified to be non-sufficient and not-efficient¹²⁶. The US General licenses are only provided under specific sanctions regimes¹²⁷;

124. See *US Fails in Bid to Extradite Brit for Helping North Korea Evade Sanctions with Cryptocurrency*, <https://therecord.media/us-fails-in-bid-to-extradite-brit-for-helping-north-korea-evade-sanctions-with-cryptocurrency>, visited on May, 2024; *Enforcement of Financial Sanctions and Extradition Risk*, <https://corkerbinning.com/enforcement-of-financial-sanctions-and-extradition-risk/>, visited on May, 2024.

125. See *Enforcement of Financial Sanctions and Extradition Risk*, <https://corkerbinning.com/enforcement-of-financial-sanctions-and-extradition-risk/>, visited on May, 2024.

126. Submissions by M. Swainston, McNair International.

127. Dogra S., Wilhelm K., Darling S., Bowen J., Denton J., “*Key Sanctions Issues in Civil Litigation and Arbitration*”, <https://www.linklaters.com/de-de/knowledge/publications/>

- lengthy and uncertain process of getting licenses to represent clients under sanctions and to be entitled to be paid for the services (UK)¹²⁸, US¹²⁹, EU¹³⁰ even when it refers to international adjudication, including the International Court of Justice¹³¹;
- geopolitical motivation in licensing decision-making, “even where the grounds of a licensing purpose have been satisfied”¹³²;
- challenges to get payment for the work done as banks are blocking accounts of clients, relevant bank transfers or already transferred money;
- fear to be subjected to criminal prosecution due to adoption of legislation on criminalization of circumvention of sanctions regimes, providing for higher responsibility of legal professionals¹³³;
- requests to report on the content of their discussion with clients and monitor all details of the clients’ structure, including piercing of the corporate veil;
- obligation to report on the violation of EU unilateral sanctions, “when providing services in the context of professional activities, as there “is a

alerts-newsletters-and-guides/2023/october/17/gir-guide-to-sanctions-4th-edition-key-sanctions-issues-in-civil-litigation-and-arbitration, visited on May, 2024.

128. Designated persons face delays of many months in receiving licenses even for subsistence, <https://www.lawgazette.co.uk/practice-points/time-for-a-general-licence-to-cover-basic-needs/5117856.article>, visited on May, 2024. There is massive obstruction of businesses, <https://www.bloomberg.com/news/articles/2022-09-13/investors-fume-at-uk-treasury-s-license-delays-for-russian-firms>, visited on May, 2024. Lawyers face lengthy delays in obtaining licenses to represent clients, see e.g. <https://corkerbinning.com/russian-sanctions-and-the-law-of-unintended-consequences/>, visited on May, 2024.

129. Submission by A.D. Bolivar; *U.S. Code of Federal Regulations*, Title 31, § 542.201, 542.507, 542.508, 594.517; see *OFAC Guidance on the Provision of Legal Services*, https://www.treasury.gov/resource-center/sanctions/Documents/legal_fee_guide.pdf, visited on May, 2024.

130. Claire DeLelle, Nicole Erb, “Key Sanctions Issues in Civil Litigation and Arbitration”, *Global Investigations Review*, 2020, <https://globalinvestigationsreview.com/guide/the-guide-sanctions/first-edition/article/key-sanctions-issues-in-civil-litigation-and-arbitration>; submission by Partners for Transparency, visited on May, 2024.

131. Submission by M. Swainston.

132. *Ibid.*; *Guidance on the Principles Its Licensing Caseworkers Follow to Assess License Applications*, <https://www.gov.uk/government/publications/financial-sanctions-licensing/ofsi-licensing-designated-individuals-licensing-principles-2>, visited on May, 2024.

133. Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673, art. 8 (c).

clear risk of the services of those legal professionals being misused for the purpose of violating Union restrictive measures”¹³⁴;

- reputational risks, including accusations in amorality or qualification of efforts to challenge the legality of unilateral sanctions as defamation or disinformation¹³⁵;
- prohibition to provide legal advisory services to certain types of clients, including “the Russian Government, or legal persons, entities or bodies established in Russia even those which do not fall under acting sanctions regimes” without certainty about what can be qualified as “legal advice”¹³⁶;
- Limited exemptions from the prohibition to provide legal services under art. 5n of Council Regulation (EU) No. 833/2014, referring mostly to the “services that are strictly necessary for the exercise of the right of defense in judicial proceedings and the right to an effective legal remedy”;¹³⁷

It is also important to note that many of unilateral sanctions violate ***fundamental principles and norms of international law***, including the principle of sovereign equality of states, principle of non-intervention into the domestic affairs of states. It started from 1990th with announcement of certain states as belonging to the “axis of evil”¹³⁸, “pariah states”¹³⁹, “failed

134. Directive (EU) 2024/1226, preamble (18).

135. See Bob Seely *Criticizes Libel Laws Over Russian Influence in UK*, <https://www.standard.co.uk/news/uk/bob-seely-vladimir-putin-libel-law-russia-parliamentary-privilege-b985500.html>, visited on May, 2024.

136. Regulation (EU) No. 269/2014 concerning restrictive measures in respect of the actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, art. 2.

137. *Access to Justice in the Face of Unilateral Sanctions and Overcompliance*, Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, Alena Douhan, A/79/183, 18 July 2024, paras. 5, 15, 48, 59, <https://documents.un.org/doc/undoc/gen/n24/213/84/pdf/n2421384.pdf>, visited on October, 2024.

138. Damrosch L.F., “*Sanctions Against the Perpetrators of Terrorism*”, *Houston Journal of International Law* 22 (1) (1999), p. 65; Simon S., Benjamin D., “*America and the New Terrorism*”, *Survival (The IISS Quarterly)* 42 (1) (2000), p. 62; *Looks Like ‘Axis of Evil’ Is Back on the Menu*, <https://foreignpolicy.com/2023/11/29/axis-of-evil-russia-china-iran-north-korea-bush-era/>, visited on May, 2024.

139. *The 13 Current Pariah States*, <https://www.worlddata.info/pariahstates.php/>, visited on May, 2024.

states”, not entitled for the protection by international law¹⁴⁰, or states – sponsors of terrorism¹⁴¹.

Such qualifications put a reputational pressure on the states and are often used as a ground to justify withdrawal of the immunity from and arrest of the state property including the reserves of Central banks due to the refusal to recognize the results of elections or the government if the country, or qualifying a state as sponsoring terrorism. This approach contradicts principles of international law, including the principle of sovereign equality of states and principle of non-intervention into the domestic affairs of states¹⁴². In accordance with the Declaration on Principles of International Law of 1970: “*All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature*”¹⁴³.

Additionally maximum pressure campaigns against Iran includes a broad scope of measures aimed to deprive Iran of any revenues and to undermine its economy¹⁴⁴. Billon the Prohibition of Normalization of relations with Assad regime is aimed to prevent any normalization of relations of other state with Syria, prevent recognition of its government as well as any attempts of reconstruction and rebuilding of the country, dramatically affected by 12 years of military hostilities and unilateral sanctions¹⁴⁵.

This activity constitutes a clear violation of the principle of sovereign equality of states and principle of intervention in the domestic affairs of states, principle of self-determination of the people of Syria, as well as violation of rights of other countries, which are to be prevented from cooperation with Syria¹⁴⁶. Under declaration on Principles of International law

140. *Failed States* 2024, <https://worldpopulationreview.com/country-rankings/failed-states/>, visited on May, 2024.

141. *AL USA 31/2023 of 6 February 2024*, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28693>, visited on May, 2024.

142. *AL USA of 16 February 2024*, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28740>, visited on May, 2024.

143. The Charter of the United Nations. A Commentary. 1995, p. 84.

144. Azizi H., Golmohammadi V., Vazirian A.H., “Trump’s “maximum pressure” and anti-containment in Iran’s regional policy”, *Digest of Middle East Studies* 29 (2020):150-166 (p. 150).

145. *Assad Regime Anti-Normalization Act of 2023 S. 2342*, <https://www.congress.gov/118/crec/2023/07/18/169/123/CREC-2023-07-18-pt1-PgS2989-3.pdf>, visited on May, 2024.

146. *Visit to the Syrian Arab Republic - Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights*, Alena

“[...] armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law. No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind.”

Extraterritoriality used to be a recognized characteristics of economic and other types of sanctions since late 1980s. Some criticism of the extra-territorial application of unilateral measures has been expressed by the UN already in 1948 towards the Arab League, which sought to implement a secondary boycott of Israel and conditioned trade with third-state companies on their rejection to do any business with Israel¹⁴⁷.

Since 1996, starting with the Helms-Burton Act, the United States actively prevents foreign partners from accessing U.S. markets when they are doing business with governments and companies subject to primary sanctions¹⁴⁸. The Caesar Act can be cited as a clear example of extraterritorial application, threatening to sanction third countries, companies, or individuals dealing with the Government of Syria, its Central bank or listed persons, preventing inter alia reconstruction projects in the country already severely affected by military conflict.¹⁴⁹ Measures taken under Caesar act have been further enforced via abovementioned Assad Regime Anti-Normalization Act of 2023.

The expansion of jurisdiction on the ground of payment in U.S. dollars has been repeatedly cited for China as regards Huawei's economic and trade exchanges with Iran¹⁵⁰; Venezuela – as for the reported threats to private business and third-country donors, partners and humanitarian organizations¹⁵¹ or designation of owners of ships, vessels and captains delivering oil and gasoline cargos to and from Venezuela; humanitarian NGOs – as for the designation of banks and prevention of payments in US dollars that

Douhan, A/HRC/54/23/Add.1, <https://www.ohchr.org/en/documents/country-reports/ahr5423add1-visit-syrian-arab-republic-report-special-rapporteur>, visited on May, 2024.

147. See Ruys Tom, 2017.

148. Helms-Burton Act, Iran and Lybia sanctions acts, etc.

149. IAPD Report; see also AL USA 30/2020 of 21 December 2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25785>, visited on May, 2024.

150. Response of China to the Questionnaire.

151. Venezuela preliminary country assessment report.

makes impossible financial transfers to/from states targeted by sanctions¹⁵² and many others.

General consent about the illegality of applying extraterritorial sanctions exists today both in the legal doctrine and political discourse of the directly targeted states (Iran, Belarus, Guyana¹⁵³, China, etc.) and countries which traditionally are viewed as imposing sanctions¹⁵⁴. In particular, the European Union reports that it has been affected among others by extraterritorial measures applied by the United States against Cuba, Russia and Iran while building North Stream 2. It refers to the incompatibility of extraterritorial sanctions with international law as affecting the sovereignty of the EU member-states¹⁵⁵.

It has been generally agreed that any measures can only be taken by states with sufficient jurisdictional ties. The following jurisdictional grounds have been identified in particular in the EU Parliament study: when conduct produces substantial effects within the territory of the legislating State; when a state needs to legislate to remedy harm done to its nationals abroad; to protect the security of the State against conduct by foreigners or non-residents; and on the basis of *universal jurisdiction* to remedy international crimes¹⁵⁶. Therefore, the EU member states and their partners emphasize that their sanctions are non-extraterritorial and are to be applied within their respected jurisdictions only¹⁵⁷. The EU insists that its sanctions are not extraterritorial and believes that extraterritoriality is against international law.

152. *Virtual Arria Meeting, End Unilateral Coercive Measures Now*, <https://webtv.un.org/en/asset/k1l/k1l5rfnox1>, visited on May, 2024; see also OHCHR, *Call for Submissions: UCM-Study on Impact of Unilateral Sanctions on Human Rights During the State of Emergency Amid COVID-19 Pandemic*, <https://www.ohchr.org/en/calls-for-input/2021/call-submissions-ucm-study-impact-unilateral-sanctions-human-rights-during>, visited on May, 2024.

153. Response by the Government of the Cooperative Republic of Guyana to the Call for Submissions on the “Notion, characteristics, legal status and targets of unilateral sanctions”.

154. *Commission, The European Economic and Financial System: Fostering Openness, Strength and Resilience*, Communication Brussels, COM (2021) 32 final (Key action 7), https://ec.europa.eu/finance/docs/policy/210119-economic-financial-system-communication_en.pdf, visited on May, 2024.

155. *Extraterritorial sanctions on trade and investments and European responses*, Policy Department for External Relations Directorate General for External Policies of the Union PE 653.618 - November 2020, p. 51.

156. *Ibid.*, pp. 52-54.

157. Contribution to the UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions of Denmark of 16 March 2021; Contribution of Ireland; Contribution of EU; Response of Association of Reintegration of Crimea of 29 March

Extraterritorial application is reported to result in overcompliance and to affect all foreign partners, in trade, health, education, culture etc.¹⁵⁸ They also result in the expansion of direct and indirect targets of sanctions, including specially designated individuals and companies, populations in whole or in part, refugees, counter-partners of designated individuals and companies, nationals of sanctioning states, third country nationals, humanitarian organizations and their constituent parts, and employees and beneficiaries in third countries¹⁵⁹.

It is also necessary to pay attention to multiple attempts to enforce unilateral sanctions via non-explicit means, in particular, via applying ***pressure over the reputation*** of the states, companies or individuals under sanctions, or those with nationality, or place of registration in the targeted state, or those, which continue cooperation of any type with those targeted or affected by unilateral sanctions¹⁶⁰. Challenges caused to the reputation of the directly affected individuals, lawyers¹⁶¹ and other people, subjected to reputational pressure to enforce sanctions¹⁶². At the moment she is not aware of any legal procedure aimed at the protection of reputation, but as reputational campaigns in sanctions' cases are held by cyber means mostly, starting a case of defamation might be very problematic. Any attempt to

2021; extraterritoriality is specially condemned by Venezuela response to the call for contributions.

158. *Venezuela Report; Right to Live Without a Blockade: Impact of the US Sanctions on the Cuban Population and Women's Rights* (OXFAM, 2021), pp. 19-20, <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/621191/bp-cuba-blockade-women-250521-summ-en.pdf;jsessionid=4DEE90884C8B0120039F23E740FD33C7?sequence=4>, visited on May, 2024; see also https://oi-files-cng-prod.s3.amazonaws.com/lac.oxfam.org/s3fs-public/file_attachments/bp-cuba-blockade-women-250521-en.pdf, visited on May, 2024; ODVV Input, December 2020.

159. Douhan A.F., "COVID-19 pandemic: humanitarian concerns and negative impact of unilateral sanctions and their exemptions, COVID-19 Human Rights Guidance Note", *Guidance Note on Unilateral Coercive Measures and COVID-19*, <https://www.ohchr.org/Documents/Issues/UCM/UCMCOVID19GuidanceNote.docx>, visited on May, 2024.

160. Douhan A.F., *Reputational Risks as a Mechanism for Ensuring the Application of Unilateral Sanctions by States and Regional Organizations* (Довгань Е.Ф. Принуждение к соблюдению односторонних санкционных режимов и его правовые последствия // ЖМПМО.), *Pravo. by.* 2024, No. 1-2, C. 3-12.

161. See *Bob Seely Criticizes Libel Laws Over Russian Influence in UK*, <https://www.standard.co.uk/news/uk/bob-seely-vladimir-putin-libel-law-russia-parliamentary-privilege-b985500.html>, visited on May, 2024.

162. See *Over 1,000 Companies Have Curtailed Operations in Russia – Some Remain*, <https://som.yale.edu/story/2022/over-1000-companies-have-curtailed-operations-russia-some-remain>, visited on May, 2024.

protect the right to reputation via judicial means will be limited to the civil suits on the protection of dignity and reputation, with all abovementioned challenges of the access to the court. Lawyers representing companies under sanctions are often subjected to reputational risks, including accusations in amorality or qualification of efforts to challenge the legality of unilateral sanctions as defamation or disinformation¹⁶³.

Serious challenges can also be identified in the sphere of ***suppression of international terrorism and other types of transboundary crimes***¹⁶⁴. Analysis of reports on implementation of the UN Global counter-terrorism strategy¹⁶⁵ (in particular, in the UN GA resolution 77/298) clearly demonstrates that unilateral sanctions and over-compliance with them are affecting every part of the global counter-terrorism response¹⁶⁶.

In particular, unilateral coercive measures, means of their enforcement and over-compliance give raise to poverty, hunger, unavailability of education and descent work opportunities, and others, qualified as an integral part of the effective counter-terrorism strategy by the General Assembly, that means that they *facilitate the conditions conducive to terrorism*. Unilateral sanctions and over-compliance are also creating impediments for the delivery of humanitarian assistance to the countries affected by unilateral sanctions, even if the deliveries are sought to take place via collective action including based on the UN Security Council resolution 2664 (2022). National legislations of sanctioning countries although formally adopting certain acts presuming to enable implementation of this resolution, in reality do not remove any of financial, delivery, insurance or punitive elements, that makes all presumably good intentions to stay on paper only, and *preventing access of those in need to life-saving goods and services*.

At the side event organized by my mandate in Geneva on March 13, 2024 3 huge humanitarian organizations (in particular, Caritas, World Evangelical Alliance and Oxfam) unanimously reported about the impossibility or high

163. MP Bob Seely criticizes UK libel laws for enabling Russian oligarchs to intimidate the press through 'amoral' lawyers, <https://www.standard.co.uk/news/uk/bob-seely-vladimir-putin-libel-law-russia-parliamentary-privilege-b985500.html>, visited on May, 2024.

164. Douhan A.F., "The Main Threats of the Use of Unilateral Sanctions from the Point of View of Achieving the Sustainable Development Goals and Ensuring International Peace and Security", in Douhan A.F. (ed.), *Countering Modern Challenges and Threats in the Context of International Security Law and Sustainable Development* (Minsk: Kolorgrad, 2023), pp. 11-38.

165. UN Global counter-terrorism strategy.

166. Resolution 77/298.

complexity of getting necessary licenses, other operational and administrative challenges, inefficacy of humanitarian exemptions and growing risks for them and humanitarian workers for their efforts to deliver even the basic food and medicine to the affected countries. They foresee that the recent adoption of legislation aimed at the criminalization of circumvention of sanctions regimes by the US, UK and the one being in the process of adoption within the EU, will make situation even more complicated.

Respect to the rule of law is an integral part of struggle against terrorism. At the same time unilateral coercive measures, sanctions regulations and administrative means *violate fundamental principles of international law, the rule of law and human rights while countering terrorism*, in particular, via extending jurisdictions extraterritorially, unilaterally qualifying states as sponsoring terrorism, denying immunities to states and their property without any access to justice and fair trial guarantees. Lawyers in the sanctioning countries report of their fear to represent targeted individuals or companies due to the risks for reputation or even criminal charges. Non-designated nationals and companies from targeted countries are deprived from any possibility to protect their rights in the courts. I repeatedly addressed these issues in communications but did not receive any response.

Use of alternative ways of payments and deliveries in the face of unilateral sanctions and over-compliance *increases the risks of money laundering and reduces transparency* preventing thus proper implementation of the UN Security Council resolutions on terrorism financing. In particular, some countries under sanctions drop down in the transparency index of the FATF after introduction of unilateral sanctions.

Moreover, UCMs also *reduce national capabilities in prevention and investigation of acts of terrorism as well as other transboundary crimes* due to absence of sufficient financing, brain-drain of experts, operational officials and judges; lack of specialized equipment, materials, and STI for forensic expertise; limited possibility or impossibility of training; insufficient regional cooperation and technical-level synergies in criminal matters; disruptions in the implementation of the universal counter-terrorism and suppression of other types of transboundary crimes conventions, bilateral agreements on cooperation in criminal matters among others¹⁶⁷.

167. AL/USA/31/2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28693>, visited on May, 2024.

It is also possible to refer to violation of other areas of international law, including International air law, law of international security, international sea law, international trade law, treaties of amity¹⁶⁸, immunity of state property¹⁶⁹, bilateral treaties on the mutual protection of investment, cooperation in civil, family and criminal matters and many others.

Unilateral sanctions are actively used today as a foreign policy tool by many states and international organizations. at the same time the majority of measures applied does not conform international obligations of sanctioning states and does not correspond standards of the law of international responsibility. They affect many areas of international law, including fundamental principles of international law, UN Charter as concerns principles of international law, and prohibition to intervene into the domestic affairs of states, international trade law, International air law, law of international security, law of human rights, bilateral and multilateral treaty and customary obligations.

They are also affecting a broad scope of human rights including civil, economic, social, cultural rights, right to development with very low probability of access to justice, access to effective remedies, accountability, responsibility and redress. As a result overwhelming majority of unilateral sanctions constitute unilateral coercive measures and shall be lifted.

They rise serious concerns as regards their humanitarian impact, impact on specific human rights or groups of human rights, effect on vulnerable groups, effect on human rights in specific countries, challenges to deliver life-saving goods, impact on critical infrastructure, efficacy of humanitarian exemptions, challenges to monitor humanitarian impact of unilateral sanctions¹⁷⁰ or to establish principles to minimize over-compliance or protect human rights affected by states and private actors¹⁷¹.

168. ICJ, *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v. USA)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2021, p. 9; ICJ, *Certain Iranian Assets (Iran v. USA)*, *Judgement* of 30 March 2023.

169. ICJ, *Alleged violations of State immunities (Islamic Republic of Iran v. Canada)*, *Application instituting proceedings*, 23 June 2023, <https://www.icj-cij.org/sites/default/files/case-related/189/189-20230628-app-01-00-en.pdf>, visited on May, 2024; *Certain Iranian Assets (Iran v. USA)*, *Judgement* of 30 March 2023.

170. A/HRC/59/.

171. *Guiding Principles on Sanctions, Compliance and Human Rights*, <https://www.ohchr.org/sites/default/files/documents/issues/ucm/cfis/guiding-principles-sanctions/guiding-principles-sanctions-over-compliance-hr.pdf>, visited on May, 2024.

CHAPTER II

Secondary sanctions, over-compliance and de-risking

(Prof. M. Strauss)

The humanitarian impact of unilateral sanctions, amply described throughout this book, is exacerbated by the presence of two increasingly common practices: (1) the imposition of secondary sanctions by sanctioning states as a means of enforcing their initial or primary sanctions, and (2) overcompliance with sanctions by companies that seek to minimize their legal, financial and business risks – including the risk of becoming targets of secondary sanctions – and that also seek to minimize compliance costs.

Secondary Sanctions

The degree to which unilateral sanctions can achieve their stated objectives depends largely on how comprehensively the sanctioning states are able to ensure compliance. This is done by enforcing sanctions through national laws and regulations that entail civil and/or criminal penalties for violations, although these can be bypassed by foreign actors outside of the sanctioning state's territorial jurisdiction. Efforts to eliminate the opportunity for parties abroad to ignore sanctions with impunity (and to profit at the sanctioning state's expense by replacing its interactions with the targeted party) have led to the imposition of “secondary sanctions” – sanctions targeting foreign individuals, organizations and entities that are alleged to have business or other dealings with the parties originally sanctioned.

Introduced first by the United States, secondary sanctions typically include travel restrictions that prevent alleged violators from entering U.S. territory; freezing their funds and property held in the United States or controlled by U.S. interests; and preventing them from carrying out transactions involving the U.S. financial system, thus blocking their potential to do business with entities that have U.S. links. Conceptually, secondary sanctions are similar to the Arab League's 1948 boycott that banned third-country companies doing business with Israel from also doing business in Arab League member states,¹ but the U.S. measures are more sophisticated in structure, more vigorous in enforcement and harsher in penalties.

1. League of Arab States, The principles of the Arab boycott of Israel, 1948. The Arab League suspended the boycott in 1994, but in 2024 some member states were still applying

The use of secondary sanctions is controversial for several reasons. From the perspective of international law, the practice can be seen to undermine the sovereignty of other states through interference in their internal affairs. It creates hindrances to their international trade and inter-state relations, and can prevent individuals and businesses from complying with domestic and third-country contractual obligations. With secondary sanctions, the United States extends the reach of its legal system extraterritorially to penalize actors anywhere in the world for their supposed involvement in activity that does not occur within the United States, that may have no direct or indirect relation to the United States, and that is not among the crimes which, by international agreement, are subject to universal jurisdiction. Indeed, the activity for which the foreign actors are penalized may be fully compliant with the laws and regulations of the countries where they carry it out.

From a humanitarian standpoint, secondary sanctions often violate a number of human rights and harm the well-being of people beyond the individuals, organizations and entities specifically targeted by them. Sometimes they affect entire populations that benefit from the penalized activity, especially when it is instrumental in ensuring humanitarian goals.

Secondary sanctions imposed by the United States against Syria illustrate how this occurs. American sanctions have been in place against Syria for several decades. They were substantially broadened after the Syrian government's suppression of domestic uprisings in 2011 in order "to deprive the regime of the resources it needs to continue violence against civilians and to pressure the Syrian regime to allow for a democratic transition as the Syrian people demand."² Under the Caesar Act,³ a U.S. law that came into effect in 2020, U.S. authorities are required to impose secondary sanctions against individuals and entities in any country that are deemed by the U.S. government to do business with Syrian entities operating in the construction sector on behalf of the Syrian government. This affects, among other things, the development of housing and essential public services destroyed by conflict in the country. According to Human Rights

it informally (Mohamed Shadi, "The Economic Impacts of Boycotts Against Israel and Supporting Companies," Al Habtoor Research Centre, 6 February 2024, <https://www.habtoorresearch.com/programmes/economic-impacts-of-boycotts-against-israel/>, visited on September, 2024).

2. U.S. Department of State, "Syria Sanctions", <https://www.state.gov/syria-sanctions/>, visited on September, 2024.

3. Caesar Syria Civilian Protection Act of 2019.

Watch, these sanctions have been “effectively disrupting efforts to rebuild Syria.”⁴

The Caesar Act’s secondary sanctions also target foreign companies that are deemed to facilitate Syria’s domestic ability to produce oil, gas and refined fuels, which are necessary for a wide range of humanitarian purposes such as producing and transporting food, medicine and medical supplies to locations where they are needed within Syria, and for transporting people, including to schools and hospitals.

Secondary sanctions are similar to primary sanctions in that they are essentially a response to a foreign situation that the United States considers to be against its interests. They are applied without requiring the alleged breaches of U.S. primary sanctions to be verified through a judicial process; thus, an alleged foreign violator may be targeted by secondary sanctions without ever being charged or convicted in any jurisdiction.⁵ U.S. sanctions regimes specify that the U.S. president must determine if a foreign individual, organization or entity engages in activities prohibited by the sanctions, making the penalty a function of the executive branch of the U.S. government, not the judicial branch. The president “enjoys discretion as to whether to make such a determination”⁶ and has broad latitude in how it is done. There is no requirement for potential humanitarian consequences to be taken into account in the process.

Other countries, including sanctioning countries, have opposed U.S. secondary sanctions on grounds of their dubious legality. Today, this opposition is being eroded through the recent introduction of secondary sanctions by the European Union to secure foreign adherence to the sanctions it imposed against Russia in connection with the war in Ukraine.⁷ The European Union had previously criticized U.S. secondary sanctions on grounds that it “does not recognize the extraterritorial application of laws adopted by third countries and considers such effects to be contrary

4. See <https://www.hrw.org/news/2023/06/22/questions-and-answers-how-sanctions-affect-humanitarian-response-syria/>, visited on September, 2024.

5. Like primary sanctions, their application occurs without regard to the human right to due process, enshrined in the International Covenant on Civil and Political Rights.

6. Roberto J. Gonzalez and Rachel M. Fiorill, “USA,” *Sanctions 2020*, London: Global Legal Group, 2019.

7. See <https://www.politico.eu/article/eu-aims-central-asia-sanction-circumvention-russia-war/>, <https://medium.com/european-horizons/the-eus-enforcement-problem-navigating-secondary-sanctions-ahead-of-the-12th-sanctions-package-58920180bd48>, <https://ecfr.eu/article/rules-of-the-road-for-the-eus-secondary-sanctions/>, visited on September, 2024.

to international law.”⁸ It even adopted a blocking statute to impede EU entities from complying with the U.S. sanctions and to protect them from U.S. enforcement efforts.⁹ Nonetheless, in 2023, the European Union proceeded to authorize secondary sanctions targeting “persons and entities circumventing the Union’s restrictive measures (against Russia) by activities which have the aim or result of frustrating the prohibitions in those measures.”¹⁰ Like those of the United States, the EU secondary sanctions entail penalties such as asset freezes, bans on obtaining funds from EU sources and travel bans.¹¹

The European Union’s use of secondary sanctions means that the United States is no longer isolated as the only state that uses them, ending a situation that could facilitate international political or legal challenges against the practice. As a further consequence, the use of secondary sanctions by the two most prolific users of primary sanctions opens the way for these measures to become more tolerated, if not necessarily acceptable, as an element of state conduct; in such circumstances, other sanctioning countries and regional organizations may become inclined to adopt them.

It is well-documented that primary sanctions imposed by states outside the context of UN Security Council authorization have a substantial humanitarian impact, and that exemptions for humanitarian goods and services are broadly ineffective. Thus, it is not a surprise that secondary sanctions, often structured like the primary sanctions, generate similar humanitarian problems. As the UN Special Rapporteur on unilateral coercive measures

8. European Commission, “Extraterritoriality (Blocking statute),” https://finance.ec.europa.eu/eu-and-world/open-strategic-autonomy/extraterritoriality-blocking-statute_en, visited on September, 2024.

9. Council Regulation (EC) No. 2271/96 of 22 November 1996. In an ironic twist, this echoes U.S. blocking laws enacted in 1976 and 1977, spurred by the Arab League boycott, “to require U.S. firms to refuse to participate in foreign boycotts that the U.S. does not sanction” (Office of the U.S. Trade Representative, “Arab League,” National Trade Estimate report, 2013).

10. Barbara Moens, Leonie Kuewski and Suzanne Lynch, “EU targets Central Asia in drive to stop sanctioned goods reaching Russia,” *Politico*, 8 May 2023.

11. See, e.g., European Council and Council of the European Union, “Russia’s war of aggression against Ukraine: EU lists two individuals and four entities for circumventing EU sanctions and materially supporting the Russian government,” press release, 28 June 2024, <https://www.consilium.europa.eu/en/press/press-releases/2024/06/28/russia-s-war-of-aggression-against-ukraine-eu-lists-two-individuals-and-four-entities-for-circumventing-eu-sanctions-and-materially-supporting-the-russian-government/>, visited on September, 2024.

has pointed out, “access to and delivery of food is severely affected by secondary sanctions” as well as by overcompliance with sanctions.¹²

The combined effect of primary and secondary sanctions on the health of populations in countries targeted by U.S. sanctions has at times been devastating; in Iran, for example, they prevented the country’s public and private sectors from obtaining medicines and dealing with crises such as the COVID-19 pandemic.¹³ More generally, by adding to the domestic economic problems in targeted countries that arise from primary sanctions, secondary sanctions further reduce their ability to maintain infrastructure for electricity and water supplies, communication and transportation, and education.

In essence, primary sanctions against a country cause it to intensify its reliance on third-state partners to replace the lost business and other interactions, including to ensure the provision of goods and services that are vital to the well-being of its population. The replacement partners become potential targets of secondary sanctions, which explains how targeting them contributes to humanitarian problems in the sanctioned country. As researchers in Canada who examined the impact of both primary and secondary sanctions concluded, “In light of the significant power that the United States exerts on the global economy, we posit that attempts by other international actors to make up for the shortage of basic needs – food, medicines, energy and construction materials, among others – brought about by sanctions will fail.”¹⁴

Overcompliance with Sanctions

Unilateral sanctions against a targeted country, organization or entity restrict the business that companies can do with the target, but do not necessarily abolish it altogether. While in normal circumstances companies aim to maximize their business activity and might be expected to take

12. UN General Assembly, “Secondary sanctions, overcompliance and human rights,” Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, 4 September 2023, doc. A/78/196, p. 15, <https://documents.un.org/doc/undoc/gen/n23/260/44/pdf/n2326044.pdf>, visited on September, 2024.

13. Soheil Golchin, “The Right to Health and Unilateral Sanctions During the COVID-19 Pandemic: The Case of Iran,” *AALCO Journal of International Law* (2021): 103-104.

14. Claudia Chaufan, Nora Yousefi and Ifsia Zaman, “The Violence of Non-Violence: A Systematic Mixed-Studies Review on the Health Effects of Sanctions,” *International Journal of Social Determinants of Health and Health Services* 53 (2) (2023): 216-232.

advantage of the opportunities that remain under the sanctions to keep doing at least some business with the target, in fact the opposite frequently occurs: companies decide to restrict their business with the target to a greater extent than the sanctions require. Numerous reasons have been put forth to explain this, notably involving various risks and costs of adhering to the exact parameters of sanctions regimes, particularly regimes in which the targets and rules evolve and change, or when different countries' sanctions against the same target vary in their details and compliance requirements.

In seeking to minimize risks and costs when confronted with sanctions, companies view overcompliance as the simplest and, from the standpoint of legal and business risks, the safest path to avoid inadvertent breaches and the sometimes severe penalties that are imposed against violators. As the use of sanctions has expanded enormously around the world, overcompliance, too, has become substantial and widespread. Measures of its extent are elusive, but the evidence of overcompliance is abundant. Much of this evidence takes the form of the humanitarian harm that overcompliance causes.

The UN Special Rapporteur on unilateral coercive measures, Alena Douhan, defines overcompliance as “self-imposed restraints beyond the restrictions mandated by sanctions, applied as a part of the de-risking process (to minimize the potential for inadvertent violations or to avoid reputational or other business risks), and therefore, the widening of the scope of targets to include non-sanctioned individuals and entities, and sometimes entire populations.”¹⁵ Pierre-Hugues Verdier, a law professor in the United States, calls overcompliance “a situation in which a market participant applies sanctions – that is, refrains from an otherwise desirable transaction or activity involving some connection with a sanctioned country or person – beyond what is legally mandated by the relevant regime.”¹⁶

According to A. Douhan, overcompliance occurs for a number of reasons that often overlap. These include “the multiple, complex, unclear, fast-evolving and overlapping sanctions regimes; the broad, unclear and confusing terminology and wording of sanctions regulations, which bring about uncertainty concerning their scope of application, the types of

15. UN General Assembly, “Secondary sanctions, overcompliance and human rights,” *op. cit.*, p. 4.

16. Pierre-Hugues Verdier, “Sanctions Overcompliance: What, Why, and Does It Matter?,” *North Carolina Journal of International Law* 48, p. 473.

prohibited conduct and the negative spillover effects on critical sectors of the targeted State; the existence of secondary sanctions, and criminal and civil penalties (...) for circumvention of sanctions regimes; direct threats with sanctions; maximum pressure campaigns; uncertainty around the scope of humanitarian carve-outs; and the complex licensing procedures, even for the delivery of humanitarian goods, along with the burden of proof of the humanitarian nature of the activities imposed on humanitarian actors.”¹⁷

Enforcement is sometimes unpredictable and penalties are sometimes extremely costly, and the process has insufficient transparency to reliably guide companies toward staying within the bounds of legally permitted engagements with the targets of sanctions.¹⁸ Penalties levied by the United States sometimes total many millions of dollars, and businesses usually prefer to reach agreed settlements with the U.S. sanctions regulator, the Office of Foreign Assets Control (OFAC), “rather than challenging the administrative decisions and risking heavier fines and/or criminal prosecution.”¹⁹ The magnitude of settlements can themselves be extremely high, the largest to date being an agreement by the French bank BNP Paribas in 2014 to pay \$9 billion for U.S. sanctions violations. A. Douhan has noted that settlement agreements with OFAC in the first half of 2023 alone exceeded half a billion dollars.²⁰

According to P.-H. Verdier, “Even if a business complies with what it believes to be the letter of sanctions, it faces the risk that enforcers such as OFAC or the U.S. Department of Justice will adopt a broader interpretation. Because of the wide deference agency interpretations enjoy in U.S. courts, which is even greater for statutes relating to national security and foreign relations, market participants have little recourse against perceived overreach. As a result, enforcers enjoy substantial discretion to interpret sanctions so as to reach conduct or transactions they identify as impermissible.”²¹

The fact that sanctions are unstable relative to most other regulations that companies must follow also encourages overcompliance, as it requires

17. *Ibid.*

18. *Ibid.*, p. 7.

19. *Ibid.*, p. 8.

20. *Ibid.*

21. Pierre-Hugues Verdier, “Sanctions Overcompliance: What, Why, and Does It Matter?” *op. cit.*, p. 480.

the companies to constantly monitor for changes in their scope of application and permitted exemptions; for changes in the specific individuals, organizations, companies and sectors listed or delisted as targets; and for evolving administrative requirements necessary for compliance.

Sanctions imposed against Mali in recent years illustrate the bewildering speed and frequency at which the rules can change: “Sanctions (...) were decided by the Economic Community of West African States (ECOWAS) against Mali one day after a coup in August 2020. ECOWAS eased the sanctions after several days when negotiations for a transitional government began, eased them further six weeks later after a transitional government was agreed, then tightened them in January 2022 when the transitional government was deemed too slow in restoring democratic rule to Mali. Eleven weeks later, a court declared some of the sanctions illegal and ordered their suspension.”²² Within four months, in July 2022, ECOWAS ended the sanctions against Mali as a state but maintained them against certain individuals and groups.²³ Some of these sanctions were lifted in February 2024, after Mali had announced its withdrawal from ECOWAS.²⁴

Many companies that are relied upon by humanitarian aid providers to deliver goods and services to sanctioned countries lack the internal expertise or resources for the intensive monitoring that can be necessary to simultaneously keep up with multiple sanctions regimes. Meanwhile, relying on outside experts as well as implementing frequent compliance

22. UN General Assembly, “Secondary sanctions, civil and criminal penalties for circumvention of sanctions regimes and overcompliance with sanctions,” Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena F. Douhan, 15 July 2022, doc. 1/HRC/51/33, pp. 11-12, citing ECOWAS, Press Release on the Situation in Mali, 18 August 2020; Ilana Zelmanovitz Axelrod and Kwesi Aning, “Mali, Democracy and ECOWAS’s Sanctions Regime,” Policy Brief 9, October 2020, Kofi Annan International Peacekeeping Training Centre; ECOWAS, Declaration of ECOWAS Heads of State and Government on Mali, 5 October 2020; ECOWAS, 4th Extraordinary Summit of the ECOWAS Authority of Heads of State and Government on the Political Situation in Mali, Final Communiqué, 9 January 2022; and “West African court orders lifting of some sanctions against Mali,” Reuters, 24 March 2022.

23. ECOWAS, Sixty-First Ordinary Session of the Authority of Heads of State and Government, Draft Communiqué, 3 July 2022, https://ecowas.int/wp-content/uploads/2022/07/UK_Final-Communique-Summit-July-2022-VF.pdf, visited on September, 2024.

24. ECOWAS, Extraordinary Summit of the ECOWAS Authority of Heads of State and Government on the Political, Peace and Security Situation in the Region, Final Communiqué, 24 February 2024. Mali’s withdrawal from ECOWAS had not been finalized at the time of this writing.

changes can be costly. As Verdier notes, “the possibility that sanctions will expand or contract in response to unpredictable events provides another reason for prudence. Perfectly legal conduct today may become illegal tomorrow, potentially exposing a party to sanctions enforcement, and at the very least calling for costly adjustments and potential breach of contracts. Anticipating these problems, market participants may find it wiser to get ahead of them by circumscribing their activities beyond what sanctions formally require, at least today.”²⁵

The abovementioned reasons for overcompliance arise from sanctions themselves and their enforcement, but there are other motivating factors as well. One is the reputational risk associated with continuing to do business with a target of sanctions, even if the business is humanitarian in nature and is authorized under the sanctions, such as sales of food or medicine to a sanctioned country. A company’s reputation has an impact on revenues and profits, its share price and thus capital costs, and its ability to attract high-quality employees. Many companies fear that engaging even legally with a sanctioned party can lead to negative publicity, which in turn could result in consumer boycotts or threats of them, the loss of clients, and the severing of ties by suppliers that are concerned with their own reputations. Indeed, business organizations “are especially vulnerable to anything that damages their reputations.”²⁶ Verdier has described reputation as a “possibly major” reason for overcompliance, to the point that publicized lists of companies that withdraw or don’t withdraw from a sanctioned country may prompt additional companies that are not required to withdraw to do so anyway.²⁷

The full extent of overcompliance is unknown because it is generally not disclosed by companies in any detail, on grounds of business confidentiality. It is possible that the overall impact of overcompliance with a given sanctions regime is equal to, or exceeds, the consequences of compliance alone. Indeed, it is reported that “there is talk now of overcompliance as a far more dangerous challenge to humanitarian concerns than the sanctions themselves.”²⁸

25. Pierre-Hugues Verdier, “Sanctions Overcompliance: What, Why, and Does It Matter?” *op. cit.*, pp. 483-484.

26. Robert G. Eccles, Scott C. Newquist and Roland Schatz, “Reputation and its Risks,” *Harvard Business Review*, February 2007.

27. Pierre-Hugues Verdier, “Sanctions Overcompliance: What, Why, and Does It Matter?” *op. cit.*, p. 488.

28. Omar Abdulaziz Hallaj, “Overcompliance: Another Way to Look at the Humanitarian Externalities of Sanctions,” LUGARIT, 19 March 2024, <https://www.lugarit.com/>

When it comes to humanitarian consequences, the impact of overcompliance is clearly visible. Sanctions that authorize the continuation of trade in humanitarian goods and services also make it complex, confusing and/or costly to do so properly and without risk of penalties. Shortages of medicines and medical supplies in sanctioned countries suggest that the volume of trade that could occur but doesn't may exceed the volume of trade that does take place, and this can sometimes be verified for specific products. As an example, the only company that makes specialized bandages that alleviate the impact of the skin disease epidermolysis bullosa is a Swedish manufacturer that halted all business with Iran when banks declined to provide financing to its Iranian importer in response to U.S. sanctions, even though the sanctions allowed such financing for humanitarian goods.²⁹

This example highlights how overcompliance by third parties – in this case financial institutions – can produce humanitarian harm even if the exporter and importer of exempt goods are willing to conduct the authorized transactions. Indeed, a trade transaction involves many participants, and overcompliance by any one of them in the chain of companies involved – banks, insurers, freight transporters, cargo handlers, etc. – can result in a humanitarian shipment to a sanctioned country being blocked.

Whether on their own accord or because of overcompliance in the business chain they need for their still-authorized trade, more than half of the foreign pharmaceutical companies operating in Venezuela completely withdrew from that market within a year of U.S. sanctions being imposed in 2015, according to Douhan. In Syria, “the pharmaceutical sector has greatly shrunk since 2011” and overcompliance with the Caesar Act sanctions by various parties involved in domestic medical production and imports has essentially halted both.³⁰ The impact of overcompliance on the health of sanctioned countries' populations is exacerbated by the breadth of the goods and services affected: foreign companies' reticence to participate in shipments of spare parts for medical equipment, in servicing it, and in selling necessary medical technology is “obliging sanctioned countries and their entities to find riskier and costlier alternative procurement routes with possible adverse impacts on the quality of the procured medical

commentary/commentary-the-humanitarian-fallout-of-sanction-overcompliance, visited on September, 2024.

29. UN Office of the High Commissioner for Human Rights, “Over-compliance with US sanctions harms Iranians' right to health,” press release, 19 October 2021.

30. UN General Assembly, “Secondary sanctions, overcompliance and human rights,” *op. cit.*, p. 16.

goods” – all while trade in goods and services pertaining to health remains legal under the sanctions.³¹

Humanitarian organizations that would normally procure supplies and provide much of the aid that sanctioned countries’ populations receive find that foreign companies are “unwilling to supply goods for humanitarian work in heavily sanctioned countries like Iran and the Democratic People’s Republic of Korea,” according to the Stockholm International Peace Research Institute (SIPRI), citing information from the Swedish Red Cross – which also referred to consequences such as a reduced range and lower quality of medical products being available to the sanctioned countries at higher prices.³²

Financial firms, despite often having more resources and expertise to comply with sanctions than other companies do, are a frequent source of overcompliance. Their regulatory burden is particularly complex because of the nature of their business, as they must comply with rules that govern their financial health, rules to ensure that they don’t inadvertently facilitate financial crimes, and numerous other regulations that are sources of risk besides sanctions compliance. Particularly comprehensive sanctions regimes like the U.S. sanctions against Iran, and the associated enforcement efforts, “have compelled most banks and companies to exercise overcompliance to avoid being penalized or targeted by U.S. political and enforcement actions,” according to SIPRI. It adds that “almost all financial institutions are extremely sensitive to the extraterritorial application of U.S. sanctions because they are dependent on access to the US financial system.”³³

According to researchers at Geneva’s Graduate Institute, “Global banks’ culture of ‘overcompliance’ with sanctions is in large part the outcome of their entanglement with U.S. financial authorities and the lack of clarity of U.S. rules governing sanctions exemptions. Even though the U.S. government insists that it observes a broad humanitarian exemption, all payments in the field of medicine or food that would go to an entity even remotely controlled by a designated entity (for instance, the Iranian Revolutionary Guards) would constitute a violation of US sanctions law. Confronted with the risk that due diligence procedures would fail to detect a connection to

31. *Ibid.*

32. Kola Brockmann and Keith A. Preble, “Mitigating Humanitarian Impact in a Complex Sanctions Environment: The European Union and the Sanctions Regimes against Iran,” Stockholm International Peace Research Institute, 2021, pp. 14-15.

33. *Ibid.*, pp. 17-18.

a U.S. designated entity, global banks have preferred to massively “de-risk” rather than apply uncertain Know Your Customer (KYC), Know Your Customer’s Customers (KYCC), and Know Your Transaction (KYT) procedures mandated in the transnational governance of sanctions. Instead, they have dropped customers from Iran and other sanctioned jurisdictions en masse, or not facilitated transactions with correspondent banks of banks located in Iran, even in the humanitarian field.”³⁴

The sanctions scholar Joy Gordon states the problem for banks more succinctly: “Banks must not only check blacklists of ‘Specially Designated Nationals,’ but must also research their customers, and their customers’ transactions, to prevent funds from even inadvertently benefitting someone on a U.S. blacklist. The Treasury Department does not make fully clear exactly what banks must do to meet these expectations. (...) Faced with this dilemma – unclear expectations, and potentially catastrophic penalties – it is not surprising that many banks and other private actors choose to simply withdraw from a market altogether.”³⁵

Indeed, this is the form that overcompliance by banks and other companies often takes: ceasing all business in a sanctioned country, regardless of the legality that some of it may have, thereby shutting off paths for humanitarian transactions to occur. Douhan, the UN Special Rapporteur, reported in 2023 that she had “received accounts from foreign companies and banks that had suspended their activities in Zimbabwe, including 87 correspondent banks, by divesting themselves from their interests and moving funds out of the country shortly after the Zimbabwe Democracy and Economic Recovery Act was passed by the United States Congress in 2001. Currently, only a handful of financial institutions are allowed to act as correspondents (6 out of 27 commercial banks).”³⁶

The severe reduction in banking services involving sanctioned countries inevitably has an impact on authorized transactions that are necessary for humanitarian purposes. In particular, it impedes flows of funds from aid organizations and other donors, and remittances to families in sanctioned countries from relatives abroad, which can be critical for their

34. Grégoire Mallard, Farzan Sabet and Jin Sun, “The Humanitarian Gap in the Global Sanctions Regime: Assessing Causes, Effects, and Solutions,” *Global Governance* 26 (2020): 131-132.

35. Joy Gordon, “US sanctions and the theatre of humanitarian concern,” *Le Monde diplomatique*, 19 April 2023.

36. UN General Assembly, “Secondary sanctions, overcompliance and human rights,” *op. cit.*, p. 14.

ability to procure food and health care and pay for essential services such as electricity and water. Foreign financial assistance to natural disaster victims in sanctioned countries is equally affected.³⁷

Even humanitarian trade carried out by the United Nations has been delayed by overcompliance with U.S. sanctions against Cuba. Douhan noted that “powdered milk delivery by the United Nations Children’s Fund (UNICEF) took several months in 2022. The shipping companies have reduced their capacity and the volume of goods transported to Cuba. Similarly, only 9 of 518 requests by the agricultural sector of Cuba in international market for tractors, engines, batteries, forklifts and spare parts for agricultural machinery were approved in 2022 owing to the ‘fear to be punished.’ Food security is still fragile in the country, despite various national mitigation efforts.”

As overcompliance with sanctions has become a known practice in the business world and among sanctioning governments, it is predictable that the imposition of new sanctions will entail greater compliance than what is strictly necessary in order to adhere to them. And with overcompliance allowing sanctions to become more effective with respect to their objectives, little if anything has been done by sanctioning states to actively discourage it. The United States and the European Union have issued guidance documents for making use of the humanitarian exemptions in their sanctions, but these are generally complex in their own right and may be counterproductive.

The European Union’s guidance for providing humanitarian aid to sanctioned countries, for example, contains technical wording as well as “complicated legalistic terms, combined with confusing non-legal terms such as ‘expectations,’ ‘interpretations,’ ‘behavioural red flags’ and ‘potential red flags indicators,’ as well as terms that are approximative and need further clarity (such as ‘most relevant,’ ‘non exhaustive’ requirements, that ‘must be read in combination’), all of which may exacerbate uncertainty and result in inconsistent application and enforcement” of the EU sanctions’ humanitarian exemptions.³⁸ The result is that official guidance may actually exacerbate rather than reduce overcompliance, to the detriment of populations that suffer from the absence of authorized trade in humanitarian goods and services.

37. Kola Brockmann and Keith A. Preble, “Mitigating Humanitarian Impact in a Complex Sanctions Environment,” *op. cit.*, p. 15.

38. *Ibid.*, pp. 12-13.

Various due diligence responsibilities of business enterprises that are incorporated into their sanctions compliance policies and programs also contribute to the complexity of adhering to sanctions. Douhan cites Emmanuel Breen, a French jurist, as noting that “the more sophisticated and nuanced a compliance programme is, the more expensive it becomes for the company to implement and monitor. This is why a company may be tempted to use simplistic and operational decision making criteria and processes that generate forms of overcompliance.”³⁹ Justine Walker, responsible for sanctions and risk-related matters at the Association of Certified Anti-Money Laundering Specialists, adds that “the legal costs associated with undertaking due diligence and acquiring a license may in some instances be higher than the value of the goods and services.”⁴⁰

Verdier asserts that overcompliance is a rational business response to the uncertainties surrounding sanctions regimes.⁴¹ One can go further and conclude that it is perhaps the most rational response among various options for minimizing risks and costs, and the most expedient for shielding businesses from the dangers that arise from operating amid a proliferation of unilateral sanctions. Factors that contribute to this are ever-present in the background, such as national securities regulations in many countries that oblige company directors to make decisions, including policy choices, that are in the best interests of the company’s shareholders. All of this makes it likely that overcompliance with sanctions has already become entrenched as a standardized practice among businesses in all sectors that operate internationally, to the detriment of trade in humanitarian goods and services.

It is therefore not unreasonable to consider overcompliance as a structural element of the sanctioning process that makes it virtually impossible for humanitarian exemptions in the sanctions to succeed. This, in turn, makes the result – human suffering – another structural element of

39. UN General Assembly, “Secondary sanctions, civil and criminal penalties for circumvention of sanctions regimes and overcompliance with sanctions,” *op. cit.*, p. 12, citing Emmanuel Breen, “Corporations and US economic sanctions: the dangers of overcompliance,” in *Research Handbook on Unilateral and Extraterritorial Sanctions*, Charlotte Beaucillon (ed.) (Cheltenham, Edward Elgar, 2021), pp. 262-263.

40. *Ibid.*, pp. 12-13, citing Justine Walker, “Risk management principles guide for sending humanitarian funds into Syria and similar high-risk jurisdictions,” European Commission *et al.*, 2020, p. 26.

41. Pierre-Hugues Verdier, “Sanctions Overcompliance: What, Why, and Does It Matter?” *op. cit.*, p. 498.

unilateral sanctions that sanctioning states must anticipate as they continue to engage in the practice. It has already been argued that unilateral sanctions in general, both primary and secondary, run counter to international law except in narrow circumstances.⁴² By having sanctions that invite over-compliance, states breach their obligation to protect the human rights of all people, including those in sanctioned countries, and thus add a further element to the legal argument against them.

42. See, e.g., Alena Douhan, "Unilateral Coercive Measures: Effects and Legality Issues," *Yale Journal of International Law* (2023); Michael J. Strauss, "The (il)legality of unilateral sanctions in light of the inadequacy of humanitarian exemptions," *Journal of the Belarusian State University – International Relations* 1 (2021), p. 87.

CHAPTER III

Unilateral sanctions and international cooperation

(Prof. A. de Zayas)

UN Charter, Art. 55: “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- 1. higher standards of living, full employment, and conditions of economic and social progress and development;*
- 2. solutions of international economic, social, health, and related problems; and **international cultural and educational cooperation**”*

UDHR Art. 28 “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

Unilateral Coercive measures (hereafter – UCMs) are the very opposite of the international cooperation envisaged in the UN Charter and in countless General Assembly resolutions, e.g. 2131, 2625, 3314, 36/103, 48/141, 60/1, 68/2000, 70/1, 77/214. Such cooperation is the *raison d'être* of the entire UN system and its agencies, including the ILO, UNESCO, UNHCR, UNIDIR, WHO. Multilateralism is the *mode d'emploi* to achieve and maintain peace, the condition to live together and realize all civil, cultural, economic, political and social rights for all in international solidarity¹.

UCMs can only be phased out through concerted action of local, regional and international players, including governments, intergovernmental organizations such as the African Union, the ASEAN, BRICS, CELAC, the Non-aligned movement, the Organization of Islamic Cooperation, as well as major non-governmental organizations including Amnesty International and Human Rights Watch. Such action may include bringing

1. *Reports of the Human Rights Council's Independent Expert on International Solidarity*, <https://www.ohchr.org/en/special-procedures/ie-international-solidarity>, visited on May, 2024; *UN Expert Calls for a Declaration on the Right to International Solidarity*, press release, <https://www.ohchr.org/en/press-releases/2023/10/un-expert-calls-declaration-right-international-solidarity>, visited on May, 2024; *About International Solidarity and Human Rights*, Human Rights Council's Independent Expert on International Solidarity, <https://www.ohchr.org/en/special-procedures/ie-international-solidarity/about-international-solidarity-and-human-rights>, visited on May, 2024.

UCMs to the International Court of Justice pursuant to article 96 of the UN Charter with a view to obtaining an advisory opinion laying out the legal consequences of the continued imposition and application of this scourge of humanity, and the level of compensation due to the victims of this international outlawry.

Countless United Nations reports and resolutions demonstrate that UCMs are contrary to the letter and spirit of the UN Charter and peremptory international law, including the principles of national sovereignty, the sovereign equality of states, the self-determination of peoples, freedom of trade and commerce, and the prohibition of interference in the internal affairs of States. Although yearly GA resolutions reject UCMs as illegal, those States imposing them have flouted and continue to flout these resolutions with impunity. Bearing in mind that UCMs are responsible for the deaths of tens of thousands of persons worldwide, they raise issues under articles 6 and 7 of the Statute of Rome, justifying an investigation by the International Criminal Court². Moreover, considering the “intent” behind UCMs and the effect of “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part...”³, as defined in article II c of the 1948 Genocide Convention, States parties can invoke article 9 and refer the matter to the International Court of Justice (hereafter – ICJ) with a view to obtaining a judgment on the merits. The ICJ judgment in the case *Bosnia v. Serbia* is particularly relevant, because it imposes an obligation on States to take the necessary measures aimed at *preventing* genocide. This entails in the UCM context the obligation of States imposing UCMs to immediately lift them, and the obligation of third States to reject any cooperation with them, so as not to become complicit under article IIIe of the Convention⁴.

Many documents including the Vienna Declaration and Programme of Action emphasize the function of international cooperation in achieving the goals of the UN. In its preamble the Vienna Declaration reaffirms “the

2. *Rome Statute of the International Criminal Court*, <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>, visited on May, 2024.

3. *Convention on the Prevention and Punishment of the Crime of Genocide*, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-prevention-and-punishment-crime-genocide>, visited on May, 2024.

4. *Convention on the Prevention and Punishment of the Crime of Genocide*, https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf, visited on May, 2024.

commitment contained in article 56 of the Charter of the United Nations to take joint and separate action, placing proper emphasis on developing effective international cooperation.”⁵ Operative paragraph 4 further states: “The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the international community. The organs and specialized agencies related to human rights should therefore further enhance the coordination of their activities based on the consistent and objective application of international human rights instruments.” Operative paragraph 10 reaffirms the right to development and stipulates “States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development.”

Following up on the recommendations of the Vienna World Conference on Human Rights, the General Assembly adopted on 20 December 1993 Resolution 48/141 creating the mandate of the United Nations High Commissioner for Human Rights. In its preambular paragraphs, the Resolution recalls “that one of the purposes of the United Nations enshrined in the Charter is to achieve international cooperation in promoting and encouraging respect for human rights”.

In operative paragraph 4, the resolution enumerates the responsibilities of the High Commissioner, including “To enhance international cooperation for the promotion and protection of all human rights”⁶.

Paragraphs 5 and 6 of the Outcome Document of the World Summit of 2005, Res. 60/1, emphasizes the importance of multilateralism and international cooperation.

“5. We are determined to establish a just and lasting peace all over the world in accordance with the purposes and principles of the Charter. We rededicate

5. *Vienna Declaration and Programme of Action*, <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action>, visited on May, 2024.

6. *General Assembly Resolution 48/141*, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F48%2F141&Language=E&DeviceType=Desktop&LangRequested=False>, visited on May, 2024.

ourselves to support all efforts to uphold the sovereign equality of all States, respect their territorial integrity and political independence, to refrain in our international relations from the threat or use of force in any manner inconsistent with the purposes and principles of the United Nations, to uphold resolution of disputes by peaceful means and in conformity with the principles of justice and international law, the right to self-determination of peoples which remain under colonial domination and foreign occupation, non-interference in the internal affairs of States, respect for human rights and fundamental freedoms, respect for the equal rights of all without distinction as to race, sex, language or religion, international cooperation in solving international problems of an economic, social, cultural or humanitarian character and the fulfilment in good faith of the obligations assumed in accordance with the Charter.

6. *We reaffirm the vital importance of an effective multilateral system, in accordance with international law, in order to better address the multifaceted and interconnected challenges and threats confronting our world...* (emphasis added)

Paragraph 48 highlights the importance of the right to development: “We reaffirm our commitment to achieve the goal of sustainable development... To this end, we commit ourselves to undertaking concrete actions and measures at all levels and to enhancing *international cooperation*, taking into account the Rio principles.”⁷

It is important to recall the language of the preambular paragraphs of the latest Human Rights Council resolution on UCMs, Res. 54/15 of 11 October 2023, which recalls in its preambular paragraphs the numerous commitments made by the international community to cooperate, including Resolution 70/1 entitled ‘Transforming our World: the 2030 Agenda for Sustainable Development’ of 25 September 2015, which strongly urged States to refrain from promulgating and applying any unilateral economic, financial or trade measures that impede the full achievement of economic and social development.

Resolution 54/15 further welcomed “*the final document and declaration adopted at the eighteenth Summit of Heads of State and Government of the Movement of Non-Aligned Countries, held in Baku on 25 and 26 October*

7. *General Assembly Resolution 2625 (XXV)*, [https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F2625\(XXV\)&Language=E&DeviceType=Desktop&LangRequested=False](https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F2625(XXV)&Language=E&DeviceType=Desktop&LangRequested=False), visited on May, 2024.

2019, in which the Movement reaffirmed... its principles position of condemnation of the promulgation and application of unilateral coercive measures...”

In its operative paragraphs, Resolution 54/15 welcomed the launch of the Special Rapporteur’s sanctions research platform and called upon all Governments to cooperate with and assist the Special Rapporteur in her tasks.

The necessity of international cooperation in phasing out UCMs is reflected in yearly UN General Assembly Resolutions, with reference to the norms of international law violated by the UCMs, including the UN Charter, the principles of sovereignty, freedom of commerce and navigation, and the prohibition of interference in the internal affairs of states.

Res. A/79/L.3 on the *Necessity of ending the economic, commercial and financial embargo imposed by the US against Cuba* was adopted on 30 October 2024 by a vote of 187 in favour and only two against (US and Israel) and one abstention (Moldova). The preambular paragraphs reaffirm the 30 prior GA resolutions condemning the US embargo and make reference to the Declarations of Chiefs of State of Latin America and the Caribbean at the CELAC summit demanding an end to the US blockade. The operative paragraphs also call for international solidarity in refusing the implementation of the US unilateral measures and the extra-territorial reach of US legislation. All countries are called upon to take whatever measures are necessary to render the UCMs without effect.

In this context it is pertinent to recall the language of the revised draft UN Declaration on the Right to International Solidarity⁸, that expands on the original draft contained in the 2017 report of the Human Rights Council’s Independent Expert on International Solidarity, Virginia Dandan⁹.

The preambular paragraphs of the revised Declaration read:

“Recognizing in this regard that international solidarity is essential in preventing and overcoming global challenges such as health emergencies, environmental degradation, climate change, armed conflict, forced migration, trafficking of persons, poverty in all its forms and dimensions, including extreme poverty, food insecurity, all forms of violence against

8. *Revised Draft Declaration on the Right to International Solidarity*, <https://www.ohchr.org/sites/default/files/documents/issues/solidarity/reviseddraftdeclarationrightinternationalsolidarity.pdf>, visited on May, 2024.

9. *Annex to Report A/HRC/35/35*, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/099/39/PDF/G1709939.pdf?OpenElement>, visited on May, 2024.

women and children, racism and discrimination, violent extremism, terrorism, colonialism, foreign domination and occupation, aggression, *unilateral coercive measures...*"

Article 2 of the operative paragraphs calls for "collective or individual actions... to respond to and solve global challenges, including... *unilateral coercive measures...*"

Article 3 specifically calls for "Combating *unilateral coercive measures...*"

Article 9 reaffirms the obligation of "(f) Avoiding the deployment of *unilateral coercive measures* that are inappropriately or too broadly targeted, or which contribute to the exacerbation of human rights violations in affected States." (emphasis added)

A matter of terminology: UCMs are not "sanctions"

Notwithstanding the loose use of the term "sanctions" to refer to UCMs, this term should only be used when referring to sanctions imposed by the Security Council under Chapter VII of the UN Charter. "Unilateral coercive measures" is the correct terminology to refer to the economic and financial "use of force" (Art. 2(4) UN Charter) against targeted States with a view to changing their policies or even their governments. Unilateral "economic sanctions" and financial blockades unilaterally imposed by governments are unlawful, because the States imposing them lack the necessary international legal authority. Using the term "sanctions" psychologically suggest that the measures of coercion have some legitimacy and should be complied with. The use of the term "sanctions" further suggests that violating these patently illegal measures can be legitimately enforced through penal sanctions with extra-territorial reach.

For lawyers and non-lawyers alike, it is important to recognize that the kind of UCMs currently being imposed by the United States cannot be legitimized by reference to the international law concepts of "retorsion" and "countermeasures" pursuant to articles 49/50 of the ILC's Code on Responsibility of States¹⁰. Moreover, UCMs imposed by the US and other

10. *Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001)*, Article 49: Object and limits of countermeasures, and Article 50: Obligations not affected by countermeasures, https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf, visited on May, 2024. "Article 49: Object and limits of countermeasures: 1. An injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations under part two. 2. Countermeasures are limited to the non-

countries of the “collective West” constitute unlawful “collective punishment”¹¹ against innocent persons and contravene the very foundations of the rule of law, the presumption of innocence and the principle of individual responsibility.

Strategies to defeat UCMs

Bearing in mind that in spite of UN resolutions and declarations condemning UCMs, their use has proliferated, it is important to devise strategies to defeat them.

Among the many obstacles to peace and international cooperation is the on-going information war, the very high level of fake news, fake history and fake law disseminated by governments and by a complicit media that serves as an echo chamber for those governments imposing UCMs. Many academics like Professor Jeffrey Sachs of Colombia University, Professor Richard Falk of Princeton and Professor Dan Kovalik of Pittsburgh have documented the unlawful impacts of UCMs. Think tanks like the Center for Economic and Policy Research in Washington D.C. have issued pertinent reports. Their scholarship is gradually having some effects, which should be strengthened by the activities of inter-governmental and non-governmental organizations.

The illegality of UCMs justifies injured states in developing strategies of retorsion and adopting proportionate countermeasures against those states that violate their sovereignty by imposing UCMs with extra-territorial effects. For instance, member countries of regional organizations like ALBA, BRICS, CELAC, MERCOSUR can adopt “blocking legislation” prohibiting the implementation of foreign UCMs and imposing penalties on enterprises that cooperate in their implementation. In particular banks that operate within the jurisdiction of the State must be obliged to open bank accounts and to make transfers to and from countries under unlawful

performance for the time being of international obligations of the State taking the measures towards the responsible State. 3. Countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question.”; “Article 50: Obligations not affected by countermeasures. Countermeasures shall not affect: (a) the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations; (b) obligations for the protection of fundamental human rights; (c) obligations of a humanitarian character prohibiting reprisals; (d) other obligations under peremptory norms of general international law.”

11. *UN News: COVID-19 solidarity is ‘sorely lacking,’ Guterres tells forum, urges greater support for developing nations*, <https://news.un.org/en/story/2021/08/1097562>, visited on May, 2024.

UCMs. Legislation must be adopted to prohibit enterprises from paying penalties to the countries imposing unlawful UCMs. States must use the tools of diplomatic protection to defend the rights of their citizens, including through international arbitration and adjudication. When appropriate, the assets of foreign States imposing unlawful UCMs should be frozen.

The success of such legal and proportional countermeasures against States imposing unlawful UCMs depends on international cooperation. For instance, an international conference of those countries opposing UCMs should be organized in order to adopt binding mechanisms to make it abundantly clear to the countries imposing UCMs that the international community will not stop at mere condemnation in General Assembly and Human Rights Council resolutions, but will take measures that will “bite”.

What is at stake is the authority of the UN Charter as the only “rules based international order” that we have. What is at stake is the credibility of the system of international law, because it is evident that the countries imposing UCMs are not about to abandon their illegal practices until and unless they experience economic consequences.

It bears repeating that the UN Charter is akin to a world constitution, and that pursuant to the “supremacy clause” (Art. 103), it is superior to all other treaties, superior to the Treaty of the European Union, superior to the Charter of the Organization of American States, superior to the North Atlantic Treaty. States are bound to implement the provisions of the UN Charter in good faith, in particular its Purposes and Principles enunciated in the Preamble and Articles 1 and 2.

Already in its preamble the Charter stipulates the determination “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained”, further “to employ international machinery for the promotion of the economic and social advancement of all peoples”. Article 1(2) formulates the purpose “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”, further Article 1(3) “to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character”. Pursuant to Article 2(4), “All members shall refrain in their international relations from the threat or use of force”.

Among the treaties that pursuant to the Charter must be upheld are the International Covenant on Civil and Political Rights (ICCPR) and

the International Covenant on Economic, Social and Cultural Rights (ICESCR), article 1 of which stipulates the right of self-determination of all peoples, by virtue of which “they freely determine their political status and freely pursue their economic, social and cultural development.” Article 1(2) goes on to state that “All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit... In no case may a people be deprived of its own means of subsistence.”¹²

In this context it is important to recognize that UCMs destabilize countries and disrupt their economies with the result that these states cannot fulfil their obligations under the ICCPR and ICESCR, thus impeding the enjoyment of civil, cultural, economic, political and social rights by the populations targeted. The Committee on Economic, Social and Cultural Rights already signalled the incompatibility of UCMs with the ICESCR in its General Comment Nr. 8, even concerning sanctions imposed by the Security Council:

“Economic sanctions are being imposed with increasing frequency, both internationally, regionally and unilaterally. 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... 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. Thus, for example, they often cause significant disruption in the distribution of food, pharmaceuticals and sanitation supplies, jeopardize the quality of food and the availability of clean drinking water, severely interfere with the functioning of basic health and education systems, and undermine the right to work. In addition, their unintended consequences can include reinforcement of the power of oppressive élites, the emergence, almost invariably, of a black market and the generation of huge windfall profits for the privileged élites which manage it, enhancement of the control of the governing élites over the population at large, and restriction of opportunities to seek asylum or to manifest political opposition.”¹³

12. *International Covenant on Civil and Political Rights*, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>, visited on May, 2024.

13. *Universal Declaration of Human Rights*, <https://www.refworld.org/docid/47a7079e0.html>, visited on May, 2024.

Notwithstanding the clear language of the Committee's General Comment, many states parties to the ICESCR continue to impose unlawful UCMs with very negative impacts on the enjoyment of ICESCR rights. This must end.

Conclusions and recommendations

The author would suggest that the UN General Assembly adopt a resolution pursuant to Article 96 of the Charter elevating the matter to the International Court of Justice for an advisory opinion that will once and for all lay down the reasons why UCMs are unlawful and what legal consequences flow from their continued imposition and application.

States parties to the Statute of Rome and whose populations have suffered thousands of deaths directly and indirectly linked to UCMs should demand of the Prosecutor of the International Criminal Court that an investigation under article 7 be opened for crimes against humanity and that the responsible politicians be duly indicted. Such a demand was made in February 2020 by the Venezuelan Foreign Minister Jorge Arreaza¹⁴, who personally delivered the demand to the then Prosecutor General Fatou Bensouda (Gambia). The case was registered as Venezuela II. Unfortunately, it is apparent that the current Prosecutor General Karim Khan (UK) has decided not to proceed with the investigation whether UCMs in Venezuela constitute crimes against humanity. The states parties to the Rome Statute have reason to question the professionalism and objectivity of the prosecutor and should challenge the discontinuance. Alas, there is method in the madness. One of the first actions of Prosecutor Khan was to discontinue the investigations against NATO forces for war crimes and crimes against humanity in Afghanistan¹⁵, while continuing the investigations against the Taliban. Even Amnesty International strongly criticized the discontinuance and questioned the future of the ICC¹⁶. Such

14. *Reuters: U.S. imposes fresh sanctions on Venezuela to pressure Maduro government*, <https://www.reuters.com/article/idUSKBN2072I5/>, visited on May, 2024; *See International Criminal Court: Situation in Venezuela II*, <https://www.icc-cpi.int/venezuela-ii>, visited on May, 2024.

15. *Al Jazeera: ICC prosecutor targets Taliban, ISIS-K in Afghanistan probe*, <https://www.aljazeera.com/news/2021/9/27/icc-prosecutor-targets-taliban-isis-k-in-afghanistan-probe>, visited on May, 2024; *See Foreign Affairs: ICC's Flawed Afghan Investigation*, <https://www.foreignaffairs.com/articles/afghanistan/2021-11-03/iccs-flawed-afghan-investigation>, visited on May, 2024.

16. *Amnesty International: Strengthening the UN Treaty Bodies: Amnesty International's Proposals for a More Effective System*, <https://www.amnesty.org/en/documents/ior53/4842/2021/en/>, visited on May, 2024.

obvious double standards could trigger a mass departure from the Rome Statute if impartiality cannot be ensured in practice.

Assuming *arguendo* that a new case concerning the lethal impact of UCMs in Cuba, Nicaragua, Sudan, Syria, Venezuela etc. is submitted to the court and the case is not immediately registered and professionally dealt with, this would evidence a level of arbitrariness wholly incompatible with the trust initially placed on the ICC. States parties would be well advised to consider denouncing the Rome Statute, since the ICC appears to have been hijacked for geopolitical purposes¹⁷.

In states parties to the Optional Protocols to the ICESCR and ICCPR, victims of violations of their rights by the application of UCMs should first challenge the illegality of UCMs in the domestic courts and then submit cases to the respective UN Committees for an examination on the merits. Inter-State complaints procedures are also available and are worth being tried.

Finally, peoples' tribunals could be a useful tool in advancing public awareness and international cooperation. We remember the important work of the Russell Tribunal on Vietnam¹⁸, the Kuala Lumpur Tribunal¹⁹ on Iraq and the many proceedings organized under the auspices of the Lelio Basso Permanent Peoples' Tribunal²⁰.

Indeed, only through resolute international cooperation and action will the scourge of UCMs finally be banned.

17. A. de Zayas, *The Human Rights Industry*, Clarity Press, Chapter 4, 2023.

18. *International Journal of Transitional Justice: Complementarity in Crisis: Uganda, Alternative Justice, and the International Criminal Court*, <https://academic.oup.com/ijtj/article-abstract/10/2/211/2356915?login=false>, visited on May, 2024; *London Review of International Law: Human Rights and the International Criminal Court*, <https://academic.oup.com/lril/article-abstract/5/3/483/5003020?redirectedFrom=fulltext&login=false>, visited on May, 2024.

19. *Global Research: War Crimes Tribunal Finds Bush and Blair Guilty*, <https://www.globalresearch.ca/war-crimes-tribunal-finds-bush-and-blair-guilty/5478367>, visited on May, 2024.

20. *Fondazione Basso: History and Profile*, <https://www.fondazionebasso.it/2015/la-fondazione/history-and-profile/?lang=en>, visited on May, 2024; *Fondazione Basso: International Section*, <https://www.fondazionebasso.it/2015/sezioneinternazionale/?lang=en>, visited on May, 2024.

CHAPTER IV

Reflections on the assessment of humanitarian impact of unilateral coercive measures

(Prof. M. Strauss)

International efforts to address humanitarian problems arising from inter-state conflicts are generally oriented toward situations of war; the Geneva Conventions and treaties banning certain types of weapons are among many examples. By contrast, this type of commitment is virtually absent in the case of humanitarian problems arising from inter-state disputes that fall short of armed conflict. The use of sanctions warrants attention in this regard because sanctions are often praised as an alternative to warfare and their use has been increasing,¹ yet they, too, produce humanitarian problems.²

There are no multilateral treaties dedicated to protecting civilian populations from the humanitarian impact of sanctions, but this impact has become evident in recent decades as sanctions have proliferated. While human suffering in wartime can be directly linked to the actions of military forces, humanitarian problems that develop from the application of sanctions are not as clearly visible, even though there is no doubt that they occur as a byproduct of the sanctions' use.³ This nebulousity is arguably a key obstacle to constructing effective mechanisms to prevent or alleviate the harm resulting from sanctions.

Three factors can be observed that make it challenging to discern their humanitarian impact. One is that sanctions are frequently not the only cause of humanitarian problems affecting a population; they may coexist with endemic poverty or food insecurity, the denial of certain human rights by a government, or any number of other contributing reasons. Another is that humanitarian problems are an unintended consequence

1. See, e.g., James Pattison, *The Alternatives to War: From Sanctions to Nonviolence* (Oxford: Oxford University Press, 2018).

2. See, e.g., Joy Gordon, "Smart Sanctions Revisited," *Ethics & International Affairs* 25 (3) (2011): 315-335.

3. United Nations, "Concerned by Unintended Negative Impact of Sanctions, Speakers in Security Council Urge Action to Better Protect Civilians, Ensure Humanitarian Needs are Met," press release, 7 February 2022, <https://press.un.org/en/2022/sc14788.doc.htm>, visited on May, 2024.

of the sanctioning process; sanctions are typically drafted, imposed and enforced without the inclusion of means to detect or track their unplanned effects. Responses to past problems, such as the shift toward more targeted sanctions and the incorporation of humanitarian exemptions, demonstrate that harmful results do elicit action, but only after the problems become great enough to attract notice – and these responses still leave ample room for human suffering.⁴ Thus, unanticipated humanitarian harm attributable to sanctions still occurs without being identified or evaluated when it first emerges and develops, illustrating the third factor that makes it challenging to capture the humanitarian impact: it is not something stable; rather, its parameters evolve over time.

Yet detecting, isolating and measuring the impact of sanctions as a contributor to humanitarian problems is essential for creating responses that are truly adequate to prevent or alleviate their consequences at the earliest possible stage. An ability to show the harm in a concrete way can also be critical for building sufficient political support for a concerted international response.

The awareness that sanctions trigger humanitarian issues emerged most prominently with the comprehensive economic sanctions mandated by the UN Security Council against various countries in the 1990s. The UN sanctions against Iraq in particular stood out for the severity and breadth of their impact on the country's population.⁵ This awareness prompted the UN to shift toward more targeted sanctions, although these did not fully eliminate the negative humanitarian effects. It was in this context that the UN Inter-Agency Standing Committee (IASC) and the Office for the Coordination of Humanitarian Affairs (OCHA) produced a handbook in 2004 for assessing the impact of sanctions on populations; it distinguished the humanitarian impact from the human rights impact while noting that

4. M. J. Strauss, "The (il)legality of unilateral sanctions in light of the inadequacy of humanitarian exemptions," *Journal of the Belarusian State University – International Relations* 2021-1: 86-97, <https://journals.bsu.by/index.php/internationalRelations/article/view/3515>, visited on May, 2024.

5. Larry Minear, David Cortright, Julia Wagler, George A. Lopez and Thomas G. Weiss, "Toward More Humane and Effective Sanctions Management: Enhancing the Capacity of the United Nations System," *Occasional Paper* 31 (1998); Thomas J. Watson Jr. Institute for International Studies, Providence, R.I., pp. xvii-xxix, <https://reliefweb.int/report/world/toward-more-humane-and-effective-sanctions-management-enhancing-capacity-united-nations>, visited on May, 2024.

both are closely intertwined, with the humanitarian impact being the foundation for assessing the effects on human rights.⁶

The global situation involving sanctions has changed profoundly since the IASC/OCHA handbook was published. Unilateral sanctions⁷ of various types (comprehensive to targeted), as opposed to those mandated by the UN, now dominate the sanctioning environment, while the humanitarian impact comes not only from the sanctions themselves but also from the methods of enforcement, especially secondary sanctions, and from widespread overcompliance with sanctions by international companies and other actors that seek to minimize their risks and compliance costs.

The extraterritorial application of secondary sanctions result in unilateral sanctions having a humanitarian and human rights impact anywhere in the world, regardless of the sanctioning country or the country where the target of the initial sanctions is located. Moreover, it is known today that assessing the human rights impact of sanctions does not necessarily depend on assessing their humanitarian impact, as the proliferation of unilateral sanctions has shown that the reverse also occurs – as when sanctions deny rights to a specific target that a broader public relies upon for a humanitarian need. The human rights impact may thus become evident before a humanitarian impact can be discerned. Such circumstances demonstrate that the dynamics between the humanitarian and human rights effects of sanctions is more complex than it was considered to be two decades ago. What is important is that they occur as the result of the same sanctions, which makes it vital in the first instance to establish the existence of factual situations in which sanctions have a human cost.

While the acceleration in the use of sanctions by individual countries, regional blocs and *ad hoc* groups of nations has not necessarily made sanctions more effective relative to their stated objectives, it has expanded the number of people in the world who are affected by their humanitarian impact. Exemptions for humanitarian goods and services have proved largely ineffective in mitigating this harm,⁸ while it has been magnified by the

6. IASC and OCHA, Handbook for Assessing the Humanitarian Implications of Sanctions (2004), pp. 12-14, https://interagencystandingcommittee.org/system/files/2020-11/IASC%20Sanctions%20Assessment%20Handbook%20for%20Assessing%20the%20Humanitarian%20Implications%20of%20Sanctions_0.pdf, visited on May, 2024.

7. The term “unilateral sanctions” as used here refers to those imposed by individual nations, organizations of states, or *ad hoc* groups of countries that align their individual sanctions imposed against the same target.

8. Strauss, “The (il)legality of unilateral sanctions,” *op. cit.*

overcompliance that has emerged from the sanctions' frequent complexity and lack of clarity, as well as harsh enforcement and fears of penalties for inadvertent violations.⁹ These trends continue today, adding urgency to the need to measure the human consequences of unilateral sanctions.

The ability to show their nature and scope is equally critical for monitoring the effectiveness of the international responses that emerge to address these problems. As noted by the UN Office of the High Commissioner for Human Rights, "any approach to developing indicators as useful tools for furthering human rights implementation will have to address the importance of quantifying human rights outcomes, as well as the processes underlying those outcomes."¹⁰

Evaluating the humanitarian impact of sanctions thus requires the collection of data that has sufficient integrity to be seen as valid by the international community and to withstand scrutiny in both diplomatic and legal environments. But what data? How shall it be collected? And how shall it be presented? Obtaining information that can be transformed into usable indicators demands a workable methodology, but the sanctions themselves can impede the collection of data by impacting communications, transportation and other aspects of the economic and social environment.

Despite such obstacles, an effort to establish indicators for assessing the humanitarian impact of unilateral sanctions has been recently been undertaken by the UN Special Rapporteur for unilateral coercive measures, Alena Douhan, whose mandate entails identifying and reporting on the negative effects that such measures have on human rights.¹¹ Building on the IASC/OCHA's work and similar past efforts, the aim is to create a uniform system that credibly measures the human impact of unilateral sanctions in the current environment.

Developing the methodology entailed input from numerous international experts from the legal and academic spheres, as well as from NGOs and international agencies that actively engage in alleviating humanitarian

9. Alena Douhan, Report of the Special Rapporteur, "Secondary sanctions, civil and criminal penalties for circumvention of sanctions regimes, and over-compliance with sanctions," 2022.

10. UN Office of the High Commissioner for Human Rights (OHCHR), Human Rights Indicators: A Guide to Measurement and Implementation (2012), p. 34, https://www.ohchr.org/sites/default/files/Documents/Publications/Human_rights_indicators_en.pdf, visited on May, 2024.

11. United Nations, "Special Rapporteur on unilateral coercive measures," <https://www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures>, visited on May, 2024.

problems in locations where the effects of sanctions are manifest, and also from impacted parties. This complex endeavor involved a process of reflection on a number of general and specific issues. A document that was prepared and circulated as a starting point for the discussions¹² grouped these issues into several key areas:

1. What form should an assessment take to establish a “best practice” standard?

Should it be inherently “comprehensive”? Unilateral sanctions often impact multiple human rights at once, and the impact can differ in nature and magnitude according to the right, so the assessment should strive to be comprehensive in order to cover all rights affected by the sanctions and the impact on each. An assessment as complete and detailed as possible can minimize the possibility that certain rights are overlooked in the process. Indicators to measure the impact on specific rights can be included in a collective index to establish a comprehensive view of the overall impact.

Indicators for individual rights can vary because data for each right may differ in nature or accessibility, and thus the methods, resources and time necessary to collect it can also vary. A comprehensive assessment should consider that the impact of unilateral sanctions on different rights may be simultaneous, delayed or indirect, and also that the impact on some rights may depend on the impact on other rights (for example, the right to life may be affected by sanctions that initially impact the right to health).

Should it be judged by the nature or quantity of available data? The value of any assessment of the impact of unilateral sanctions on human rights will depend on judgments about the data quality, so the indicators should consider the nature of the data (whether it is first-hand, second-hand, indirect, extrapolated, etc.), what form it takes (statistics, human observations, press reports, etc.) and whether the quantity of data obtained is sufficient for a credible assessment.

The indicators should strive for using data that contribute to credibility: comprehensiveness, appropriateness of methodology, accuracy, objectivity, known or reputed credibility (objectivity and reputation of the data source, origin of funding), level of acceptance, existing uses, timeliness, and any other appropriate measures.

12. “Draft – Points for discussion at the Expert Consultation on indicators for the human rights impact of unilateral sanctions, November 2022” 30 September 2022.

Should it be based only on quantitative data? The use of quantitative data is valuable for establishing the scope and magnitude of the human rights impact of unilateral sanctions in various ways: the number of people affected, the proportion of a population affected, the magnitude of a short-fall in humanitarian goods, how specific rights are implicated (as with excess rates of malnutrition, disease or deaths, or educational outcomes), the severity of the impact, etc. Quantitative data also may be readily available in many cases, as with statistics that are published on a regular basis by credible sources with well-established methodologies. Quantitative data can thus be particularly appropriate for indicators of the human rights impact of unilateral sanctions, and at times it may stand on its own in illustrating the impact.

However, quantitative data may not reflect nuances that can be valuable to an assessment of human rights problems; for example, an indicator may be a numerical representation of a final result, such as excess malnutrition during a given time period, while not indicating relevant dynamics which lead to that result, such as whether the impact of unilateral sanctions is dominant, or heightened or lessened by other simultaneous factors. Additionally, quantitative data is ill-suited for measuring the human rights impact in some situations, as with the rights of individuals who are subject to targeted or secondary sanctions. In such cases, qualitative data can be valuable in identifying the impact (incidents, anecdotes, etc.) that quantitative data may not capture.

Should it be based on a comparative analysis (before and after the imposition of sanctions; between various points while sanctions are in effect)? Assessments involving comparisons between points in time before and after unilateral sanctions are imposed, and between points while the sanctions are in effect, are valuable for showing the evolution of the sanctions' impact, whether on specific human rights or on human rights more generally. This information can reveal which human rights are affected more rapidly or severely than others, allowing *inter alia* responses to alleviate the human rights damage to be directed toward the most acute situations.

A caveat is that such measurements can be imprecise unless the evolution of other factors affecting human rights are also measured during the same periods of comparison, as this can be the only way to isolate the impact of sanctions as a factor.

What should be the baseline conditions for the impact assessment? And how could these baseline conditions be identified for countries with

long-standing sanctions? Baselines for indicators should, as far as possible, use data from a point or specified period immediately before unilateral sanctions are imposed, unless there are known distortions in the data at that time, in which case the baseline should encompass the point or period with “normal” conditions as close as possible to the imposition of sanctions.

This applies equally for countries with long-standing sanctions, although in some cases the time that has elapsed since their imposition can limit the usefulness of the information. When a pre-sanctions baseline is considered too old to be useful for an assessment of the human rights impact, a more recent point or period of time since sanctions were imposed can be used as a baseline; any significant change or adjustment in the sanctions regime can become a point for which “before and after” measures are made.

What is the most desirable timing for indicators and assessments? (How frequently or regularly should they be produced? Should the timing be associated with events, such as a change in a sanctions regime?) Indicators should measure the situation with sufficient regularity and frequency to detect changes in the impact on individual rights as quickly as possible when they occur. Monthly measurements may be appropriate for rights that are affected rapidly, while quarterly measurements may be appropriate more generally; longer intervals such as annually may not capture deteriorations in a human rights situation quickly enough to allow the impact to be minimized as early as it could be.

Measurements of the impact are also warranted after any significant event regarding the sanctions, such as changes in their scope, or any non-sanctions event that has a significant impact on human rights in a sanctioned country; this can trigger a new baseline measurement that should be as close in time as possible to the event itself, with subsequent measurements occurring at appropriate intervals. If the event is considered likely to have a rapid impact on human rights, post-baseline measurements should occur as early as the impact is deemed likely.

2. Of the different types of indicators referred to in existing research, what type(s) should be used?

All categories of indicators should be used in order to have the most complete picture of the human rights impact of unilateral sanctions. A given indicator will likely fall into more than one category, depending on how it is used.

Structural indicators, reflecting the institutional, economic and other situations in the country at a given time: Structural indicators are useful in establishing baseline levels for economic, demographic, social and other situations prior to the introduction of sanctions and between two points in time when sanctions are in effect. They reflect medium-term or long-term situations from which a human rights assessment can be extracted or deduced, and they take various forms: economic or social statistics, a state's policies or practices – anything that has the potential to change as the result of sanctions.

Process indicators, measuring the performance of certain processes: Unilateral sanctions are typically imposed for periods of time, frequently years, and consequently their impact on human rights occurs over time. Process indicators that regularly assess the situations of different human rights while sanctions are in effect will show how the impact on specific rights progresses – whether it develops slowly or rapidly, whether its development is steady or irregular, whether the impact plateaus after a point, etc. – so these indicators can be vitally important to addressing the sanctions' effects. Process indicators also allow assessments to be made of measures taken to ameliorate a human rights situation – how effective they are, how rapidly they work, etc.

Outcome indicators, measuring the results of certain processes and ultimately the impact on selected areas: These indicators will show conclusive human rights situations that result from unilateral sanctions, as opposed to interim situations that are measured by process indicators. "Conclusive" in this sense may not necessarily mean the end of the human rights impact or the end of its evolution, rather it means an impact that is deemed more definitive or concrete, such as an impact that stabilizes after a period of development during sanctions.

3. What, specifically, should be measured?

Should indicators cover all human rights collectively or certain rights individually, and should different rights be weighted differently? The only way to know with accuracy the full range of the impact of unilateral sanctions on human rights is through a set of indicators that cover all rights individually, including those that may not be affected. As this can be a complex, costly and time-consuming process involving many different indicators and may not be feasible, particularly in acute situations, an alternative is to have indicators for blocks of related human rights that are based on representative

measurements. A global assessment of the human rights impact of sanctions can then be made on the basis of these indicators.

There should be no weighting of individual human rights relative to each other as all rights are considered to share the same status. The Vienna Declaration and Plan of Action from the World Conference on Human Rights in 1993 stated that all human rights are interdependent and interrelated and must be treated equally “with the same emphasis.”¹³

Although human rights scholars have long debated whether there is a hierarchy of human rights, indicators created to assess the impact of unilateral sanctions on human rights do not seem the appropriate venue for making judgments about this question; indeed, any judgment may harm the ability to obtain information about the impact of sanctions on some rights if they are deemed less “important,” while such a judgment may also be disputed, affecting the integrity and credibility of the indicators.

Should indicators distinguish between the immediate human rights impact of unilateral sanctions and any longer-term forms of impact? Indicators should focus on the existing human rights impact at the time the data is compiled because that is what is visible and can be measured. The longer-term impact can be discerned through indicators that measure the human rights situation on an ongoing basis; this is a reason for establishing regular measurements at an appropriate frequency.

Should there be indicators of the effectiveness of humanitarian exemptions to sanctions? This is something that merits assessment because there is ample evidence that humanitarian exemptions are largely ineffective, but a meaningful and useful indicator covering the exemptions in all unilateral sanctions would be difficult to construct because of differences in sanctioning countries’ exemption regimes, procedures for using them and enforcement processes; because the reasons for not using exemptions are specific to each sanctioning country’s system; and because of the numerous variables involved (type of actor, complexity or lack of clarity of sanctions, time or costs involved in using exemptions, enforcement and penalty-related fears, risk policies, etc.).¹⁴ Additionally, business confidentiality can impede companies that decline to use humanitarian exemptions from disclosing the reasons.

13. UN Office of the High Commissioner for Human Rights, “World Conference on Human Rights, Vienna, 1993,” document A/ CONF.157/ 24, <https://www.ohchr.org/en/about-us/history/vienna-declaration>, visited on May, 2024.

14. Strauss, “The (il)legality of unilateral sanctions,” *op. cit.*, p. 88.

Indicators of the effectiveness of humanitarian exemptions in a given country's sanctions, or in specific sanctions regimes of that country, would be more appropriate in terms of being meaningful for purposes of encouraging or facilitating changes that can lead to greater effectiveness. Any such indicator would depend on qualitative data that may be obtained through surveys or interviews.

Should indicators cover the human rights impact of unilateral sanctions plus overcompliance together, or should overcompliance be measured separately? (If separately, how can the impact of overcompliance be distinguished?) The human rights impact of unilateral sanctions is the combined result of compliance and overcompliance with the sanctions, so indicators automatically include overcompliance when they measure the impact. Overcompliance (and thus its human rights impact) is virtually impossible to quantify separately. Even discerning its presence is challenging due to business confidentiality factors, and also because some overcompliance may not be seen as such by the parties involved if it is involuntary (for example, a manufacturer that is blocked from exporting authorized goods to a sanctioned country because its banks or shipping companies over-comply with the sanctions). Discerning the presence of overcompliance and learning the reasons for it may be possible through surveys or interviews, but it would seem that the variability of what these would yield makes it impossible to build an indicator that can reliably measure their human rights impact.

Should indicators come from a variety of disciplines, given the different types of unilateral sanctions and their multifaceted impact? As the range of human rights that can be negatively affected by unilateral sanctions is quite broad, indicators should make use of any relevant source of information for determining the impact on each right, provided that the criteria of integrity and credibility are respected. Some entities such as professional associations or NGOs or other organizations that specialize in a given discipline can actually be a source of integrity and credibility for the indicators.

Should the human rights impact of unilateral sanctions be measured in relative terms against other factors that may be simultaneously affecting human rights? Whether unilateral sanctions add incrementally or substantially to a human rights problem, or not at all, is valuable information that should constitute a key purpose of the indicators. Through measurements using baselines and points in time before and after unilateral sanctions are implemented, it can be possible to discern the specific impact of sanctions as

a contributing factor in existing human rights problems, and consequently to establish whether the sanctions are responsible for a given proportion of the overall situation. Once the sanctions are in effect, the dynamics of the sanctions as well as other factors that simultaneously affect human rights (which can be affected by the sanctions) may change relative to each other depending on significant changes in the sanctions or in the other factors. Establishing the real as well as the relative impact of unilateral sanctions on an ongoing basis thus will depend on taking the various factors into account, and not the sanctions alone.

4. How should measurements be done?

What types of sources should be relied upon (statistical data, field observations, etc.)? The impact of unilateral sanctions on different human rights can require different types of measurement to adequately represent the impact in the form of indicators. Statistics are particularly useful in illustrating the scope and magnitude of the impact, while field observations, surveys, interviews and other non-quantitative forms of data can show the depth and consequences of the impact on individuals in ways that statistics may not capture. Non-quantitative data can also be critical in specifically implicating sanctions in producing the impact.

The types of data sources should be specifically oriented toward sanctions and human rights to the extent possible. It has been noted that general statistics can lack sufficient clarity for discerning a human rights impact and thus statistics that focus on human rights concerns should be developed,¹⁵ although it is not evident that this has occurred to any great extent; for purposes of tracking the impact of sanctions on human rights, an even narrower focus is warranted.

How should the integrity of the information from sources be determined? Judgments about the integrity of information entail many factors. Ideally, they should reflect both the features of the data (key measures are whether it is sufficiently complete, accurate, objective and timely) and the features of the source (the type of source, its reputation and the reputation of data it is known to produce), as well as what is known about the methodology for compiling the information, the professionalism and capabilities of the people involved in doing it, and existing uses of the data (which reflect judgments about its quality by others). It can take time for the data itself to

15. OHCHR, *Human Rights Indicators*, *op. cit.*, p. 2.

establish a reputation of integrity; knowledge about the sources can speed the process.

Should different types of unilateral sanctions be measured differently? (Different types of sanctions may affect socio-economic realities differently, while the imposition of more than one type of unilateral sanctions may lead to an aggregate effect on a specific area and on a specific segment of society.) Comprehensive or general economic sanctions, or sanctions that target a vital economic sector, can impact a broad range of human rights for a significant portion of the population, or even the entire population. Targeted sanctions against entities or individuals can affect a more limited number of rights and people, including individuals affected indirectly.

Indicators should take into account that specific human rights may be not be affected in the same order in all cases; this will normally depend on the details of the sanctions regime and the specific activities it restricts.

How can the impact of unilateral sanctions on a country's development be assessed? Unilateral sanctions affect a country's development on two levels – by restricting a country's interaction with other countries, and by affecting human rights within the targeted country. Maximizing the scope and pace of a country's development depends on the ability of its population to fully enjoy human rights of all types, so any restriction that sanctions are found to impose on human rights can impede development and the enjoyment of the right to development. An indicator of how sanctions affect the right to development can be developed by combining data from indicators for other rights, or from an index of the overall human rights impact of sanctions based on such a combination.

Can everything that is desirable to measure actually be measured? What obstacles can be identified? At present there are no established indicators that specifically measure the impact of unilateral sanctions on individual human rights or on human rights more generally; information is piecemeal and anecdotal. Nonetheless, many aspects of the human rights impact of unilateral sanctions can be discerned, at least approximately, from existing available information, which should be evaluated for its potential use in this regard. For example, when sanctions prevent international flights by a nation's air carriers, the impact on the right to freedom of movement may be deduced with a high degree of accuracy, even if not 100%, from data on international commercial flight departures and land border crossings; the levels represented by this data prior to the sanctions would already take into account other factors affecting the right to freedom of movement.

It is probable that the impact of unilateral sanctions on certain human rights may not be discernible from currently produced information, requiring new indicators to be developed for this purpose. The lack of such data may reflect an absence of demand, but may also reflect the difficulty in compiling it, or in compiling it rapidly enough to be timely.

5. Who should perform the measurements?

Should particular entities be implicated in issuing the indicators or producing analyses from them? If so, what types of entities should be involved (UN agency, NGO, university, government, etc.), and how should they be determined (integrity, credibility, reputation, objectivity, neutrality, etc.)? The primary objective is to have indicators and assessments with integrity and credibility, as they must be convincing to various audiences that may be necessary to alleviate the human rights situations that arise from unilateral sanctions, either immediately or in the longer term (securing funding for NGOs to be active on the ground, launching a legal case against a sanctioning state, building political support within a sanctioning country for changes in its sanctions, etc.). Any entity that is capable of collecting and producing the necessary data, that has a valid methodology, and that is broadly perceived as impartial and objective can be a valid source of the indicators; these can include the UN or other intergovernmental organizations, NGOs and universities, among others.

Certain information may only be obtainable from other sources, such as the government of a sanctioned country that produces statistics which can reveal human rights problems arising from unilateral sanctions. Such data may be fully acceptable as it is often collected and produced with professionalism by technical specialists, but one should be alert to the potential for such data, or the domestic analysis of it, to be distorted – or even simply perceived as distorted – for political or ideological reasons, in which case the credibility of such indicators is diminished. Governments have been known to pressure official statistical agencies to publish data that favor their positions.¹⁶

6. What blocks shall be included in the methodology?

- Health
- Food security
- Labour and economic rights

16. OHCHR, *Human Rights Indicators*, op. cit., p. 49.

- Social Guarantees
- Education
- Functioning of humanitarian actors/delivery of humanitarian aid
- Development/developmental projects
- Protection of vulnerable groups
- Cultural Rights
- Other blocks

Indicators should attempt to measure the impact of unilateral sanctions on as many individual human rights as possible. When this is not feasible, indicators should focus on blocks of rights that are as narrow as possible in order to maximize the indicators' precision.

7. What shall be the content of/main indicators in each of these blocks?

The content of each indicator at the level of a block of rights will vary according to the category of rights and the availability of information. Quantitative information should be used whenever possible as it is readily comparable between different periods, supplemented by relevant qualitative information that reveal nuances in the impact which are not necessarily evident from the numerical data.

8. Additional matters to consider

Regardless of whether unilateral sanctions target states, economic sectors, entities or individuals, they can affect the rights of a far greater number of people indirectly and unintentionally, from individuals to entire populations.¹⁷ Assessments must be capable of establishing the breadth of the impact, and for that reason they should occur at the level of populations in order to determine if the impact is limited to the intended targets or to a broader group, and how large that group is; what right or rights are affected; and the depth or intensity of the impact.

Yet while a comprehensive and detailed measure of the impact of unilateral sanctions on the full range of human rights of a country's entire population is desirable, it can be labor-intensive, time-consuming and costly, particularly in countries where the physical, transportation, communication or other infrastructure is not ideal; where parts of the population are

17. UN Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, "Targets of unilateral coercive measures: notion, categories and vulnerable groups," 12 July 2021, doc. A/76/2455.

difficult to access; where the strength and scope of the state's administrative presence and capabilities may be lacking; or where local expertise is insufficient. Countries targeted by unilateral sanctions or countries where specific targets are located may be particularly susceptible to these factors.

The outcome of these reflections and discussions was the creation by the Special Rapporteur of a sanctions impact monitoring tool that the United Nations published on line in 2023¹⁸ for use by any party with knowledge of concrete circumstances in which sanctions had an identifiable humanitarian impact. Features that differentiate it from the 2004 assessment methodology of IASC/OCHA are its simplicity and accessibility, so that it can be used by those with relevant information regardless of their training, educational background or type of stakeholder status, or the means by which the information came to be known. The monitoring tool was based on the following set of principles:

Inclusion: Determining the specific impact of unilateral sanctions on human rights requires input from a variety of stakeholders whose circumstances allow them to observe or have access to relevant information, whether descriptive or quantitative. The proposed monitoring and reporting platform is open to all relevant actors and entities, governmental and nongovernmental, engaging in any discipline, or research and policy area.

Comprehensiveness: Considering that sanctions can affect multiple human rights at once, and their impact can differ in nature and magnitude according to the right, the objective is to collect sufficient data from various sources and stakeholders, public or private. The tool is proposed as an open platform to all disciplines approaching the issue of sanctions from different perspectives and with different findings and outputs.

Evidence-based: The provided information can be an empirical snapshot of the sanctions-induced restrictions, which may contain both quantitative and qualitative information/data, as well as concise factual narratives explaining correlation or causality. Anecdotal observations and evidence, and even partial observations, may be considered valuable to shed light on mechanisms and phenomena triggered by the imposition of sanctions-induced restrictions.

18. OHCHR "Monitoring and assessment of the impact of unilateral sanctions and overcompliance on human rights," 2023, <https://www.ohchr.org/sites/default/files/documents/issues/ucm/cfis/assessment-tool/SR-Draft-assessment-tool.pdf>, visited on May, 2024.

Confidentiality: The ultimate purpose of the tool is to offer the opportunity to any actor and stakeholders to freely engage in the work of monitoring of and reporting on the observed adverse effects of unilateral coercive measures and to share specific input, either once or on regular basis, with the mandate of the Special Rapporteur. For this reason, the Special Rapporteur takes very seriously issues pertaining to the privacy of the submitters. Therefore, their identity is to remain confidential.

Principled: The proposed tool should not be seen as an acceptance/acquiescence of the imposition of unilateral coercive measures, or as a method to map the impact for the purpose of developing and putting forward mitigating solutions. It's instead a tool to encourage the impact assessment work of all relevant actors and the regular reporting, and a means to reflect on the specific areas of impact".¹⁹

Specifically, the sanctions impact monitoring tool takes the form of a non-technical questionnaire that aims to capture information that can be submitted to the office of the UN Special Rapporteur about where the humanitarian impact is occurring, to whom, and its nature. Respondents can provide detail to the degree that corresponds to their knowledge of a humanitarian situation, whether narrow or ample; from this, it is hoped that the data can produce concrete links between specific sanctions and their humanitarian effects.

To enhance credibility, the tool requests basic information about the respondent – whether it is an individual, a government, an NGO or an academic/research institution – but it offers room for confidentiality, even anonymity, to take into account sensitivities that can exist in obtaining access to knowledge of the sanctions' impact, or in being identified in any way with the data. It also requests information on the geographic scope of the impact.

To assess the impact on various human rights, the tool lists a number of rights for which there are specific questions. As an example, the section on the right to health seeks the following information:

1. Impact on availability of medicines: Yes/No
 - If yes:
 - The items concerned
 - Specific obstacles to procurement

19. *Ibid.*

2. Impact on the availability of medical equipment: Yes/No

If yes:

- The items concerned
- Specific obstacles to procurement

3. Impact on the availability of raw material for domestic production: Yes/No

If yes:

- The items concerned
- Specific obstacles to procurement

4. Impact on the availability of spare parts/software/high-tech/consumables for medical equipment or treatment: Yes/No

If yes:

- The items concerned
- Specific obstacles to procurement

5. Indicate the populations most affected

6. Additional criteria/indicators²⁰

The data resulting from the collection of such information will allow a direct connection to be established between sanctions and the nature and degree of the humanitarian problems that are attributable to their use, from which dedicated international as well as national responses can be built to avert further human harm.

Report on the challenges and principles of the development of the Sanctions; Assessment and Monitoring tool has been presented to the Human Rights Council in September 2024²¹ and the online application launched at the same session of the Council²².

20. *Ibid.*

21. A/HRC/57/55 Monitoring and assessment of the impact of unilateral sanctions and overcompliance on human rights - Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena F. Douhan <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/57/55&Lang=E>, visited 10.10.2024.

22. Sanctions Monitoring and Impact Assessment Tool <https://ucmmonitoring.ohchr.org>, visited 10.10.2024.

CHAPTER V

Unilateral sanctions and the Sustainable Development Goals

(Prof. A. Douhan, UN Special Rapporteur)

Sustainable development goals have been in the center of political and academic discussion since the moment of adoption of the UN Millennium Declaration of 2000¹. Specific sustainable development goals (SDGs) for the period of 2015-2030 have been fixed in the 2030 Agenda for Sustainable Development² and recently reviewed at the Sustainable development summit in September 2023. At the same time despite the rapid expansion of various forms of unilateral sanctions, expanding use of the means of their enforcement in various forms (secondary sanctions, civil and criminal penalties for circumvention of sanctions regimes) as well as over-compliance, none of the documents, including the Political declaration of the High-level political forum on SDGs of September 2023³ contains any reference to the unilateral sanctions/ unilateral coercive measures or any type of coercive measures applied by states without or beyond authorization of the UN Security Council and do not intend to provide for the assessment of the impact on the achievement of SDGs.

Alongside the expansion of the use of unilateral sanctions, the scope of academic works on the problem is also expanding. At the same time the mainstream of academic studies focuses on political or general legal issues of unilateral primary⁴ or secondary sanctions⁵. Humanitarian impact is

1. *United Nations Millenium Declaration*, UN, 8 September 2000, UN.

2. *Transforming our world: the 2030 Agenda for Sustainable Development*, 25 September 2015 (A/RES/70/1), UN, resolution / adopted by the General Assembly.

3. 78/1. Political declaration of the high-level political forum on sustainable development convened under the auspices of the General Assembly, 16 October 2023, UN, Resolution adopted by the General Assembly, <https://documents.un.org/doc/undoc/gen/n23/306/65/pdf/n2330665.pdf?token=Ip5msn9Gsg6pt2cdyw&fe=true>, visited on May, 2024.

4. Mirzadeh F., Flowe B., Ordway J. A., Fisher-Owens D., Hoghooghi B., Bechky P. S., Gold R., McClurg J. A., Turner Roberts M., "Economic sanctions," *International Enforcement Law Reporter* 35, no. 3 (2019): 106–109; Meredith Rathbone, Peter Jeydel, Amy Lentz, "Sanctions, sanctions everywhere: Forging path through complex transnational sanctions laws," *Georgetown Journal of International Law* 44, no 3 (2013): 1055-1126.

5. Bruce Zagaris, "Economic Sanctions," *International Enforcement Law Reporter* 36, no. 9 (September 2020): 347-348.

traditionally assessed either as concerns specific human rights⁶, human rights in specific countries⁷, on specific groups of population⁸ or impact a particular type of sanctions⁹. At the same time no academic works focusing on the impact of UCMs on the achievement of the SDGs have been published.

Unilateral coercive measures constitute those unilateral sanctions which violate international legal norms or wrongfulness of which cannot be excluded as countermeasures in accordance with the law of international responsibility. As such analysis requests assessment of every specific types of measure, at the same time the overwhelming majority of unilateral sanctions do not fall under the above criteria, terms UCMs and unilateral sanctions are used in this article interchangeably.

Agenda for sustainable development for the period until 2030 includes 17 goals and their 169 targets in economic, environment and humanitarian areas, including:

- Goal 1 (Elimination of poverty);
- Goal 2 (End hunger, achieve food security and improved nutrition and promote sustainable agriculture);
- Goal 3 (To ensure healthy lives and promote well-being for all at all ages);
- Goal 4 (Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all);
- Goal 5 (Achieve gender equality and empower of women and girls);
- Goals 6 (Ensure availability and sustainable management of water and sanitation for all);
- Goal 7 (Ensure access to affordable, reliable, sustainable and modern energy for all)
- Goal 8 (Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.

6. Richard Garfield, "The Public Health Impact of Sanctions: Contrasting Responses of Iraq and Cuba," *Middle East Report* (Summer 2000): 16-19.

7. FatemehKokabisagh, "Assessment of the Effects of Economic Sanctions on Iranians' Right to Health by Using Human Rights Impact Assessment Tool: A Systematic Review," *International Journal of Health Policy and Management* 7, no 5 (2018): 374-393.

8. Pelter Zoë, Camila Teixeira, Erica Moret, Sanctions and their impact on Children (UNICEF), (2022), www.unicef.org/globalinsight/media/2531/file/%20UNICEF-Global-Insight-Sanctions-and-Children-2022.pdf, visited on May, 2024.

9. Charlotte Beaucillon (ed.), *Research Handbook on Unilateral or Extraterritorial Sanctions* (UK: Elgar Publishing, 2021), pp. 336-457.

- Goal 9 (Build resilient infrastructure, promote inclusive and sustainable industrialization, and foster innovation)
- Goal 10 (Reduce inequality within and among countries)
- Goal 11 (Make cities and human settlements inclusive, safe, resilient, and sustainable)
- Goal 12 (Ensure sustainable consumption and production patterns)
- Goal 13 (Take urgent action to combat climate change and its impact),
- Goal 14 (Conserve and sustainably use the oceans, seas and marine resources for sustainable development);
- Goal 15 (Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss);
- Goal 16 (Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels);
- Goal 17 (Strengthen the means of implementation and revitalize the global partnership for sustainable development).

UCMs, means of their enforcement and over-compliance with such measures are negatively affecting the achievement of SDGs in all spheres that has been reflected in a number of resolutions of the UN GA (73/167 of 17.12.2018¹⁰; 74/154 of 18.12.2019¹¹; 75/181 of 16.12.2020¹² and many other). Current article addresses the impact of UCMs on various groups of SDGs: humanitarian, economic and environmental.

Humanitarian group of SDGs traditionally includes the following goals: Goal 1 (Eradication of poverty), 2 (End hunger, achieve food security), 3 (Ensure the highest attainable level of health); 4 (Ensure inclusive and equitable education), 5 (gender equality), 8 (Promote sustained, inclusive and sustainable economic growth), 10 (prohibition of discrimination).

10. Human rights and unilateral coercive measures, 17 December 2018, UNGA, resolution, A/RES/73/167, para. 7, documents-dds-ny.un.org/doc/UNDOC/GEN/N18/449/13/pdf/N1844913.pdf?OpenElement, visited on May, 2024.

11. Human rights and unilateral coercive measures, 18 December 2019, UNGA, resolution, A/RES/74/154, para. 7, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/428/37/pdf/N1942837.pdf?OpenElement>, visited on May, 2024.

12. Human rights and unilateral coercive measures, 16 December 2020, UNGA, resolution, A/RES/75/181, para. 7, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/372/60/pdf/N2037260.pdf?OpenElement>, visited on May, 2024.

Goal 1 (Elimination of poverty) and Goal 8 (Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all) are closely related. Unilateral sanctions, means of their enforcement and over-compliance demonstrates from substantial up to detrimental effect over the economy of states under sanctions¹³. Financial sanctions impede the possibility of external transactions and result in the drop in / cut off the revenue of people involved in activities relevant to international trade (production, trade, tourism, air companies, etc.), prevent them not only from the possibility to get support from the side of the government, but also to benefit from their participation in international trade or to get revenues from their family members abroad. In many countries (Syria, Iran, Zimbabwe, Cuba) the only possibility for such assistance exists via the use of Havalas mechanism which is traditionally criticized and provides for the possibility of only minimal (USD 100-150 per month) transactions.

Sectoral sanctions, sanctions against states, huge companies and high state officials, including those responsible for the specific spheres of economy result in the economic crises, reduction of working places, salaries, growing unemployment rates¹⁴, migration of people facing deterioration of income, that negatively affects these people and their family members (Report A/76/174)¹⁵.

In particular, as a result *inter alia* of the above reasons and consequent hyperinflation salary in the public sector detrimentally dropped in many

13. Visit to the Islamic Republic of Iran, 17 August 2022, UN, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, A/HRC/51/33/Add.1, paras. 17-24, www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/regularsession/session51/2022-09-07/A_HRC_51_33_Add1_AdvanceUneditedVersion.docx, visited on May, 2024; Visit to Zimbabwe, Alena Douhan, 12 August 2022, UN, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, A/HRC/51/33/Add.2, paras. 18-20, <https://reliefweb.int/attachments/ec766d56-a7e0-4c9a-9fc4-73ae61d0506a/G2244831.pdf>, visited on May, 2024; Visit to the Bolivarian Republic of Venezuela, 6 September 2021, UN, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, A/HRC/48/59/Add.2, paras. 23-25, https://reliefweb.int/attachments/2c45fc17-c098-3ddd-855b-cfe5c3930e74/A_HRC_48_59_Add.2_AdvanceUneditedVersion.pdf, visited on May, 2024.

14. *Report on the Country visit to Zimbabwe*, paras. 20-21.

15. *Targets of unilateral coercive measures: notion, categories and vulnerable groups*, 15 July 22, UN, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights A/76/174, paras. 36-55.

countries under sanctions: to USD 2–10 in Venezuela¹⁶. USD 20-40 in Syria¹⁷, USD 20-50 in Zimbabwe¹⁸, with the cost of food basket being multiple times higher (around USD 200 in Venezuela, with average salary covering less than 2 per cent of it). All the above results in the deteriorating level of social security, labour conditions, loss of professionals, economic migration. Countries under sanctions report about high involvement into shadow economy (46 per cent in Venezuela¹⁹) with level of vacancies among professionals in the vital public sectors reaching 30-50 and sometimes even higher per cent: doctors, nurses, teachers, university professors, state officials, policemen, judges etc. (Venezuela²⁰, Zimbabwe²¹, Syria²²) or those involved in tourist, restaurant and relevant sectors (Venezuela²³, Zimbabwe, Iran²⁴). As a result, poverty rate in Venezuela upon the assessment of humanitarian organizations reaches 94%, 67% of those living in the extreme poverty²⁵; similarly in Syria official poverty rate exceeding 90%²⁶.

People involved in other but relevant to international relations and trade are also affected, including those doing in particular handicrafts, like indigenous population in Venezuela²⁷, women weaving baskets and plates in Zimbabwe; people involved in crafting all types of art objects in Iran and Syria. In particular, women weaving traditional baskets in Zimbabwe are only able to receive less than 5 per cent of their cost due to the need to export them via South Africa changing therefore the country of origin. Only 10% of people traditionally involved in handicrafts in Iran continue this activity after introduction of UCMs in 2018, as a result more than 900 000 people have to look for other sources of income²⁸. This situation

16. *Report on the Country visit to Venezuela*, para. 96.

17. Preliminary findings of the visit to the Syrian Arab Republic by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Prof. Dr. Alena Douhan, www.ohchr.org/sites/default/files/documents/issues/ucm/statements/2022-11-09/20221110-eom-syria-sr-ucm-en.docx, visited on May, 2024.

18. *Report on the Country visit to Zimbabwe*, para. 50.

19. *Report on the Country visit to Venezuela*, para. 32.

20. *Report on the Country visit to Venezuela*, para. 37.

21. *Report on the Country visit to Zimbabwe*, paras. 41, 46-48.

22. *Preliminary findings of the visit to Syria*.

23. *Report on the Country visit to Venezuela*, para. 67.

24. *Report on the Country visit to Iran*, para. 62.

25. *Report on the Country visit to Venezuela*, para. 30.

26. *Preliminary findings of the visit to Syria*.

27. *Report on the Country visit to Venezuela*, para. 67.

28. *Report on the Country visit to Iran*, para. 62.

also has long-term consequences for other elements of sustainable development including in particular, risk of disappearance of handicrafts included in the UNESCO list of cultural heritage.

Similar factors combined with the impact of financial, banking sanctions and over-compliance result in the reduction of revenue of states under-sanctions, that together with impediments in the delivery of various types of goods (on the first hand those which cannot be qualified as being purely humanitarian (that is traditionally understood as including food and medicine only but also request receiving special licenses), even if not subjected to sanctions regimes directly), undermines the ability of governments to ensure construction and maintenance of objects of critical infrastructure, including schools, hospitals, public transportation (Venezuela, Zimbabwe, Syria, Iran)²⁹.

In particular, complex UCMs against Iran together with over-compliance undermine the ability of its government to ensure basic needs (food, housing, healthcare, education) of more than 5,5 mln of Afghan refugees, in a view that around 5 000-10 000 of them are arriving in the country every day³⁰. UCMs, threat with secondary sanction safter adoption of Ceasar act against Syria, prevents any effort aimed to restore critical infrastructure, destroyed during the period of military conflict, impeding therefore access to electricity, water supply, irrigation, railroads, land and avia transportation, heating etc.³¹ Adoption of so-called Syria Anti-normalization act(not adopted as for April 2024) has a higher risk of making the situation much worse, due to the threats of severe punishment towards states, businesses and other non-state entities³².

States under sanctions are also losing gradually their capacities to maintain reproductive and family planning programs (Venezuela, Iran), In particular, Venezuela is only able to provide USD 0,5 support for pregnant women, that is twice less than the cost of the single bus ticket. In Syria level of social assistance has substantially decreased in the absence of functioning

29. *Report on the Country visit to Venezuela*, paras. 56–66; *Report on the Country visit to Iran*, paras. 19, 43–53; *Preliminary findings of the visit to Syria*.

30. *Report on the Country visit to Iran*, para. 67.

31. *Preliminary findings of the visit to Syria*.

32. US Anti-Normalization Act set to worsen dire humanitarian situation in Syria, 22 February 2024, <https://www.ohchr.org/en/press-releases/2024/02/us-anti-normalization-act-set-worsen-dire-humanitarian-situation-syria-un>, visited on May, 2024.

infrastructure, absence of financial resources and impossibility of delivery, many functions are transferred to civil society actors³³.

As a result, poverty rates are enormously increasing affecting thus SDG 2 (*End hunger, achieve food security and improved nutrition and promote sustainable agriculture*). Countries under sanctions report on the high level of food insecurity varying from specific regions only (Iran³⁴), up to 24-50 (Venezuela³⁵), 60 (Zimbabwe³⁶) 90 (Syria³⁷) per cent being food insecure countrywide. Agricultural unsustainability is exacerbated by the abovementioned impediments in access to irrigation, diesel, agricultural equipment, spare parts, seeds and fertilizers³⁸.

The FAO reports that the number of food insecure people worldwide is increasing rather than decreasing since 2014, and returned back to the level of 2005, when the issue of food security started to be addressed within the SDGs agenda. It has been reported e.g. that around 720-811 food insecure including severe malnutrition in 2020³⁹, with additional growth for 20-46 mln⁴⁰, and slight decrees in 2022 – up to 690-783 mln people living in hunger and still stay above the 2019 level⁴¹, that is around 11.3 per cent of the world population being severe food insecure (people run out of food and, at the most extreme, have gone days without eating⁴²) and 29.5 per cent living in moderate hunger.

Below specific country related examples can be found. In accordance with UNICEF reports around 90 per cent of children in Syria are in severe need for humanitarian assistance for basic survival; and about

33. *Preliminary findings of the visit to Syria*.

34. *Report on the Country visit to Iran*, para. 42.

35. *Report on the Country visit to Venezuela*, paras. 32, 35.

36. *Report on the Country visit to Zimbabwe*, para. 42.

37. *Preliminary findings of the visit to Syria*.

38. Report on the Country visit to Venezuela, paras. 56–66; Report on the Country visit to Zimbabwe, para. 24, 27; Report on the Country visit to Iran, para. 41; Food Outlook. Biennial Report on Global Food Markets (Rome: FAO, 2022), pp. 72, 77, <https://reliefweb.int/attachments/6fa84dd2-0e70-4707-b5af-71c9330f5a63/cb9427en.pdf>, visited on May, 2024.

39. The State of Food Security and Nutrition in the World 2021. Transforming food systems for food security, improved nutrition and affordable healthy diets for all (Rome: FAO, 2021), p. Xi, www.fao.org/3/cb4474en/cb4474en.pdf, visited on May, 2024.

40. *Food Outlook. Biennial Report on Global Food Markets* (Rome: FAO, 2022), p. 10.

41. The State of Food Security and Nutrition in the World 2023 (Rome: FAO, 2023), pp. vii, xviii, 6-12, www.fao.org/3/cc3017en/cc3017en.pdf, visited on May, 2024.

42. Hunger and food insecurity, FAO, www.fao.org/hunger/en/, visited on May, 2024.

500 000 children are in the state of severe malnutrition⁴³; 51 per cent of population live in moderate hunger, 2,4 mln people – severe hunger, when people are omitting not the meals or change ratio but rather omit days⁴⁴. In Venezuela a number of such children in 2022 constituted 117 000⁴⁵, and around 50 per cent of children under age of 5 are severely undernourished⁴⁶. In North Korea the number of severely undernourished children is reported to be 140 000 of children aged under 5⁴⁷.

In Venezuela the number of meals per day has decreased from 3 to 1.5 since unilateral sanctions have been imposed in 2015, with minimal number of proteins, and mostly ensured by the food baskets provided by the state, as the minimal salary does not cover even 2% of the food basket costs⁴⁸ [53, п. 31–32, 36], and a number of people being food insecure has increased to 213.8 per cent during the period of UCMs⁴⁹. More than 2,5 mln are living in the severe hunger (7,9 per cent) and more than 24 per cent – moderate hunger⁵⁰. In Zimbabwe around 60 per cent of population are food insecure⁵¹. In Iran the level of food insecurity is much lower, at the same time in the regions inhabited by Afghan refugees (Sistan, Baluchestan) reaches out 60 per cent⁵². It shall be taken into account the UCM and growing overcompliance with them cannot be qualified as the only reason for growing food insecurity. It is also affected worldwide by the natural disasters, pandemics, military hostilities, absence of control over the agricultural territories. At the same time it is possible to observe the straightforward tendency of deterioration of food security indexes immediately after introduction of UCMS and/ or intensification of measures aimed at the enforcement⁵³.

43. Zoë Pelter, Camila Teixeira, Erica Moret, *Sanctions and their impact on Children* (UNICEF, 2022), p. 12, www.unicef.org/globalinsight/media/2531/file/%20UNICEF-Global-Insight-Sanctions-and-Children-2022.pdf, visited on May, 2024.

44. *Preliminary findings of the visit to Syria*.

45. Zoë Pelter, Camila Teixeira, Erica Moret, *Sanctions and their impact on Children* (UNICEF, 2022), p. 18.

46. *Report on the Country visit to Venezuela*, para. 33.

47. Zoë Pelter, Camila Teixeira, Erica Moret, *Sanctions and their impact on Children* (UNICEF, 2022), p. 26.

48. *Report on the Country visit to Venezuela*, paras. 31–32, 36.

49. *Ibid.*, para. 31.

50. *Ibid.*, paras. 32, 35.

51. *Report on the Country visit to Zimbabwe*, para. 24.

52. *Report on the Country visit to Iran*, para. 42.

53. *Report on the Country visit to Venezuela*, para. 37; *Report on the Country visit to Zimbabwe*, paras. 49–59.

Due to the same reasons, states under sanctions are not able to ensure sustainable functioning the financial system, electricity, water supply, access to affordable gas and diesel, agricultural machinery and spare parts, food proceeding, conservation and storage, seeds⁵⁴, which constitute an integral part of food security in accordance to the FAO⁵⁵. As for March 2024 humanitarian organizations report that electricity supply in Syria does not cover even 20% of necessary capacity undermining therefore all efforts to establish any working places or restore water supply, bakeries etc.⁵⁶

Additional challenges are expected due to the limited access to fertilizers in a view of the sanctions imposed over fertilizers producers, as well as delivery companies, that in the period of 2020-2022 resulted in the 3-4 multiplication of fertilizers' costs and consequent reduction of their affordability⁵⁷, which become critical for many countries (Afghanistan, Myanmar, Yemen, Syria, Haiti, Columbia⁵⁸. Belarusian Potash company, designated by the EU, can be used as a good illustration of the point, as it used to cover 20 per cent of the world market of potash fertilizers, without any possibility of replacement, with 100% coverage of Chad, Madagascar, Nigeria, Mali, Kenya, Myanmar, Venezuela, Columbia, Honduras and many other African countries⁵⁹.

The need to ensure healthy lives and promote well-being for all at all ages (SDG 3) is also affected in the face of UCMs of states and regional

54. *Report on the Country visit to Venezuela*, paras. 56-66; *Report on the Country visit to Zimbabwe*, para. 24; *Report on the Country visit to Iran*, para. 41.

55. *Food Outlook. Biennial Report on Global Food Markets* (Rome: FAO, 2022), p. 5.

56. Anna Cervi, Turn on the Light: Why tackling energy-related challenges in the nexus of water and food in Syria cannot wait. Discussion paper (Oxfam, 2024), <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/621586/dp-turn-on-the-light-290124-en.pdf?sequence=1>, visited on May, 2024.

57. *Food Outlook. Biennial Report on Global Food Markets* (Rome: FAO, 2022), pp. 72, 77; *Report on the Country visit to Zimbabwe*, para. 27.

58. Hunger Hotspots: FAO-WFP early warnings on acute food insecurity | February to May 2022 Outlook, knowledge4policy.ec.europa.eu/publication/hunger-hotspots-fao-wfp-early-warnings-acute-food-insecurity-february-may-2022-outlook_en#:~:text=The%20Food%20and%20Agriculture%20Organization,from%20February%20to%20May%202022, visited on May, 2024.

59. Mandate of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, 4 May 2022, AL OTH 27/2022, spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27231, visited on May, 2024; Mandate of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, 4 May 2022, AL LTU 1/2022, spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27230, visited on May, 2024.

organizations, as well as over-compliance by banks and private sector due to the deteriorating economic situation in the country under sanctions in general, individuals, hyperinflation, challenges to procure, pay and deliver necessary medical equipment, medicine, spare parts, adaptive equipment. Detrimental effect of sanctions of the UN Security Council against Iran in 1990-2003 (despite their legality) has been reflected but humanitarian organizations. It demonstrated the rapid mortality rate among all population groups, including maternal mortality, mortality of infants under 5⁶⁰ despite formally existed humanitarian exemptions (General comment No 8 of the CESCR 1997⁶¹).

In many countries under sanctions, the use and implementation of UCMs affect the whole system of healthcare including system of prevention and control of diseases also via vaccination and monitoring, that results in the outbreaks of preventive diseases like measles (Venezuela, Iran), polio (Venezuela, Zimbabwe, Syria⁶², Iran⁶³), yellow fever (Venezuela), rotavirus, diphtheria, tuberculosis (Venezuela, Somalia, Yemen)⁶⁴. In 2016-2018 around 2,6 million of children in Venezuela have not been vaccinated⁶⁵. Child vaccination rate in Syria has dropped from 95 to around 60 per cent between 2006 and 2022⁶⁶.

60. Richard Garfield, "The Public Health Impact of Sanctions: Contrasting Responses of Iraq and Cuba," *Middle East Report* (Summer 2000): 16-19.

61. The relationship between economic sanctions and respect for economic, social and cultural rights, 12 December 1997, UN Committee on Economic, Social and Cultural Rights, General Comment No. 8, E/C.12/1997/8, (paras. 3-5), www.refworld.org/docid/47a7079e0.htm, visited on May, 2024; Zoë Pelter, Camila Teixeira, Erica Moret, Sanctions and their impact on Children (UNICEF, 2022), pp. 15-18; Richard Hanania, "Ineffective, Immoral, Politically Convenient: America's Overreliance on Economic Sanctions and What to Do about It," Policy analysis (CATO Institute, 18 February 2020), www.jstor.org/stable/pdf/resrep23040.pdf?refreqid=excelsior%3Ad66928b8f68e09c8bba2c58fe72142e2&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=, visited on May, 2024.

62. Kasturi Sen, Waleed Al-Faisal, Yaser AlSaleh, "Syria: The Impact of Sanctions on Public Health," *Journal of Public Health* 35, no 2 (2012): 197-198; Submission by Syria, OHCHR, www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures, visited on May, 2024.

63. Zoë Pelter, Camila Teixeira, Erica Moret, *Sanctions and their impact on Children* (UNICEF, 2022).

64. Submission by Maat for Peace, Development and Human Rights, OHCHR, www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures, visited on May, 2024.

65. *Report on the Country visit to Venezuela*, paras. 41-43.

66. Richard Hanania, "Ineffective, Immoral, Politically Convenient: America's Overreliance on Economic Sanctions and What to Do about It," *Policy analysis* (CATO Institute, 18 February 2020).

Sanctions against states, sectors of economy, high state officials or huge companies, impossibility of or impediments in bank transfers, exacerbated by over-compliance, prevent procurement and delivery of all types of medicine, medical and adaptive equipment, materials and reagents to all countries under sanctions⁶⁷). In particular, many of them are facing severe insufficiency of medical professionals (Venezuela⁶⁸, Syria⁶⁹), insufficiency and impossibility to deliver medicine and medical equipment (Sudan⁷⁰, Cuba⁷¹, Venezuela⁷², Iran⁷³, Syria⁷⁴), other medicines⁷⁵, means of individual protection (Cuba⁷⁶), spare parts and software, including for CT scanners and ventilators (Syria⁷⁷, Sudan⁷⁸, Cuba), fuel, electricity, food, drinking water and water for sanitation (Venezuela⁷⁹, Syria⁸⁰). In Zimbabwe vacancy rates in the health sector is 89% for midwives, 64% for doctors and 49% for nursing tutors. Most provinces have less than 10 health professionals per 10,000 people⁸¹. Since 2021 Zimbabwe is included in the list of countries

67. KasturiSen, Waleed Al-Faisal, YaserAlSaleh, "Syria: The Impact of Sanctions on Public Health," p. 198; The Human Costs and Gendered Impact of Sanctions on North Korea (Korea Peace Now, October 2019), p. 8, <https://koreapeacenow.org/wp-content/uploads/2019/10/human-costs-and-gendered-impact-of-sanctions-on-north-korea.pdf>, visited on May, 2024; Preliminary findings of the visit to Syria.

68. Venezuela. Urgent aid needed to combat COVID-19 – Water Shortages in Hospitals Heighten Risk in Country, Region, HRW, www.hrw.org/news/2020/05/26/venezuela-urgent-aid-needed-combat-covid-19, visited on May, 2024.

69. *Preliminary findings of the visit to Syria.*

70. Inputs received for SR UCM-Study on the impact of unilateral sanctions on human rights during the state of emergency in the context of COVID-19 pandemic of 15 June 2020, OHCHR, www.ohchr.org/en/calls-for-input/call-inputs-report-impact-unilateral-sanctions-human-rights-during-state-emergency, visited on May, 2024.

71. *Ibid.*

72. *Ibid.*

73. *Ibid.*

74. *Preliminary findings of the visit to Syria.*

75. Inputs received for SR UCM-Study on the impact of unilateral sanctions on human rights during the state of emergency in the context of COVID-19 pandemic of 15 June 2020, OHCHR.

76. *Ibid.*

77. *Ibid.*; *Preliminary findings of the visit to Syria.*

78. Inputs received for SR UCM-Study on the impact of unilateral sanctions on human rights during the state of emergency in the context of COVID-19 pandemic of 15 June 2020, OHCHR.

79. *Ibid.*

80. *Ibid.*; *Preliminary findings of the visit to Syria.*

81. *Report on the Country visit to Zimbabwe*, para. 32.

with the lowest number of health workers⁸² alongside Somalia, Sudan and Yemen⁸³.

It shall be noted that many already mentioned elements are also subjected to severe but indirect impact of UCMs and over-compliance. It has been broadly recognized in particular, that elimination of poverty and hunger, promotion of inclusive and sustainable economic growth, agriculture, food security and improved nutrition, full and productive employment and decent work for all important aspects of the right to health, availability and sustainable management of water and sanitation is vital for the achievement of the right to health⁸⁴. It is worrying thus that unavailability of electricity and fuel, and rising prices of water quality control materials and equipment, such as cultivation media, chlorination tablets and other essentials (Iran⁸⁵), result in the collapse of water and sanitation systems. Distribution of drinking water is undertaken for few hours per week in Venezuela⁸⁶ or not at all (Zimbabwe⁸⁷, Syria⁸⁸, Gaza⁸⁹), with serious adverse health effects explaining the occurrence of waterborne, bacterial and other diseases, such as cholera, malaria, dengue, lupus⁹⁰, while shortage of water for irrigation,

82. Submission by Sexual Right Initiative, OHCHR, www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures, visited on May, 2024.

83. WHO health workforce support and safeguards list 2023, WHO, <https://apps.who.int/iris/rest/bitstreams/1493584/retrieve>, visited on May, 2024.

84. Impact of unilateral coercive measures on the right to health, 15 September 2023, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena F. Douhan, A/HRC/54/23, www.ohchr.org/en/documents/thematic-reports/ahrc5423-impact-unilateral-coercive-measures-right-health-report-special, visited on May, 2024.

85. Submission by Iran, OHCHR, www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures, visited on May, 2024.

86. *Report on the Country visit to Venezuela*, paras. 62-63.

87. Visit to the Syrian Arab Republic, 3 July 2023, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, A/HRC/54/23/Add.1, paras. 28-29, <https://documents.un.org/doc/undoc/gen/g23/127/57/pdf/g2312757.pdf?token=2vcWGUKnHlUr3bFtbm&fe=true>, visited on May, 2024.

88. *Ibid.*, paras. 31-34.

89. Submission by PCHR, OHCHR, www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures, visited on May, 2024.

90. Report on the Country visit to Venezuela, para. 48; Submission by Sexual Rights Initiative, OHCHR, www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures, visited on May, 2024.

combined with climate change, have serious consequences for domestic agricultural production in Iran⁹¹ and Syria⁹²).

It has also been reported that some rare disease patients receiving foreign-produced specialized medicine free of charge or at subsidized prices resell part of their treatment to cover other basic needs, such as food, due to their dire economic situation⁹³. Other reports refer to the growing people's engagement in the illegal trade of organs as the only source of income⁹⁴.

Persons with disabilities as well as those suffering from rare or severe diseases in need of sustained medical attention are the most vulnerable in the face of unilateral sanctions and over-compliance⁹⁵. The absence of adequate and sufficient medical assistance and adequate treatment for persons with disabilities and for severe and rare diseases patients results in growing mortality rates, reduced life expectancy and deteriorating overall health conditions. In particular, in Venezuela heart surgeries are only available for 7-10 per cent of children who needs it⁹⁶, possibility for transplantation of brain-marrow and kidney in Italy and Argentine is lost⁹⁷.

Unilateral sanctions and over-compliance create the conditions for the systematic violations of the rights of persons with disabilities and thus of many provisions of the UN Convention on the Rights of Persons with Disabilities, including with regards to social support, provision of healthcare

91. *Report on the Country visit to Iran*, paras. 45-47.

92. Submission by Syria, OHCHR, www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures, visited on May, 2024.

93. *Report on the Country visit to Iran*, para. 30.

94. Desperate Afghans sell kidneys amid poverty and starvation, Al Jazeera, 28 February 2023, www.aljazeera.com/news/2022/2/28/desperate-afghans-resort-to-selling-kidneys-to-feed-families, visited on May, 2024.

95. Submission by Sures, OHCHR, www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures, visited on May, 2024.

96. *Report on the Country visit to Venezuela*, para. 46.

97. Mandates of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; the Special Rapporteur on the right to development; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Independent Expert on the promotion of a democratic and equitable international order; the Independent Expert on human rights and international solidarity; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, AL OTH 207/2021, 12 July 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26509>, visited on May, 2024.

services both in the country of residence and abroad⁹⁸, and unavailability of assistive technology and adaptive equipment. This technology and equipment is subject to sanctions-related export controls because they contain at least 10% of US content and components and is often procured through alternative routes with serious cost implications.

General deterioration of transport system and unavailability of fuel in the countries under sanctions add to the challenges faced by persons with disabilities and those suffering from rare or severe diseases, in terms of access to health facilities, or workplace, community events, while electricity and water shortages constitute additional obstacles to surmount in the daily lives⁹⁹.

In Syria, waiting line for CT scanning for onco-patients is around 6 months. Due to the impossibility to do tests and deliver necessary medicine, absence of anesthesiologists, cancer is diagnosed at the late stages, that results in the sky-rocketing mortality rates¹⁰⁰.

In Iran which has a rather developed pharmaceutical system, people suffering from rare and severe diseases are the most affected. In particular, the impossibility to deliver specialized medicine to 930 persons suffering

98. Report on the Country visit to Venezuela, paras. 46-47; Report on the Country visit to Iran, para. 28; Mandates of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to development; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Independent Expert on human rights and international solidarity, AL SWE 4/2022, 11 October 2022; Mölnlycke Health Care AB Mandates of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to development; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Independent Expert on human rights and international solidarity, AL OTH 95/2022, 11 October 2022; Iran: Over-compliance with unilateral sanctions affects thalassemia patients say UN experts, <https://www.ohchr.org/en/press-releases/2023/02/iran-over-compliance-unilateral-sanctions-affects-thalassemia-patients-say>; <https://www.ohchr.org/sites/default/files/documents/issues/ucm/statements/2022-11-09/20221110-eom-syria-sr-ucm-en.docx>, visited on May, 2024; Submission by PROSALUD, OHCHR, www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures, visited on May, 2024.

99. *General comment no. 2 (2014), Article 9, Accessibility, CRPD*, paras. 6-10; *General comment No. 9 (2006): The rights of children with disabilities*, para. 39.

100. *Report on the Country visit to Syria*.

from epidermolysis bullosa¹⁰¹ and 23,000 thalassemia patients to Iran due to the reported reluctance of pharmaceutical companies based in Sweden, Switzerland and France¹⁰² to sell medical goods to Iran, challenges in payments or in medical cargo insurance has been repeatedly raised by the Special Rapporteur but with not much result. The case filed by Iranian Thalassemia association in the national US court has been dismissed¹⁰³. The above situation resulted in the growing mortality rates and human suffering for EB patients (15 patients died within a year due to insufficient delivery of bandages), rising mortality rates for Thalassemia patients (from 25-35 per year before 2018 to 150-220 per year in 2018-2022) and reducing their life expectancy (from 45-50 to below 20).¹⁰⁴

The use of UCMs is also affecting state capacity to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all for the lifetime (SDG 4). In some countries under sanctions the high level of school drop out is observed. Children have to start working to earn their living, being unable to get to schools or buy school uniforms and (Venezuela¹⁰⁵, Zimbabwe¹⁰⁶, Iran¹⁰⁷). In Syria more than 2.5 mln children (mostly boys) stay out of schools¹⁰⁸, illiteracy rate has increased up to 22% for people above 15¹⁰⁹. In Zimbabwe the number of children with primary education dropped to 77.6%, secondary education – to 63.1% by 2018 mostly due to financial reasons¹¹⁰, that decreases their chances to get

101. AL SWE 4/2022; AL OTH 95/2022.

102. Iran: Over-compliance with unilateral sanctions affects thalassemia patients say UN experts; AL OTH 95/2022; Mandats du Rapporteur spécial sur les effets négatifs des mesures coercitives unilatérales sur l'exercice des droits de l'homme, et de l'Expert indépendant sur les droits de l'homme et la solidarité internationale, 8 February 2023; AL OTH 134/2022; Roquette Frères Mandats du Rapporteur spécial sur les effets négatifs des mesures coercitives unilatérales sur l'exercice des droits de l'homme, et de l'Expert indépendant sur les droits de l'homme et la solidarité internationale, 8 February 2023, AL OTH 135/2022.

103. Iran Thalassemia Society et al v. Office of Foreign Assets Control et al, 15 August 15 2022, US District Court for the District of Oregon, dockets.justia.com/docket/oregon/ordec/3:2022cv01195/168501, visited on May, 2024.

104. Reported 10–15% availability of medicines for Thalassemia patients in Iran.

105. *Report on the Country visit to Venezuela*, paras. 3, 70.

106. *Report on the Country visit to Zimbabwe*, paras. 38-39.

107. *Report on the Country visit to Iran*.

108. Zoë Pelter, Camila Teixeira, Erica Moret, *Sanctions and their impact on Children. Discussion paper* (UNICEF, 2022), p. 12.

109. *Preliminary findings of the visit to Syria*.

110. *Report on the Country visit to Zimbabwe*, para. 42.

education and descent job in the future¹¹¹. In many countries under sanctions, population refers to the establishment of generation educational gap.

In the course of the pandemic many families appeared to be unable to guarantee access to Internet to enable online education (Venezuela, Syria, Zimbabwe¹¹², Iran¹¹³ etc.). In Venezuela Canaima computer literacy project, which enabled more than 7 mln children and students to receive laptops before 2016, stopped due to the unavailability of spare parts¹¹⁴.

Impeded access to a number of online platforms (Zoom, PubMed), access to free of charge and paid electronic libraries, participation in online conferences¹¹⁵, procurement of books and equipment for schools, maintenance of school infrastructure impedes access of students to school and university education, enhancement of qualification for professionals¹¹⁶. People with Syria IP addresses and phone numbers are prevented from having access to the substantial number of web pages including those of the UN Specialized agencies, educational platforms, social networks¹¹⁷. The scope of impediments in the sphere is currently expanding to all countries under sanctions¹¹⁸.

It shall also be noted that none of the above elements cannot be covered via the delivery of humanitarian assistance of any sort. Today humanitarian exemptions are qualified extremely narrow and include in the best case food and medicine only (although staying even in this case non-effective, non-efficient, lengthy, expensive, complicated and risky for humanitarian actors. No other goods including those necessary for functioning of educational system can be delivered as they are qualified as development rather than humanitarian projects (see Chapter on humanitarian exemptions).

Crisis situation is traditionally the most severe for the most vulnerable groups including women, that prevents the achievement of the SGD 5 (*Achieve gender equality and empower of women and girls*). Women and girls

111. SafouraMoeeni, "The Intergenerational Effects of Economic Sanctions," Policy Research Working Paper 9836 (2021), <https://openknowledge.worldbank.org/bitstream/handle/10986/36548/The-Intergenerational-Effects-of-Economic-Sanctions.pdf?sequence=1&isAllowed=y>, visited on May, 2024.

112. *Report on the Country visit to Zimbabwe*, paras. 44, 61.

113. *Report on the Country visit to Iran*, paras. 57-58.

114. *Report on the Country visit to Venezuela*, para. 71.

115. *Ibid.*, para. 73.

116. Zoë Pelter, Camila Teixeira, Erica Moret, *Sanctions and their impact on Children. Discussion paper* (UNICEF, 2022), p. 25.

117. *Preliminary findings of the visit to Syria*.

118. Communication to be sent still.

might depend on men or have lower level of income and are usually the first to lose the job in crisis situations (Zimbabwe,¹¹⁹ North Korea, Iraq¹²⁰). They are often subjected to the human trafficking and sexual exploitation¹²¹, or sacrifice the food for men and children.

Growing number of women delivering babies outside of health facilities has increased in Venezuela, Zimbabwe and Syria due to the insufficiency of gasoline, access to transportation, absence of medicine, tests and even water in the hospitals that results in growing anemia of pregnant women (Venezuela¹²², Zimbabwe¹²³) and maternal mortality (Venezuela¹²⁴, North Korea¹²⁵, Zimbabwe¹²⁶). In particular, maternal mortality in Zimbabwe reached 458 deaths per 100 000 of deliveries¹²⁷, in Venezuela this figure more than doubled since 2014 (was 199) and reached 259 death per 100 000 of deliveries¹²⁸. Some reports refer not only to the problems with medicine but also to the insufficiency of basic sanitary means (Cuba¹²⁹).

UCMs enhanced by the means of their enforcement and over-compliance and de-risking results in the growth of non-equality that constitutes a violation of the SDG 10, and results in discrimination of all people (nationals, residents of the countries under sanctions) on the ground of their nationality, place of birth, residence, phone of IP address, preventing them from benefiting from international cooperation, academic, sports, arts, cultural cooperation (Iran, Syria, Venezuela, Russia, Zimbabwe,

119. *Report on the Country visit to Zimbabwe*, conclusions.

120. *The Human Costs and Gendered Impact of Sanctions on North Korea*, pp. 23-24.

121. *Report on the Country visit to Venezuela*, para. 32; *Report on the Country visit to Zimbabwe*, para. 45.

122. *Report on the Country visit to Venezuela*.

123. *Report on the Country visit to Zimbabwe*, para. 24.

124. Venezuela (Bolivarian Republic of) – Maternal mortality ratio, Knoema, <https://knoema.com/atlas/Venezuela-Bolivarian-Republic-of/Maternal-mortality-ratio>, visited on May, 2024.

125. *The Human Costs and Gendered Impact of Sanctions on North Korea*, p. 25.

126. Zimbabwe - Maternal mortality ratio, Knoema, <https://knoema.com/atlas/Zimbabwe/Maternal-mortality-ratio>, visited on May, 2024.

127. *Ibid.*

128. Venezuela (Bolivarian Republic of) - Maternal mortality ratio, Knoema.

129. Right to Live without a Blockade : Impact of the US sanctions on the Cuban population and women's rights (OXFAM, 2021), <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/621191/bp-cuba-blockade-women-250521-summ-en.pdf;jsessionid=4DEE90884C8B0120039F23E740FD33C7?sequence=4>, visited on May, 2024.

Cuba¹³⁰), use of online platforms (North Korea, Cuba, Iran, Venezuela etc.¹³¹), vents and trainings of civil society actors (Zimbabwe) inter alia due to the challenges in getting visas, procurement of tickets, booking hotels, closing bank accounts abroad (Iran¹³², Venezuela, Zimbabwe¹³³, Russia, Belarus¹³⁴); possibility to have access to humanitarian assistance (Syria, Iran), buy necessary medicine and medical equipment (Venezuela, North Korea, Cuba, Iran, Belarus, etc.)¹³⁵, or as a result of negative propaganda or defamation companies, e.g. Russophobia condemned by the UN High Commissioner for human rights¹³⁶ and the UN Secretary General.

Nationals of the countries under sanctions (Russia, Belarus, Zimbabwe, Syria, Iran, Venezuela) face the requests of closing banking accounts in the EU, UK and the USA, or limitation of their activity including those who might have the permanent residence permit or surnames of those sound similar to surnames of citizens of countries under sanctions¹³⁷, diplomatic agents of the countries under sanctions (Iran, Venezuela,

130. Report on the Country visit to Venezuela, para. 78; Unilateral sanctions in the cyber world: tendencies and challenges, 17 August 2022, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, A/77/296, paras. 35-36, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/464/10/PDF/N2246410.pdf?OpenElement>, visited on May, 2024; Report on the Country visit to Iran, para. 55; Report on the Country visit to Zimbabwe, para. 17; Preliminary findings of the visit to Syria.

131. *Unilateral sanctions in the cyber world: tendencies and challenges*, 17 August 2022, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, A/77/296, paras. 30-33.

132. *Report on the Country visit to Iran*, para. 56.

133. *Report on the Country visit to Zimbabwe*, paras. 14-16.

134. EU foreign ministers agree to scrap Russia visa deal but stop short of full tourist ban, Euronews 2022, www.euronews.com/my-europe/2022/08/31/eu-foreign-ministers-agree-to-scrap-russia-visa-deal-but-stop-short-of-full-tourist-ban, visited on May, 2024.

135. Negative impact of unilateral coercive measures on the enjoyment of human rights, 21 July 2020, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, A/75/209, paras. 38-39, 49, 52-57, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/190/03/pdf/N2019003.pdf?OpenElement>, visited on May, 2024.

136. UN High Commissioner for Human Rights Bachelet speaks out against Russophobia, Oops Top, 20 March 2022, oopstop.com/un-high-commissioner-for-human-rights-bachelet-speaks-out-against-russophobia/, visited on May, 2024; America Shuts Down Amid Russian State-Media Bans, Vulture, 6 March 2022, www.vulture.com/2022/03/youtube-tiktok-meta-block-russia-owned-rt.html, visited on May, 2024.

137. Scores of customers have sued over “Kafkaesque” mistreatment, RT, 26 August 2022, www.rt.com/news/561626-french-banks-russians-discrimination/, visited on May, 2024.

Syria, Zimbabwe¹³⁸). Multiple reports refer to the attempts to introduce the presumption of legality of all types of sanctions and to extend them to everything that might have anything to do with such countries, their nationals or companies.

Financial sanctions prevent countries from payment of membership fees to international organizations, that might result in the suspension of voting rights. Iran in particular, has lost its voting right in the UN in 2021 and has restored it only after some of its assets were released and it was able to pay USD 18,4 mln in 2022; Venezuela has not regained its UN voting rights since 2021¹³⁹, although this right was kept in 2020 by the 5th committee of the UN General Assembly with reference to the fact that non-payment stays outside of the control of the country¹⁴⁰.

Economic SDGs are also affected by the use of UCMs. Goals 6 (*Ensure availability and sustainable management of water and sanitation for all*) as well as Goal 7 (*Ensure access to affordable, reliable, sustainable and modern energy for all*) are inter-dependent as water pumping and supply traditionally need sustainable electricity or other fuel access. Unilateral sanctions are often primarily targeting oil and energy sector via oil and gas embargoes, prohibition to trade with targeted sectors including with spare parts and reagents necessary for the functioning of oil industry (Venezuela¹⁴¹, Russia, Cuba, Iran, Syria¹⁴²)

Unavailability of electricity and fuel results in the collapse of water and sanitation systems with water to be available ones per a week per a few hours (Venezuela¹⁴³) or not at all (Zimbabwe¹⁴⁴, Syria¹⁴⁵) resulting in

138. *Report on the Country visit to Iran; Report on the Country visit to Zimbabwe; Preliminary findings of the visit to Syria.*

139. Iran, Venezuela and Sudan Lose UN Voting Rights With 5 More, Middle East, 12 January 2022, www.voanews.com/a/iran-venezuela-and-sudan-lose-un-voting-rights-with-5-more/6394205.html, visited on May, 2024; Iran Regains UN Assembly Voting Rights After Assets Unfrozen, U.S. News, 24 January 2022, www.usnews.com/news/us/articles/2022-01-24/iran-regains-un-assembly-voting-rights-after-assets-unfrozen, visited on May, 2024.

140. Fifth Committee Approves Draft Resolution Allowing Three Member States in Budgetary Arrears to Retain General Assembly Voting Rights, UN, 7 October 2020, <https://press.un.org/en/2020/gaab4356.doc.htm>, visited on May, 2024.

141. *Report on the Country visit to Venezuela*, paras. 62, 64.

142. *Preliminary findings of the visit to Syria.*

143. *Report on the Country visit to Venezuela*, paras. 62-63.

144. *Report on the Country visit to Zimbabwe*, paras. 28-29.

145. *Preliminary findings of the visit to Syria.*

cholera outbreaks (Zimbabwe, Syria¹⁴⁶), insufficiency of water for irrigation purposes (Iran¹⁴⁷, Syria¹⁴⁸). UCMs are quite often intending to affect the extraction, refining and export of oil, gas and their derivatives. In particular, Venezuela which used to be the main importer of oil within regional PetroCaribbean appeared to be unable to deliver and refine heavy crude oil due to the impossibility to maintain refinery infrastructure, deliver necessary reagents, spare parts, deliver oil to Cuba after UCMs have been introduced in 2015, that also resulted in the loss of 99 per cent of its external revenue¹⁴⁹. As a result the country does not have sufficient fuel to ensure proper function of the transportation system, suffers from the insufficiency of electricity, water and gas for cooking. Hence energy is not available for the majority of the population – especially in the remote areas and for indigenous population; water is delivered once per 5-7 days per 2-3 hours, despite the existence of the functioning up to 90 per cent system of centralized water supply system¹⁵⁰. There is no possibility, however, to deliver filters and chlorine, spare parts for the maintenance and reparation of the system.

Zimbabwe is facing challenges in the sustainable electricity supply, at the same time the very system of water supply, delivery and purification is destroyed. And cannot be restored in the absence of necessary resources that results in cholera and typhus outbreaks all around the country as more than half of population does not have any access to clean water and sanitation¹⁵¹. Even if ad hoc projects are implemented by international organizations, like the project on the reconstruction of water supply infrastructure in Bulawayo by the African bank of development, over-compliance prevented any possibility to procure tubes or, as well as procurement of filters and chlorine¹⁵². Projects on the use of sun energy have not been implemented as well¹⁵³ in the face of fear of private companies to deliver them to Zimbabwe due to the possibility of secondary sanctions, despite

146. Cholera situation report, UNICEF, 10 November 2022, www.unicef.org/syria/reports/cholera-situation-report-10-november-2022, visited on May, 2024.

147. *Report on the Country visit to Iran*, paras. 45-47.

148. *Preliminary findings of the visit to Syria*.

149. *Report on the Country visit to Venezuela*, paras. 62, 64.

150. *Ibid.*, paras. 62-63.

151. *Report on the Country visit to Zimbabwe*, paras. 28-29.

152. *Ibid.*, para. 20.

153. *Report on the Country visit to Zimbabwe*, para. 50.

the fact that no sectoral or comprehensive sanctions have ever been applied to Zimbabwe¹⁵⁴.

Critical infrastructure in Syria has been severely damaged by 12 years of military hostilities, faces the need not only of maintenance but also of overall reconstruction and rebuilding of infrastructure to restore access to electricity, water, fuel, gas for heating etc. electricity is only available 1-4 h per day across the country, hospitals can only be provided with electricity 10-11 hours per day, that is not sufficient. Water is available per 2-3 hours once per 3-5 days. Drinking water is delivered to the remote areas in cisterns, that make such deliveries irregular and extremely expensive in the face of insufficiency of fuel. There is no possibility to restore irrigation and sewage systems¹⁵⁵. As a result, there was the largest registered outbreak of cholera in the country starting from September 2022¹⁵⁶.

Calls not to expand unilateral sanctions over any type of critical infrastructure or critical services¹⁵⁷ have not been accepted by sanctioning states. UCMs, secondary sanctions, criminalization of circumvention of sanctions regimes, vague terminology impossibility to get any license for reconstruction and development projects prevent any possibility to restore critical infrastructure (EU Guidance on the delivery of humanitarian assistance 2022¹⁵⁸) results in over-compliance sponsors, businesses, humanitarian organizations and even international organizations, that prevents the procurement and deliver of necessary equipment, spare parts, software, reagents that impedes the achievement of SDGs 9, 11, 16. In Iran, in particular, all projects aimed to ensure impeded delivery of water, irrigation, fuel and energy security have been stopped¹⁵⁹.

SDG 16 (access to justice) is also affected by the use of unilateral sanctions and over-compliance. States under sanctions are not able to ensure necessary training and payment to the qualified professionals (judges,

154. *Ibid.*

155. *Preliminary findings of the visit to Syria.*

156. *Cholera situation report*, UNICEF, 10 November 2022.

157. UN experts urge States to consider humanitarian impacts when imposing or implementing sanctions, OHCHR, <https://previous.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=28362&LangID=E>, visited on May, 2024.

158. Commission Guidance Note on the provision of humanitarian aid in compliance with EU restrictive measures (sanctions), European Commission, 30 June 2022, paras. 3.9-3.10, ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/220630-humanitarian-aid-guidance-note_en.pdf, visited on May, 2024.

159. *Report on the Country visit to Iran*, paras. 45-47.

police, experts) (Syria¹⁶⁰[40], Venezuela¹⁶¹[53], Zimbabwe), to procure necessary equipment and reagents also for forensic expertise, software for maintenance of electronic databases and electronic justice (Zimbabwe¹⁶², Syria¹⁶³). Additionally, countries under sanctions are facing insufficiency of equipment and transportation for police as it is usually qualified as dual use goods, absence of fuel for proper investigation, transportation of suspected criminals and witnesses.

In many cases bilateral treaties on mutual assistance in criminal matters are stopped to be applied by the neighbouring countries, that prevents any possibility to secure evidence abroad, undermine cooperation between states in criminal matters (Venezuela¹⁶⁴, Zimbabwe¹⁶⁵). Similarly, victims of HR violations due to the use of UCMs are usually deprived or very limited in the possibility to assess justice internationally, even within the UN Human rights treaty bodies¹⁶⁶. Those who are not directly designated usually lack this possibility at all.

Environmental SDGs – SDG 13 (*Take urgent action to combat climate change and its impact*), 14 (*Conserve and sustainably use the oceans, seas and marine resources for sustainable development*), 15 (*Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss*) directly depend on the availability of financial resources and necessary infrastructure. In crisis situation states usually switch to the “survival mode” prioritizing food, health and agriculture¹⁶⁷, at the expense of environmental projects, including maintenance of national parks and protection of endangered species (Zimbabwe¹⁶⁸), transporting and treating solid waste and medical waste, addressing conflict-related pollution, including toxic munitions ingredients and explosive material undergoing

160. *Preliminary findings of the visit to Syria.*

161. *Report on the Country visit to Venezuela.*

162. *Report on the Country visit to Zimbabwe*, paras. 46-48.

163. *Preliminary findings of the visit to Syria.*

164. *Report on the Country visit to Venezuela*, paras. 58, 60, 75.

165. *Report on the Country visit to Zimbabwe*, paras. 46-48.

166. Alena Douhan, “Mechanisms for the protection of human rights in the event of the introduction of unilateral forced measures in the activities of the special mechanisms of the UN council on human rights,” *Pravo.by* 5 (2017): 124-131.

167. KavehMadani, “Have International Sanctions Impacted Iran’s Environment?” *World 2* (2021): 231-252.

168. *Report on the Country visit to Zimbabwe*, paras. 52, 88.

chemical transformations¹⁶⁹, using environmental friendly technologies (Iran¹⁷⁰, Venezuela, Syria), procuring filters and filtering technologies, cutting woods for cooking and heating (Syria¹⁷¹, Venezuela), use sewage water for drinking, cooking and irrigation purposes (Syria¹⁷², Venezuela¹⁷³, Zimbabwe¹⁷⁴), developing alternative sources of energy (Iran¹⁷⁵, Zimbabwe), protection of atmosphere, natural heritage, sea and land ecosystems, biodiversity, accommodation of the climate change¹⁷⁶.

Implementation of environmental SDGs depends on the availability of substantial economic resources, which are severely affected in the countries under sanctions as well as physical impediments in the delivery of necessary goods due to the fear and over-compliance of companies in the sanctioning states as well as third states. The are not able to introduce and implement technologies friendly for the environment due to the same reasons (e.g. production of cars not corresponding the environmental standards in Iran,

169. *Preliminary findings of the visit to Syria.*

170. Martin Heger and Maria Sarraf, "Air Pollution in Tehran: Health Costs, Sources, and Policies," World Bank (2018), p. 9, openknowledge.worldbank.org/bitstream/handle/10986/29909/126402-NWP-PUBLIC-Tehran-WEB-updated.pdf?sequence=1&isAllowed=y, visited on May, 2024; Agence France-Presse, "Iran : le retrait de Peugeot et Renault mauvais pour l'environnement (responsable)," Le Point (2018), https://www.lepoint.fr/automobile/iran-le-retrait-de-peugeot-et-renault-mauvais-pour-l-environnement-responsable-02-10-2018-2259594_646.ph; KavehMadani, "Have International Sanctions Impacted Iran's Environment?," pp. 237-239; AL USA 17/2022, spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27571, visited on May, 2024; Report on the Country visit to Iran, para. 45.

171. *Preliminary findings of the visit to Syria.*

172. *Ibid.*

173. *Report on the Country visit to Venezuela*, paras. 37, 50.

174. *Report on the Country visit to Zimbabwe*, paras. 28-30, 61.

175. Climate Home News, "Empty car shows and stalled solar as sanctions keep Iran dirty," 15 January 2019, www.climatechangenews.com/2019/01/15/empty-car-shows-stalled-solar-sanctions-keep-iran-dirty/, visited on May, 2024.

176. Amanda Carucci, "Environmental effects of economic sanctions: The Cuban experience," Honors Theses. Paper 49 (2000), pp. 96-97, 100-110, <https://digitalcommons.colby.edu/honorstheses/49/>, visited on May, 2024; Qiang Fu, Yin E Chen, Chyi-Lu Jang, Chun-Ping Chang, "The impact of international sanctions on environmental performance," *Science of the Total Environment* 745 (2020): 1-14; Shirin Hakim, Karen E. Makuch, "Conflicts of Interest: The Environmental Costs of Modern War and Sanctions," Royal United Services Institute, 11 May 2022, www.rusi.org/explore-our-research/publications/commentary/conflicts-interest-environmental-costs-modern-war-and-sanctions/, visited on May, 2024.

Venezuela, Syria¹⁷⁷, due to impossibility to procure necessary filter and equipment). Additional damage is caused by extra emissions of the planes of designated companies, as they are to use longer (often multiple times) routes for flights as well as to carry dual quantity of fuel as many countries and companies refuse to fuel them outside of national territory, impediments in the procurement of filters, treatment systems and spare parts for them, absence of specialists to control the safety/ cleaning standards, due to the refusal of companies to do post-sale maintenance and to provide services due to the direct impact of sanctions or over-compliance of banks or companies (all countries under sanctions).

Additional emissions also appear due to the cutting of woods for cooking, open fire cooking, exploitation of the outdated systems for heating or cooking (Syria, Venezuela, Zimbabwe). Refusal of third countries and producers from the third countries to cooperate with states under sanctions, impossibility to pay for procurement, delivery or insurance as well as the refusal of manufacturers, insurance and delivery companies to cooperate with any institution from the countries under sanctions, result in the impossibility to procure equipment for the drinking water purification and water for irrigation (Venezuela¹⁷⁸, Syria, Zimbabwe¹⁷⁹), development or procurement of the alternative system of electricity production, e.g. solar panels (Iran¹⁸⁰, Zimbabwe).

Scholars and practitioners from the countries under sanctions are usually prevented from the possibility to participate in international cooperation, projects, conferences, loose access to online professional platforms and

177. Martin Heger, Maria Sarraf, "Air Pollution in Tehran: Health Costs, Sources, and Policies," World Bank, 2018, p. 9, <https://openknowledge.worldbank.org/bitstream/handle/10986/29909/126402-NWP-PUBLIC-Tehran-WEB-updated.pdf?sequence=1&isAllowed=y>, visited on May, 2024; Iran : le retrait de Peugeot et Renault mauvais pour l'environnement (responsable), Le Point, 2 October 2018, www.lepoint.fr/automobile/iran-le-retrait-de-peugeot-et-renault-mauvais-pour-l-environnement-responsable-02-10-2018-2259594_646.ph/, visited on May, 2024; Kaveh Madani, "Have International Sanctions Impacted Iran's Environment?," AL USA 17/2022 <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27571>; Report on the Country visit to Iran, para. 45.

178. *Report on the Country visit to Venezuela*, paras. 37, 50.

179. *Report on the Country visit to Zimbabwe*, paras. 28-30, 61.

180. "Empty car shows and stalled solar as sanctions keep Iran dirty," Climate Home News, 15 January 2019, www.climatechangenews.com/2019/01/15/empty-car-shows-stalled-solar-sanctions-keep-iran-dirty/, visited on May, 2024.

databases¹⁸¹), that impedes the ability of states under sanctions to develop their own mechanisms and skills in the sphere of sustainable development and environmental protection. Similarly, states under sanctions might also be limited in their ability to pay membership fees to international organizations. Challenges in getting visas, booking hotels and tickets also minimizes their ability to participate in international cooperation that shall be the cornerstone for the achievement of SDGs, especially in the sphere of the environment.

UCMs and over-compliance with such measures also affect the capacity of states to react to natural disasters and to implement properly international recommendations in the sphere as well as national emergency response plans. It refers on the first hand to the seismologically active countries (Syria, Iran, Zimbabwe) which are deprived of the possibility to buy necessary equipment, spare parts, software and reagents for monitoring of seismological activity, forest fires, equipment and transportation necessary for rescue operations, as, in particular, cross-country vehicles and helicopters are usually qualified as dual use goods and fall under the direct sanctions¹⁸². Delivery of such equipment, spare parts and reagents are not possible even in the course humanitarian assistance, as sanctions and humanitarian exemptions of sanctioning countries are explicitly requesting to interpret exemptions in the narrowest possible way and not to grant any licenses for not purely humanitarian projects, including those in the sphere of environmental protection (EU Guidance on delivery of humanitarian assistance 2022¹⁸³).

Licenses providing for certain humanitarian relieve after the earthquake in Turkey and Syria in February 2023 appeared to be very low effective, due to their short term (6 months only), vague and unclear terminology, uncertainty as regards other parts of sanctions, prohibitions for delivery, procurement and insurance of any deliveries still stayed in force, despite the licenses.

181. Have International Sanctions Impacted Iran's Environment?; Preliminary findings of the visit to Syria; paras. 57–59; Report on the Country visit to Zimbabwe, para. 32; “EU foreign ministers agree to scrap Russia visa deal but stop short of full tourist ban”, Euronews, 2022, www.euronews.com/my-europe/2022/08/31/eu-foreign-ministers-agree-to-scrap-russia-visa-deal-but-stop-short-of-full-tourist-ban, visited on May, 2024.

182. *Report on the Country visit to Iran*; paras. 50–52; *Report on the Country visit to Zimbabwe*, para. 76.

183. Commission Guidance Note on the provision of humanitarian aid in compliance with EU restrictive measures (sanctions), European Commission, 30 June 2022, paras. 3.9–3.10, https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/220630-humanitarian-aid-guidance-note_en.pdf, visited on May, 2024.

Conclusions

World community is currently facing expansion of various forms and types of unilateral sanctions applied to all sorts of governmental and non-governmental actors, sectors of economy, as well as in the face of uncertainty and overlaps of sanctions regimes, threats with secondary sanctions, civil and criminal penalties for circumvention of sanctions regimes, growing level of zero-risk policies and over-compliance by banks, producers of goods, transportation and delivery companies as well as other types of private actors.

Humanitarian impact of unilateral sanctions and over-compliance with such sanctions can only be assessed cumulatively and usually affects the whole population of the country under sanctions, being especially harmful for the most vulnerable groups: poorest, migrants, people suffering from chronic and severe diseases, women, children, elderly. As a result nearly all categories of human rights are affected: civil, economic, social, cultural, right to developments, including in many cases even violation of the right to life as well as all sustainable development goals in humanitarian, economic and environmental spheres.

Current mechanisms of responsibility and redress for violation of human rights and over-compliance are under-developed and very limited. States may engage in lengthy, expensive and complicated arbitration and judicial processes, use mechanisms of diplomatic protection, use counter-measures instruments in accordance with restrictions of the law of international responsibility. Individuals unfortunately stay unprotected in the face of the cumulative effect of UCMs, means of their enforcement and over-compliance, and those who are vulnerable are affected the most.

Today the impact of UCMs and over-compliance has nearly not been assessed by the UN organs, agencies and institutions even in the course of Universal Periodic review or reports considered by the UN Human Rights treaty bodies, by the UN specialized agencies or while assessing implementation of the SDGs.

It is therefore necessary to include the assessment of the impact to the agenda of all UN specialized agencies, as well as those UN organs and institutions which in one way or another are involved in the promotion and protection of human rights and implementation of SDGs. Without any doubts it shall be included in the agenda and reports of summits and high-level political forums on the progress on implementation of SDGs.

SECTION II

IMPACT OF UNILATERAL SANCTIONS ON VARIOUS CATEGORIES OF HUMAN RIGHTS

CHAPTER VI

Impact of unilateral sanctions on civil rights

(Prof. A. de Zayas)

“We find that the sanctions have inflicted, and increasingly inflict, very serious harm to human life and health, including an estimated more than 40,000 deaths from 2017-2018; and that these sanctions would fit the definition of collective punishment of the civilian population as described in both the Geneva and Hague international conventions.”

Jeffrey Sachs and Mark Weisbrot¹

The impact of unilateral coercive measures on the enjoyment of economic, social and cultural rights is predictable, demonstrable and measurable. UCMs, including the so-called “targeted sanctions”, dislocate the economies of the countries aggressed, adversely affecting the standard of living of entire populations, restricting their access to food, health, water and sanitation, shelter, education, employment, etc. and making the implementation of the right to development and the Sustainable Development Goals illusory.

UCMs also impact civil and political rights, notably the rights to life, property, honour and reputation. Other impacts are inevitable, bearing in mind that all human rights are interrelated and interdependent, and that violations of economic, social and cultural rights will inevitably engender violations of the civil and political rights enunciated in the International Covenant on Civil and Political Rights (ICCPR)². UCMs also directly violate individual rights³ laid down in the constitutions of many States, in their domestic legislation as well as in international treaties. Besides the obvious breaches of the ICCPR, UCMs impact the following provisions of the ICCPR:

1. Center for Economic and Policy Research, Washington D.C., 2019, <https://cepr.net/images/stories/reports/venezuela-sanctions-2019-04.pdf>, page 1, visited on May, 2024.

2. Özgür Özdamar and Evgenia Shahin, “Consequences of Economic Sanctions: The State of the Art and the Paths Forward” in *International Studies Review* 23 (2021): 1646-1671, <https://academic.oup.com/isr/article/23/4/1646/6309628>, visited on May, 2024; Center for Economic and Policy Research, *The Case Against Economic Sanctions*, Washington, D.C. 10 January 2020; Michael Fakhri, in *Yale Journal of International Law*, “Situating Unilateral Coercive Measures Within a Broader Understanding of Systemic Violence” (2023).

3. Biersteker, T.J., “Targeted Sanctions and Individual Human Rights”, in *International Journal* 65(1) (2010): 99-117.

Art. 1 – the individual and collective right of self-determination of peoples, the right over their natural wealth and resources, the right to property, the right not to be deprived of means of subsistence⁴.

Art. 2 – the right to a remedy

Art. 3 – women’s rights, since women disproportionately bear the consequences of the dislocations caused by UCMs⁵

Art. 6 – the right to life. UCMs demonstrably kill⁶. Here the link to the ICESCR right to health⁷ is evident, because UCMs restrict access to life-saving medicines, e.g. insulin, anti-malaria and anti-retro-viral drugs, as well

4. Human Rights Council Resolution 54/15 of 11 October 2023 recalls in its preambular paragraphs that article 1, paragraph 2, common to the ICCPR and ICESCR stipulate “that in no case may a people be deprived of its own means of subsistence, including but not limited to food and medicines.” The resolution further emphasizes “that each State has full sovereignty over the totality of its wealth, natural resources and economic activity, exercising its free, in accordance with General Assembly Resolution 1803 (XVII) of 14 December 1962, and that violation of this right is contrary to the spirit and principles of the Charter and hinders the development of international cooperation and the maintenance of peace.”

5. A.C. Drury and Dursun Peksen “Women and Economic Statecraft: The Negative Impact International Economic Sanctions Visit on Women”, *European Journal of International Relation* 20 (2) (2012): 475-483.

6. Jeffrey Sachs and Marc Weisbrot, “Economic Sanctions as Collective Punishment”, Center for Economic and Policy Research, Washington DC, 2019, <https://cepr.net/images/stories/reports/venezuela-sanctions-2019-04.pdf>, visited on May, 2024; Gutmann, Jerg, Matthias Neuenkirch, and Florian Neumeier, “Sanctioned to Death? The Impact of Economic Sanctions on Life Expectancy and Its Gender Gap”, *The Journal of Development Studies* 57 (1) (2020): 139-162; Parker, Dominic, Jeremy, D. Foltz, “Unintended Consequences of Sanctions for Human Rights: Conflict Minerals and Infant Mortality”, *The Journal of Law and Economics* 59 (4) (2016): 731-774. See also UN Secretary General 2023 report on the Cuban Embargo, A/78/84: “...deliberate action of preventing the supply of pulmonary ventilators when they were most needed by our health system made clear the profoundly inhumane nature of this policy, as well as its impact on the right to life...The exceptional conditions under which Cuba had to face SARS-CoV-2 were recognized by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, during her keynote address given at the University of Havana on 4 May 2023 as part of her academic visit to the island: she noted that Cuba was the only country where AliExpress was unable to collect and deliver donations because of the deterrent effect of the unilateral sanctions of the United States.”

7. Committee on Economic, Social and Cultural Rights, General Comment Nr. 8 (1997); Dursun Peksen, “Economic Sanctions and Human Security: The Public Health Effect of Economic Sanctions”, *Foreign Policy Analysis* 7 (3) (2011): 237-251; Allen, Susan and David Lektzian, “Economic Sanctions: A Blunt Instrument”, *Journal of Peace Research* 50 (a) (2013): 121-135.

as medical equipment, including dialysis machines, scanners, radiation, etc. Moreover, UCMs have been shown to adversely impact life expectancy.⁸

Art. 7 – the right not to be subjected to cruel and inhuman treatment or punishment

Art. 12 – freedom of movement

Art. 14 – due process of law⁹, the prohibition of collective punishment, the presumption of innocence

Art. 17 – honour and reputation of persons whose names appear on a sanctions list

Art. 20 – the prohibition of propaganda for war and prohibition of incitement to hatred. It is relatively easy to show that UCMs are frequently accompanied by a propaganda onslaught, including hate speech and amalgamations against the peoples of Belarus, China, Cuba, Nicaragua, Syria, Russia, etc. The media campaign of Russophobia and Sinophobia have been indispensable in making UCMs palatable to a democratic society.

Art. 22 – freedom of association. Individuals and groups are frequently made to suffer defamation and financial loss just because of their association with persons or countries subjected to UCMs. Even UN sanctions regimes can adversely affect the right of freedom of association.¹⁰

Art. 23 – protection of the family, maternal access to health services¹¹

Art. 24 – rights of the child. UCMs are a factor in the rise of infant mortality¹² and in the right to health and physical integrity of children.

8. *An Investigation of Relationship Between Global Economic Sanctions and Life Expectancy: Do Financial and Institutional Systems Matter?*, https://www.researchgate.net/publication/357875036_An_Investigation_of_Relationship_between_Global_Economic_Sanction_and_Life_Expectancy_Do_financial_and_institutional_system_matter, visited on May, 2024.

9. “Sanctions may also violate a person’s human rights by targeting individuals without a ‘fair hearing’ or the possibility of an appeal.... Erroneous listings may harm the targeted individual’s economic situation and reputation.” T.J. Biersteker, “Targeted Sanctions and Individual Human Rights” *International Journal* 65 (1) (2010): 99-117, at 103.

10. See the Human Rights Committee decision in the Sayadi et al. v. Belgium case (2008), holding that articles 12 and 17 ICCPR had been violated, <https://juris.ohchr.org/casedetails/1477/en-US>, visited on May, 2024.

11. Dominic Parker, J. Foltz and D.Elsea, “Unintended Consequences of Sanctions for Human Rights” *The Journal of Law and Economics* 59(4) (2016): 731-774.

12. Dursun Peksen, “Economic Sanctions and Human Security”, in *Foreign Policy Analysis*, 7(3) (2011): 237-251.

Art. 26 – the prohibition of discrimination, in particular when assets are frozen or confiscated on a discriminatory or arbitrary fashion¹³.

The gravity of the impact of UCMs cannot be overstated, but the gravest violation of the human rights of individuals and groups is the violation of the right to life. In countries like Cuba¹⁴, Iran¹⁵, Nicaragua¹⁶, Sudan¹⁷, Syria¹⁸, Venezuela¹⁹ UCMs have killed tens of thousands of persons by making it nearly impossible for the targeted governments to obtain sufficient food, medicines and medical equipment necessary to prevent deaths, nearly impossible because replacement parts cannot be obtained, because of the difficulties in obtaining seeds for agriculture and food security, because UCMs have triggered desperation and consequent suicides, caused uncontrolled migration flows, sometimes accompanied by tragedy in the seas.

13. Human Rights Council Resolution 54/15 underlines that “under no circumstances should people be deprived of their basic means of survival or their personal belongings and property based on their nationality.”

14. See Judgment of the International Tribunal on US sanctions against the Republic of Cuba, Brussels 17 November 2023.

15. See the 2022 report of the Special Rapporteur on UCMs, Professor Alena Douhan, on her mission to Iran,

<https://www.ohchr.org/en/documents/country-reports/ahrc5133add1-visit-islamic-republic-iran-report-special-rapporteur>, visited on May, 2024; Setayesh, Sogol, and Tim K. Mackey, “Addressing the Impact of Economic Sanctions on Iranian Drug Shortages in the Joint Comprehensive Plan of Action: Promoting Access to Medicines and Health Diplomacy.” *Globalization and Health* 12(1) (2016): 12-31; Shahabi, S., H. Fazlalizadeh, J. Stedman, L. Chuang, A. Sharifatabrizi, and R. Ram, “The Impact of International Economic Sanctions on Iranian Cancer Healthcare”, *Health Policy* 119 (10) (2015): 1309-1318.

16. See <https://afgj.org/nicanotes-08-17-2023>, visited on May, 2024; see <https://coha.org/book-review-nicaragua-a-history-of-us-intervention-resistance-by-daniel-kovalik/>, visited on May, 2024; <https://ricksterling99.medium.com/nicaragua-a-history-of-us-intervention-and-resistance-e06fc4b0c451>.

17. See http://ee.china-embassy.gov.cn/eng/dssghd/202305/t20230522_11081514.htm, visited on May, 2024; See the 2016 report of the Special Rapporteur on UCMs, Dr. Idriss Jazairy, on his visit to Sudan.

18. See the 2023 report of the Special Rapporteur on UCMs, Prof. Alena Douhan, on her visit to Syria, <https://www.ohchr.org/en/documents/country-reports/ahrc5423add1-visit-syrian-arab-republic-report-special-rapporteur>, visited on May, 2024; See also ESCWA, Office of the UN Resident Coordinator in the Syrian Republic, “Humanitarian Impact of Syria-related Unilateral Restrictive Measures”, 16 May 2016, https://www.csi-schweiz.ch/app/uploads/sites/2/2016/12/ESCWA_Sanctions-Report_May-2016.pdf, visited on May, 2024.

19. See the 2021 report of the Special Rapporteur on UCMs, Alena Douhan, on her visit to Venezuela, <https://www.ohchr.org/en/documents/country-reports/ahrc4859add2-visit-bolivarian-republic-venezuela-report-special>, visited on May, 2024.

UCMs entail a revolt against fundamental principles of the UN Charter, international law and international order, including the sovereign equality of states, the self-determination of peoples, the prohibition of the use of force contained in UN Charter, article 2(4) of the Charter, and the prohibition of interference in the internal affairs of states²⁰. Most importantly, it must be acknowledged that UCMs kill, just as bullets do. The level of deaths caused in more than 30 countries over the past decades are sufficient to raise issues under the 1948 Genocide Convention, which stipulates *inter alia*:

“... genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) *Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part ...*²¹ (*emphasis added*)

Besides the massive attack of UCMs on the right to life, they also seriously affect the right to property, which is not specifically protected in the ICCPR, but which is violated when property is confiscated or frozen in a discriminatory fashion contrary to article 26 ICCPR. The right to property is protected *ratione materiae* in the European Convention on Human Rights and Fundamental Freedoms, and in the domestic legislation of most countries. WTO law provides for the protection of private property; the General Agreement on Tariffs and Trade prohibits restrictions of imports and exports, as well as the freezing of assets and the restriction of international transfers and payments²².

UCMs also constitute a significant “push factor” generating uncontrolled migration movements. In this context it is important to separate the concepts of “refugees” and “economics migrants”, e.g. because the vast majority of the people who have left Venezuela over the past ten years did

20. General Assembly Resolutions 2131, 2625, 3314, 36/103 (Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States” 9 December 1981, etc. See also A. de Zayas, *Building a Just World Order*, Clarity Press, Atlanta, 2021, especially pp. 203-05, 215-221, and de Zayas in <https://www.globalissues.org/news/2019/03/12/25073>.

21. See <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-prevention-and-punishment-crime-genocide>, visited on May, 2024.

22. See https://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf, visited on May, 2024.

not do so because of political persecution by the Maduro government, but because many of them lost their employment in the wake of the artificial economic crisis brought about by the drop in oil prices and the severity of the US economic war against Venezuela. The exodus from Venezuela and other countries subjected to UCMs is a result of the economic crisis artificially created by the UCMs.²³

In a more general sense, UCMs constitute an attack on democracy²⁴ itself, bearing in mind that UCMs deliberately aim at imposing one country's economic system on another, thereby violating the right of the targeted nation to choose its own form of government. UCM pressures are incompatible with para. 135 of General Assembly Resolution 60/1, which stipulates:

“We reaffirm that democracy is a universal value based on the freely expressed will of people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. We also reaffirm that while democracies share common features, there is no single model of democracy, that it does not belong to any country or region, and reaffirm the necessity of due respect for sovereignty and the right of self-determination. We stress that democracy, development and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing.”

Purposes and effectiveness of UCMs

The history of UCMs is one of suffering and devastation. They are geopolitical tools to pressure governments to change their policies, especially their choice of economic priorities that conflict with the expansion of the neo-liberal capitalist model promoted by the “collective West”. However, they have been largely ineffective, because they have failed to achieve their main purpose – to induce regime change.

Pronouncements by many US government officials since the days of President J.F. Kennedy document the real intent of US coercive legislation and financial blockades. A good explanation of the purpose of UCMs

23. See the Report of the UN Independent Expert on International Order on his mission to Venezuela and Ecuador, Human Rights Council 38th session, September 2018, <https://www.ohchr.org/en/documents/country-reports/ahrc3947add1-report-independent-expert-promotion-democratic-and-equitable>, visited on May, 2024.

24. Peksen, Dursun, and A.C. Drury, “Coercive or Corrosive: The Negative Impact of Economic Sanctions on Democracy”, *International Interactions* 36(3) (2010): 240-264.

with regard to the Cuban embargo is contained in the statement of the US Undersecretary of State for Latin America Lester Mallory in 1960. He stated:

“The majority of Cubans support Castro... The only foreseeable means of alienating internal support is through disenchantment and disaffection based on economic dissatisfaction and hardship... Every possible means should be undertaken promptly to weaken the economic life of Cuba... A line of action which, while as adroit and inconspicuous as possible, makes the greatest inroads in denying money and supplies to Cuba, to decrease monetary and real wages, to bring about hunger, desperation and overthrow of Government.”²⁵

In other words, the clear purpose of UCMs imposed by the US is deliberately to destabilize the targeted society, to cause hunger and suffering until the chaos leads to violence and eventually “regime change”. In the course of the years, however, a new, less offensive narrative was concocted, in order to make the predictable injustices appear somewhat legitimate. According to the new apologetics, UCMs are an exercise in “soft power” intended to “persuade” the targeted countries to accept subordination to the US and change their economic policies accordingly. As the pundits in Washington think tanks confidently predict, public discontent and anger should result in a peoples’ revolt and *coup d’état*²⁶.

In order to make UCMs appear more “palatable” to a democratic electorate, propaganda is deployed to demonize the targeted government, placing the blame on its “authoritarian” and “corrupt” leaders, who are accused of gross violations of human rights and democratic principles. Thus, the UCMs are disguised as benign pressure aimed at bringing an end to the alleged human rights violations in the targeted country.

There is nothing new about this cynical tactic. Already Tacitus²⁷ noted that it is human to put the blame on the victim of one’s actions. Government

25. Report of the Secretary-General, 3 May 2023, *Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba*, UN Doc. A/78/84, at p. 48.

26. McCurdy, Nan, “The CIA: Attempting Coups in Nicaragua with Tax Dollars through US Agencies and Corporate Foundations - USAID does not provide aid, it carries out coups” Dissident Voice, 18 June 2021, <https://dissidentvoice.org/2021/06/the-cia-attempting-coups-in-nicaragua-with-tax-dollars-through-us-agencies-and-corporate-foundations/>, visited on May, 2024.

27. See <https://www.socratic-method.com/quote-meanings/tacitus-it-is-human-nature-to-hate-the-man-whom-you-have-hurt>, visited on May, 2024.

propaganda and the echo chambers of the mainstream media are enough to anaesthetize the electorate of democratic countries so that they “accept” the legitimacy of UCMs. This kind of demonization of foreign governments includes false accusations of being “sponsors of terrorism” and a threat to the “national security” of the country imposing the UCMs. This is compounded by a hybrid media war that is tantamount to incitement to hatred and constitutes a violation of article 20 ICCPR.²⁸

Human rights restrictions by the targeted State in response to UCMs

As shown above, the purpose of UCMs is to cause chaos, a national emergency. At the same time, the political narrative attempts to justify UCMs by invoking human rights and humanitarian principles as their true purpose. But is there any empirical evidence showing that countries subjected to UCM have improved their human rights records?

Experience shows that when a country is at war – any kind of war – it usually derogates from some civil and political rights. Similarly, when a country is enduring non-conventional warfare and is subjected to financial blockades and other UCMs, the result is *not* an expansion of human rights, but exactly the opposite. When UCMs trigger economic and social crises, governments routinely invoke a “national emergency” and impose extraordinary measures. Accordingly, as in classical war situations, when a country is subject to a siege, it closes ranks in an attempt to re-establish stability through the temporary restriction of certain civil and political rights.

Article 4 ICCPR envisages the possibility that governments may impose certain temporary restrictions, e.g. the derogation from Art. 9 (detention), Art. 14 (fair trial proceedings), Art. 19 (freedom of expression), Art. 21 (freedom of peaceful assembly), Art. 25 (periodic elections). While such derogations are undesirable and should be as brief as possible, every state’s priority is survival, the defence of its sovereignty and identity. International law recognizes that governments have a certain margin of discretion in determining the existential threats posed by internal or external danger, whether by UCMs, paramilitary activities, subversive propaganda and sabotage.

Article 4 stipulates: “In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed,

28. A. de Zayas, Chapter 7 of *The Human Rights Industry*, Clarity Press, 2023, pp, 112, 190, 227.

the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. ”²⁹

It is easy to document that external pressures to destabilize targeted countries have resulted in restrictive laws and regulations in response. This has been the case in Cuba³⁰, Nicaragua³¹ and Venezuela³², where the enjoyment of certain civil rights has been restricted in the name of national security. In such cases UCMs reveal themselves as counter-productive³³.

If the international community wants to help a country improve its human rights performance, it should endeavour to eliminate the threats that make governments retrench instead of opening-up. Precisely because UCMs aggravate a country’s economic and social situation and disrupt the proper functioning of state institutions, they actually weaken the rule of law and lead to retrogression in human rights terms.

In the light of the continuing threats by some politicians against countries subjected to UCMs, it would seem that an old French adage applies:

- *La bête est très méchante, lorsqu'on l'attaque, elle se défend.*

The beast is very nasty – when you attack it, it defends itself.

Another collateral effect of UCMs is that targeted governments frequently use their own propaganda means to bring about a “rallying around the flag” effect, emphasizing national identity and “embattled

29. See also General Comment Nr. 29 of the Human Rights Committee on states of emergency (2001), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F21%2FRev.1%2FAdd.11&Lang=en, visited on May, 2024.

30. A/78/84.

31. John Perry, “Nicaragua’s Finance Minister Details How U.S. Sanctions Impact Nicaragua’s Poor”, Covert Action Magazine, December 6, 2023, <https://nicaleaks.com/us11440-en-2017-de-la-ned-a-la-cpdh-para-sabotear-elecciones/>, visited on May, 2024.

32. Comments of the Venezuelan government on my mission report to the Human Rights Council.

33. “Sanctions...also undermine media openness as targeted governments may try to censor criticizing the media, while the media may have less funding resources within a weakening economy”. Dursun Peksen, “Coercive Diplomacy and Press Freedom”, *International Political Science Review* 31(4) (2010): 449-69 (2010), at 459.

sovereignty”.³⁴ North Korean and Iranian leaders have succeeded in appealing to nationalistic feelings among their populations in an attempt to make them accept the government’s resilience to sanctions.³⁵ During my UN mission to Venezuela in November/December 2017, I had the opportunity to speak with a considerable number of Venezuelans across the political spectrum, including professors, students, NGO-activists, parish priests, Jesuit teachers, musicians, average people etc. Since Spanish is my mother tongue I could easily relate with my interlocutors and I discovered that the “mood” in the population was one of being under “siege” by the US, and a majority of those whom I consulted blamed the US for their misery and not the Maduro government.³⁶ I consulted the analyses of many academics who confirmed my observations. Reed Wood further argues that sanctions tend to increase repression used by targeted regimes to mute any domestic dissent³⁷. For similar reasons, human rights for physical integrity can deteriorate under prolonged UCMs³⁸.

The bottom line is that “democracy” cannot be exported and imposed by force, that human rights are not the result of a vertical, top-down enforcement but rather require a horizontal recognition of the dignity of every human being. The exercise of human rights depends on peace, education, mutual respect and solidarity.

Case-Study: Impacts of UCMs against Cuba

Every year the UN adopts a resolution demanding the lifting of the embargo against Cuba, supported by a Secretary General Report on the consequences of the embargo and a detailed documentation. The 2022 SG report³⁹ A/77/358 reads in part:

34. Jaeger, Mark, “Constructing Sanctions: Rallying Around the Target in Zimbabwe”, *Cambridge Review of International Affairs* 29 (3) (2016): 997-1021.

35. Richard Falk, *Public Intellectual* (Clarity Press: Atlanta, 2021); Julia Grauvogel and Christian von Soest, “Claims to Legitimacy Count: Why Sanctions Fail to Instigate Democratisation in Authoritarian Regimes”, *European Journal of Political Research* 53(4) (2014): 635-653.

36. See the Report of the UN Independent Expert on International Order on his mission to Venezuela and Ecuador, Human Rights Council 38th session, September 2018.

37. Reed Wood, “A Hand upon the Throat of the Nation: Economic Sanctions and State Repression”, *International Studies Quarterly* 52(3) (2008): 489-513.

38. Dursen Peksen, “Better or Worse? The Effect of Economic Sanctions on Human Rights”, *Journal of Peace Research* 46(1) (2009): 59-77.

39. See <https://undocs.org/Home/Mobile?FinalSymbol=A%2F77%2F358&Language=E&DeviceType=Desktop&LangRequested=False>, visited on May, 2024.

“The combined effects of a multidimensional global crisis in the energy, food, environmental and transportation sectors, and the cumulative impact of two years of the coronavirus disease (COVID-19) pandemic, have brought about a complex international context...”

The blockade violates the right to life and health of all Cubans. The impact of this policy is reflected in the shortage of essential consumer goods, as well as the challenges faced by national industry in acquiring supplies needed to produce pharmaceuticals and provide other vital services. Cuba is capable of producing more than 60 per cent of its essential medicines; however, this level has not been attained for months owing to the impact of the blockade on the country’s capacity to pay; the impossibility of accessing medical technologies with more than 10 per cent of components originating in the United States; the need to resort to alternative transportation routes at a high additional cost; and the growing refusal of financial and banking institutions in various countries to conduct operations with Cuba, which has impeded transactions with these suppliers. This is illustrated by the impossibility of purchasing insulin from the Danish company Novo Nordisk because of the refusal of a Danish bank to accept bank transfers. The bank alleged that it could not receive funds from Banco Financiero Internacional because it is a Cuban entity sanctioned by the Office of Foreign Assets Control. In the midst of the fight against the COVID-19 pandemic, the blockade hindered the arrival of syringes into the country to support the vaccination process. Negotiations with a foreign supplier had to be interrupted because a British bank informed the supplier that it could not carry out payment transactions destined for Cuba.

At the peak of the pandemic in the country in 2021, not a single measure to ease the blockade was applied. This policy hindered the delivery of donations; the procurement of cylinders, spare parts and other components required for the supply of medical oxygen; and the purchase and transport of indispensable materials for the prevention, diagnosis and treatment of COVID-19, as well as for the research, production and evaluation of vaccine candidates and Cuban vaccines against the virus. As a result of the blockade, the Centre for Genetic Engineering and Biotechnology, which produces the Cuban COVID-19 Abdala vaccine, reported losses amounting to \$190,671,000. For the Finlay Vaccine Institute, producer of the Soberana 02 and Soberana Plus vaccines, this policy hampered 20 operations, 11 of which related to supplies, 6 to reagents and 3 to equipment from United States manufacturers. Clinical studies of autoimmune diseases, such as psoriasis and multiple sclerosis, as well as neurodegenerative diseases, have

not started because the required drugs, which are standard therapeutics throughout the world, are not available to Cuban patients....

The Secretary General's report concluded:

"The blockade constitutes a massive, flagrant and systematic violation of the human rights of the Cuban people. The blockade is an act of economic warfare in times of peace. It is the primary impediment to the country's economic and social development, and to the implementation of the 2030 Agenda for Sustainable Development and its Goals. Its purposes are illegitimate and illegal and violate the Charter of the United Nations and international law....

Three decades since the first United Nations General Assembly resolution against the blockade, the Government of the United States persists in ignoring the Assembly's many pronouncements calling for it to unconditionally eliminate its failed, unilateral and criminal policy against Cuba."

The 61-page Cuban report dated 19 October 2022⁴⁰, one of the sources upon which the SG report was based, reads in part:

"The main damages arose from the impossibility of acquiring medical technology of U.S. origin or with more than 10 percent of its components from that country. Medicines, equipment, medical devices, reagents and other supplies used in medical care have to be obtained in geographically distant markets and on many occasions through intermediaries, with a significant increase in prices. The extraterritorial nature of the blockade hinders the purchase of spare parts, maintenance and replacement of equipment for medical care and research... As a result of this policy, the Cuban people have faced shortages of medicines and medical equipment, including oxygen supplies and pulmonary ventilators, protection kits, spare parts, fuel, electricity, among other indispensable resources for the sustainability of the Cuban health system.

These shortages have an impact not only on the country's ability to cope with COVID-19, but also cause daily difficulties for people to acquire essential medicines on time for the treatment of chronic diseases, such as insulin, antibiotics, painkillers, drugs used to control blood pressure, antihistamines and others... In particular, the company OWENS & MINOR, INC. was asked for horizontal spin centrifuges [3], an equipment required in the laboratories of the health institutions' network; while the company

40. See <http://cubaminrex.cu/en/cubas-report-resolution-75289-united-nations-general-assembly-entitled-necessity-ending-economic>, visited on May, 2024, pp. 3-4, 11.

ELI LILLY was asked for Pemetrexed, a chemotherapy drug used to treat non-small cell lung cancer⁴¹ and pleural mesothelioma (a type of cancer that affects the lining of the lungs). As for MERCURY MEDICAL, this company refused to supply several medical devices necessary for the treatment of Acute Hypoxemic Respiratory Failure (AHRF), Acute Respiratory Distress Syndrome (ARDS) and septic shock...

In the midst of the COVID-19 pandemic, which has caused a multidimensional crisis throughout the world, and with the additional burden of the economic, commercial and financial blockade imposed by the United States, the Cuban State has faced enormous obstacles in obtaining the basic resources that are essential to guarantee the functioning of the national health system.

The Biden administration ordered a review of the impact of the unilateral coercive measures that limit States' capacity to face the pandemic. Cuba was excluded from this exercise and, unlike other countries, no modification to the measures in force was announced. With this, the United States intends to ignore the damage caused by the blockade, particularly worsened under the effects of COVID-19...

"The impacts of the blockade cannot be addressed without considering the serious human detriment this policy causes, aimed at creating uncertainty in the minds of Cubans, thwarting their hopes for development and inciting civil unrest. Such human harm cannot be quantified, but it is nonetheless real and substantial."

At the 2023 discussion of the new Report by the Secretary-General (Document A/78/84) on 1 November 2023 the overwhelming majority of the Assembly (187 voted in favour of Resolution 78/L.5) many regional organizations expressed solidarity with the Cuban people, who are the real victims of the UCMs. The Representative of Mauritania, speaking on behalf of the Organization of Islamic Cooperation (OIC) expressed alarm at how the embargo's impact grew exponentially after Cuba was added to list of countries allegedly sponsoring terrorism. Banking and financial operations have become extremely difficult for Cuba due to this. The representative of Saint Vincent and the Grenadines, speaking on behalf of the Community of Latin American and Caribbean States (CELAC) rejected the application of laws and measures that are contrary to international law, "We are also opposed to the unjust inclusion of Cuba on the list of State sponsors of

41. See <https://news.un.org/en/story/2021/07/1096202>, visited on May, 2024.

terrorism.” The Representative of El Salvador, speaking on behalf of the Central American Integration System, complained *inter alia* that as a result of the embargo Cuba cannot acquire medicines necessary to treat childhood cancer. Uganda’s delegate, speaking on behalf of the Group of 77 and China said “All we know about Cuba is friendship and solidarity; we know nothing about terrorism.” Saint Lucia’s delegate, speaking on behalf of the Caribbean Community (CARICOM), called the embargo contrary to the letter and spirit of the Charter of the United Nations and an abandonment of the ethos of multilateralism.⁴²

Conclusion

By way of conclusion, I would like to recall the many press releases and articles by UN rapporteurs including Alena Douhan, Idriss Jazairy, Tlaleng Mofokeng, Michael Fakhri⁴³, Obiora Okafor, Livingston Sewanyana, including their call to respect the precautionary principle:

“The precautionary principle should be applied by States when unilateral sanctions are taken to avoid any negative humanitarian impact on the whole scope of human rights, including the right to development...The punishment of innocent civilians must end.”⁴⁴

It is appropriate to close this section with the words of High Commissioner Michelle Bachelet on 16 September 2021 when she called for a major rethink of UCMs.⁴⁵

“When sanctions target an entire country, or address entire economic sectors, it is the most vulnerable people in that country – those who are least protected – who are likely to be worst harmed... Sanctions can create severe and undue suffering for individuals who have neither perpetrated crimes nor otherwise bear responsibility for improper conduct. When sanctions target an entire country, or address entire economic sectors, it is the most vulnerable people in that country – those who are least protected – who are likely to be worst harmed. And those sought to be targeted can in fact perversely benefit through gaming sanctions regimes and profiteering

42. GA/12552, 1 November 2023.

43. Fakhri, “Understanding Systemic Violence”, Yale Journal of International Law (2023), <https://www.yjil.yale.edu/situating-unilateral-coercive-measures-within-a-broader-understanding-of-systemic-violence/>, visited on May, 2024.

44. See <https://www.ohchr.org/en/press-releases/2021/08/unilateral-sanctions-impinge-right-development-un-experts>, visited on May, 2024.

45. See <https://news.un.org/en/story/2021/09/1100142>, visited on May, 2024.

from the economic distortions and incentives introduced by them... In March 2020, less than two weeks after COVID-19 was declared a global pandemic, I called⁴⁶ for sanctions that could affect the health sector to be eased or suspended. This was vital, to ensure that millions of people in countries being targeted by sanctions regimes could access essential medical equipment and treatment. Continued sanctions risked causing more suffering and death and wider contagion around the world.”

It is a disgrace that more than two years after the High Commissioner’s call, UCMs continue to kill worldwide and engender gross violations of civil, cultural, economic, political and social rights.

Recommendations

“Though this be madness, yet there is method in it”

Hamlet, II, ii, 211-212)

The above pages illustrate the serious retrogression that UCMs has brought about in terms of civilization, rule of law, human rights, ethics, predictability and *Rechtssicherheit*. In a very real sense UCMs constitute an expression of social Darwinism, a vestige of that kind of imperialism and colonialism condemned by the UN Human Rights Council in its resolution 48/7 (8 October, 2021).

This form of neo-colonialism is being white-washed by many politicians and the mainstream media. Yet, the growing number of critics, including prominent academics, gives reason for optimism that soon UCMs will be generally condemned as incompatible with the ICCPR and ICESCR. It is a matter of conscience to reaffirm our commitment to truth and to the ethos of scholarship.

It bears repeating that all states parties to the ICCPR and ICESCR have an *erga omnes* obligation to ensure their implementation. When these states grossly violate their commitments under ICCPR and ICESCR, they should be called to account by the respective monitoring Committees during the periodic examination of state reports. In particularly egregious cases, the inter-state complaints procedure should be activated. Such violations should also be examined during the Human Rights Council’s Universal Periodic Review.

46. See <https://www.ohchr.org/en/2020/03/bachelet-calls-easing-sanctions-enable-medical-systems-fight-covid-19-and-limit-global?LangID=E&NewsID=25744>, visited on May, 2024.

Civil society and our democratic representatives are called upon to correct the chaos caused by UCMs:

1. Civil society victims who have suffered violations of their rights through UCMs should challenge them in domestic courts or ask their governments in the exercise of diplomatic protection to represent their rights before the courts of countries imposing UCMs. Judges must recognize that the UN Charter, the ICCPR and ICESCR are treaties and in the United States and many other countries, treaties are part of the “law of the land” and must be implemented by domestic courts.⁴⁷ Moreover, by virtue of the supremacy clause (Art. 103 of the UN Charter) all treaties must conform with the UN Charter, including the Treaty of Lisbon, the Treaty of Maestricht, the North Atlantic Treaty Organization Treaty. Any agreement between the US, Canada, UK and EU States to impose joint UCMs would be *contra bonos mores* and null and void.
2. Persons under the jurisdiction of States parties to the Optional Protocol to ICCPR (e.g. Canada, France, Germany, Italy, Poland, Switzerland – but not US and UK) can submit cases to the UN Human Rights Committee alleging violations of their rights under e.g. articles 1, 6, 7, 12, 14, 17, 22, 26 etc., after exhausting domestic remedies, provided that these remedies are “available and effective” as stipulated in the jurisprudence of the Committee.⁴⁸
3. States parties to the ICCPR and ICESCR may consider submitting inter-state complaints (e.g. under article 41 ICCPR), calling upon States parties who impose UCMs to immediately lift the UCMs and to pay reparation to the victims.
4. Persons under the jurisdiction of States subject to the European Convention on Human Rights should submit applications to the European Court of Human Rights.
5. States parties to the Genocide Convention should invoke article 9 of the Convention and refer UCMs to the ICJ demanding the condemnation of UCMs as a form of genocide and crimes against humanity. The Court should also examine the relevance of the ICJ judgment in

47. See 1900 judgment of the US Supreme Court in the Paquete Habana case, <https://supreme.justia.com/cases/federal/us/175/677/>, visited on May, 2024.

48. Jakob Möller and Alfred der Zayas, *UN Human Rights Committee Case-Law* (N.P.Engel: Strasbourg, 2009), pp. 111-116.

the *Bosnia v. Serbia*⁴⁹ case, which formulates the obligation not only not to commit genocide, but the far-reaching obligation to take measures aimed at preventing genocide. An important issue complicity in genocide pursuant to Article 3e should also be adjudicated.

6. States parties to the Statute of Rome should refer UCMs to the ICC for an investigation of the widespread deaths caused by UCMs, which arguably amount to crimes against humanity for purposes of article 7, and may amount to genocide under article 6 of the Statute.
7. The UN General Assembly should invoke article 96 of the UN Charter and refer legal questions associated with UCMs to the ICJ requesting an advisory opinion on the legal consequences of the continuing imposition of UCMs, notwithstanding yearly resolutions by the General Assembly and Human Rights Council, bearing in mind that because of their lethal impacts on the most vulnerable, UCMs constitute crimes against humanity. Indeed, over the past thirty years tens of thousands of human beings have lost their lives in many countries. The ICJ should also determine the level of compensation that is due to the victims pursuant to article 31 of the ILC draft Code of Responsibility of States which reaffirms the right to just reparation⁵⁰.
8. The UN Secretary General should invoke article 99 of the UN Charter and refer the humanitarian crises caused by UCMs to the UN Security Council. It is evident that the destabilization of States through UCMs may engender violence and constitute a threat to international peace and security.
9. Individuals and corporations adversely impacted by UCMs may invoke the pertinent investment protection chapters in free-trade agreements and bilateral investment treaties, and activate ISDS arbitration against those states imposing UCMs.
10. States should adopt or activate existing legislation to prohibit enterprises registered and operating under their jurisdiction from complying with extra-territorial legislation of foreign states, which result in the death of persons in the targeted States. By complying or “over-complying” with foreign UCMs, individuals and corporations become complicit in the

49. See <https://icj-cij.org/case/91>, visited on May, 2024.

50. Article 31 Reparation “1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act. 2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.”

violation of the State's sovereignty and co-responsible for the deaths that result from hunger and disease directly linked to the UCMs.

11. States should adopt or activate existing legislation on the obligation of private individuals and corporations to assist persons in distress. For instance, a corporation that refuses export medicines or medical equipment, banks that refuse to transfer money to countries under UCMs may be responsible for the death of cancer and dialysis patients.
12. States should exercise diplomatic protection on behalf of corporations registered or operating within its jurisdiction, when these entities are penalized by extra-territorial UCMs.
13. States should adopt proportional measures of retorsion against countries imposing UCMs, including denying entry visas to foreign officials associated with the Office of Foreign Assets Control (OFAC). The persons responsible for the adoption and implementation of UCMs could be indicted for criminal acts and prosecuted if they enter the territorial jurisdiction of the State.
14. States may activate the principle of universal jurisdiction to prosecute government officials involved in the adoption and implementations of UCMs.
15. ILO, OCHA, UNESCO, UNHCR, UNICEF, WHO, as well as Amnesty International and Human Rights Watch should investigate the adverse impacts of UCMs and *inter alia* quantify the number of deaths resulting from the economic chaos triggered by UCMs.
16. The Human Rights Council Special Rapporteurs on UCMs, food, health, water and sanitation, independence of judges and lawyers, the independent experts on international order and international solidarity should cooperate in compiling concrete information on the lethal consequences of UCMs.
17. The Central American Bank for Economic Integration (CABEI) and the Central American Free Trade Agreement (CAFTA) should be encouraged to increase support and coordination to countries in the region whose economies have been devastated by UCMs.

CHAPTER VII

The position of the Committee on Economic, Social and Cultural Rights on unilateral coercive measures

(Prof. Abashidze A. Kh.)

Professional international legal analysis of the negative impact of unilateral coercive measures (*UCM*) on economic, social and cultural rights and the position of the Committee on Economic, Social and Cultural Rights (*CESCR*) on this issue through the lens of the obligations of States parties to the ICESCR involves a comprehensive and integrated study of the key tenets of the Covenant itself, which is a fundamental human rights instrument in the United Nations system.

Since the ICESCR belongs to the UN system, it is necessary to recall the basic historical and conceptual-normative provisions, namely that the founding States of the UN, united in the anti-Hitler coalition, were determined: “to practise tolerance and live together in peace with one another as good neighbours”, “to unite our strength to maintain international peace and security” and “to employ international machinery for the promotion of the economic and social advancement of all peoples”¹.

The use of the term “all peoples” in the quoted preambular provision of the UN Charter is noteworthy. Based on the provision of the UN Charter on the determination of the PEOPLES OF THE UNITED NATIONS to reaffirm the belief “in the equal rights of men and women and of nations large and small”² it is safe to say that this term includes not only the peoples living in the UN member states (51 founding states), but all peoples of the world. Subsequently, all former Axis countries became UN member states, in accordance with Article 4 of the UN Charter, as having become “peace-loving states” and ready to assume the obligations contained in the UN Charter. The former colonial peoples who, against the wishes of the colonial powers, but with the support of the UN provided by the firm position of the USSR and other states of the socialist camp, actively conducted national liberation movements and achieved independence, also became

1. The United Nations Charter. San-Francisco, 26 June 1945 r. Preamble. <https://www.un.org/ru/about-us/un-charter/full-text>, visited on June, 2024.

2. *Ibid.*

UN member states. Of course, the “all peoples” mentioned in the preamble of the UN Charter include those peoples who are now in the status of “over-seas” and other similar entities of the former colonial powers. Thus, it is logical to assume that the international apparatus referred to in the preamble of the UN Charter should promote the economic and social progress of all peoples of the world without exception.

The international legal order, built on the provisions of the UN Charter and other post-war arrangements, is based on a system of collective security that encompasses not only the traditional politico-military sphere, but also the economic, social and humanitarian fields, including human rights.

This explains the appearance of a separate chapter (IX) entitled “International Economic and Social Cooperation” in the founding act – the UN Charter – and of the Economic and Social Council (Chapter X) among the six main UN bodies.

The promotion of the economic and social progress of all peoples, which according to the preamble of the UN Charter the international apparatus is called upon to do, implies ensuring fundamental human rights and freedoms, which, based on Article 1 (3) of the UN Charter, is one of the main purposes of the Organization. This is confirmed in the first international human rights instrument in the history of mankind – the Universal Declaration of Human Rights (*UDHR*). According to its Article 2 and Article 28, “Everyone is entitled to all the rights and freedoms” and “to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”³.

The preambles of the International Covenant on Civil and Political Rights (hereinafter ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) contain a provision common to both Covenants, which reads: “Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of a free human person, free from fear and want, can be fulfilled only if conditions are created whereby everyone may enjoy his economic, social and cultural rights as well as his civil rights”⁴. In relation to these two International Covenants on Human Rights, it is pertinent to note that they (the Covenants) and the

3. Universal Declaration of Human Rights. New-York, 10 Dec. 1948. Art. 2, 28. https://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml, visited on June, 2024.

4. International Covenant on Civil and Political Rights. New-York, 16 Dec. 1966. Preamble. https://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml; International Covenant on Economic, Social and Cultural Rights. New-York, 16 Dec. 1966. Preamble.

UDHR together form the International Bill of Human Rights, which serves as the conceptual and normative core of International Human Rights Law.

There are 172 States parties to ICESCR, almost as many as States parties to ICCPR (173). This large number of Parties to the ICESCR confirms the relevance of the rights enshrined in the Covenant in today's complex development context. To illustrate, almost all 17 SDGs address, to varying degrees, the realization of economic, social and cultural rights at both the national and global levels.

Both in 1945, when the UN Charter was adopted, and today, 80 years later, the provision enshrined in Article 1.1 of both International Covenants on Human Rights remains relevant. It states: by virtue of the right to self-determination, all peoples "freely determine their political status and freely pursue their economic, social and cultural development"⁵. However, the fact that many economically developed states in the Western world do not adequately perceive the rights of all peoples arising from the principle of self-determination (sovereign equality, non-interference in internal affairs, etc.) brings us back again and again to another important conceptual provision of the preamble of the UDHR that "common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge"⁶.

All of the above points to the systemic nature of the international legal order established by the UN Charter in all important aspects, including the relationship between ensuring the economic and social progress of all peoples and the cooperation of states in ensuring human rights and freedoms. This provision is clearly and succinctly reflected in Article 55 of the UN Charter, according to which the UN promotes "universal respect for and observance of human rights and fundamental freedoms for all"⁷ first and foremost "with a view to creating conditions of stability and well-being necessary for peaceful and friendly relations among nations"⁸. Under Article 56 of the UN Charter, all member states "pledge themselves to take

https://www.un.org/ru/documents/decl_conv/conventions/pactecon.shtml, visited on June, 2024.

5. *Ibid.*, art. 1(1).

6. Universal Declaration of Human Rights. New-York, 10 Dec. 1948. Preamble. https://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml, visited on June, 2024.

7. The United Nations Charter. San-Francisco, 26 June 1945 r. Art. 55. <https://www.un.org/ru/about-us/un-charter/full-text,,> visited on June, 2024.

8. *Ibid.*

joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55”⁹.

The Committee on Economic, Social and Cultural Rights (CESCR), which has internationally monitored the implementation of the ICESCR by States parties since its inception, has drawn attention to the importance of an adequate understanding of certain key provisions of the Covenant and the obligations of States parties arising therefrom. the Committee’s views on these key provisions of the Covenant are concentrated in its general comments and concluding observations on the periodic reports of States parties.

In this regard, it is worth reading the CESCR’s explanation (opinion) on the nature of States parties’ obligations under the ICESCR, as set out in General Comment n° 3¹⁰, which reflects provisions of a conceptual nature. In it, the Committee reaffirms: “in terms of political and economic systems the Covenant is neutral...the rights recognized in the Covenant are susceptible of realization within the context of a wide variety of economic and political systems, provided only that the interdependence and indivisibility of the two sets of human rights, as affirmed *inter alia* in the preamble to the Covenant, is recognized and reflected in the system in question”¹¹.

Following the clarification of the concept of “progressive realization of obligations” by the State party taking the necessary measures “to the maximum of its available resources”, the CESCR specifies that each State party to the Covenant has a “minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights...”¹² The Committee considers that any assessment of a State party’s fulfilment of its minimum core obligation under the Covenant must also take into account the country’s resource constraints¹³.

In the context of the obligation of States parties “to take steps, individually and through international assistance and cooperation, especially economic and technical...” the Committee reiterates that the drafters of the Covenant intended the phrase “to the maximum of its available resources”

9. *Ibid.*, art. 56.

10. The CESCR General Comment n° 3 “The nature of States parties’ obligations”, 1990. Para. 8. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=ru&TreatyID=9&DocTypeID=11, visited on June, 2024.

11. *Ibid.*, para. 10.

12. *Ibid.*

13. *Ibid.*

to refer both to the resources of the State itself and to those it may receive from the international community through international assistance and cooperation¹⁴. In this context, the Committee points out that “in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States”¹⁵. In doing so, the Committee emphasizes: “this is particularly incumbent upon those States which are in a position to assist others in this regard”¹⁶. The Committee was referring here to economically developed States, such as those that are members of the G7 or the OECD.

How should any unilateral coercive measures be characterized in the context of the above? What is the position of CESCR on unilateral coercive measures?

Logically, the Committee had two options: as an independent human rights treaty body, to remain neutral and therefore refrain from expressing any views; and as an integral part of the UN system, to adhere strictly to the provisions of the UN Charter.

Strict adherence to the provisions of the UN Charter implies taking into account the following peremptory provisions: member states (193 of them), on the basis of Article 24 of the UN Charter, “confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf”¹⁷. Under Article 25 of the UN Charter, member states agree “to accept and carry out the decisions of the Security Council in accordance with the present Charter”¹⁸.

Under Articles 34 and 39 of the UN Charter, the Security Council is authorized to investigate any dispute or situation, determine any threat to the peace, breach of the peace and decide what measures should be taken to maintain or restore international peace and security.

14. *Ibid.*, para. 13.

15. *Ibid.*, para. 14.

16. *Ibid.*

17. The United Nations Charter. San-Francisco, 26 June 1945 r. Preamble. <https://www.un.org/ru/about-us/un-charter/full-text>, visited on June, 2024.

18. *Ibid.*, art. 25.

The measures proposed by the UNSC may include those that do not involve the use of armed forces¹⁹, namely the total or partial interruption of economic relations, railroad, sea, air, postal, telegraphic, radio or other means of communication, and the severance of diplomatic relations. If such measures prove insufficient, the Security Council measures “may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations”²⁰.

According to Article 48 of the UN Charter, actions required to implement Security Council decisions in order to maintain international peace and security “shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine”²¹.

Article 50 of the UN Charter contains an important provision: if the Security Council takes “enforcement measures” against any state, any other state facing special and economic problems arising out of the enforcement measures shall have the right to consult the Security Council with a view to resolving such problems.

Article 53(1) of the UN Charter is clear: “no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council”²².

This extensive review is justified because it leads to the following conclusions: 1) the UN Charter provides a firm international legal basis for collective action by UN Member States to maintain or restore peace; 2) the UN Security Council the only one authorized to act to assess a situation as a breach of peace and to take enforcement action of a non-violent and/or coercive nature against the violator of international law; 3) only the UN Security Council has the right to act on behalf of UN member states (in fact, on behalf of the entire international community), and its decisions on issues of ensuring international peace and security are binding on all states, including non-members of the UN; 4) enforcement actions taken outside the authority of the UN Security Council, including actions by states within the framework of regional agreements or regional bodies, must be authorized by the UN Security Council.

19. *Ibid.*, art. 41.

20. *Ibid.*, art. 42.

21. *Ibid.*, art. 48.

22. *Ibid.*, art. 53.

The cited articles of the UN Charter refer to “measures” or “provisional measures” (Art. 40), measures involving “the use of armed forces” (Art. 41), “enforcement actions” (Art. 53(1)) taken “to maintain or restore international peace and security” (Art. 39). It is precisely such measures taken by the UNSC that are legitimate under the UN Charter and fall within the exclusive competence of the UNSC.

Early in its work, CESCR addressed “economic sanctions”. CESCR’s position on them is reflected in its General Comment No 8, entitled “The relationship between economic sanctions and respect for economic, social and cultural rights”²³.

We note that CESCR uses the term “economic sanctions” in the title of the General Comment. In the first paragraph of the document, the Committee notes the increasing use of “economic sanctions” at the “international and regional levels” as well as “unilaterally”, but without any explanation of these concepts. Moreover, the Committee made them difficult to understand by stating, “The Committee does not in any way call into question the necessity for the imposition of sanctions in appropriate cases in accordance with Chapter VII of the Charter of the United Nations or other applicable international law”²⁴.

The fact is that the CESCR does not have the authority to assess, directly or indirectly, the provisions of Chapter VII of the UN Charter, and thus its “does not in any way call into question” clause is, to put it mildly, inappropriate. As for the other part of CESCR’s statement, namely “by another relevant provision of international law”, it (the reference) is contrary to the provisions of the UN Charter. “Enforcement action” is only taken by the UN Security Council within the strict framework of the UN Charter. If the Committee means by “other relevant provision of international law”²⁵ anything outside the UN Charter, it should be guided by Article 103 of the Charter, which states that “in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their

23. The CESCR General Comment No 8 “The relationship between economic sanctions and respect for economic, social and cultural rights”, 1997. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=ru&TreatyID=9&DocTypeID=11, visited on June, 2024.

24. *Ibid.*, para. 1.

25. *Ibid.*, para. 1.

obligations under the present Charter shall prevail”²⁶. It should be added that the CESCR Covenant is not authorized to comment on what does not fall within its competence.

A reminder of the requirement of Article 103 of the UN Charter is also relevant in the context of the Committee’s judgment as follows: in such cases (i.e. in cases of economic sanctions) “those provisions of the Charter that relate to human rights (Articles 1, 55, 56) must still be considered to be fully applicable in such cases”²⁷.

In such a vague form, the Committee’s judgments raise questions of principle, and the lack of clear explanations of key concepts and terms in the text of the general comment under consideration negatively affects the credibility of the CESCR’s opinion.

In view of the criticisms we have made, we believe it would be useful to draw attention to those provisions of the General Comment which relate to legitimate enforcement actions as defined by the UNSC and the prevention of their negative effects on the enjoyment of economic, social and cultural rights.

The Committee reasonably requires that, when imposing sanctions (meaning “enforcement actions” taken by the UNSC), State party shall “...take full account of the provisions of the International Covenant on Economic, Social and Cultural Rights”²⁸.

The Committee lists the negative effects of UNSC sanctions that affect the rights recognized in the Covenant. For example, sanctions often result in serious interruptions in the supply of food, medicines and sanitation, reduced food quality and lack of clean drinking water, severely affect the functioning of basic health and education systems, and impair the right to work²⁹.

In the view of the CESCR, when considering UNSC sanctions, it is important to distinguish between the primary purpose of exerting political

26. The United Nations Charter. San-Francisco, 26 June 1945 r. Preamble. <https://www.un.org/ru/about-us/un-charter/full-text>, visited on June, 2024.

27. The CESCR General Comment No 8 “The relationship between economic sanctions and respect for economic, social and cultural rights”, 1997. Para. 1. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=ru&TreatyID=9&DocTypeID=11, visited on June, 2024.

28. *Ibid.*

29. *Ibid.*, para. 3.

and economic pressure on the ruling elite of a particular country to comply with international law and the resulting suffering of vulnerable groups in the targeted country. It is for this reason, the Committee notes, that the sanctions regimes established by the Security Council provide for humanitarian exceptions aimed at securing essential goods and services for humanitarian purposes. The Committee agrees with the view that these exemptions ensure respect for economic, social and cultural rights in the targeted country³⁰.

The Committee agrees with a different but critical conclusion presented in the UN studies that such exemptions do not work and that the exemptions themselves are limited in scope, e.g., they do not cover access to primary education and do not provide opportunities to repair infrastructure vital to water supply, adequate health care³¹. The Committee also agrees with the conclusion that the vetting procedures of the various sanctions structures established by the Security Council “remain cumbersome”³².

Importantly, the CESCR has recognised that insufficient attention has been paid to the impact of UNSC sanctions on vulnerable groups, and that the protection of human rights must therefore be taken into account when addressing the issue of sanctions³³.

In the view of CESCR, if the measures taken prevent a State from fulfilling its obligations under the Covenant, the Committee may then consider the conditions of sanctions and the manner in which they are implemented³⁴. The Committee considers that two sets of obligations arise from

30. *Ibid.*, para. 4.

31. Supplement to an Agenda for Peace: position paper of the Secretary-General on the occasion of the fiftieth anniversary of the United Nations (A/50/60-S/1995/1), 1995. Para. 66-76. <https://www.securitycouncilreport.org/un-documents/document/unro-s1995-1.php>, visited on June, 2024.

32. The CESCR General Comment No 8 “The relationship between economic sanctions and respect for economic, social and cultural rights”, 1997. Para. 5. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=ru&TreatyID=9&DocTypeID=11, visited on June, 2024.

33. See: Summary of the study prepared at the request of the Department of Humanitarian Affairs on behalf of the Inter-Agency Standing Committee “Toward More Humane and Effective Sanctions Management: Enhancing Capacity of the United Nations System / L. Mineat, et al. – R.I.: Watson Institute for International Studies Press, 1998.

34. The CESCR General Comment No 8 “The relationship between economic sanctions and respect for economic, social and cultural rights”, 1997. Para. 9. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=ru&TreatyID=9&DocTypeID=11, visited on June, 2024.

this consideration. The first set relates to the State that has been the subject of sanctions. While sanctions inevitably limit the ability of the targeted State to finance or provide for certain necessary measures, the imposition of sanctions does not in any way eliminate or diminish the relevant obligations of the State party concerned. In this regard, the Committee should closely monitor the extent to which the State concerned is taking measures “to the maximum of its available resources” to protect to the maximum extent possible the economic, social and cultural rights of every person subject to the jurisdiction of that State³⁵.

The second set of obligations relates to the party (or parties) responsible for administering, enforcing or applying sanctions. In this regard, the Committee considers that the principle of recognizing economic, social and cultural human rights allows for three logical conclusions³⁶.

First, these rights must be fully taken into account when designing an appropriate sanctions regime. In this regard, the Committee supports initiatives such as proposals to establish an appropriate mechanism within the UN to anticipate and monitor the impact of sanctions³⁷.

Second, the protection of the economic, social and cultural rights of the population of the affected country must be effectively monitored throughout the sanctions period³⁸.

Third, that party has an obligation “to take steps, individually and through international assistance and cooperation, especially economic and technical” in order to respond to any disproportionate suffering experienced by vulnerable groups within the targeted country³⁹.

The Committee emphasizes that the people of a country are not deprived of their basic economic, social and cultural rights by a finding that the leaders of that country have violated norms of international peace and security⁴⁰.

The Committee recalled its views expressed in other general comments. In General Comment No 14 entitled “The right to the highest attainable standard of health” (ICESCR Art. 12), the Committee noted: “States parties

35. *Ibid.*, para. 10.

36. *Ibid.*, para. 11.

37. *Ibid.*, para. 12.

38. *Ibid.*, para. 13.

39. *Ibid.*, para. 14.

40. *Ibid.*, para. 15.

should refrain at all times from imposing embargoes or similar measures restricting the supply of another State with adequate medicines and medical equipment. Restrictions on such goods should never be used as an instrument of political and economic pressure”⁴¹.

In General Comment No 15 “The Right to Water” (Articles 11 and 12 of the ICESCR) the CESCR, drawing the attention of States parties to their international obligations in relation to the right to water, stated: “States parties should refrain at all times from imposing embargoes or similar measures, that prevent the supply of water, as well as goods and services essential for securing the right to water. Water should never be used as an instrument of political and economic pressure... States parties should ensure that the right to water is given due attention in international agreements and, to that end, should consider the development of further legal instruments. With regard to the conclusion and implementation of other international and regional agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to water. Agreements concerning trade liberalization should not curtail or inhibit a country’s capacity to ensure the full realization of the right to water”⁴².

In General Comment No 19 “The Right to Social Security” (ICESCR Art. 9), the CESCR reminded States parties of their international obligations in relation to the right to social security, that they have to “respect the enjoyment of the right by refraining from actions that interfere, directly or indirectly, with the enjoyment of the right to social security in other countries”⁴³.

Here, as in General Comment No 15, the CESCR reminded States parties that when concluding and implementing international and regional agreements, they should take measures to ensure “that these instruments do not adversely impact upon the right to social security. Agreements concerning

41. The CESCR General Comment No 14 “The right to the highest attainable standard of health”, 2000. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=ru&TreatyID=9&DocTypeID=11, visited on June, 2024.

42. The CESCR General Comment No 15 “The right to water”, 2003. Para. 32, 35. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=ru&TreatyID=9&DocTypeID=11, visited on June, 2024.

43. The CESCR General Comment No 19 “The right to social security”, 2008. Para. 53. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2F2002%2F11&Lang=ru, visited on June, 2024.

trade liberalization should not restrict the capacity of a State party to ensure the full realization of the right to social security”⁴⁴.

In General Comment No 24 on “State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities”, the CESCR outlined its position with regard to the extra-territorial obligation of States parties. According to the Committee, the extraterritorial obligation to respect “requires States parties to refrain from interfering directly or indirectly with the enjoyment of the Covenant rights by persons outside their territories. As part of that obligation, States parties must ensure that they do not obstruct another State from complying with its obligations under the Covenant. This duty is particularly relevant to the negotiation and conclusion of trade and investment agreements or of financial and tax treaties, as well as to judicial cooperation”⁴⁵.

Adhering to such views, the CESCR should adequately respond to the appeals of those States parties to the Covenant that suffer negative consequences from unilateral coercive measures that are unlawful from the point of view of the UN Charter. One of the most recent examples is the address of the head of the government delegation of Belarus to the members of the CESCR during the consideration of the 7th periodic report of this country in February 2022. In his address, the head of delegation noted the following: “It is impossible not to touch upon the topic of sanctions that have been illegally imposed by Western countries on Belarus. We very much hope that the Committee will not remain silent on the problem of counterproductive sanctions and call on the collective West to abandon them in favour of dialogue. After all, the actions of Western countries not only prevent Belarus from implementing the UN 2030 Agenda for Sustainable Development, but also run counter to the UN Charter and the main UN conventions in the field of human rights, including the International Covenant on Economic, Social and Cultural Rights...”⁴⁶ Unfortunately, the CESCR chose to remain silent, reflecting nothing in its concluding observations on the report of Belarus.

44. *Ibid.*, para. 57.

45. The CESCR General Comment No 24 “State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities”, 2017. Para. 29. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=ru&TreatyID=9&DocTypeID=11, visited on June, 2024.

46. Opening statement from the Head of the Delegation Belarus, 15 February 2022. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=BLR&Lang=RU, visited on June, 2024.

However, as a member of the Committee, I had to make a Herculean effort to reflect the following provisions on extraterritorial obligations in the concluding observations on Lithuania's report: "The Committee remains concerned about the recent measures taken by the State party that prevented the transportation from Belarus of potash destined for third countries in Africa and Latin America, resulting in fertilizer shortages and negatively affecting the food security of those countries". In this regard, the Committee "recommends that the State party reviews the recently introduced measures that have had a negative impact on fertilizer prices and food security in third countries"⁴⁷.

If the CESCR wishes to be credible in the eyes of the most of States parties to the Covenant, it should identify the priority themes of its General Comment and not waste its efforts on far-fetched or secondary themes that are not directly related to the provisions of the Covenant. The negative impact of unlawful unilateral coercive measures on the enjoyment of economic, social and cultural rights should be recognized as one such priority topic.

47. The CESCR Concluding Observations on the third periodic review of Lithuania. 30 Mar. 2023. Para. 20-21. file:///C:/Users/1032206146/Downloads/G2304956.pdf, visited on June, 2024.

CHAPTER VIII
Impact of Unilateral sanctions,
means of their enforcement
and over-compliance on the right to health
(Prof. A. Douhan, UN Special Rapporteur)

Article 12 of the International Covenant on Economic, Social and Cultural rights provides for the right of everyone “*to the enjoyment of the highest attainable standard of physical and mental health*” and identifies areas to be addressed by states to ensure this right: the reduction of the still-birth-rate and of infant mortality and for the healthy development of the child; improvement of all aspects of environmental and industrial hygiene; prevention, treatment and control of epidemic, endemic, occupational and other diseases; creation of conditions which would assure to all medical service and medical attention in the event of sickness¹.

At the same time, health system becomes very vulnerable to the impact of unilateral sanctions as the most vulnerable groups are usually affected the most. Impact of unilateral sanctions, means of their enforcement and over-compliance on the right to health is scarcely addressed in the academic research² and even the studies of the World Health organization. At the same time studies on the impact of the undoubtedly legal sanctions of the UN Security Council on Iraq demonstrate a devastating humanitarian impact of sanctions implementation with special effect on the right to health³.

1. ICESCR <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

2. Golchin S. The Right to health and Unilateral sanctions during COVID-19 Pandemic: The case of Iran // AALCO Journal of International Law / International Law and Pandemic. 2021, p. 103-118 ; Douhan A.F. COVID-19 as a Challenge to International Solidarity (Legal Regime and Application of Unilateral Sanctions in the Course of the Pandemic) // Humanitäres Völkerrecht (Journal of International Law of Peace and Armed Conflict) June 2021, Issue 1-2, pp 8-22.

3. Normand R Iraqi Sanctions, Human Rights and Humanitarian Law // <https://merip.org/1996/09/iraqi-sanctions-human-rights-and-humanitarian-law/> 1996 ; Popal G.R. Impact of Sanctions on the Population of Iraq // Eastern Mediterranean Health Journal. 2000. No. 4, p. 791-795.

The current article reflects on my findings as the Special Rapporteur while preparing reports on the impact of unilateral sanctions on the right to health⁴ including in the state of emergency amid COVID-19 pandemic⁵, but also addresses a number of issues relevant to the availability of humanitarian assistance and impact monitoring and assessment. As a result it assesses both direct and indirect impact of UCMs on the right to health as General Comment 14(2000) explicitly notes that the right to health “*is dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement*” (para. 3)⁶.

I. Direct impact of unilateral sanctions on the right to health

The healthcare system as a whole is highly vulnerable to the imposition of unilateral sanctions and to relevant zero-risk policies due to the deterioration they cause in the population’s standards of living, high inflation, and problems pertaining to the purchase, payment for and delivery of necessary medicines, medical equipment, spare parts, reagents or software. Over-compliance by the private sector prevents access to medicine even in the absence of comprehensive or sectoral sanctions. Even with the declared humanitarian exemptions for medicines and food, businesses are often afraid to provide medical services or sell medical goods due to vague or overlapping sanctions regulations. Deliveries may either be obstructed or delayed due to financial restrictions, including exclusion from SWIFT of targeted banks or countries, freezing of Central Banks’ assets, sanctions imposed over transportation and insurance companies, threats with secondary sanctions, requests for multiple licenses for procurement, transportation or insurance, even for delivery of humanitarian assistance, imposition of civil or criminal penalties for dealing with countries under sanctions, zero risk policies by third-country banks.

It is regrettable that the request of the UN Committee on Economic, Social and Cultural Rights (CESCR) to “*refrain at all times from imposing embargoes or similar measures restricting the supply of another State with*

4. A/HRC/54/23 <https://www.ohchr.org/en/documents/thematic-reports/ahrc5423-impact-unilateral-coercive-measures-right-health-report-special>.

5. A/75/209 <https://www.ohchr.org/en/documents/thematic-reports/a75209-report-impact-unilateral-sanctions-human-rights-during-state>.

6. E/C.12/2000/4.

adequate medicines and medical equipment”⁷ has not been respected and implemented. The CESCR already in 1997 in the General Comment No. 8(1997) in relation to the sanctions of the UN Security Council noted that the use of sanctions has a dramatic humanitarian impact, including on the highest attainable level of health. The Council recognized that even the humanitarian exemptions of the UN Security Council appear to be ineffective (paras. 3-5)⁸.

A. Access to medicine and medical equipment

The serious negative impact of unilateral sanctions and over-compliance with sanctions on all aspects of the right to health, including access to healthcare, nutrition, clean water and sanitation, is widely recognized and reflected in the majority of submissions received in the course of the preparation of reports on health-related issues. Even reports by sanctioning actors admit the negative humanitarian impact of over-compliance as an “unintended” one and acknowledge the need for its mitigation.⁹

As a result the imposition of sanctions against states or economic sectors and the ensued financial challenges, exacerbated by the effects of over-compliance, prevent the purchase, payment and delivery of medicines, medical equipment, spare parts, raw materials and reagents in all countries under sanctions.

Already at the outbreak of the pandemic the many countries highlighted shortages of, and the inability to, purchase medicines and medical equipment necessary for the diagnosis and treatment of COVID -19 and other diseases, including COVID tests, oxygen and artificial lung ventilation devices (Sudan, Cuba, Venezuela, Iran), personal protective equipment (Cuba, Iran), spare parts and software, in particular for CT and ventilation devices (Syria, Sudan, Cuba, Iran), fuel, electricity, food, drinking

7. General comment 14(2000), para. 41.

8. CESCR, E/C.12/1997/8, 1997, paras. 3-5.

9. EU submission to the report, A/HRC/54/23 impact of unilateral coercive measures on the right to health - Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena F. Douhan <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/54/23&Lang=E>, para. 19. References to submissions in this part are done to the submissions of states and NGOs for preparation of the Report on the impact of UCMs on the right to health.

water and water for hygiene purposes (Venezuela, Syria)¹⁰, pay for COVAX mechanism (Iran, Venezuela¹¹).

Unfortunately challenges in getting *access to all types of medicine, medical equipment, spare parts, vaccination, software, syringes, installation and post-sale services* remain and might be even increase even after the end of the pandemic due to the expansion of sanctions regimes and means of their enforcement¹². Due to unilateral sanctions and over-compliance, countries cannot use “*foreign currency to import humanitarian goods*” and to procure respiratory, cardiology, endoscopic, pharmaceutical and other types of equipment, high-tech kits, medicine for treatment of specific forms of cancer¹³, diabetes, hemophilia, leukaemia, ichthyosis, multiple sclerosis, autism¹⁴, epidermolysis bullosa (EB)¹⁵, thalassemia, HbA1¹⁶, kidney failure and dysfunction, hypertension, anaemia, respiratory deceases¹⁷, chronic inflammatory demyelinating polyneuropathy or multifocal motor neuropathy, immunocompressed patients, asthma, orthosis, prothesis, as well as factor VIII, hormones, anesthetics, antibiotics, antidotes, immunoglobulin, immunosuppressors, blood derivatives¹⁸, pressure, cardiac, antipyretic drugs, painkillers, and other irreplaceable and essential drugs and equipment¹⁹.

In Venezuela more than 85 per cent of world available medicine does not reach the country, including blood products, antibiotics, insulin, dialysis supplies, antiretrovirals, vaccines and medicine against malaria, cancer and other deceases congenital heart disease, tuberculosis, chronic and communicable diseases, including within the programs authorized by

10. A/75/209, paras. 37-38, 49-57; Submission by Syria.

11. Submission by Iran; Submission by Venezuela.

12. Submission by Iran.

13. <https://www.hrw.org/report/2019/10/29/maximum-pressure/us-economic-sanctions-harm-iranians-right-health>.

14. Iran country visit report, A/HRC/51/33/Add.1, para. 28.

15. AL SWE 4/2022 <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27591>; AL OTH 95/2022 <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27592>.

16. Joint statement, <https://www.ohchr.org/en/press-releases/2023/02/iran-over-compliance-unilateral-sanctions-affects-thalassemia-patients-say>; Submission by Iran.

17. *Report on the Country visit to Syria*, A/HRC/54/23/Add.1, para. 43.

18. Submission of Syria; <https://www.reuters.com/article/us-mideast-crisis-syria-sanctions-idUSKBN16M1UW>; Syria country visit report, para. 43.

19. ODVV submission; Minnesota university students submission; Armenia submission, PCHR submission; Submission by Iran; Submission by Venezuela.

PAHO and sometimes even water²⁰. In Zimbabwe, even in the absence of sectoral sanctions the Government is able to guarantee the availability in hospitals of only 50 basic medicines, mainly due to over-compliance by private sector²¹. Multiple reports refer to the challenges to deliver medicine necessary for treatment of rare diseases even in the countries with developed pharmaceutical systems like Iran, Cuba, Belarus.

After sanctions have been imposed against Belarus a long list of companies based in Finland, the Great Britain, Germany, Poland, USA have reportedly stopped the deliveries of life-saving medicine and equipment for diagnostics and treatment of HIV, tuberculosis, cancer, hepatitis B, hepatoses, cirrhosis, high intensity pain-killers, certain forms of antiepileptic, tranquilizers and sedative medicines, drugs to normalize the content of calcium in bone tissues as well as various types of sterilisers, raw materials, reagents and spare parts for sterilisers, arthroscopes²².

Professional associations report on the challenges to deliver life-saving and pain-killing medicines and equipment for pediatrics in Cuba including high-tech lung ventilators for newborns or children, nutritional supplements or special foods for medical use, dietary management of specific childhood disorders and diseases, pediatric arterial and venous lines, hydrophobic filters, temporary hemodialysis catheters for young children, pediatric dialyzers, dialysis bags and catheters, used for newborns and infants with acute renal failure, analgesics or anesthetics to prevent or treat pain²³, high-tech medical treatment and support equipment for children with disabilities²⁴; pacemakers, supplies and medications needed in cardiovascular surgery; catheters, stents, oxygenators, disposable electrodes, contrast media, radioisotopes in Cuba²⁵.

Multiple reports refer to serious procurement challenges faced by countries with developed healthcare and pharmaceutical sectors (Iran, Cuba²⁶,

20. Venezuela country visit report, A/HRC/48/59/Add.2, para. 38-39; Venezuela submission.

21. *Report on the Country visit to Zimbabwe*, para. 38.

22. Submission by Belarus.

23. Cuban Association of Pediatrics submission.

24. Academic visit to Cuba, May 2023.

25. Sociedad Cubana de Cardiología submission; PROSALUD submission.

26. Garfield R. *The Public Health Impact of Sanctions: Contrasting Responses of Iraq and Cuba*.

Syria²⁷⁾²⁸, especially if they rely on deliveries from producers based in sanctioning countries. Even international cooperation in the sphere of organ transplants is affected due to impediments to payments and freezing assets of Central banks and public companies²⁹. Impossibility of bank payments even affects cooperation between medical and research institutions both of which are placed in the countries under sanctions³⁰.

Unavailability or shortage of medicine and medical equipment results in rising mortality rates, levels of suffering and reduced life expectancy for people suffering from chronic and severe diseases. Reports indicate that every additional year under sanctions increase life expectancy adverse effects by 0.3 to 0.2 years³¹. It shall also be noted that shortages of medicine affect not only directly designated countries. They have a serious spill over neighborhood and regional effect. In particular, countries like South Africa, Columbia, Lebanon reported about the shortages of medicine in pharmacies as well as increased burden over health facilities, due to the health-related migration from Zimbabwe, Venezuela, Syria.

It is also necessary to note the growing number of refusals by pharmaceutical companies to sell medicine, medical equipment, spare parts, hi-tech equipment, post-sale services, and by the discontinuation of pre-existing contracts, the challenges faced by banks in the countries under sanctions to get letters of credit and to ensure payments for medical items³², rejections by transport and insurance companies³³, all of which force affected people, States and companies to seek alternative, riskier and costlier means

27. *Report on the Country visit to Syria*, para. 43, 46, Kasturi, S., Al Faisal W., Alsaleh Y., Syria: The Impact of Sanctions on Public Health; Submission of Syria.

28. Zoë Pelter, Camila Teixeira, Erica Moret, Sanctions and their impact on Children. Discussion paper, UNICEF, 2022 <https://www.unicef.org/globalinsight/media/2531/file/%20UNICEF-Global-Insight-Sanctions-and-Children-2022.pdf> (C. 22); OXFAM, Right to Live without a Blockade : Impact of the US sanctions on the Cuban population and women's rights, 2021.

29. USA 23/2021,; Venezuela country visit report, A/HRC/48/59/Add.2, Para. 47.

30. Submission by Iran.

31. Zoë Pelter, Camila Teixeira, Erica Moret, Sanctions and their impact on Children. Discussion paper. UNICEF. 2022 - 38 p. <https://www.unicef.org/globalinsight/media/2531/file/%20UNICEF-Global-Insight-Sanctions-and-Children-2022.pdf> (C. 22).

32. Belarus Submission; Iran Submission; Dr. Ahmed Zarzour submission; Chinese submission.

33. Reuters, "U.S. sanctions against Syria complicate aid delivery: U.N.," 14 March 2017, <https://www.reuters.com/article/us-mideast-crisis-syria-sanctions-idUSKBN16M1UW>, visited on May, 2024.

of procurement. It increases the likelihood for corruption and other irregular practices, not to mention risks for the quality of the procured item.

It has been reported in particular, that in certain cases Syrian doctors themselves were forced to bring into Syria, through their networks abroad, medicines and medical equipment not available in the country, and bear the financial costs, in order to be able to treat their patients.³⁴

Due to impossibility to procure new equipment, spare parts, and reagents, high tech, software, unavailability of post-sale and maintenance services, there is severe shortage on equipment including for basic blood-test and urine test centrifuges, sterilisers, kidney treatment and dialysis machines, operational haemodialysis units, CT Scans, B-scans, MRT and PET Scan devices, B-scans, endoscopic devices, X-rays, cardiac catheters, incubators, ICU ventilators, oxygen generators in the country due to the lack of spare parts and updated software. In Syria, there is only one linear accelerator device in the whole country³⁵, and a waiting list of 6 months for CT scan treatment of cancer patients of, with serious impact on timely diagnosis and treatment³⁶. In the few cases of successful delivery of the specialised medical equipment, the equipment could not operate because of the non-delivery of the operating software or non-performance of any other post-sale installation and maintenance services³⁷. Similarly due to unavailability of spare parts and reagents for pediatric cardio hospital in Caracas resulted in 12fold reduction of the number of child cardio-surgeries in Venezuela³⁸

Despite several forwarded communications on the impossibility to deliver specialized medicine to 930 person suffering from epidermolysis bullosa (EB)³⁹ and 23,000 thalassemia patients to Iran pharmaceutical companies based in Sweden, Switzerland and France⁴⁰ refuse to sell medical goods to Iran, referring to the challenges in receiving payments, deliveries

34. CSO information; Syria country visit report, para. 44.

35. Syrian Government information.

36. Information received during the country visit to Syria in 2022.

37. Syria country visit report, para. 46.

38. Venezuela report, para. 46.

39. AL SWE 4/2022; AL OTH 95/2022.

40. <https://www.ohchr.org/en/press-releases/2023/02/iran-over-compliance-unilateral-sanctions-affects-thalassemia-patients-say>; AL OTH 95/2022, AL OTH 134/2022, AL OTH 135/2022.

and in medical cargo insurance. The case filed by Iranian Thalassemia association in the national US court has been dismissed⁴¹.

The above situation resulted in the growing mortality rates and human suffering for EB patients (15 patients died within a year due to insufficient delivery of bandages), rising mortality rates for Thalassemia patients (from 25-35 per year before 2018 to 150-220 per year in 2021-2022) and reducing their life expectancy (from 45-50 to below 20).⁴² It is necessary to note however, that in many cases companies over-comply. In particular, similar challenges have been reported as concerns 124 EB patients in Belarus with the remaining 1-2 month storage of bandages as for July 2023 after the Swedish company's rejection to sell bandages to the country⁴³.

As regards the delivery of medicine to thalassemia patients in Iran responses received from Switzerland⁴⁴ and the Swiss company⁴⁵ provide contradictory information, and do not ensure availability of the life-saving medicine for patients. No response has been received from France, France based company and the US. It is illustrative however, that Swiss pharmaceutical company producing Thalassemia medicine has already been subjected to the US fine in 2008-2011 for delivering medicine to Iran and agreed to pay USD 17 million⁴⁶.

As a result all involved actors: sanctioning and enforcing states and regional organizations, private entities, *shift responsibility to each other*, leaving in the absence of the proper access to justice⁴⁷ and access to the meaningful remedy, people being absolutely not protected.

At the same time such situation is fully incompatible with international law. Unilateral sanctions and over-compliance by businesses, including banks and pharmaceutical, transportation, and insurance companies, violate the due diligence obligations of businesses and the states that own or control them, or in whose territory or jurisdiction those businesses are domiciled. Under the principle of due diligence, states or regional organizations with an exclusive or competing competence and entitled to take binding decisions with direct effect on the territory of member states (e.g. the

41. <https://dockets.justia.com/docket/oregon/ordce/3:2022cv01195/168501>.

42. Reported 10-15% availability of medicines for Thalassemia patients in Iran.

43. Belarus Submission.

44. <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=37445>.

45. <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=37440>.

46. https://home.treasury.gov/system/files/126/20160705_alcon.pdf.

47. Impact of Unilateral sanctions on the Access to justice A/79/183, para. 31.

EU or other regional integration organizations with similar competences), are under the obligation to ensure that activities taken under their jurisdiction or control do not violate human rights, including extraterritorially. States are obliged to take legislative, administrative, judiciary, budgetary and any other type of measures to respect, protect and fulfill human rights, in accordance with General comment 14 of the CESCR. The obligation to respect is the duty “*to refrain from interfering directly or indirectly with the enjoyment of the right to health*”. And the obligation to protect means “*to take measures that prevent third parties from interfering with article 12 guarantees*”. Similarly, the obligation to fulfill requires States “*to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health*.”⁴⁸.

The obligation of States to ensure that activities of businesses in their territory or under their jurisdiction or control do not violate human rights, refers to all categories of businesses, which follows from the obligation of due diligence and is explicitly provided for in the General comments of the CESCR with regard to all human rights. All businesses are under the obligation to ensure that their activities, in the state of jurisdiction or control and/or extraterritorially, do not violate human rights at least those set forth in the International Bill of human rights⁴⁹.

Increasing mortality rates, reduced life expectancy, the rising prevalence of physical and mental health conditions and disabilities due to the lack of timely diagnosis and treatment, and increasing physical and psychological suffering are only some of the serious tangible consequences. These constitute violations of human rights, such as the rights to life and freedom from torture and inhuman treatment, and the principle of non-discrimination.⁵⁰

The failure to deliver essential and especially life-saving goods, particularly when the business is a monopolist supplier of the goods, services, equipment, or spare parts, cannot be justified by references to freedom of contract or commercial activity, or by fear of or reluctance stemming from unilateral sanctions or their enforcement. It constitutes a violation of the generally recognised “duty of care,” derived from common law, defined as “a legal obligation requiring adherence to a standard of reasonable care while performing any act that could foreseeably harm others,” or “a legal

48. CESCR, General comment No. 14, E/C.12/2000/4, 2000. Available at: https://digitallibrary.un.org/record/425041/files/E_C.12_2000_4-EN.pdf?ln=ru.

49. UN Guiding Principles on Business and Human Rights, paras. 11-13.

50. A/HRC/54/23, para. 82.

*obligation to act towards others with prudence and vigilance to prevent any risk of foreseeable damage,*⁵¹ which is inherently part of the due diligence obligation in the broader human rights context.⁵²

Because the unavailability of medicine or other goods produced by a monopolist (or a limited number of producers) will evidently result in the deterioration of health status, suffering, and, with a high probability, the death of people in need, and because, when such people rely on an established supply scheme from a monopolist (or a limited number of producers), businesses do not have the right to terminate existing contracts or refuse to proceed with procurement due to the obvious foreseeable severe harm to the health and lives of those in need. Such activity constitutes a violation of the right to life, the right to the highest attainable standard of health, and freedom from torture of people affected by the manufacturers of life-saving goods, as well as any other businesses (including banks and other financial institutions, and delivery and insurance companies) that impede the delivery of such goods.

Another challenges refer to the detrimental effects of unilateral sanctions and over-compliance by the private sector on **decease prevention and control**. Many countries report to be unable to deliver WHO recommended vaccinations including for measles (Venezuela⁵³), polio (Venezuela, Zimbabwe, Syria⁵⁴, Iran⁵⁵), yellow fever (Venezuela), rotavirus, diphtheria, tuberculosis (Venezuela, Somalia, Yemen)⁵⁶. In 2016-2018 around 2,6 million of children in Venezuela have not been vaccinated⁵⁷. To date COVAX vaccination coverage in Venezuela is around 20 per cent. Child vaccination rate in Syria has dropped from 95 to around 60 per cent between 2006 and 2022⁵⁸.

51. ICRC Duty of care: elements of definition. Available at: https://unsceb.org/sites/default/files/imported_files/ICRC%20-%20Duty%20of%20Care%20ICRC%20definition.pdf.

52. What is the duty of human rights vigilance in the supply chain? Available at: <https://www.yvea.io/en/services/quality-compliance/product-quality-standard/human-rights-duty-of-care-in-the-supply-chain>.

53. A/HRC/48/59/Add.2, paras. 41-43.

54. Kasturi, S., Al Faisal W., Alsaleh Y., Syria: The Impact of Sanctions on Public Health // Journal of Public Health. – 2012. – Vol. 35. – No. 2. – p. 195-199 (p. 197-198); Submission of Syria.

55. Pelter, Teixeira, Moret, op. cit, <https://www.unicef.org/globalinsight/media/2531/file/%20UNICEF-Global-Insight-Sanctions-and-Children-2022.pdf>.

56. Maat for Peace, Development and Human Rights submission.

57. A/HRC/48/59/Add.2, paras. 41-43.

58. Hanania R. Ineffective, "Immoral, Politically Convenient: America's Overreliance on Economic Sanctions and What to Do about It", CATO Institute, 18 February 2020, <https://>

Similar challenges are reported in the *delivery of laboratory kits and tests* (Iran⁵⁹, Cuba⁶⁰, Venezuela⁶¹). Iran refers to the failure to deliver HIV Drug Resistance System-Sequencing Analyzer to improve care and treatment for patients living with HIV+, as well as tests for asthma and COPD, despite joint efforts of the Ministry of Health and the UN Office in Iran⁶². Belarus is reporting about impossibility to procure test systems of treatment resisting tuberculosis and HIV even via The Global⁶³. The absence of proper tests and medicine results in outbreaks of typhus, roseola (Syria)⁶⁴, HIV/AIDS (Venezuela⁶⁵, Zimbabwe)⁶⁶, opportunistic infections (Venezuela⁶⁷) tuberculosis (North Korea⁶⁸, Venezuela⁶⁹), dengue fever (Cuba⁷⁰).

All the above results in the *deteriorating psychological effects*, especially on youth, of the dramatic economic situation, unavailability of jobs, food and medicine due to the “loss of hope” (Syria⁷¹, Cuba⁷²). Disillusionment and psychological suffering is compounded also by the unavailability of specialized medicine including for mental health conditions, postnatal and other types of depression, anxiety-depressive disorder, suicidal behavior and thoughts, self-harm and other conditions⁷³.

B. Availability of healthcare

CESCR refers to on the obligation of states to guarantee availability of healthcare, including the sufficient quantity and physically safe accessibility of health facilities, goods and services, provided by “skilled medical

www.cato.org/policy-analysis/ineffective-immoral-politically-convenient-americas-overreliance-economic-sanctions#humanitarian-costs-sanctions.

59. Submission by Iran.

60. Confidential submission.

61. Venezuela country visit report, para. 37, 49-50.

62. Submission by Iran.

63. Submission by Belarus.

64. Hanania R. *op cit*.

65. Venezuela report, para. 51.

66. See also Sexual Rights initiative submission.

67. A/HRC/48/59/Add.2.

68. <https://koreapeacenow.org/wp-content/uploads/2019/10/human-costs-and-gendered-impact-of-sanctions-on-north-korea.pdf> (C. 7).

69. A/HRC/48/59/Add.2, para. 43.

70. Confidential submission.

71. Samer Awad submission; Syria preliminary country visit.

72. SOCUMES and OAR submission.

73. Joint Coming out, Center-T and Sphere Foundation submission.

personnel, scientifically approved and unexpired drugs and hospital equipment”, as well as the “underlying determinants of health, such as safe and potable water, adequate sanitation facilities”⁷⁴, contraceptives, medicine for prevention and treatment of sexually transmitted infections, tuberculosis, diphtheria and AIDS/HIV⁷⁵.

All these elements are negatively affected by the cumulative impact of unilateral sanctions, over-compliance and deteriorating economic situation in the countries under sanctions. Due to the rapid reduction of country revenue, impediments in delivery of necessary goods and equipment, the construction, reconstruction and maintenance of hospitals and primary health care centres has stopped in Venezuela⁷⁶ and Zimbabwe⁷⁷. In Syria after adoption of the so-called Caesar act, and despite the widespread destruction following 12-year conflict, any reconstruction and rebuilding efforts including among others of hospitals, water supply systems and electricity grids stopped due to the refusal of donors, foreign businesses and financial institutions to provide for the delivery of construction materials, spare parts and software or their refusal to process payments for such goods and services⁷⁸.

Countries under sanctions report on the *reducing capacity of governments to guarantee free or affordable treatment of all types of diseases* due to hyper-inflation, growing costs of insurance, delivery and bank transactions (Venezuela⁷⁹, Iran⁸⁰), physical impediments in delivery of medical goods; the need to look for tests, laboratory equipment, reagents, anti-viral, high-tech at distant markets and via alternative delivery routes.

In Iran, Venezuela and Syria numerous private medical services have discontinued due to the impossibility to deliver necessary medicine and equipment as a result of sanctions and over-compliance⁸¹, or the inability of patients to afford the high cost of private healthcare.⁸²

74. General comment 14(2000), paras. 8, 12; Sexual right initiative submission.

75. General comment 22(2016), paras. 12-21 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGC%2F22&Lang=en, Venezuela country visit report, para. 43.

76. A/HRC/48/59/Add.2, para. 37.

77. A/HRC/51/33/Add.2, para. 36.

78. Syria country visit report, paras. 15, 27, 53.

79. Venezuela submission.

80. Submission of Iran.

81. Submission by Venezuela, Submission by Belarus.

82. Country visit to Iran, NGO submission.

It is also reported that *access to medical assistance abroad* is severely impeded by unilateral sanctions due to the freezing assets of Central banks or other state property previously used to cover medical expenses for the nationals in need, challenges to transfer money, drastically reduced income of nationals and residents, travel restrictions, and payments for accommodation⁸³. In particular, freezing assets of SITGO, used to cover expenses for kidney and brain marrow transplantations for Venezuela children in Italy and Argentina⁸⁴ resulted in death of 14 children⁸⁵. Iran is not able to transfer money and ensure ophthalmology treatment and trachea mesh insertion for people affected with mustard gas in Iran-Iraqi's war⁸⁶.

Physical blockade of specific territories is reported to add additional challenges for the access to healthcare within or beyond the borders of the disputed territory⁸⁷. In particular, inhabitants of Gaza strip and the West bank are requested to apply for approval of their trip for health reasons. Since 2017 the approval time for non-urgent interventions has extended to 23 days, which can be further delayed, with an approval rate around 84 per cent in 2022⁸⁸. It is reported that in 2022 parents of 1/3 of children from Gaza Strip and 15% from the West bank did not receive permission to accompany them for medical treatment; 3/5 of people with disabilities from Gaza strip and 1/5 from West bank did not receive a permission for the accompanying person⁸⁹. A total of 839 patients lost their life while waiting for permit responses for the period of 2008-2021, while there are reports of growing number of severe, moderate, and mild mental health disorders among adults and children⁹⁰. According to WHO, the survival rate for cancer patients whose travel permissions for chemo- or radiotherapy are delayed or denied is 1,5 times lower than for those whose requests are approved without the delay⁹¹.

83. Samer Awad submission.

84. AL OTH 207/2021.

85. AL USA 23/2021 A/HRC/48/59/Add.2, para. 47.

86. A/HRC/51/33/Add.1, para. 32.

87. Submission by Armenia; Armenian Bar Association.

88. WHO SG report 2023 Health conditions in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan, 17.05.2023 https://apps.who.int/gb/ebwha/pdf_files/WHA76/A76_15-en.pdf, paras. 23.

89. WHO SG report 2023 paras. 21-22.

90. PCHR Submission.

91. WHO SG report 2023, para. 24.

Similar impediments are reported as for the delivery of medicine to Gaza strip, which needs specific approval by Israeli authorities. According to information, 69% of requests by private companies through the Presidential Committee for Commodities Coordination of the Palestinian Authority for delivery of machines or spare parts to Gaza for x-ray, CT, or oxygen delivery were denied by Israeli authorities in 2021,⁹² with the delivery of diagnostic radiology, X-rays, endoscopy, MRI and CT, equipment and spare parts for rehabilitation services, oxygen cylinders, nuclear medicine technology, materials used in limb prostheses being denied, qualified as dual use⁹³. Combined with the shortage of skilled health personnel the above challenges undermine the proper functioning of the healthcare system⁹⁴.

Unilateral sanctions and over-compliance also result in the *reducing number of medical personnel in the countries under sanctions*. They usually report 30-50% shortage of medical professionals due to low salaries, hyper-inflation, transportation costs (Venezuela⁹⁵, Syria⁹⁶). In Zimbabwe vacancy rates in the health sector is 89% for midwives, 64% for doctors and 49% for nursing tutors. Most provinces have less than 10 health professionals per 10,000 people⁹⁷. Since 2021 Zimbabwe is included in the list of countries with the lowest number of health workers⁹⁸ alongside Somalia, Sudan and Yemen⁹⁹.

Unilateral sanctions *prevent health professionals from further developing their qualifications*, and to participate in international exchange and research programs. Medical professionals from countries under sanctions face challenges in accessing online platforms (including PubMed), participate in medical conferences, subscribe to medical journals due to their nationality or IP address, participate in joint research, get visas, pay for travel (Iran, Zimbabwe, Syria¹⁰⁰, Cuba¹⁰¹), publish in health academic

92. <https://applications.emro.who.int/docs/9789292740887-eng.pdf?ua=1>.

93. PCHR submission; WHO SG report 2023, para. 20.

94. PCHR submission.

95. A/HRC/48/59/Add.2, paras. 37, 56.

96. A/HRC/54/23/Add.1, paras. 48, 50.

97. A/HRC/51/33/Add.2, para. 32.

98. Sexual Right Initiative submission.

99. <https://apps.who.int/iris/rest/bitstreams/1493584/retrieve>.

100. A/HRC/51/33/Add.1, para. 58; Submission by Iran; A/HRC/51/33/Add.2, paras. 41-86; A/HRC/54/23/Add.1, para. 51; Samer Awad submission; PCHR submission.

101. Cuban Association of Paediatrics submission.

journals¹⁰², pay membership fees to participate in international academic and professional health associations¹⁰³.

Domestic research is also reported to be affected due to impediments in delivery of biological items, raw materials, spare parts and laboratory equipment (Iran)¹⁰⁴, including microscopes (Venezuela)¹⁰⁵, high tech (China¹⁰⁶), and refusals to renew licenses even if the equipment is physically delivered¹⁰⁷.

Medical students cannot access online professional resources due to their nationality or IP address, or to access training in the absence of appropriate equipment, software, and books (Syria, Iran, Cuba, Gaza strip¹⁰⁸).

Sanctions imposed over energy, including diesel, gasoline and transportation sector has enormously affected **access to hospitals** in the countries under sanctions especially for vulnerable groups. In Venezuela and Zimbabwe gasoline shortages restraint people's mobility, disproportionately affecting women's access to healthcare facilities. In Venezuela up to 80% of women give birth outside health facilities¹⁰⁹ with the consequent growing numbers of maternal and infant mortality¹¹⁰.

Access to health facilities, prevention and control of diseases is impeded in many countries under sanctions due to the impossibility to purchase and repair medically equipped vehicles¹¹¹, to provide necessary quantity of diesel (Venezuela¹¹², Syria¹¹³). Search-and-rescue helicopters, air-ambulances and specialized vehicles being the only means for the search and

102. USA 9/2022; OTH 37/2002; OTH 38/2022; OTH 39/2022; OTH 40/2022; Submission by Iran; Submission by Venezuela.

103. Cuban Association of Paediatrics submission.

104. Submission by Iran.

105. USA 13/2022.

106. Chinese submissions.

107. Sexual rights initiative submission.

108. Samer Awad submission; Submission by Iran; Cuban Association of Paediatrics submission; SOCUMES and OAR submission; Sexual Rights Initiative submission.

109. A/HRC/48/59/Add.2, paras. 65, 66, 99; A/HRC/51/33/Add.2, para. 49.

110. <https://data.worldbank.org/indicator>.

111. Sexual right initiative submission.

112. A/HRC/48/59/Add.2, para. 65.

113. A/HRC/54/23/Add.1.

transport to health facilities are often qualified as dual-use goods and therefore not delivered¹¹⁴, thus raising mortality rates.

Energy shortages in many countries under sanctions are reported to cause frequent *power outages in hospitals and health centres*. In Syria, in particular, power grid distribution for health care centres is secured for only 10-11 hours per day in the main cities (compared to 1-2 h per day across the country), with the rest covered by diesel power stations and generators. Due to the irregularity of electricity, power cuts and electric overloads, medical operations are interrupted and medical equipment and sensitive medicines are damaged, without the possibility of repair or replacement due to the imposed trade and financial restrictions¹¹⁵.

II. Indirect impact of UCMs on the right to health

A. *Poverty and nutrition*

Elimination of poverty and hunger, promotion of inclusive and sustainable economic growth, agriculture, food security and improved nutrition, full and productive employment and decent work for all important aspects of the right to health. The complexity of unilateral sanctions, compounded by over-compliance, result in economic crises, growing unemployment¹¹⁶, deterioration of income¹¹⁷. Countries under sanctions report on high unemployment rates in the public sector (doctors, nurses, teachers, professors, public officers, judges, and others¹¹⁸), in the tourist industry and handicrafts¹¹⁹, resulting in the the weakening of formal economy and instead expansion of informal/shadow economy¹²⁰, with poverty rates skyrocketing above 90 per cent in Venezuela¹²¹ and Syria¹²².

Due to the deteriorating economic situation and insufficient resources sanctioned States are forced to discontinue or reduce the coverage of social

114. <https://www.ohchr.org/en/statements/2023/02/genuine-solidarity-earthquake-survivors-calls-lifting-sanction-induced>.

115. A/HRC/54/23/Add.1, para. 48; PCHR submission.

116. A/HRC/51/33/Add.2, paras. 20-21.

117. A/76/174, paras. 36-55.

118. A/HRC/48/59/Add.2, para. 35; A/HRC/54/23/Add.1.

119. A/HRC/48/59/Add.2, para. 67; A/HRC/51/33/Add.1t, paras. 24, 63.

120. A/HRC/48/59/Add.2, para. 32.

121. *Ibid.*, para. 30.

122. A/HRC/54/23/Add.1, para. 56.

support programs in healthcare, including free examinations, medicines and medical treatment. In Iran growing prices for medicine and assistive equipment render them inaccessible for people¹²³. It has also been reported that some rare disease patients receiving foreign-produced specialized medicine free of charge or at subsidised prices resell part of their treatment to cover other basic needs, such as food, due to their dire economic situation¹²⁴. Other reports refer to the growing people's engagement in the illegal trade of organs as the only source of income¹²⁵.

Adequate nutrition constitutes an fundamental element of the right to health, both in terms of quality as well as quantity, and with due consideration of the particular and complementary needs of those in vulnerable situations, including infants and children.. Many countries under sanctions report high levels of food insecurity in their populations, including up to 24-50 per cent in Venezuela¹²⁶, 60 per cent in Zimbabwe¹²⁷ and 90 per cent in Syria¹²⁸, with disproportionate impact on women and girls¹²⁹. Agricultural unsustainability is exacerbated by the sanctions and sanctions-related impediments in access to irrigation, diesel fuel, agricultural equipment, spare parts, seeds and fertilizers¹³⁰.

It has been reported that 90 per cent of children in Syria depend on humanitarian assistance for the survival and around 500 000 are severe food insecure¹³¹. In Venezuela average number of meals reduced to 1,5 per day with minimal quantity of proteins¹³², 50 per cent of children under 5 are at risk of severe undernourishment¹³³. Similar figures are also reported

123. Submission by Iran.

124. A/HRC/51/33/Add.1, para. 30.

125. Desperate Afghans sell kidneys amid poverty, starvation, 28.02.2023 <https://www.aljazeera.com/news/2022/2/28/desperate-afghans-resort-to-selling-kidneys-to-feed-families>.

126. A/HRC/48/59/Add.2, paras. 32, 35; SURES submission.

127. A/HRC/51/33/Add.2, para. 42.

128. A/HRC/54/23/Add.1, para. 56.

129. Sexual Rights Initiative submission.

130. A/HRC/48/59/Add.2, paras. 56-66; A/HRC/51/33/Add.2, paras. 24, 27; A/HRC/51/33/Add.1, para. 41; FAO (2022) 'Food Outlook. Biennial Report on Global Food Markets', p. 72, 77.

131. Pelter, Teixeira, Moret, *op cit*.

132. A/HRC/48/59/Add.2, paras. 31-32, 36.

133. A/HRC/48/59/Add.2, paras. 33.

in other countries¹³⁴ and territories¹³⁵ under sanctions, with growing child mortality¹³⁶ and prevalence of chronic diseases.¹³⁷

Several reports, including by the former Special Rapporteur on the right to food acknowledge that “[t]he continued imposition of crippling economic sanctions on Syria, Venezuela, Iran, Cuba, and, to a lesser degree, Zimbabwe [...], severely undermines the ordinary citizens’ fundamental right to sufficient and adequate food”¹³⁸ while others refer to challenges such as the interruption of bank correspondence relations and supply chains, SWIFT bans¹³⁹, fear of secondary sanctions, physical blockades of transport routes¹⁴⁰, hindering delivery of medicine and food by humanitarian organisations.

B. Clean water and sanitation, access to energy, environment

Availability and sustainable management of water and sanitation is vital for the achievement of the right to health. She is concerned that unavailability of electricity and fuel, and rising prices of water quality control materials and equipment, such as cultivation media, chlorination tablets and other essentials (Iran¹⁴¹), result in the collapse of water and sanitation systems. Distribution of drinking water is undertaken for few hours per week in Venezuela¹⁴²) or not at all (Zimbabwe¹⁴³, Syria¹⁴⁴, Gaza¹⁴⁵), with serious adverse health effects explaining the occurrence of waterborne, bacterial and other diseases, such as cholera¹⁴⁶, malaria, dengue, lupus¹⁴⁷,

134. Pelter, Teixeira, Moret, *op. cit.*; <https://koreapeacenow.org/resources/the-humanitarian-impact-of-sanctions-on-north-korea-2/>.

135. PCHR submission.

136. Jerg Gutmann, Matthias Neuenkirch, Florian Neumeier. “Sanctioned to Death? The Impact of Economic Sanctions on Life Expectancy and its Gender Gap.” CESifo, 2019, p. 26; Kim Yiyeon. “Economic Sanctions and Hiv/Aids in Women.” *Journal of Public Health Policy* 2019.

137. Sexual Rights Initiative submission.

138. <https://www.ohchr.org/en/press-releases/2020/03/covid-19-economic-sanctions-should-be-lifted-prevent-hunger-crises-un-expert?LangID=E&NewsID=25761>.

139. Submission by China.

140. Armenian Bar Association submission; PCHR submission.

141. Submission by Iran.

142. A/HRC/48/59/Add.2, paras. 62-63.

143. A/HRC/54/23/Add.1, paras. 28-29.

144. A/HRC/54/23/Add.1, paras. 31-34.

145. PCHR submission.

146. Kim Yiyeon, *op. cit.* Gutmann, Neuenkirch, Neumeier, *op. cit.*, p. 27.

147. A/HRC/48/59/Add.2, para. 48.; Sexual Rights Initiative submission.

while shortage of water for irrigation, combined with climate change, have serious consequences for domestic agricultural production in Iran¹⁴⁸ and Syria¹⁴⁹).

Challenges caused by unilateral sanctions and over-compliance force States under sanctions to enter into “survival mode”, prioritizing food, health and agriculture¹⁵⁰ at the expense of other projects, including transportation and treatment of solid waste and medical waste, conflict-related pollution, including toxic munitions ingredients and explosive material undergoing chemical transformations¹⁵¹; they are also prevented from developing environmental friendly technologies¹⁵², procure industrial filters and other up-to-date technologies, and instead rely on polluting and outdated sources of energy for both domestic and industrial use.. All these elements affect the right to a favorable environment with the long-term health effects¹⁵³.

The use of unilateral sanctions reduces ability of States under sanctions to guarantee and promote occupational health and safety, including through social protection schemes. Countries report on deteriorating labour conditions with rising numbers of health-related and other incidents¹⁵⁴, and refer to sanctions-induced restrictions in the procurement of appropriate and updated specialized equipment, including for pollutants measurements, as well as control and mitigation of occupational hazards.¹⁵⁵

148. A/HRC/51/33/Add.1 Iran country visit, paras. 45-47.

149. Submission by Syria.

150. Kaveh Madani, “Have International Sanctions Impacted Iran’s Environment?” *World 2021*, 2, pp. 231-52.

151. Syria country visit. End of mission statement <https://www.ohchr.org/sites/default/files/documents/issues/ucm/statements/2022-11-09/20221110-eom-syria-sr-ucm-en.docx>.

152. Martin Heger and Maria Sarraf, “Air Pollution in Tehran: Health Costs, Sources, and Policies,” World Bank, 2018, p. 9, <https://openknowledge.worldbank.org/bitstream/handle/10986/29909/126402-NWP-PUBLIC-Tehran-WEB-updated.pdf?sequence=1&isAllowed=y>; Agence France-Presse, “Iran : le retrait de Peugeot et Renault mauvais pour l’environnement (responsable),” *Le Point*, 2 October 2018, https://www.lepoint.fr/automobile/iran-le-retrait-de-peugeot-et-renault-mauvais-pour-l-environnement-responsable-02-10-2018-2259594_646.ph; Kaveh Madani, op. cit; USA 17/2022; A/HRC/51/33/Add.1, para. 45.

153. Submission of Iran; USA 17/2022; A/HRC/54/23/Add.1, paras. 78-79; A/HRC/48/59/Add.2, para. 102; A/HRC/51/33/Add.2, paras. 32, 88.

154. Submission by Iran.

155. *Ibid.*

Despite her repeated calls for the lifting of all sanctions against any goods and objects related to critical infrastructure and necessary for the enjoyment of the right to health and of all its underlying determinants and elements mentioned above¹⁵⁶, no meaningful response has been received by the mandate.

III. Protection of vulnerable groups

A. People with disabilities, people suffering from rare and severe deceases

Persons with disabilities as well as those suffering from rare or severe deceases in need of sustained medical attention are the most vulnerable in the face of unilateral sanctions and over-compliance¹⁵⁷. The absence of adequate and sufficient medical assistance and adequate treatment for persons with disabilities and for severe and rare diseases patients results in growing mortality rates, reduced life expectancy and deteriorating overall health conditions.

Unilateral sanctions and over-compliance create the conditions for the systematic violations of the rights of persons with disabilities and thus of many provisions of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), including with regards to social support, provision of healthcare services both in the country of residence and abroad¹⁵⁸, and unavailability of assistive technology and adaptive equipment. She notes with concern that much of this technology and equipment is subject to sanctions-related export controls because they contain at least 10% of US content and components, and is often procured through alternative routes with serious cost implications.

General deterioration of transport system and unavailability of fuel in the countries under sanctions add to the challenges faced by persons with disabilities and those suffering from rare or severe deceases, in terms of access to health facilities, or workplace, community events, while electricity

156. <https://www.ohchr.org/en/press-releases/2022/03/un-experts-urge-states-consider-humanitarian-impacts-when-imposing-or>.

157. Sures submission.

158. A/HRC/48/59/Add.2 paras. 46-47; A/HRC/51/33/Add.1, para. 28; SWE 4/2022; OTH 95/2022; <https://www.ohchr.org/en/press-releases/2023/02/iran-over-compliance-unilateral-sanctions-affects-thalassemia-patients-say>; <https://www.ohchr.org/sites/default/files/documents/issues/ucm/statements/2022-11-09/20221110-eom-syria-sr-ucm-en.docx>; PROSALUD submission.

and water shortages constitute additional obstacles to surmount in the daily lives.¹⁵⁹

B. Women and children

Convention on Elimination of All Forms of Discrimination against Women requests States to “take all appropriate measures to ensure [...] access to healthcare services, including those related to family planning; appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation”¹⁶⁰, all of which are unfortunately affected by unilateral sanctions. Convention on the Rights of the Child (CRC) provides for measures to minimize infant and child mortality, appropriate pre- and post-natal health care of mothers, preventive health care for children, adequate nutrition and clean water access (art. 29)¹⁶¹.

In Venezuela and Zimbabwe, in light of the shortage of gasoline, the lack of medicines, tests, equipment and water in hospitals, the number of women giving birth without medical assistance has dramatically increased (according to some reports, up to 80%) with extremely low hemoglobin¹⁶² or underweight (for example, anemia in pregnant women in Zimbabwe reached a level of 33.2% by 2019¹⁶³), which, in the absence of hemostatic drugs, led to an increase in infant and maternal mortality (Venezuela, DPRK¹⁶⁴). Maternal mortality rate in Zimbabwe as of 2020 was 357 deaths per 100,000 births¹⁶⁵, in Venezuela 259¹⁶⁶, in Afghanistan 680¹⁶⁷. In the occupied Palestinian territory insufficiency of healthcare services results in the early discharge of mothers and their babies following birth that reduces opportunities for the detection of potential medical complications and the

159. CRPD General comment No. 2 (2014) paras. 6-10; CRPD General comment No. 9 (2006), para. 39.

160. CEDAW; CESCR General comment 14(2000), para. 14.

161. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>; General comment 14(2000) para. 17.

162. SURES submission.

163. A/HRC/51/33/Add.2, para. 24.

164. <https://koreapeacenow.org/wp-content/uploads/2019/10/human-costs-and-gendered-impact-of-sanctions-on-north-korea.pdf>.

165. <https://data.worldbank.org/indicator/SH.STA.MMRT>.

166. <https://data.worldbank.org/indicator/SH.STA.MMRT>.

167. Sexual rights initiative submission.

provision of lifesaving interventions¹⁶⁸ thus heightening risks for maternal and newborn mortality which can be prevented¹⁶⁹.

Unilateral sanctions and over-compliance have all the more the growing impact on the right to health of children¹⁷⁰. Multiple reports reflect on the growing malnutrition, anemia, underweight and undergrowth of children at the birth and at later stages of their life, growing infant and under-5 mortality rates. In Zimbabwe rising infant mortality rates were registered after unilateral sanctions were imposed in 2001, while currently stands at 26 per 1000 live births. In Venezuela infant mortality increased from 15 (in 2013) to 21 in 2022; in Syria from 16 in 2010 to 25 in 2014, while the 2021 figure is 18.¹⁷¹

It has also been reported that due to shortages in water and gas, the population is shifting to open fire cooking and unsafe water sources (Venezuela¹⁷², Zimbabwe¹⁷³, DPRK¹⁷⁴) with women and girls being disproportionately exposed and affected.

Under the economic crisis, caused or exacerbated by unilateral sanctions an active male migration abroad is reported. As a result, women are left alone and forced to look for a source of financial support for themselves and their children, despite the fact that they are often the first to lose their jobs, especially in rural areas (Zimbabwe¹⁷⁵, North Korea, DPRK, Haiti, Iraq¹⁷⁶). They are frequently reported to be subjected to human trafficking, prostitution and sexual exploitation (Venezuela¹⁷⁷, Zimbabwe¹⁷⁸), and are exposed to similar risks when migrating abroad.

168. <https://www.unicef.org/sop/what-we-do/health-and-nutrition>.

169. https://palestine.unfpa.org/sites/default/files/pub-pdf/national_maternal_mortality_report_2020_0.pdf (p. 6-7).

170. See A/HRC/57/55, Annex II.

171. <https://data.worldbank.org/indicator/SP.DYN.IMRT.IN?locations=ZW-VE-AF-SY>.

172. A/HRC/48/59/Add.2.

173. A/HRC/51/33/Add.2.

174. <https://koreapeacenow.org/wp-content/uploads/2019/10/human-costs-and-gendered-impact-of-sanctions-on-north-korea.pdf>.

175. *Report on the Country visit to Zimbabwe*.

176. The Human Costs and Gendered Impact of Sanctions on North Korea [Electronic resource] : October 2019 // Korea Peace Now. <https://koreapeacenow.org/wp-content/uploads/2019/10/human-costs-and-gendered-impact-of-sanctions-on-north-korea.pdf>, visited on June, 2022. p. 23-24; Sexual Rights initiative submission.

177. Venezuela country visit.

178. *Report on the Country visit to Zimbabwe*.

In difficult economic circumstances, children and adolescents are also very vulnerable to violence, sexual and economic exploitation, drug use, involvement in criminal activities, armed conflicts (Syria¹⁷⁹, Venezuela¹⁸⁰, Cuba¹⁸¹), with serious health and social consequences, including the prevalence of adolescent pregnancies, opportunistic infections and HIV / AIDS, particularly in the absence of adequate resources for the implementation of social protection, public health and family planning programs, with a recent example the interruption in Cuba of the free distribution of contraceptives.¹⁸²

C. Other vulnerable groups

The Special Rapporteur emphasises that unilateral sanctions affect other populations in vulnerable situations. In particular, sanctions against Iran hinders its ability to provide 5.5 million Afghan refugees with adequate food, healthcare, housing and other services¹⁸³. In addition, while CEDAW General Comment No. 6 (1995) stipulates the need for preventive, curative and rehabilitative health treatment for older persons,¹⁸⁴ multiple reports highlight healthcare challenges affecting the elderly due to sanctions-induced economic and trade restrictions as well as over-compliance by businesses and the financial sector.

Sanctions-induced healthcare-related challenges have also serious adverse effects on the right to the highest attainable standard of physical and mental health of lesbian, gay, bisexual, trans and other diverse persons, and intersex persons, due to the unavailability, shortage, low quality and doubled or tripled price of available gender affirmative hormone therapy, hormone replacement and anti-retro-viral therapy that results in health status complications, involvement of people in the alternative means of procurement, including via private uncertified chains¹⁸⁵.

179. A/HRC/54/23/Add.1, para. 57.

180. A/HRC/48/59/Add.2, para. 32.

181. SOCUMES and OAR submission.

182. SOCUDEF submission.

183. A/HRC/51/33/Add.1, para. 67.

184. General comment No. 5 (1995).

185. Joint Coming out, Center-T and Sphere Foundation submission.

IV. Impact of UCMs on the right to health in emergency situations and humanitarian aid delivery

It is generally recognized that urgent medical care in cases of accidents, epidemics and similar health hazards, and the provision of disaster relief and humanitarian assistance in emergency situations constitutes an integral part of the right to health¹⁸⁶. At the same time the delivery of humanitarian assistance as well as the work of humanitarian actors have also been substantially affected by the imposition of unilateral sanctions, in particular due to the unclear, over-lapping, confusing and complicated sanctions regulations, the complexity of acquiring licenses for humanitarian purposes through the existing systems of humanitarian exceptions, exemptions or derogations¹⁸⁷.

Countries which impose sanctions claim that such measures do not aim at affecting peoples' basic needs, and put forward the argument of for the efficiency of existing humanitarian exemptions¹⁸⁸, in addition to their reported financial support for the provision of humanitarian assistance¹⁸⁹. In practice however, humanitarian exemptions are de facto ineffective, inefficient and unjustifiably narrow in scope.

Multiple reports reflect however, on complexities and inconsistencies in the application of humanitarian carve-outs, which challenge the work of humanitarian actors and undermine their timely emergency response capabilities, on top of the overall sense of uncertainty for fear of possible violations of the sanctions regulations. In particular, she has been informed about lengthy, expensive and complex licensing procedures¹⁹⁰, serious delays in applications processing (up to 1-1,5 years¹⁹¹), cumbersome legal fees for regulatory interpretation and legal support, heightened burden of proof for humanitarian operations and safeguards against aid deviation¹⁹², impossibility to deliver medical goods due to financial and

186. General comment 14(2000) para. 16.

187. USA 21/2022; OTH 106/2022.

188. https://finance.ec.europa.eu/publications/sanctions-commission-guidance-note-provision-humanitarian-aid-compliance-eu-restrictive-measures_en; https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/humanitarian-assistance-environments-subject-eu-sanctions_en.

189. EU submission.

190. A/HRC/54/23/Add.1, para. 51.

191. A/HRC/54/23/Add.1, para. 54.

192. USA 21/2022, 2022; see also https://finance.ec.europa.eu/system/files/2022-07/220630-humanitarian-aid-guidance-note_en.pdf, para. 3.9-3-10.

transport restrictions as well as over-compliance by businesses and banks imposed embargoes on dual use goods (including toothpaste, water purifying reagents, laboratory equipment¹⁹³, radioisotopes used for the medical screening¹⁹⁴). Humanitarian actors, donors and financial institutions often do not have the expertise or the financial and human resources to navigate complex and interlinked sanctions regimes. These challenges have reportedly shifted humanitarian work from the “needs assessment” to “risk assessment”¹⁹⁵.

Although food and medicine are generally exempted from sanctions, other restrictions may apply, including prohibitions to receive money from countries under sanctions, or to enter its sea or air space and to ensure cargoes¹⁹⁶, thus disrupting deliveries to the countries under sanctions¹⁹⁷.

Existing challenges in the implementation of humanitarian exemptions and delivery of humanitarian aid affects also implementation of the relevant UN Security Council resolutions (2615(2021)¹⁹⁸, 2664(2022)¹⁹⁹), and the upholding of the enshrined principles of humanity, neutrality, impartiality and interdependence. The Special Rapporteur notes with concern that documents adopted by sanctioning states and organizations may only allow for limited transfer of funds by United Nations and partner NGOs for humanitarian purposes²⁰⁰. Similar humanitarian challenges exist for Cuba²⁰¹ under USA embargo which has been repeatedly condemned by international community as shown in the voting patterns of UN General Assembly resolutions.

As noted above, ineffectiveness of humanitarian exemptions was recognized by the CESCR already in 1997 in the General Comment No. 8

193. Submission by Iran.

194. Submission of GNLU SRDC; see also International Atomic Energy Agency, <https://www.iaea.org/newscenter/statements/iaea-director-generals-introductory-statement-to-the-board-of-governors-14-september-2020>.

195. <https://www.hrw.org/news/2023/06/22/put-peoples-rights-first-syria-sanctions>.

196. A/HRC/51/33/Add.1; A/HRC/48/59/Add.2.

197. SWE 4/2022.

198. UN Security Council Resolution 2615(2021) of 22.12.2021 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/413/83/PDF/N2141383.pdf?OpenElement>.

199. S/res/2664(2022) <http://unscr.com/en/resolutions/doc/2664>.

200. Council Regulation (EU) 2023/331 of 14.02.2023 amending certain Council regulations concerning restrictive measures in order to insert provisions on a humanitarian exemption 5.

201. PROSALUD submission.

(1997) as not having the expected positive effects and not providing for the unhindered flow of essential goods and services destined for humanitarian purposes even in relation to the sanctions of the UN Security Council²⁰². The UN Secretary General report of 1996 referred to the ambiguous character of humanitarian exemptions providing for broad possibility for arbitrarily and inconsistent interpretation, causing delays, confusion and denial of requests to import essential humanitarian goods, leading to resource shortages in the targeted by sanctions countries.²⁰³

Due to the specifics of unilateral sanctions, growing over-compliance by banks, businesses, donors, and other actors, humanitarian exemptions are rendered ineffective and inefficient due to administrative and operational obstacles, with adverse effects on the procurement and delivery of goods which are explicitly exempted from sanctions' regimes²⁰⁴. Humanitarian organizations report that *"overcompliance can prevent, delay, or increase the costs of purchase and shipments of humanitarian goods to sanctioned countries required for the provision of humanitarian assistance, which in turn can pose serious consequences for those in need"*²⁰⁵. In the post-earthquake Syria they refer to sanctions related difficulties *"to access essential goods, leading to reduced funding for aid organizations, restricting travel and movement, increasing bureaucratic hurdles, and more generally, impeding economic activity"*²⁰⁶.

It is reported that over-compliance with unilateral sanctions prevents, delays or makes more costly the purchase and shipment to sanctioned countries of goods, including humanitarian goods and services such as essential food, medicine, medical equipment and spare parts for such equipment, even when the goods are not under sanctions lists or are exempted from sanctions regimes and even when the need is urgent and if they are of a life-saving nature²⁰⁷. The detrimental effects of over-compliance prevents,

202. CESCR, E/C.12/1997/8, 1997, paras. 3-5.

203. See Impact of Armed Conflict on Children: Note by the Secretary-General, U.N. GAOR, 51st Sess., 128, U.N. Doc. A/51/306 (1996).

204. Assessing the Impact of Sanctions on Humanitarian Work, December 2022 https://www.caritas.org/wordpress/wp-content/uploads/2023/03/Final_Report_ARP_Sanctions-2.pdf, p. 15-16.

205. *Ibid*, p. 16.

206. <https://www.hrw.org/news/2023/06/22/put-peoples-rights-first-syria-sanctions>.

207. Guidance Note on Overcompliance with Unilateral Sanctions and its Harmful Effects on Human Rights <https://www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures/resources-unilateral-coercive-measures/guidance-note-overcompliance-unilateral-sanctions-and-its-harmful-effects-human-rights>.

therefore, even exempted goods, such as food and medicines, from reaching people in need.²⁰⁸

It shall be noted that the delivery or provision of humanitarian assistance in general, is not codified. However, several universal treaties have addressed specific types of disasters²⁰⁹, or specific forms of assistance²¹⁰, and some regional treaties²¹¹ and soft law²¹² are equally assuming an increasingly important role of and for humanitarian actors and humanitarian assistance. GA Resolution 46/182 and subsequent resolutions set forth principles of UN humanitarian assistance: humanity, neutrality, impartiality and independence²¹³. Rapid and unimpeded humanitarian access is a fundamental prerequisite to effective humanitarian action. The same rules and requirements shall be applied to the delivery of humanitarian assistance to all those in need. The topic of obligations to grant access to effective humanitarian action is not addressed in the Resolution, but shall be understood broadly and to include all actors, including sanctioning countries in sanctions environment.

GA Resolution 46/182 of December 19, 1991 explicitly makes clear that humanitarian assistance shall not be viewed as immediate humanitarian relief only, but rather as to “*ensure a smooth transition from relief to rehabilitation and development [...], supportive of recovery and long-term development.*”²¹⁴ UN Security Council Resolution 2664 (2022) follows the broad approach as well, by interpreting humanitarian assistance as one referred to “activities that support basic human needs”²¹⁵. As a result limitation of humanitarian assistance to food and medicine only and establishment of

208. A/74/65 para 45.

209. For instance, the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency of 26 September 1986. Available at: <https://www.iaea.org/sites/default/files/infirc336.pdf>.

210. For instance, the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations of 18 June 1998. Available at: <https://www.ifrc.org/Docs/idrl/I271EN.pdf>.

211. For instance, the Inter-American Convention to Facilitate Disaster Assistance of 7 June 1991. Available at: <https://www.oas.org/juridico/english/treaties/a-54.html>; Arab Cooperation Agreement on Regulating and Facilitating Relief Operations (Arab League Decision No. 39) of 3 September 1987. Available at: <https://disasterlaw.ifrc.org/media/3123>.

212. UNGA, Resolution 46/182; UNSC, Resolution 2664 (2022), etc.

213. UNGA, Resolution 46/182.

214. OCHA, Guiding Principles annexed to UNGA Resolution 46/182 “Strengthening of the coordination of humanitarian emergency assistance of the United Nations”, para. 9.

215. UNSC, Resolution 2664 (2022), para. 1.

additional licensing challenges, or imposing financial, delivery, insurance and other sanctions preventing humanitarian deliveries, provisions on responsibility of humanitarian actors constitutes a clear violation of the rights to access humanitarian assistance.

Recipients of humanitarian assistance shall not be discriminated against on any grounds. Humanitarian relief shall be provided to all those most in need. Humanitarian organizations shall not be requested to do any profiling, or report on recipients or condition humanitarian assistance by support of sanctions or political views. The delivery of humanitarian assistance to countries under sanctions shall not be viewed as a circumvention, or assistance in circumvention, of sanctions regimes, also when referring to sanctions of the UN Security Council²¹⁶.

Conclusions and recommendations

All the above provides me with the possibility to make the following conclusions. The world community is currently facing an expansion of various forms and types of unilateral sanctions applied to all sorts of governmental and non-governmental actors and economic sectors, as well as complexity of these regimes, threats of secondary sanctions, civil and criminal penalties for violation or circumvention, and a growing use of zero-risk policies and over-compliance by banks, producers of goods, delivery and insurance companies and other private actors.

Unilateral sanctions and over-compliance have a detrimental impact on implementation of all aspects of the right to health of all people in the countries under sanctions, including access to adequate medicine, health-care facilities, medical equipment, access to qualified medical assistance, prevention and control of diseases, scarcity of health professionals, access to health facilities, training and access to up-to-date scientific knowledge, technologies, research, exchange of good practices. They also affect all relevant underlying rights: right to adequate food, freedom of movement, elimination of poverty, access to clean water and sanitation, electricity, fuel, economic and labor rights, right to a favorable environment. Women, girls, children, persons with disabilities, people suffering from rare and severe diseases, older persons, and socio-economically marginalized groups are the most vulnerable in the face of unilateral sanctions.

Growing mortality rates, reduced life expectancy, rising prevalence of physical and mental health conditions and disabilities due to lack of timely

216. UNSC, Resolution 2664 (2022), para. 1.

diagnosis and treatment, as well as growing physical and psychological suffering are only some of the serious tangible consequences, in violation of human rights such as the right to life, freedom from torture and inhuman treatment, and the principle of non-discrimination. Announced unintentional character of the impact of unilateral sanctions and over-compliance on the right to health, references to good intentions do not legitimize any such conduct. The burden of proof of the legality of any unilateral means of pressure lies with the States and organizations which impose them.

Impediments resulted from the use of unilateral sanctions and over-compliance with these measures prevents countries from any possibility to exercise fully their obligations to guarantee the right to health within all available resources due to the scarcity of such resources; reduces their capacity to establish a strong and reliable domestic health system and constitutes violation of the right to health by sanctioning States. Similar responsibility rises when States do not take all necessary measures to guarantee that businesses acting under their jurisdiction or control do not affect directly or indirectly the right to health.

Health-related humanitarian exemptions, exceptions and derogations are ineffective and inefficient due to the complicated, confusing and over-lapping sanctions legislation; complex and unclear license application procedures; uncertainty about potential criminal and civil liability for possible circumvention of sanctions' regimes; uncertainty around the scope of "humanitarian assistance"; financial and other operational restrictions as a result of designation of financial institutions of sanctioned countries and the freezing of their assets, international payments disruptions, challenges in transportation and insurance of humanitarian goods.

In some areas, over-compliance manifestly results in a direct violation of the basic obligation of businesses to respect human rights. When over-compliance by the private sector prevents access to medicines, even in the absence of comprehensive or sectoral sanctions²¹⁷, the violation of the right to health, due to its high sensitivity and close linkage to the right to life cannot be denied. Businesses must, therefore, avoid zero-risk policies and over-compliance, which are incompatible with their obligations under the GPBHR, especially regarding medicines, vaccines, medical equipment, spare parts, and other goods necessary for providing health-related services and supporting critical infrastructure²¹⁸. A similar situation exists

217. A/HRC/54/23, para. 17.

218. A/HRC/54/23, para. 95.

regarding access to other essential goods and services, as understood by these Guiding Principles

Increasing mortality rates, reduced life expectancy, the rising prevalence of physical and mental health conditions and disabilities due to the lack of timely diagnosis and treatment, and increasing physical and psychological suffering are only some of the serious tangible consequences. These constitute violations of human rights, such as the rights to life and freedom from torture and inhuman treatment, and the principle of non-discrimination.²¹⁹

Because the unavailability of medicine or other goods produced by a monopolist (or a limited number of producers) will evidently result in the deterioration of health status, suffering, and, with a high probability, the death of people in need, and because, when such people rely on an established supply scheme from a monopolist (or a limited number of producers), businesses do not have the right to terminate existing contracts or refuse to proceed with procurement due to the obvious foreseeable severe harm to the health and lives of those in need. Such activity constitutes a violation of the right to life, the right to the highest attainable standard of health, and freedom from torture of people affected by the manufacturers of life-saving goods, as well as any other businesses (including banks and other financial institutions, and delivery and insurance companies) that impede the delivery of such goods.

219. A/HRC/54/23, para. 82.

CHAPTER IX
Impact of unilateral sanctions on the right to food.
When there is no appetite for sanctions
(Dr. R. Huish)

The relationship between food and sanctions

The incredible irony about sanctions, technically referred to as unilateral coercive measures, is that they seek the end product of what comes from total war all in order to prevent actual war.¹ Dating back to the Megarian Decree in 432 BC, where the Athenian empire prohibited the Megarians from accessing ports or arable land, to current conflicts in the Middle East and Europe, sanctions weaponize economics in order to apply direct and indirect pressure on a target.² Before committing the United States of America into World War I, President Woodrow Wilson said that “thoughtful men have thought that war is barbarous... the boycott is an infinitely more terrible instrument of war.”³ Speaking from the recent memories of the late 19th century Boer War, and Spanish-American War, where belligerents sought total war on their opponent by attacking crops and forcefully displacing civilian populations into internment camps, the impact of hunger and pestilence on a population far outweighed the damage caused by bullet or artillery shell.⁴ Even in antiquity, the Megarian Decree was described by Aristophanes as leaving the Megarians “slowly starving”.⁵ In the First World War up to 400,000 people died of blockade-related starvation and illness in Central Europe, in addition to another 500,000 in Ottoman controlled territories in the Middle East.⁶ In the 2nd World War, the Dutch famine occurred when Nazi’s cut off food supplies. Within six months, between November 1944 and the fall of the Reich in May 1945, roughly 20,000 people

1. N. Mulder, *The Economic Weapon* (New Haven: Yale University Press, 2022).

2. W. Stinson, “An Assessment of the Efficacy of Economic Sanctions in Response to Russian Military Aggression in Ukraine”, *Cadmus* 138 (2022).

3. N. Mulder, *The Economic Weapon*.

4. A. Forth, J. Kreienbaum, “A Shared Malady: Concentration Camps in the British, Spanish, American and German Empires”, *Journal of Modern European History* 14 (2) (2016): 245-267.

5. P. Brunt, “The Megarian Decree”, *The American Journal of Philology* 72 (3) (1951): 269-282.

6. N. Mulder, *The Economic Weapon*.

died in the Netherlands, and 4.5 million people were directly impacted by the famine.⁷ It was a page taken out of the 1941 “Hunger Plan” by Reich Minister of Food, Richard Darré and State Secretary Herbert Backe. This plan killed 4.1 million people through hunger and pestilence overall.⁸

In the 20th century, before World War II, “the hundreds of thousands of deaths by economic isolation were the chief man-made cause of civilian death in conflict”⁹. At a time when industrialization required more dependency on international trade for food inputs, such as fertilizer, and production and processing technology, the threat of being cut off from the world was assumed to be so great that the league of nations figured that no nation would dare try to break international protocols for fear of putting their society into a state of total pestilence. Much like the atomic bomb, the threat of the worst weapon, only this time it was an economic weapon, was meant to be a deterrent for barbarous conflict going forward.

Unlike the atomic bomb, sanctions have been re-imagined in the 20th and 21st century to be “smarter”, less destructive, and more surgical in their approach. Ham fisted sanctions, or what can be referred to as “blockades” were routinely applied in the 20th century. Cuba suffered, and continues to suffer, from a collection of unilateral coercive measures meant to create isolation, stagnation, and deprivation. U.S. sanctions policy against Cuba systematically targeted the country’s food and medicine supply¹⁰ and then to make it more difficult to acquire these necessities by hindering cooperation and partnership with other nations¹¹. While Cuba managed to stave off famine and create a resplendent health system during the height of these sanctions, the country has suffered greatly from lacking resources. Likewise, U.S. sanctions imposed on Iraq in the 1990s led to catastrophic inflation in foodstuffs that promoted hunger within the country even though agricultural production increased in the country.¹²

7. T. Roseboom, S. de Rooji, R. Painter, “The Dutch famine and its long-term consequences for adult health”, *Early human development* 82 (8) (2006): 485-491.

8. S. Chaney, S. Nazi, “Hunger Politics: A History of Food in the Third Reich”, *Agricultural History* 90 (4) (2016): 554.

9. Mulder, 2022, p. 5

10. Torecelli Act, 1992

11. see Helms Burton Act, 1995

12. M. Koc, J. Carey, D. Rupen, “Food security and food sovereignty in Iraq: The impact of war and sanctions on the civilian population”, *Food, Culture & Society* 10 (2) (2007): 317-348.

Praised by British Prime Minister Tony Blair, U.S. President's Bill Clinton, and George W. Bush, along with UN Secretary General Kofi Anan, sanctions were widely accepted by foreign policy experts as an important deterrent to control and contain conflict whilst minimizing boots on the ground warfare. With more political weight put towards sanctions, more critique followed from humanitarian groups and civil society organizations to say that sanctions systemically impact the poor, the vulnerable, and the marginalized in any society. Armies will eat – no matter what. Women and children may not.¹³

Enter the realm of “soft power” sanctions or “smart” sanctions. By the 2010s with a continued war in Afghanistan, rising belligerence from North Korea, and aggression around Russia's borders, and rising tensions between the United States and countries such as Venezuela and Iran, smart sanctions were intended to target the architects of conflict and to rob them of their luxurious ways of life, rather than apply pressure to vulnerable citizens.¹⁴ Now in the 2020s, smart sanctions are some of the leading tools of economic warfare for countries in the west to attempt to isolate adversaries. Whereas atomic weapons remain unimaginably dangerous, no matter what their scale, sanctions, as a historically thought of as the “ultimate weapon”, have transformed into seemingly more strategic foreign policy tools that will cause more impact on the targets and less collateral damage on broader populations. Or do they?

One of the key components in achieving the sustainable development goals is fostering partnerships, and if a country is targeted by sanctions, these partnerships diminish, quickly. The private sector still accounts for most funds and the workforce in global development. When the assurance of secure and transparent partnerships disappears, the private sector often hastily retreats out of fear of risk. In some cases, this can see franchises abandon their merchandise and flee the target nation, in other cases essential foods and medicines quickly disappear. Unilateral coercive measures can deny target countries the foundations for building transparent partnerships, security and the even the right to development itself. While governments issuing unilateral coercive measures claim that sanctions are getting smarter, the ability to track humanitarian impacts remains difficult, especially when charting pre-sanction dependence on foreign investment,

13. D. Drezner, Daniel, “How not to sanction”, *International Affairs* 98 (5) (2022): 1533-1552.

14. A. Tostensen, B. Bull, “Are Smart Sanctions Feasible?”, *World politics* 54(3) (2002): 373-403.

products, and capital. What's more, there is great evidence to suggest that targeted countries can continue to acquire weapons and infrastructure for belligerent activities despite sanctions. Taken together it leaves uncertainty as to the humanitarian ethics of sanctions, and their efficacy more broadly.

Sanctions have a longer, and darker, record than they do a positive one. In cases like Iraq in the 1990s, Syria in the 2010s and Cuba since 1959, humanitarian crises have regularly emerged in target nations because of blockading essential food and medicine. The claim that sanctions will generate popular unrest and lead to the disposal of a target government is a fallacy, called the "false theory" by Galtung.¹⁵ Some scholars laud sanctions and boycotts for bringing down the Apartheid regime in South Africa.¹⁶ Often these claims give too much credit to unilateral coercive measures as the sole driver of total change, and tend to downplay the importance of local level dissent and activism in bringing about smaller, more orchestrated changes towards social justice from within the country itself.

Nevertheless, the threat of pestilence and starvation from economic isolation was all too real for societies in the early part of the 20th century when global transportation networks were still in their infancy, and for which accessible basic health services were still quite limited. In this era, disconnection from any international trade or finance networks could quickly result in disaster. It required broad strokes of blocking ships, ports, and rail lines to a country for the economic consequences to quickly follow. Fast forward to 2024 globalization has created an international multi-modal trade system that theoretically can allow targeted nations to adjust their financial and trade networks within hours to obtain necessary goods, although with increased cost. It also requires incredible levels of intelligence by the issuer to ensure that the target will not be able to continue operations if sanctioned. Oligarchs may have their yachts, mansions and private planes seized, but they can still manage to carry out business.¹⁷ Likewise, specific individuals may be targeted by an issuing nation, but unless they have reachable assets, there is little effect.¹⁸ However if an entire

15. J. Galtung, "On the Effects of International Economic Sanctions, with Examples from the Case in Rhodesia", *World Politics* 19 (1967): 378-416.

16. P. Levy, "Sanctions on South Africa: What did they do?", *American Economic Review* 89 (2) (1999): 415- 420.

17. D. Siegel, "From oligarchs to oligarchy: the failure of us sanctions on Russia and its implications for theories of informal politics", *World Affairs* 185 (2) (2022): 249-284.

18. F. M. Teichmann, "How effective are financial sanctions against individuals?", *Journal of Money Laundering Control* 24 (2) (2021): 440-445.

currency is removed from an international banking network, the oligarchs may feel the hurt, but so too will everyone else in the nation, at least for a brief period. The shortcoming of smart sanctions is that they are dealing with smart opponents who have vast networks to avoid the pressure. Russia's economy was projected to decrease by 5% after its banking system was removed from SWIFT, a financial transfer network. However, the impact was likely short lived as Russian financial institutions found new networks through countries that did not impose or maintain sanctions.¹⁹ Similarly, smart sanctions on individuals are often highly symbolic but not necessarily effective, as the targets are able to enter alternate markets free of sanctions. Whereas broader fisted sanctions that target food distribution will have visible impacts but also unintended consequences.

Once again, even in an era where smart sanctions are highly praised, the threat of "pestilence" returns as the primary consequence of an economic weapon.²⁰ If a nation imposes a highly symbolic sanction on an oligarch, there may be little threat of pestilence to the entire nation. But the strategic gain is also very low. A functional sanctions will have impacts on a population, intended or otherwise, and there will be an outflow of consequences, strategic or otherwise. How can we determine if a sanction is symbolic or functional? It comes down to the original goal of a sanction – pestilence.

Food is a means in which to measure the humanitarian hurt of sanctions, or the lofty symbolism of a sanction policy. From their earliest implementation, food deprivation has been part of the design and intention of sanctions. Even with full knowledge of the brutality of starving a population and knowing that suffering will be applied to often vulnerable and poor people in a society, sanctions are inherently about hurting the vulnerable in the hopes that hunger and desperation will make them rise up and overthrow their political leaders. When in history has this ever worked? Never. Not in ancient Greece, Napoleonic Europe, the World Wars, or in modern times. This end goal of sanctions has been relatively ineffective. Smart sanctions are meant to target only the leadership and overlook putting the hurt on the poor. When in history have sanctions effectively worked? While there is a profound literature on the topic, the short answer is: never.²¹ Heavily

19. R. Hotten, "Ukraine conflict: What is Swift and why is banning Russia so significant", May 4 2022, BBC News, <https://www.bbc.com/news/business-60521822#>, visited on May, 2024.

20. N. Mulder, *The Economic Weapon*.

21. D. Peksen, "When do imposed economic sanctions work? A critical review of the sanctions effectiveness literature", *Defence and Peace Economics* 30(6) (2019): 635-647.

sanctioned leaders have remained in power despite targeted sanctions upon them, often continuing to acquire weapons and luxury goods through shifting and porous trade networks. If measuring the efficacy of sanctions based on the behaviour changes of the target, it remains inconclusive if they are effective in any strategic way. Despite the volumes of research on sanctions, and their frequent implementation by the U.S., the European Union and other bodies, there is little conclusive evidence to suggest when and how they work to meet their goals.²² However, on the other side of the coin is the realization that sanctions regularly have unintended consequences on the vulnerable. Perhaps then a measurement tool that can determine how deep humanitarian impact is from a sanction is a better means to approach the question of efficacy in unilateral coercive measures. When sanctions are in place, people's dinner plates are at risk of changing almost immediately. Herein lies an approach to measure the *impact* of sanctions and if they are contributing to humanitarian concerns.

You are what you eat

While various theories attempt to better understand the impact and efficacy of sanctions, the role of food can be an important indicator as to how targeted a sanction really is, and if it is having unintended impacts on a population. However, the nuance of what is being measured is crucial. Embargoes on food imports or exports is not enough in itself to determine the impacts of sanctions. An embargo on food imports will be met with an internal pivot in the target nation to other foodstuffs and commodities. Cuba is a case in point where many agricultural products are prohibited to be exported from the U.S., unless paid upfront and in cash.²³ Unlike projection tools and formal declarations of famines that have specific calculations related to death rates, an embargo on food may not actually lead to any mortality. Cuba is a good example of this where restrictions on exports to Cuba by the United States have a profound impact on the availability of foodstuffs, but it has not necessarily led to long term malnutrition or famine.²⁴ Similarly, Myanmar, a heavily sanctioned nation, has difficulty

22. R. Pape, "Why economic sanctions still do not work", *International Security* 23 (1) (1998): 66-77.

23. W. Messina, "US Food and Agricultural Exports to Cuba: Progress, Problems & Prospects", *Cuba in Transition* 22 (2013): 2-4.

24. J. Gordon, "Economic sanctions as 'negative development': The Case of Cuba", *Journal of International Development* 28 (4) (2016): 473-484.

acquiring foreign goods, and while not nearing a state of famine, an increasing proportion of the population is deemed to be food insecure.²⁵

The Food Insecurity Experience Scale, is a means to measure such insecurity. Mild food insecurity may result in “worry about the ability to obtain food”.²⁶ Moderate insecurity may impact dietary quality and involve compromising the quality and variety of food stuffs or skipping meals and reducing quantity. Severe food insecurity is the result of insufficient supply that leads to physical experiences of hunger.²⁷ In applying this to the impacts of sanctions, mild food security is likely to be a factor, but does “worry about food” result in a humanitarian impact from a sanction?

In heavily sanctioned nations, like Cuba, Myanmar, North Korea, and Venezuela a coping mechanism against food insecurity comes in the form of relying more heavily on what is referred to as “culturally appropriate foods”. These are foods that are locally produced, can be easily distributed, and has an important cultural significance to the place itself. It also factors in the preparation of the meal to look at where, how, and whom it is eaten. It is more than looking at raw calorie measurements as is the case with food security measurements. The use of culturally appropriate food can be an important precursor to identifying labour, gender, housing, and social pressures on a sanctioned nation.

Pre-sanctioned Cuba saw high imports of beef and seafood to satisfy elite diets in Havana.²⁸ After 1963 more tinned meats and fruits arrived from the Soviet Union. Following the collapse of the USSR when food brought to Cuba needed to be paid for in cash, rather than credit, the country braced for a harsh dearth of food options. Under partial control through a state ration system, an addition to dollar markets and black markets, rice, beans, organically grown vegetables, sugar, coffee, oil and very little protein made up the daily food basket for many Cubans.²⁹ Likewise, in Myanmar the traditional breakfast dish of mohinga is a corner stone staple made up of rice noodles, gram flour, lemongrass, ginger and river fish like carp.

25. World Food Program. Emergency Myanmar, January 31, 2024, World Food Program, <https://www.wfp.org/emergencies/myanmar-emergency>, visited on May, 2024.

26. Food and Agriculture Organization of the United Nations. The Food Insecurity Experience Scale, 2017, <https://www.fao.org/3/i7835e/i7835e.pdf>, visited on May, 2024.

27. *Ibid.*

28. S. Dawdy, “La Comida Mambisa: food, farming, and Cuban identity, 1839 - 1999”, *New West Indian Guide / Nieuwe West-Indische Gids* 76 (1-2) (2002): 47-80.

29. J. Wright, *Sustainable agriculture and food security in an era of oil scarcity: lessons from Cuba*. (New York: Routledge, 2012).

Lahpet, or tea leaf salad, is a salad composed of pickled tea leaves and relies heavily on locally available ingredients. Curries in the country tend to build on these base ingredients rather than mimic any of the styles of neighbouring countries.

Cuba and Myanmar demonstrate an important factor food security in a heavily sanctioned environment, which is the ability to rely on culturally appropriate food during times of worry about access to foodstuffs. To this extent non-culturally appropriate foods, or what can be called non-traditional fare, may be harder to acquire or may not even be available. A turn towards deep use and reliance on culturally appropriate foods may be an important indicator of sanctions impacting the food supply and distribution within a country.³⁰ It does not in itself mean a humanitarian crisis is underway, only that some level of adjustment or coping is taking place to adapt to the economic reality. Humanitarian concern begins to deepen when there are issues of supply that occur with access to food supply more broadly. Here we see serious food emergencies arising in heavily sanctioned nations like North Korea and Venezuela.³¹ In South Korea the basic staples are often referred to as “clothing, food and shelter”, but in North Korea the saying is “food, clothing and shelter”.³² Likewise the common saying on the Korean peninsula is “What should we eat today?” In the South it refers to the choice of dish to prepare, while in the North the phrase is more to do with the challenging of finding food to begin with.³³ Culturally appropriate food such as Kim-Chi, rice, red pepper paste, and soybean paste are the traditional staples in the North, but the rarity of them being regularly available becomes a concern, especially considering that the availability of food stuffs diminishes in rural areas compared to the capital. Venezuela is a country with ample culturally appropriate food items and recipes, but supply chains shattered in the country in 2017 which led to severe shortages

30. J. McPherson, *National Food Security in Cuba: By What Means?* (Halifax: Dalhousie University, 2018) (Master's Thesis).

31. S. Doocy, M.-T. Ververs, P. Spiegel, C. Beyrer, “The food security and nutrition crisis in Venezuela”, *Social Science & Medicine* 226 (2019): 63 - 68.

32. J.-A. Cho, J. Suh, S.-H. Lim, B.-G. Kim, Y.-J. Park, “The Everyday Lives of North Koreans”, (2009), <https://repo.kinu.or.kr/bitstream/2015.oak/1385/1/0001397800.pdf>, visited on May, 2024.

33. Jin, “Ask A North Korea: What's different about food in North and South Korea?”, 2023, NK News, <https://www.nknews.org/2023/08/ask-a-north-korean-whats-different-about-food-in-north-and-south-korea/>, visited on May, 2024.

of even locally produced food and goods.³⁴ 75% of Venezuelans lost weight in 2017 according to Venezuela's living conditions survey. Some 83% of Venezuelans were in a state of poverty and 93% could no longer afford food on a regular basis.³⁵ Embargoes are external factors that can contribute towards humanitarian crises, but supply and access issues usually seen as internal factors that speak to the capacities and decision making of the target nation itself.

For nations like North Korea and Venezuela, where food insecurity is high, and the use of culturally appropriate food fails to achieve food security, how then can it be deciphered if the sanctions regime is to blame or if it is by product of internally problematic decision making and leadership?³⁶ With the collapse of the Soviet Union, North Korea fell into desperate famine in the 1990s. An estimated 1.6 million people died of absolute hunger between 1993 and 1995.³⁷ The country continues to struggle with food security, especially outside of Pyongyang. Accounts prevail of the desperate acts North Koreans take in rural areas of the country just to acquire food basics, while in the capital food supplies are more stable, and even some luxury goods can be acquired.³⁸ In 2022, quantity and price point of foodstuffs in North Korea led to a grim situation that worsened further by country's decision to maintain strict self-isolation due to the COVID-19 pandemic. While North Korea is heavily sanctioned, the internal decisions to pursue self-reliance, combined with problematic economic management plans ensured a heightened degree of vulnerability in reliable access to food. Similarly, the rise in poverty and hunger in Venezuela has had a great deal to do with economic decision-making that essentially crippled accessibility to resources in rural areas of the country. Venezuela experienced one of the largest economic collapses outside of war in the 2010s. Oil, mining and manufacturing all collapsed, and hyperinflation rose quickly. Only in 2022 did hyperinflation and food shortages begin to decline. No new adjustments to sanctions occurred in 2022, but the

34. A. Felicien, S. Christina, R. Liccia, "The politics of food in Venezuela", *Monthly Review* 70 (2): (2018): 1-19.

35. V. Sequera, "Venezuelans report big weight losses in 2017 as hunger hits", February 21 2018, <https://www.reuters.com/article/idUSKCN1G52H9/>, visited on May, 2024.

36. R. Cohen, "Sanctions hurt but are not hte main impediment to humanitarian operations in North Korea", *Asia Policy* 13 (3) (2018): 35-41.

37. D. Goodkind, L. West, "The North Korean famine and its demographic impact", *Population and Development Review* 27(2) (2001): 219-238.

38. S. Fahy, "Recalling what was unspeakable: hunger in North Korea", in S. Fahy, *The Interview* (London: Routledge, 2020), pp. 229-244.

government of Venezuela opened up more trade liberalization, which has seen the rise of a small economic “bubble”, as it is called, in Caracas.³⁹ In the case of Venezuela and North Korea, heavy external sanctions clearly have an impact on the economic environment within the country, but to what degree can these measures be held responsible for all human suffering compared to that of what the internal decision making process has caused harm is questionable.

Deciphering the balance between suffering caused by the structure of the sanction to that of the agency of the target government has long been a puzzle to unravel. Galtung reminds us that what is certain in these circumstances is that regardless of where the humanitarian is generated from, it is naïve to assume that economic disruption against the poor and vulnerable will mount into forceful political pressure for change.⁴⁰ It is to say that there is no correlation between the value-deprivation of a people to the political disintegration of the government. Knowing that economic suffering does not lead to the sort of political unrest that would unseat a leader, Portela suggests that the type of sanctions regime in place against a target can help unpack the impacts of the sanction itself to that of the target government.⁴¹ Typically, sanctions fall into one of two broad categories: “Trade Disputes” and “non-commercial disputes”. Trade disputes are often “subject to international legal regulation, mostly through the legal system put in place by the World Trade Organization”.⁴² Within this framework are pre-planned packages of countermeasures and disciplinary actions to respond to breaches. This system allows for, as Portela says, a greater degree of predictability in how a target’s decision making will play out.⁴³ It is often based on states “making concessions depending on which choice they expect would maximise their wealth” as a result.⁴⁴

39. Frangie-Mawad, T., “Venezuela’s Modest Economic Liberalization Has Created a ‘Hellscape of Inequality’”, 19 January 2023, Foreign Policy, <https://foreignpolicy.com/2023/01/19/venezuela-economy-liberalization-poverty-growth-inequality-maduro/>, visited on May, 2024.

40. J. Galtung, “On the Effects of International Economic Sanctions, with Examples from the Case in Rhodesia”.

41. C. Portela, *European Union Sanctions and foreign policy: when and why do they work?* (London: Routledge, 2012).

42. *Ibid.*

43. *Ibid.*

44. R. Pape, “Why economic sanctions still do not work”.

Non-commercial, or political, sanctions are less predictable, both in terms of being implemented, and in terms of understanding a target's behaviour. While, as Portela suggests, the EU and the United Nations Security Council provide some degree of codification and consistency of the nature of sanctions when human rights are violated and when war breaks out, but ultimately there is no enforceable norm to respond to violence, terrorism, or unlawful detention of political opponents.⁴⁵ Largely the timing of unilateral coercive measures and the design of them are largely on a case by case basis. Unlike trade disputes where countermeasures and responses are quantifiable and calculable, political sanctions have no set measurement tool to understand the nature or level of response by a target nation. Whereas trade sanction response is understood in maximizing wealth, the political sanction response can be assumed to maximize survivability. Be it of the political leadership, that of the leader's family and ancestry, or of the institutions and design of the government architecture itself. If no provision of exile or preservation is granted to a target then they are likely to organize new economic conditions that strengthen the capacity of their own power, their own security forces, if not the entire military. At this stage, a strong likelihood exists that negative knock-on effects regarding food and nutrition will impact the population of the target county, as the old phrase goes, militaries march on their stomachs.

Measuring Sanctions on the Dinner Plate

Scholars continue to search for examples and evidence to better understand both political and humanitarian impacts of unilateral coercive measures. One area that provides this evidence is in how sanctions create inhabitable climates for partnerships in the target nation, which is essential for the trade and transactions of food stuffs. Sanctioned economic climates systemically, and repeatedly, deny autonomy for both individual and collective rights of the target population. Issuers of sanctions now more than ever before, require the private sector to be the enforcer of sanctions, even on foodstuffs, which creates a neo-colonial landscape that prohibits choice and autonomy of individuals, communities, and nations. It denies autonomy to make decisions to ensure appropriate access to resources and to pursue the right to development itself. Autonomy is the goal of development, and often leads to robust democracies. When individuals are living in heavily sanctioned environments, autonomy is denied, and it is often replaced by a murky labyrinth of decisions that are based on survival, rather than

45. C. Portela, *European Union Sanctions and foreign policy: when and why do they work?*

fulfilment. These labyrinths involve local black markets to acquire goods, including food, in whatever way possible, which then leads to increased cost for individuals and families. It can also require tremendous expense to acquire medical and agricultural resources as well. Finally, it can lead to pressure to join jilted strategic alliances that promise access to resources in return for political support.⁴⁶ Taken together this hinders autonomy which infringes on the right to development among other factors.

Cuba, for example, has long struggled to gain access to medical equipment and various technologies because of patent regulations that fall under the edicts of sanctions from the issuing nation. This has resulted in Cuba relying on other countries to import much needed resources at increased cost. It also leads to chronic shortages of key items. Lowering costs and responding to supply chains crisis can occur anywhere. But without a space that permits autonomous decision making and bidding for private services, the challenge of lacking resources can be staggering.⁴⁷

It is why partnerships and cooperation need to be taken seriously when it comes to heavily sanctioned nations. The absence of vibrant partnership climates is perhaps the most obvious and powerful impact of sanctions. Because enforcement and compliance of sanctions is largely left to the private sector, there are few mechanisms in place to protect the private sector from being disciplined by the issuing government. This risk leads to overcompliance of sanction goals, the withdrawal from the target environment, and the assurance of humanitarian challenges from a lack of autonomy. The fear of reprisal of the private sector against the issuing nation can be enormous. Private sector firms can also be penalized by shareholders and investors for taking on risky ventures in heavily sanctioned environments. In this way, there is a compounding nature to private sector risk when it comes to unilateral coercive measures.⁴⁸

Is it possible then to measure if a sanction is causing humanitarian pain on a population, but also distinguish if the actions of the target government are contributing to the pain as well? McPherson's study on the role

46. R. Huish, "The Neo-coloniality of Sanctions on the Right to Development. Retrieved", 28 March 28 2023, Office of the High Commissioner on Human Rights, <https://www.ohchr.org/sites/default/files/documents/issues/ucm/side-event-28march2023/Contribution-Prof-Robert-Huish.pdf>, visited on May, 2024.

47. R. Rodriguez, "The Political Economy of Sanctions: The Case of Cuba", in K. Kirkham (ed.), *The Routledge Handbook of the Political Economy of Sanctions* (London: Routledge, 2024), pp. 187-196.

48. R. Huish, "The Neo-coloniality of Sanctions on the Right to Development.

of culturally appropriate food use in Cuba indicates, “yes”.⁴⁹ McPherson’s research chronicled the cultivation and consumption of culturally appropriate food in Cuba compared to its imports of foodstuffs from abroad. On the timeline McPherson identifies the times when the Cuban blockade intensified. First in 1961, then in 1963, again in 1992, 1995, and finally 2003. After each implementation of new unilateral coercive measures, the use of culturally appropriate foods increased. Similar trends can be found in Myanmar as well, and that non culturally appropriate foods tended to become scarce following economic measures. In Cuba’s timeline, drastic declines in foodstuffs overall seemingly had less to do with a sanctions measure, and more to do with trade interruptions or disruptions, notably with the Soviet Union before 1992. Likewise, in Myanmar the rise in use of culturally appropriate food increased after economic coercive measures were enforced, while overall declines in food consumption decreased due to other factors such as conflict or pandemic lockdowns.⁵⁰

Venezuela and North Korea do not share the similar trend, however. Venezuela’s economic collapse bottomed out food consumption overall. Likewise, World Food Program data on post-famine North Korea demonstrates a remarkably small change in overall consumption at the national level regardless of what was being consumed.⁵¹ In these cases internal economic management and decision making resulted in devastating supply and distributions emergencies, which ultimately places some of the onus on the target nation itself for handling the economic crisis in that manner it chose to promote food inequality.

Reliance or increase on culturally appropriate food can inform policy makers about the impacts of sanctions in the following ways. First, an increase in the use of culturally appropriate food indicates a disruption to trade, supply and possibly distribution of food stuffs. It serves as a marker to say that some form of disruption has occurred in the target nation that could create worry about access to food, and that the population will need to adapt in order as a result. An increase in culturally appropriate food does not immediately translate into a health or humanitarian crisis, only that disruption has occurred and is being felt at the societal level.

49. J. McPherson, *National Food Security in Cuba: By What Means?* (Halifax: Dalhousie University, 2018) (Master’s Thesis).

50. *Ibid.*

51. World Food Program. Emergency Myanmar, February 15, 2024, World Food Program, <https://www.wfp.org/emergencies/myanmar-emergency>, visited on May, 2024.

Second, if the use of culturally appropriate food serves as the basis for food security in a nation, but access to it becomes limited during the sanctions, then it is likely that internal management of the economic situation is at fault as well. This is to say that culturally appropriate food should be produced and consumed within a nation without shortage issues from accessibility or supply. If shortages occur, or if caloric intake declines, and increases in food insecurity rise, then the management of the situation by the target government can be called into question.

Third, if no increase occurs in culturally appropriate food, regardless of internal supply and distribution levels, it can be assumed that the sanction is highly symbolic and is having little direct impact on the population itself. Using culturally appropriate food as a measure of sanctions is not enough to assess deeper health, social, gender, or economic impacts, only that it can help determine if the coercive measure put in place is contributing a pressure to the dynamics of the country's internal food economy.

Making Sanctions Smart Again?

Even with the ability to decipher if a sanction, or if the target nation itself, is contributing to food insecurity, the question remains as to whether sanctions are worthy of pursuit at all? How can an economic action like a sanction work to invoke pressure from the poor to those in charge of power? As Galtung demonstrates, it can't.⁵² But now and then sanctions, or blockades have seemingly worked. The fall of the apartheid regime is a cited example of smart sanctioning. So too is India's sanctioning of Nepal to encourage greater democratic processes in the country.⁵³ In these cases, forget the notion of a poor and hungry society rising up and ousting the leader. Instead, it is important to determine if the goals of sanctions regimes are being met, and if the sanctions themselves are creating conditions for change to occur in the first place.

The fall of apartheid in South Africa was instrumentally the result of activism and political organization within the country, as much as it was from economic warfare against it from abroad. The sort of sanctioning against Apartheid South Africa in the 1980s was one grounded in solidarity with the ANC and youth movements within the country, and it did

52. J. Galtung, "On the Effects of International Economic Sanctions, with Examples from the Case in Rhodesia".

53. P. Levy, "Sanctions on South Africa: What did they do?"; K. Basnet, *Foreign Policy of India Towards Nepal: A Study of Economic Sanctions* (Kirtipur, Nepal: Department of International Relations and Diplomacy: Tribhuvan University Central Library, 2019).

not target foodstuffs directly. Hunger was prominent in Apartheid South Africa, which required food aid and support.⁵⁴ The underpinnings of this were far more to do with internal management of the economy than any direct sanction against South Africa itself. What ultimately ended the apartheid regime was the high inflation in the country resulting from massive capital flight out of the country that destabilized national industry and business to a point of chaos.⁵⁵ Also, the international community provided De Klerk “a way out”, in overseeing the country to a democratic transition, the apartheid regime would face truth and reconciliation but not vendetta justice against the political leadership. Taken together, the way out, and international solidarity that supported ANC interests rather than that of the regime were big factors leading to the change.

Is it possible then to have effective sanctions that deliver the desired influence but will not lead to the ultimate consequences of pestilence and hunger? The answer remains unclear at this point, but it may invite the opportunity to revisit how sanctions have been thought of in the past in terms of their efficacy, and whether sanctions can be constructed that foster conditions for positive change and justice, rather than threatening a people with pestilence? Seemingly smart sanctions that target bank accounts and shipping traffic held by the architects of war may seem like politically popular positions. Evaluating these measures, like others for potential impacts on a population can be done by identifying culturally appropriate food of the target nation and then evaluating its use. What we do know is that disciplinary sanctions have always led to unintentional secondary consequences, and a culturally appropriate food index should serve as a basis to help identify if those secondary effects are likely in store.

Knowing that such risk will do more to deny individuals and communities autonomy will not inspire regime change through civil unrest. In carving out better conditions for progressive change within target nations, could it not be possible to develop financial protection mechanisms for the private sector in the key areas of nutrition, health, education, and essential technologies? This is a call for an insurance mechanism that would protect the private sector connected to food production, distribution, and access in these areas from being penalized, or from being exposed to compounding

54. D. Von Fintel, “Hunger in the former apartheid homelands: determinants of convergence one century after the 1913 land act”, *Agrekon* 53(4) (2014): 38-67.

55. S. Mohamed, S., K. Finnoff, *Capital Flight from South Africa 1980 - 2000*. In G. Epstein, *Capital Flight and Capital Controls in Developing Countries* (Cheltenham: Edward Elgar Publishing, 2005), pp. 85-115.

risk, for engaging with heavily sanctioned nations. Such a tool could be organized and funded through similar structures like that of protection and indemnity clubs for shipping, where there is collective participation within the industry to protect against catastrophic costs that may occur. Such organizations could also support research and legal support to better understand the imposed unilateral coercive measures so that industry members are not needlessly put at risk.

Such a tool would not prevent scrutiny from the issuing country. But it would help to create a supportive environment for partnerships in key areas that directly contribute to the sustainable development goals. It would be an opportunity to ensure that dialysis equipment can reach Iran. It would ensure that cancer medication is made available in Cuba. It would ensure essential medical products and foodstuffs make it to any community that is in need.⁵⁶

Let this serve as a clarion call to issuers of sanctions, smart or not, that the real impacts often hit off target. When they do, the suffering that they inflict will not translate into the political action the issuer seeks. It will deny people of autonomy and of the right to development itself. These are two values that private partnerships fulfill well. Let them do their job even in times of crisis.

How sanctions could be reimagined as fostering conditions for progressive change and justice remains to be fully seen or planned out. But it could serve as a framework that worries less about sanctions being more “strategic” in terms of precision pain delivery and moves into a framework that fuels spaces of change and justice by strengthening the internal capacity of people. This would mean ensuring access to food, culturally appropriate or not. It would also need to offer an avenue of exile for the target tyrant in question. And would rebalance economic conditions so that upholding war machinery and robber baronry becomes unsustainable and that inclusive democratic processes are fostered in the process. Lofty goals? Yes. Is there a clear path to achieve them? No. But, if we have been doing sanctions *wrong* all this time, maybe it is time to start thinking about a way to do them *right*?

56. R. Huish, “The Neo-coloniality of Sanctions on the Right to Development.

CHAPTER X

Unilateral sanctions and human rights on the Internet

(Dr. N. Maroz)

The application of unilateral sanctions has increased dramatically over the last few decades. As of November 2024, 37,696 unilateral coercive measures are imposed on 30 countries by the US, the European Union, and other¹. Such measures affect all areas of social activities, producing direct and indirect, immediate and postponed adverse humanitarian consequences².

Information and telecommunication technologies (hereinafter ICTs) foster sustained, inclusive and equitable economic growth and sustainable development, competitiveness, access to information and knowledge, trade and development, poverty eradication and social inclusion³. The Human Rights Council recognized the importance of access to information and communications technology for the full enjoyment of human rights in a number of its resolutions (20/8 of 5 July 2012⁴, 26/13 of 26 June 2014⁵, 32/13 of 1 July 2016⁶, 38/7 on 5 July 2018⁷, 47/16 on 13 July 2021⁸). Unfortunately,

1. Geopolitical Map of Sanctions, <https://observatorio.gob.ve/mapa-geopolitico-sanciones/>, visited on August, 2024.

2. Monitoring and assessment of the impact of unilateral sanctions and overcompliance on human rights, A/HRC/57/55, para. 27, <https://documents.un.org/doc/undoc/gen/g24/133/16/pdf/g2413316.pdf>, visited on August, 2024.

3. *Information and communications technologies for sustainable development*, A/74/378, para. 1, <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/74/378&Lang=E>, visited on August, 2024.

4. The promotion, protection and enjoyment of human rights on the Internet, A/HRC/RES/20/8, <https://documents.un.org/doc/resolution/gen/g12/153/25/pdf/g1215325.pdf>, visited on August, 2024.

5. *The promotion, protection and enjoyment of human rights on the Internet*, A/HRC/RES/26/13, <https://www.refworld.org/legal/resolution/unhrc/2016/en/112398>, visited on August, 2024.

6. The promotion, protection and enjoyment of human rights on the Internet, A/HRC/RES/32/13, <https://documents.un.org/doc/undoc/gen/g16/156/90/pdf/g1615690.pdf>, visited on August, 2024.

7. *The promotion, protection and enjoyment of human rights on the Internet*, A/HRC/RES/47/16, https://digitallibrary.un.org/record/3937534/files/A_HRC_RES_47_16-EN.pdf?ln=ru, visited on August, 2024.

8. A/HRC/RES/32/13.

the adoption of unilateral sanctions both in respect to malicious activity on the Internet and ICT-related unilateral sanctions concern different aspects of most human rights enjoyed online. The Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights emphasized that “unilateral sanctions in the cybersphere – preventing access to satellites, the Internet, software, publicly available information and communication platforms and services – target the entire populations of targeted countries, affecting their economic and cultural rights, including rights to the Internet, to information, to education, to health, to life and to development, as well as academic freedoms, and they constitute discrimination on the ground of nationality”⁹.

These negative effects are exacerbated by the extensive practice of over-compliance and zero-risk policies exercised by IT companies¹⁰.

In reality it leads to a situation when the adoption of unilateral coercive measures, measures for their enforcement alongside with the practice of overcompliance not only seriously impede specific human right directly, but conducive to violation of any human rights online since their target digital development and cybersecurity. For example, the products of the American company DigiCert, which includes such brands as Symantec, Thawte and GeoTrust¹¹, are completely unavailable due to the unilateral coercive measures in Cuba, Iran, North Korea, Syria, as well as in the territory of Crimea, LPR and DPR¹². Avast, a company that offers antivirus software, does not operate in the Republic of Belarus and the Russian Federation¹³. Sectigo, one of the leading companies in the field of Internet security and the largest global supplier of SSL certificates¹⁴, does not provide its services in the Republic of Belarus, Cuba, Iran, the Russian Federation,

9. Unilateral sanctions in the cyberworld: tendencies and challenges, A/77/296, para. 77, <https://documents.un.org/doc/undoc/gen/n22/464/10/pdf/n2246410.pdf>, visited on August, 2024.

10. Joint Communication from Special Procedures, AL USA 11/2024, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28933>, visited on August, 2024.

11. Symantec, RapidSSL, Thawte and GeoTrust acquired by DigiCert, <https://www.gogetssl.com/news/14.html>, visited on June, 2024.

12. Embargoed Countries & Regions, <https://knowledge.digicert.com/solution/embargoed-countries-and-regions>, visited on June, 2024.

13. Cybersecurity firm Avast suspends Russia, Belarus operations, <https://www.reuters.com/technology/cybersecurity-firm-avast-suspends-russia-belarus-operations-2022-03-11/>, visited on June, 2024.

14. SSL-сертификаты Sectigo, <https://www.ps.kz/ssl/sectigo/>, visited on June, 2024.

Syria and Venezuela¹⁵. Fortinet, a company that offers solutions in the field of cybersecurity, does not provide its products and services in Cuba, Iran, North Korea, Syria, as well as in Crimea, DPR and LPR¹⁶. Trend Micro security products are not available in Cuba, Iran, North Korea, Sudan, and Syria¹⁷. Other companies that restrict the export of cybersecurity products or services include Trellix¹⁸, Check Point¹⁹, F-secure²⁰, ESET²¹, Rapid7²², Tenable²³, Barracuda Networks²⁴, Cylance²⁵, AlienVault²⁶, Qualys²⁷, and several others. At the same time, unilateral coercive measures in the field of information and communications technology (hereinafter referred to as ICT) also have a negative impact on the sanctioning states. For example, due to import bans, the Russian company Kaspersky Lab, the largest supplier of antivirus solutions, was forced to leave the American market²⁸.

15. Banned Country List, <https://support.sectigo.com/articles/Knowledge/Banned-Country-List-1527076085907?isdt=p1>, visited on June, 2024.

16. Global Trade Compliance, <https://www.fortinet.com/corporate/about-us/global-trade-compliance>, visited on June, 2024.

17. Trend Micro End User License Agreement, https://store.trendmicro.com/DRHM/store?Action=DisplayPage&SiteID=tmamer&Locale=en_US&ThemeID=900700&id=TrendMicroDirectPassPage, visited on June, 2024.

18. Software Royalty Free License, <https://www.trellix.com/downloads/free-tools/terms-of-use/>, visited on June, 2024.

19. Terms of Service – Cloud Services; Infinity Portal Cloud End-user License Agreement, <https://www.checkpoint.com/about-us/cloud-terms/>, visited on June, 2024.

20. Not available in your country, <https://www.f-secure.com/en/vpn/not-available>, visited on June, 2024.

21. [KB8492] ESET HOME Security Ultimate tier availability, <https://support.eset.com/en/kb8492-eset-home-security-ultimate-tier-availability>, visited on June, 2024.

22. Notice of U.S. Export Controls for Restricted Products, <https://www.rapid7.com/export-notice/>, visited on June, 2024.

23. Export Controls of Tenable Products, <https://www.tenable.com/export-controls>, visited on June, 2024.

24. Legal Terms and Conditions, <https://www.barracuda.com/company/legal/terms-and-conditions>, visited on June, 2024.

25. Cylance end user license agreement, <https://www.bio-rad.com/webroot/web/pdf/cdg/literature/Cylance-License-Agreement.pdf>, visited on June, 2024.

26. Alienvault, inc. End user software license and services agreement, <https://www.dlt.com/sites/default/files/documents/2021-03/AlienVault-EULA.pdf>, visited on June, 2024.

27. Qualys master cloud services agreement, <https://d7umqicpi7263.cloudfront.net/eula/product/41e6ff58-0e25-479e-a386-12254727f0ee/6ee9211f-2a96-4c47-951f-621fabe392e4.pdf>, visited on June, 2024.

28. João da Silva, Russia antivirus firm Kaspersky quits US after ban, <https://www.bbc.com/news/articles/cyr7ex16p32o>, visited on June, 2024.

Unilateral coercive measures, over-compliance and zero-risk policy in the field of information and communication technologies, give rise to a number of adverse consequences, which may be of a technical nature (unavailability of antivirus software, programs that allow maintaining the security of the Internet connection in the state, security certificates to ensure a secure connection on the network, etc.), legal (breach of the principle of sovereign equality, principle of cooperation, principle of non-interference in the internal affairs of the state, obligations in the field of human rights protection, etc.) and political nature (negative impact on the reputation of states as unable to ensure cybersecurity, fulfil due diligence obligation, etc.)²⁹.

Taking into account that such practices are relatively recent and continuously expanding in scope and in their application to different actors, the issue of unilateral sanctions on the Internet requires specific attention of scholars.

Some aspects of the topic have been addressed in academic publications (legal qualification of unilateral sanctions³⁰, their impact on humanitarian situation in certain states or specific human rights or in cyber age in general). At the same time the influence of unilateral sanctions on different groups of human rights on the Internet hasn't received so much academic attention and, therefore, requires thorough academic analysis.

Unilateral sanctions online: types and legality

Basically, states and international organizations take a wide range of unilateral measures (arms embargoes, restrictions on imports and exports, restrictions on engaging in commercial activities, etc.) beyond or outside the authorization of the UN Security Council³¹. However, the types of unilateral sanctions imposed by states have been expanded dramatically

29. Мороз Н.О., *Влияние односторонних санкций в сфере информационно-коммуникационных технологий на обеспечение информационной безопасности, Динамика правоустановления и правореализации в сфере публично-правовых отношений* (2024), Вып.6., С. 437-456.

30. Rahimi M., *Unilateral Economic Sanctions in the Light of International Law: Unilateral Sanctions on Islamic Republic of Iran*, SSRN Electronic Journal (2014); De Zayas A., *Unilateral sanctions and international law*, Human rights corner (2019); Schechla J., *Extraterritorial Human Rights Obligations in the Context of Economic Sanctions*, The Routledge Handbook on Extraterritorial Human Rights Obligations (2021) etc.

31. Moroz N. O., *Personal immunity of state officials and application of unilateral coercive measures*, *Journal of the Belarusian State University*. International Relations (2021), Vol. 2, at 53.

over the past decades and include measures directly affecting online activities on the Internet (blocking of access to web platforms and resources, import/export of software, ban to carry out certain online transactions etc.)³².

The grounds for introducing such measures may significantly differ and be taken in response to real and alleged malicious activity in cyberspace as well as to more “traditional” grounds, including suppressing corruption, enhancement of democracy, and promotion of human rights in foreign states³³. For example, restrictions on the export of technology and software to Iran were introduced in response to the “unusual and extraordinary threat to the national security, foreign policy, and economy of the United States (Executive Order 12959³⁴, Executive Order 13059³⁵). Restrictions on the export of information technology and software services to Russia were introduced by the United States with reference to the “national emergency” (Executive Order 14071)³⁶.

The prohibitions themselves range from very general ones, when it comes to exports in general (e.g., paragraph b §2 Executive Order 13582, § 560.204 CFR), to very detailed provisions: “the exportation, re-exportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any category of services as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, to any person located in the Russian Federation” (article 1(a)(ii) of Executive Order 14071³⁷).

The fear of criminal, civil and other forms of punishment for the alleged violations of unilateral sanctions contributes to overcompliance or zero-risk policy by private entities, which produces intensive humanitarian pressure on vulnerable groups, communities and population of state

32. A/77/296, paras. 2, 36, 75.

33. Unilateral coercive measures: notion, types and qualification, A/HRC/48/59, paras. 20-22, <https://documents.un.org/doc/undoc/gen/g21/175/86/pdf/g2117586.pdf>, visited on June, 2024; A/77/296, summary.

34. Executive Order 12959 of May 6, 1995, <https://ofac.treasury.gov/media/8066/download?inline>, visited on June, 2024.

35. Executive Order 13059 of August 19, 1997, <https://ofac.treasury.gov/media/8071/download?inline>, visited on June, 2024.

36. Executive Order 14071 of April 6, 2022, <https://ofac.treasury.gov/media/922081/download?inline>, visited on June, 2024.

37. Determination pursuant to section 1(a)(ii) of Executive Order 14071, <https://ofac.treasury.gov/media/932951/download?inline>, visited on June, 2024.

in general in a situation when no unilateral sanctions are applied³⁸. Such restrictions may even affect ability of states to participate in international relations arising out from their membership in international organizations. For example, users from Cuba, Iran, DPRK as well as Crimea, Luhansk, Donetsk are unable to access Zoom even for United Nations communications³⁹. Criminal and civil penalties for alleged circumvention of unilateral sanctions so huge that companies prefer not to have any business relations to the sanctioned countries. For example, Société Internationale de Télécommunications Aéronautiques (or “SITA”), a global information technology services provider for the civilian air transportation industry, agreed to pay \$7,829,640 to settle its potential civil liability for 9,256 apparent violations of the global terrorism sanctions regulations in 2020⁴⁰. Another recent example involves a combined \$3.3 million in civil penalties imposed by the US Department of the Treasury’s against Microsoft Corporation for alleged and apparent violations of U.S. export and sanctions laws in 2023⁴¹.

Legality of unilateral sanctions is dubious. Unilateral sanctions are measures taken by a state, group of States, regional organization unilaterally without authorization of the UN Security Council without prejudice to their legality or illegality⁴². Under international law states are allowed to take unilaterally only retortions and countermeasures⁴³. The International Law Commission (hereafter – ILC) referred to “countermeasures” in the commentary to Chapter II of the Draft articles on Responsibility of States for Internationally Wrongful Acts⁴⁴ as “measures that would otherwise be contrary to the international obligations of an injured State vis-à-vis the responsible State, if they were not taken by the former in response to an

38. Secondary sanctions, overcompliance and human rights, A/78/196, para. 16, <https://documents.un.org/doc/undoc/gen/n23/260/44/pdf/n2326044.pdf>, visited on June, 2024.

39. AL USA 11/2024.

40. A/78/196, para. 64.

41. Microsoft to pay over \$3.3m in total combined civil penalties to BIS and OFAC to resolve alleged and apparent violations of U.S. export controls and sanctions, <https://www.bis.doc.gov/index.php/documents/about-bis/newsroom/press-releases/3259-2023-04-06-bis-press-release-bis-ofac-microsoft-settlement/file>, visited on June, 2024.

42. Guiding principles on sanctions, compliance and human rights, <https://www.ohchr.org/sites/default/files/documents/issues/ucm/cfis/guiding-principles-sanctions/guiding-principles-sanctions-over-compliance-hr.pdf>, visited on June, 2024.

43. Douhan, A. F. *Unilateral coercive measures: notion and qualification*, Journal of the Belarusian State University. International Relations, (2021), Vol. 2, at 26-48.

44. Draft articles on Responsibility of States for Internationally Wrongful Acts (2001), p. 128, https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, visited on June, 2024.

internationally wrongful act by the latter in order to procure cessation and reparation". As the ICJ mentioned in the *Gabčíkovo-Nagymaros Project* case only measures meeting "certain conditions" and "taken in response to a previous international wrongful act of another State and... directed against that State" preclude wrongfulness of such measures⁴⁵. The ILC stressed the obligations of states to meet such "circumstances", since "like other forms of self-help, countermeasures are liable to abuse and this potential is exacerbated by the factual inequalities between States"⁴⁶. In particular, such measures should be limited in scope (article 49(2), proportionate (article 51), temporal (article 53), be taken in accordance with the conditions defined (article 52).

In accordance with article 49 (1) of DARS "an injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations". It means that the fact of the international wrongful act must be well established. Article 49 (1) does not refer to "attempts", "alleged behavior", "associated behavior" as the grounds for the adoption of countermeasures. DARS doesn't establish any grounds for the adoption of countermeasures against any state, which is not responsible for an internationally wrongful act.

Countermeasures shall not affect certain types of obligations specified in article 50 (1) of DARS, which include the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations; obligations for the protection of fundamental human rights; obligations of a humanitarian character prohibiting reprisals; other obligations under peremptory norms of general international law.

As Ruys specifies "Retortions, however, are fundamentally different in that they involve measures of discourtesy or unfriendliness vis-à-vis another State but which are a priori not inconsistent with any international obligation of the State engaging in them"⁴⁷.

Unilateral measures adopted to broaden the scope of sanctions' regime under the UN Security Council or not constituting retortions or countermeasures adopted in accordance with international law are illegal and constitute unilateral coercive measures. This qualification is reflected in a number of resolutions taken by the UN Human Rights Council⁴⁸, the UN General Assembly⁴⁹. This position was also supported and reiterated

49. Human rights and unilateral coercive measures, A/RES/69/180, paras 5–6, www.ohchr.org/Documents/Issues/UCM/Res/A-RES-69-180.pdf, visited on June, 2024; Human rights

in the reports and communications by the UN Special Rapporteur on the negative impact of UCMs on the enjoyment of human rights⁵⁰.

Alongside with traditional unilateral sanctions involving travel bans, freeze of assets, export control measures, restrictive measures adopted in cyber area include sanctions on trade in and access to software; the prevention of access to online banking; defamation campaigns and threats with sanctions as part of sanctions regimes; the blocking of access to online platforms⁵¹. The term “ICT-related” unilateral sanctions is used to cover these measures of coercion in the present research.

There is no common typology of technologies subject to limitations in accordance with unilateral sanctions. In accordance with para § 542.309 of the Code of Federal Regulations of the United States the term *information and communications technology* means any hardware, software, or other product or service primarily intended to fulfill or enable the function of information processing and communication by electronic means, including transmission and display, including via the Internet⁵².

Dual-use software or technology (usable for both civil and military purposes) can be subject to limitations under article 2 of The Export Control Order 2008 of the United Kingdom. Such dual-use items include physical goods, software and technology set out in the list of categories which include, among others, “electronics; computers; telecommunications and information security; sensors and lasers. Each category can belong to systems equipment and components; test, inspection and production equipment; materials; software or technology⁵³. “Digital assets” and “digital

and unilateral coercive measures, A/RES/70/151, paras 5–6, www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/151, visited on June, 2024; Human rights and unilateral coercive measures, A/RES/71/193, paras 5–6, www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/193, visited on June.

50. A/HRC/57/55, para. 84; A/79/183, paras. 6, 14; Joint Communication from Special Procedures, AL USA 20/2024, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=29224>, visited on June, 2024; Joint Communication from Special Procedures, AL USA 11/2024, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28933>, visited on June, 2024 etc.

51. A/77/296, paras. 2, 25, 38.

52. Part 542 – Syrian Sanctions Regulations, <https://www.ecfr.gov/current/title-31/subtitle-B/chapter-V/part-542#542.300>, visited on June, 2024.

53. Guidance: Export controls: dual-use items, software and technology, goods for torture and radioactive sources, <https://www.gov.uk/guidance/export-controls-dual-use-items->

currency” are covered by the term “property” in accordance with Canadian legislation (article 2 of the Special Economic Measures Act 1992)⁵⁴.

EU law also does not contain a definition of the term “information and communication technologies” for the purposes of introducing the ICT. However, restrictions on the export of certain goods are contained in lists that are annexes to the relevant EU Council Regulations (e.g. Annex IV, VII to Regulation 833/2014; Annex II to Regulation 2017/2063; Annex IV to Regulation 359/2011; Annex IV to Regulation 765/2006, Annex Va to Regulation 765/2006; Annex III to Regulation 401/2013).

Another issue is the practice of overcompliance and zero-risk policy that provoke not only “creeping” negative extraterritorial effects⁵⁵, but also impact the most vulnerable groups⁵⁶.

Negative effect of unilateral coercive measures on cyber infrastructure and Internet

Human rights implications of ICT-related unilateral sanctions embrace all types of human rights (civil, political, social, economic, cultural) with respect to individuals as well as peoples (right to development, right to international solidarity)⁵⁷. However, they also affect the functioning of the Internet itself.

The adoption of such unilateral sanctions leads to direct and indirect consequences, and affects not only the states against which such measures are imposed, but also third states, states imposing sanctions, and the functioning of the global Internet as a whole. The adoption of such coercive measures cause different negative consequence that include, among others, the following ones.

software-and-technology-goods-for-torture-and-radioactive-sources#dual-use-items-software-and-technology, visited on June, 2024.

54. Special Economic Measures Act 1992, <https://laws-lois.justice.gc.ca/eng/acts/s-14.5/page-1.html>, visited on June, 2024.

55. A/78/196, paras. 59-61.

56. Impact of unilateral coercive measures on the right to health, A/HRC/54/23, para 21, <https://documents.un.org/doc/undoc/gen/g23/148/52/pdf/g2314852.pdf>, visited on June, 2024.

57. A/77/296.

1. The imposition of ICT-related UCMs contribute to the fragmentation of the Internet.

A study by the United Nations Institute for Disarmament Research indicates that “the fragmentation of the Internet at the technical level has the potential to destroy an open, secure, stable, accessible and peaceful ICT environment, which will have enormous consequences for cybersecurity”⁵⁸.

Two of the three groups of reasons for Internet fragmentation indicated in the present research are related to the use of unilateral sanctions (development of new solutions to the problem of differences in technical critical components that diverge from current international standards and protocols; technical deficiencies or limitations in the design and development of critical components of the Internet).

The adoption of measures by the state aimed at mitigating the consequences of the adopted UCMs in the area discussed may lead to the emergence of new technical solutions that are inconsistent with the existing ones, which may have negative consequences for ensuring an open Internet. The rapid adoption of the Internet protocol IPV6 in the developed countries while the developing countries still have to use the IPV4 protocol can lead to fragmentation of the Internet, since in the absence of coordinated approaches it results in the incompatibility of network equipment. To date, the transition to IPV6 in France is 73.71%, in Germany – 72.43%, in the USA – 52.77%, in the UK – 47.31%, in Canada – 40.48%, while in the Republic of South Africa – 0%, the Democratic Republic of the Congo – 2.74%, Cuba – 0.26%, Venezuela – 3.13%, Syria – 0.12%, North Korea – 0%⁵⁹. This data already demonstrates a clear gap between states introducing unilateral sanctions and some targeted states.

Developing countries or countries in crisis, whose technical capabilities are already limited, face much more challenges in the context of the adoption of ICT-related UCMs, both as a direct consequence of their application and indirect one (for example, the inability to pay for software or services due to banking restrictions). For example, according to the most recent statistics provided by the World Bank Group, only 11% of the

58. Accelerating ICT Security Capacity-Building, https://undir.org/wp-content/uploads/2024/06/UNIDIR_Accelerating_ICT_Security-Capacity_Building_Take_Aways_from_the_Global_Roundtable_on_ICT_Security_Capacity_Building.pdf, visited on June, 2024.

59. Statistics, <https://www.google.com/intl/en/ipv6/statistics.html#tab=per-country-ipv6-adoption>, visited on July, 2024.

population of the Central African Republic (2021), 23% of the population of the Democratic Republic of the Congo (2021), 18% of the population of Afghanistan (2020), 28% of the population of Sudan, 35% of the population of Zimbabwe (2021), 36% of the population of Syria, all of whom are subject to unilateral sanctions, have access to the Internet⁶⁰. These countries had 6 (Central African Republic, 2020), 345 (Democratic Republic of the Congo, 2020), 1362 (Afghanistan, 2020), 282 (Sudan, 2020), 1107 (Zimbabwe, 2020), 686 (Syria, 2020)⁶¹ protected servers, respectively. For comparison, Austria had 301,414 in 2020, and the Czech Republic had 723,194 protected servers respectively⁶².

Despite the fact that the numerical indicators of the parameters considered gradually increased from 2010 to 2020 in all these countries, in absolute terms they are quite low, and therefore it can be concluded that their growth could have been restrained, among other things, by the adopted UCMs. As highlighted by the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security (hereinafter referred to as the GGE), immediate implementation of rules for responsible state behaviour in cyberspace may not be possible, in particular for developing states that do not yet have the necessary capacity (paragraph 14 of the 2015 GGE report)⁶³.

Information infrastructure is usually considered as a means that increasingly interconnect and affect the operations of critical infrastructure⁶⁴.

60. Individuals using the Internet (% of population), <https://databank.worldbank.org/reports.aspx?dsid=2&series=IT.NET.USER.ZS>, visited on July, 2024.

61. Secure Internet servers, https://data.worldbank.org/indicator/IT.NET.SECR?name_desc=false, visited on June, 2024.

62. Report of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security, A/70/174, <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/70/174&Lang=E>, visited on July, 2024.

63. Report of the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security*, A/76/135, <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/76/135&Lang=E>, visited on July, 2024.

64. Creation of a global culture of cybersecurity and the protection of critical information infrastructures, A/RES/58/199, <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/RES/58/199&Lang=E>, visited on July, 2024.

However, the question what constitute to be “critical” depends on national approaches greatly, which also may change over time⁶⁵.

Any ICT-related UCMs adversely affecting critical information infrastructure bring about harmful consequences for critical infrastructure itself. As the UN Special Rapporteur on the negative impact of UCMs on the enjoyment of human rights concluded during her visit to Syrian Arab Republic “the protection of human rights in the Syrian Arab Republic is not possible without rebuilding all critical infrastructure and services”⁶⁶. Therefore, she called to “to remove, in particular, all restrictions on trade, financial payments and delivery of critical goods and goods essential for the reconstruction and functioning of critical infrastructure, including <...> communication and transportation equipment, which are essential for the enjoyment of human rights by Syrians”⁶⁷.

Extensive pressure exerting by multiply sanctions regimes, means of their enforcement and practice of overcompliance may be qualified as crimes against humanity⁶⁸. Such measures significantly aggravate humanitarian crisis and hinder the ability of the country to detect and respond cyber attacks. For example, as a result of cyber attack against the electrical, telecommunication and internet systems, which lasted for 50 hours in Venezuela in 2019, 43 people died, mainly because of the lack of medical service⁶⁹.

In accordance with the Norms, rules and principles for the responsible behavior of States, proposed in the GGE Report 2015, a State should not conduct or knowingly support ICT activity contrary to its obligations under international law that intentionally damages critical infrastructure or otherwise impairs the use and operation of critical infrastructure to provide services to the public (article 13 (f)

65. Physical protection of critical infrastructure against terrorist attacks (2017), p. 3, <https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/cted-trends-report-march-2017-final.pdf>, visited on July, 2024.

66. Visit to the Syrian Arab Republic, A/HRC/54/23/Add.1, para. 86, <https://documents.un.org/doc/undoc/gen/g23/127/57/pdf/g2312757.pdf>, visited on July, 2024.

67. *Ibid*, para. 88 (b).

68. Venezuela II, ICC-01/20, <https://www.icc-cpi.int/venezuela-ii>, visited on July, 2024; A/HRC/54/23/Add.1, para 86.

69. Apagón en Venezuela: Maduro denuncia un "ciberataque", <https://es.euronews.com/2019/03/10/apagon-en-venezuela-maduro-denuncia-un-ciberataque>, visited on September, 2024.

2. Affect the integrity of the ICT supply chains and the security of ICTs themselves.

The critical importance of an open, secure, stable, accessible and peaceful ICT environment for all was emphasized in the report of the Group of Governmental Experts on Promoting Responsible State Behavior in Cyberspace in the Context of International Security (paragraph 5 of the report)⁷⁰, as well as the 2015 report of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security (paragraph 2 of the report)⁷¹. Moreover, ensuring an open, secure, stable, accessible and peaceful ICT environment has actually been one of the goals of the multilateral process related to ensuring ICT security, conducted within the UN in the context of the work of the Groups of Governmental Experts (section II of the 2013 report⁷², para. 13 of the 2015 report⁷³) and the Open-Ended Group (para. 9 of the 2023 report⁷⁴). As the UN Secretary-General emphasized, “All States should participate in efforts to enhance the security of cyberspace. Our efforts in this area should be aimed at maintaining the global commitment to promoting an open, secure and peaceful Internet”⁷⁵. The importance of international cooperation to ensure the effectiveness of measures to enhance information security was outlined by the UN Secretary-General in the 2011 GGE report⁷⁶.

As it's provided in the Norms, rules and principles for the responsible behaviour of States, proposed in the GGE Report 2015 “consistent with the purposes of the United Nations, including to maintain international peace and security, States should cooperate in developing and applying measures to increase stability and security in the use of ICTs and to prevent ICT practices that are acknowledged to be harmful or that may pose threats to

70. A/76/135.

71. A/70/174.

72. *Ibid.*

73. *Ibid.*

74. Report of the open-ended working group on security of and in the use of information and communications technologies 2021-2025, A/78/265, <https://undocs.org/en/A/78/265>, visited on September, 2024.

75. A/70/174.

76. Report of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security, A/65/201, <https://undocs.org/Home/Mobile?FinalSymbol=A%2F65%2F201&Language=E&DeviceType=Desktop&LangRequested=False>, visited on September, 2024.

international peace and security⁷⁷ (para. a). The adoption of ICT-related unilateral sanctions and the practice of overcompliance directly undermines this rule.

3. Unilateral sanctions contribute to malicious abuses of a low level of cybersecurity.

ICT-related UCMs reduces the technical capabilities of the state and contributes to the abuse of such a situation by various non-state actors, including transnational organized criminal groups, terrorist groups, etc. Such consequences may give rise to threats to international peace and security (in particular, the use of ICT for terrorist purposes).

Adverse impact of ICT-related UCMs on the right to development

The right to development derives from articles 1, 55 and 56 of the UN Charter⁷⁸ and is also reflected in a number of treaties on human rights, including the International Covenants on human rights⁷⁹. In accordance with article 1(1) of the Declaration on the right to development “the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized”⁸⁰. Article 1(2) stipulates that “the human right to development also implies the full realization of the right of peoples to self-determination”⁸¹.

Despite the fact the Declaration on the right to development is not legally binding itself it clarifies the already existing treaty and customary international rules and provides a “guiding standard” for the right of development⁸².

77. A/70/174.

78. Charter of the United Nations, <https://www.refworld.org/legal/constinstr/un/1945/en/27654>, visited on September, 2024.

79. International Covenant on Civil and Political Rights, United Nations Treaty Series, vol. 999, Dec. 1966, p. 171; International Covenant on Economic, Social and Cultural Rights, United Nations Treaty Series, vol. 993, p. 3.

80. Declaration on the Right to Development, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-development>, visited on September, 2024.

81. *Ibid.*

82. Report of the Special Rapporteur on the right to development, A/HRC/36/49, paras. 9-10, <https://documents.un.org/doc/undoc/gen/g17/229/68/pdf/g1722968.pdf>, visited on September, 2024.

ICTs are a necessary precondition to development in a contemporary world. UN General Assembly notes that rapid technological change can contribute to the faster achievement of the 2030 Agenda for sustainable development⁸³. It specifically addresses the need “to take actions to bridge the digital and knowledge divides⁸⁴”, “the need to provide universal, meaningful and affordable access to the Internet by 2030, including meaningful use of digitally enabled services, in line with the Sustainable Development Goals”⁸⁵ and affirms that “the same rights that people have offline must also be protected online”⁸⁶. As the United Nations Development Programme highlighted in its Digital Strategy for 2022-2025 “countries with developed digital infrastructures such as digital payments and identification systems have responded more effectively to the COVID-19 pandemic than countries whose digital infrastructures are less developed”. The International Telecommunication Union emphasizes that “information and communication technologies (ICTs) can help accelerate progress towards every single one of the 17 United Nations Sustainable Development Goals (SDGs)”⁸⁷. In particular, they can help to reduce poverty and hunger, boost health, create new jobs, help mitigate climate change, improve energy efficiency, and make cities and communities more sustainable⁸⁸.

ICT-related unilateral sanctions affect the right to development in many ways. The restrictions on the exportation or re-exportation, sale, or supply of services, software, hardware, or technology incident to the exchange of communications over the Internet, as well as barriers to access to information prevents directly impede the right to development in particular articles 3, 5 and 6(3). Unfortunately, the developing countries particularly vulnerable to any measures taken with respect to ICTs, since their basic humanitarian indicators such as access to Internet, proportion of schools

83. Impact of rapid technological change on the achievement of the Sustainable Development Goals and targets, A/RES/77/320, preamble, <https://documents.un.org/doc/undoc/gen/n23/227/47/pdf/n2322747.pdf>, visited on September, 2024.

84. *Ibid.*, para 2.

85. *Ibid.*, para 3.

86. *Ibid.*, para 4.

87. Digital technologies to achieve the UN SDGs, <https://www.itu.int/en/mediacentre/backgrounders/Pages/icts-to-achieve-the-united-nations-sustainable-development-goals.aspx>, visited on September, 2024.

88. *Ibid.*

with access to Internet, proportion of population covered by a mobile network, by technology are extremely low⁸⁹.

In low-income countries, 70 percent of households are not yet covered by fixed broadband networks, 33 percent are out of reach of mobile internet (4G), and 234 million fewer women than men use mobile internet, with women 15 percent less likely to own a smartphone⁹⁰. The adoption of UCMs against such states aggravates the situation and significantly decreases their possibilities in bridging digital divide. Moreover, as it has been previously commented in the present research, UCMs contribute to the fragmentation of technical solutions necessary for the functioning of the Internet, threatening its global nature, openness and connectivity, which constitutes an impediment to the enjoyment of most human rights⁹¹.

For that reason, the UN Special Rapporteur on the right to development mentions that “states should counter adverse trends, such as the imposition of unilateral coercive measures, that negatively affect multilateral cooperation and create obstacles to development”⁹².

The UN Secretary General also notes that “developed countries are seizing most of the opportunities and developing countries are at risk of missing this technological revolution”⁹³. The UCMs only reinforce the dominant positions in IT sector of the sanctioning states deepening the development gap, since the “trade in software limited as part of a sanctions regime”⁹⁴.

In fact, ICT-related sanctions negatively affect almost all areas of the development (social, economic, cultural development)⁹⁵, since the use of

89. Annex I. Preliminary results of the monitoring and impact assessment of negative impact of unilateral coercive measures on the enjoyment of human rights, <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session57/A-HRC-57-55-AnnexI.pdf>, visited on September, 2024.

90. Digital Strategy 2022 — 2025, p. 6, https://digitalstrategy.undp.org/documents/Digital-Strategy-2022-2025-Full-Documents_ENG_Interactive.pdf, visited on September, 2024.

91. Promotion and protection of human rights in the context of digital technologies, A/RES/78/213, Preamble, <https://documents.un.org/doc/undoc/gen/n23/422/28/pdf/n2342228.pdf>, visited on September, 2024.

92. Right to development, A/HRC/42/38, para. 83, <https://documents.un.org/doc/undoc/gen/g19/197/03/pdf/g1919703.pdf>, visited on September, 2024.

93. Science, technology and innovation for sustainable development, para 17, A/78/232, <https://documents.un.org/doc/undoc/gen/n23/218/81/pdf/n2321881.pdf>, visited on September, 2024.

94. A/77/296, para. 25.

95. *Ibid.*

the Internet is necessary to ensure all types of advancements within them. Moreover, the right to development implies the realization of the right to self-determination. The International Covenant on Civil and Political Rights setting forth the right determines that all peoples have the right freely “to pursue their economic, social and cultural development” (article 1(1)). The same provision is enshrined in the Declaration on the Granting of Independence to Colonial Countries and Peoples⁹⁶ and the Declaration on friendly relations⁹⁷. The right to self-determination is a peremptory norm of international public law⁹⁸ and “no derogation from it permitted” under international law⁹⁹.

The adoption of UCMs that deprive certain peoples of the opportunity to enjoy the results of technical progress violates subparagraph b of paragraph 1 of Article 15 of the International Covenant on Economic, Social and Cultural Rights of 1966, and is also a clear violation of the right to development and international solidarity. In the absence of technical tools for identifying and responding to cyber threats, as a result of the adoption of unilateral coercive measures, not only are the rights of individuals located on the territory of such states directly violated (the right to health, the right to education, the right to work, etc.), but also indirectly, when the state is not fully capable of preventing and prosecuting cybercrimes, since there is no technical capability for such activities.

As it's stated in the Draft convention on the right to development “the realization of the right to development requires an enabling national and international environment created through a spirit of cooperation and unity among individuals, peoples, States and international organizations, encompassing the union of interests, purposes and actions and the recognition of different needs and rights to achieve common goals everywhere. This principle includes the duty to cooperate with complete respect for the principles of international law” (article 3(i)). Any measures taken to isolate any

96. Declaration on the Granting of Independence to Colonial Countries and Peoples, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-granting-independence-colonial-countries-and-peoples>, visited on September, 2024.

97. Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, <https://www.refworld.org/legal/resolution/unga/1970/en/19494>, visited on September, 2024.

98. Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens) (2022), Annex, https://legal.un.org/ilc/texts/instruments/english/draft_articles/1_14_2022.pdf, visited on September, 2024.

99. Vienna Convention on the Law of Treaties, United Nations Treaty Series, vol. 1155, p. 331, article 53.

states, to delay its technological development and to deepen digital divide constitute a breach of the principle of international solidarity formulated in article 3(i) of the Draft convention. Despite the fact the Draft convention on the right to development is not a binding treaty as for now, the principle of international solidarity is based on article 1 (3) of the UN Charter stipulating the duty “to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights”¹⁰⁰.

As the Independent Expert on International Solidarity and human rights emphasized “a threat to human rights-based international solidarity because countries governed by populist leaders tend to focus excessively on their national audience and its well-being, forgetting about the principles encompassed by the Charter of the United Nations and other instruments and by the draft declaration on the right to international solidarity, especially when the need to address potential or existing global crises and challenges requires concerted and common action”¹⁰¹

Negative influence of UCMs on the enjoyment of individual human rights

The adoption of ICT-related UCMs directly violates a number of individual fundamental human rights. As the Human Rights Council states “the same rights that people have offline must also be protected online <...>”¹⁰². The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, “the Internet, as a medium by which the right to freedom of expression can be exercised, can only serve its purpose if States assume their commitment to develop effective policies to attain universal access to the Internet.’ And ‘given that the Internet has become an indispensable tool for realizing a range of human rights... ensuring universal access to the Internet should be a priority for all States”¹⁰³. It means that any ICT-related UCMs will directly affect the enjoyment of such rights.

100. Charter of the United Nations.

101. Human rights and international solidarity, A/75/180, para 34, <https://documents.un.org/doc/undoc/gen/n20/188/09/pdf/n2018809.pdf>, visited on September, 2024.

102. A/HRC/RES/32/13.

103. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue (2011), https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf, visited on September, 2024.

Access to the Internet is considered as a “human rights enabler”¹⁰⁴ and even as a newly emerged digital right¹⁰⁵. Thus, ICT-related UCMs negatively affect the implementation of all human rights online as well as hindering the right to Internet access as such.

As concerns ‘traditional’ human rights, the UN Special Rapporteur on the negative impact of UCMs on the enjoyment of human rights in her thematic report on the topic “Unilateral sanctions in the cyberworld: tendencies and challenges” mentions the following rights affected by the UCMs taken in response to cybercrime: access to justice and the right to due process, property rights, freedom of movement, right to protection of personal life and right to reputation, as well as economic, labour and social rights (para. 55), personal data protection (para. 57), the right to equality before courts and tribunal, the presumption of innocence (para. 58). As concerns ICT-related unilateral sanctions the following human rights are impacted: the right for equal participation in academic cooperation and access to information and the right to benefit from scientific progress (para. 62), the right to development, the right to freedom of opinion and expression (para. 63); the right to access to information, freedom of communication, education and decent work and other economic rights, and freedom of expression from discrimination (para. 66). The Special Rapporteur emphasizes that the dissemination of hostile propaganda over the Internet and incitement to hostilities constitutes direct violation of the right to life (para. 68)¹⁰⁶.

Other areas of direct influence by ICT-related include education and healthcare (restriction on trade in software and technology, providing telecommunication, software and online service)¹⁰⁷; the right to life

104. Mapping report: human rights and new and emerging digital technologies, A/HRC/56/45, para. 4, <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session56/advance-versions/a-hrc-56-45-auv.docx>, visited on September, 2024.

105. The right to Internet access, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20870>, visited on September, 2024; Mildebrath H. Internet access as a fundamental right. Exploring aspects of connectivity, [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/696170/EPRS_STU\(2021\)696170_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/696170/EPRS_STU(2021)696170_EN.pdf), visited on September, 2024; Pollicino O. The Right to Internet Access: Quid Iuris? The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric, Cambridge University Press (2020), at 263-275 etc.

106. A/77/296.

107. A/HRC/54/23/Add.1, paras. 45, 66; A/HRC/54/23, paras. 17, 21, 22, 30, 39, 46; Visit to the Islamic Republic of Iran, A/HRC/51/33/Add.1, para. 35, <https://documents.un.org/doc/undoc/gen/g22/511/85/pdf/g2251185.pdf>, visited on June, 2024.

(technical upgrades and software for civil aviation)¹⁰⁸, rehabilitation and maintenance of critical infrastructure (restriction to provide spare parts and software for power plants, refineries and water pump stations, or block financial transactions)¹⁰⁹; the right to justice (the absence and insufficiency of resources and software for proper online judiciary)¹¹⁰.

During the pandemic negative effects of UCMs significantly increased. For example, “services and software couldn’t be used for commercial Internet services or connectivity, for example, even for non-commercial activity, as the result of service agreements (as concerns those living in the Democratic People’s Republic of Korea, Iran (Islamic Republic of), the Syrian Arab Republic and Crimea) or through legislation of the United States, even for contacts and coordination among doctors to exchange their experiences on symptoms, diagnostics and means of treatment”¹¹¹ etc.

The adoption of ICT-related unilateral sanctions is only growing alongside the practice of overcompliance by IT companies. In certain situations, these restrictions are manifestly harmful for the enjoyment of core human rights. For example, the victims of conflict-related sexual violence in military conflicts from Syria are reported not to be able to access the webpage to submit complaints on the UN Against Sexual Violence in Conflict platform due to IP-bans exercised by the US-based IT companies¹¹².

The restrictions to access IT products and services are taken towards the population of the sanctioned countries as a whole¹¹³, causing impediments to the full enjoyment of human rights by vulnerable groups, including children and women.

Indirect influence of ICT-related UCMs and overcompliance results in the inability to carry out online payments to procure goods and services for humanitarian purposes¹¹⁴; to develop medical qualifications due to the nationality-based access bans to online platforms (including PubMed);

108. A/HRC/54/23/Add.1, para. 64; A/HRC/51/33/Add.1, para. 53.

109. A/HRC/54/23/Add.1, paras. 27, 78.

110. Access to justice in the face of unilateral sanctions and overcompliance, A/79/183, para. 53, <https://documents.un.org/doc/undoc/gen/n24/213/84/pdf/n2421384.pdf>, visited on June, 2024.

111. Negative impact of unilateral coercive measures on the enjoyment of human rights in the coronavirus disease pandemic, A/75/209, para. 62, <https://documents.un.org/doc/undoc/gen/n20/190/03/pdf/n2019003.pdf>, visited on June, 2024.

112. AL USA 11/2024.

113. AL USA 11/2024.

114. A/78/196, paras. 57, 72.

subscribing to and publishing in medical journals; paying for membership of international academic and professional health associations and participating in medical conferences and joint research etc.¹¹⁵

ICT-related unilateral sanctions negatively impact digital rights

The denial of services by the Internet providers, operators of searching engines to individuals located in the sanctioned states or as a result of overcompliance may hinder the right to be forgotten. Under this right the user requests that organizations remove and delete personal information about them from online platforms¹¹⁶. Despite the fact this right is not directly enshrined in the universal human rights instruments and is differently approached in different states¹¹⁷, it derives from the right to privacy introduced in article 12 of the Universal Declaration of Human Rights¹¹⁸, article 17 of the International Covenant on Civil and Political Rights¹¹⁹ and should be guaranteed. As the UN High Commissioner for Human Rights notes that at a minimum, the persons whose data is being processed “have a right to know that personal data has been retained and processed, to have access to the data stored, to rectify data that is inaccurate or outdated and to delete or rectify data unlawfully or unnecessarily stored”¹²⁰.

Under a new Frequently Asked Question (FAQ) published by OFAC with respect to a new determination under Executive Order 14701 against Russia the term information technology support services is understood to mean among others “other IT technical support services not elsewhere classified”¹²¹ potentially affecting the enjoyment of the right to be

115. A/HRC/54/23, para. 46.

116. Understanding the “Right to be forgotten” globally, https://www.accessnow.org/wp-content/uploads/2017/09/RTBF_Sep_2016.pdf, visited on June, 2024.

117. Kohl U. *The right to be forgotten in data protection law and two western cultures of privacy*. International and Comparative Law Quarterly (2023), Vol. 72(3), at 737-769; Susi M. *The Right to Be Forgotten*, The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric (2020), at 287-299 etc.

118. The Universal Declaration of Human Rights, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, visited on June, 2024.

119. International Covenant on Civil and Political Rights.

120. The right to privacy in the digital age, A/HRC/39/29, para. 30, <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/39/29&Lang=E>, visited on June, 2024.

121. 1187. How does OFAC intend to interpret the following terms in the determination, “Prohibition on Certain Information Technology and Software Services,” pursuant to Executive Order (E.O.) 14071 (the “IT and Software Services Determination”): “enterprise management software,” “design and manufacturing software,” “cloud-based services,”

forgotten even at a minimum extent as it is commented by the UN High Commissioner for Human Rights.

The adoption of UCMs connected with import and export restrictions of software and technologies inevitably impact newly emerging digital rights at least the right to cybersecurity¹²². The suspension of broadcasting activities of Russia Today (RT) and Sputnik in the EU in 2022 as well as Voice of Europe, RIA Novosti, Izvestia and Rossiyskaya Gazeta in 2024 clearly constitute a violation of the right to net neutrality¹²³ (freedom to choose among information sources) proclaimed by Special Rapporteur on freedom of opinion and expression¹²⁴.

Since digital rights themselves are not systematized in any universal international treaty, their list is highly debatable. Thus, any further possible assessment of negative impact of UCMs and overcompliance also depends on what could be considered as a digital right. There are a few initiatives taken at non-official and official regional levels on that matter. In particular, the non-binding Charter of Human Rights and Principles for the Internet adopted by the Internet Rights and Principles Dynamic Coalition raise more awareness about the protection and enjoyment of human rights online¹²⁵. The documents aims to interpret and explain universal human rights standards in a new context of the Internet and to re-emphasizes that human rights apply online as they do offline¹²⁶. The Charter contains 19 groups of such rights and also applicable responsibilities on the Internet (right to access to the Internet, right to non-discrimination in Internet access, use & governance, right to development through the Internet, right to liberty & security on the Internet, right to culture & access to knowledge

“information technology support services,” and “information technology consultancy and design services”? <https://ofac.treasury.gov/faqs/1187>, visited on June, 2024.

122. Brown D., Esterhuysen A. Why cybersecurity is a human rights issue, and it is time to start treating it like one, <https://www.apc.org/en/news/why-cybersecurity-human-rights-issue-and-it-time-start-treating-it-one>, visited on June, 2024.

123. Christoph B. Graber. Net Neutrality: A Fundamental Right in the Digital Constitution? *Indiana Journal of Global Legal Studies* (2023), Vol. 30, Issue 2, at 197-226; Carys J. Craig. Technological Neutrality: (Pre)Serving the Purposes of Copyright Law, <https://books.openedition.org/uop/977>, visited on June, 2024.

124. The role of digital access providers, A/HRC/35/22, para. 23, <https://documents.un.org/doc/undoc/gen/g17/077/46/pdf/g1707746.pdf>, visited on June, 2024.

125. The Charter of human rights and principles for the Internet, https://drive.google.com/file/d/1Hgsgl1-Irxe_3angb8GJoIdlK9nScaEi/view, visited on June, 2024.

126. *Ibid.*

on the Internet, right to work & the Internet etc.)¹²⁷. Some earlier initiatives include the APC Internet Rights Charter¹²⁸, which contains a proposed list themes (Internet access for all, access to knowledge etc.) and the corresponding digital rights (the right to share, the right to free and open source software (FOSS), the right to use encryption, the right to transparency and accessibility etc.)¹²⁹.

The regional initiative to develop a list of digital rights is embodied in the European Declaration on Digital Rights and Principles for the Digital Decade¹³⁰. By contrast, the Declaration “spells the shared political intentions and commitments, and recalls the most relevant rights in the context of the digital transformation” in the EU (para. 7 of the Preamble), thus, not only interpreting existing human rights treaties, but also introducing some new once.

UCMs can indirectly affect the enjoyment of human rights online, even if they don’t involve any ICT-related measures of coercion or specifically adopted in respect to alleged malicious cyber activities. For instance, shortages of fuel in the Bolivarian Republic of Venezuela result in electricity shutdowns that quite often make access to the Internet impossible¹³¹.

Conclusions

ICT-related unilateral sanctions greatly impact the functioning of the Internet itself. Such restrictions alongside with the practice of overcompliance lead a series of negative consequences. In particular, imposition of ICT-related UCMs contributes to the fragmentation of the Internet, affects the integrity of the ICT supply chains and the security of ICTs themselves. Cyber-related unilateral sanctions contribute to malicious abuses of a low level of cybersecurity.

ICT-related UCMs are illegal under international law and have adverse effects on collective (the right to development, the right to self-determination, the right to international solidarity) and individual human rights.

127. *Ibid.*

128. APC Internet Rights Charter, https://www.apc.org/sites/default/files/APC_charter_EN_1.pdf, visited on June, 2024.

129. *Ibid.*

130. European Declaration on Digital Rights and Principles for the Digital Decade 2023/C 23/01, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOC_2023_023_R_0001, visited on June, 2024.

131. AL USA 11/2024.

ICT-related sanctions negatively affect almost all areas of the development (social, economic, cultural development), since the use of the Internet is necessary to ensure all types of advancements within them.

The list of the affected individual rights is really broad and include all fundamental rights guaranteed by core international treaties on human rights. Moreover, since the ICT-related UCMs concern digital life they also influence the enjoyment of digital rights. In fact, any UCMs may negatively affect digital rights indirectly due to the broad effects of such measures on humanitarian situation.

As the present research reveals, UCMs adversely impact the right to access to Internet, the right to net neutrality, the right to cybersecurity. They also can impede the realization of the right to be forgotten. As far as the list of such rights is not embodied at any universal instrument on human rights, the scope of such rights is one of the developing area in international human rights law, the issue of impact of UCMs on digital rights needs systematic academic analysis.

SECTION III.

IMPACT OF UNILATERAL SANCTIONS AND OVER-COMPLIANCE ON HUMAN RIGHTS IN SPECIFIC COUNTRIES

CHAPTER XI

Impact of unilateral sanctions on human rights in Iran

(Dr. P. Askari)

Introduction

Since the Islamic Revolution in 1979, Iran has been entangled in intricate and persistent theoretical and practical disputes with the Western world, especially the United States (US). As a result, the Iranian population has endured the substantial burden of US-imposed sanctions for more than four decades.

This article primarily scrutinizes the repercussions of the US sanctions on human rights within Iran. It commences with a succinct exploration of the historical factors that have molded the protracted struggle between Iran and the US. Subsequently, it probes into the ramifications of the US sanctions on Iran's economy and the daily lives of its citizens. The article concludes by analyzing the evolving discourse on human rights, suggesting ways to mitigate the adverse effects of sanctions on human rights, with an emphasis on nascent concepts within the international human rights law sphere.

The Intricate Past and Present Relations Between Iran and the US

The persistent political discord between Iran and the United States of America has been a major contributor to the unilateral coercive measures (UCMs) that the US has imposed on Iran. This conflict originated from the victory of the Islamic Revolution in Iran in 1979. The Shah of Iran, Mohammad Reza Pahlavi, had strong ties with the US, and the US support was crucial in assisting the Shah through various domestic crises. The US intervention was notably significant in the 1953 overthrow of Prime Minister Mohammad Mossadegh. US officials have openly admitted their involvement in Mossadegh's removal, and in a recent revelation in 2023, the CIA publicly admitted that the 1953 coup against Mossadegh was undemocratic.¹

1. J.Gambrell, "CIA publicly acknowledges 1953 coup it backed in Iran was undemocratic as it revisits 'Argo' rescue", Associated Press, 12 October 2023, apnews.com/article/iran-1953-coup-cia-218323db3cc1aca6bde1e54827527e8d, visited on 6 January 2024.

The US interference in Iran's internal affairs was a primary catalyst for the resentment that fueled the Islamic Revolution against the Pahlavi dynasty and US imperialism.² Following the Revolution's triumph, a faction of students took control of the US embassy in Tehran, perceiving it as a symbol of disrespect for the independence of the newly formed Islamic Republic. They believed that the embassy was actively obstructing the revolution from achieving its objectives.³ In response, the United States government took action to freeze Iranian accounts and assets \$12 billion total in the United States and abroad. The primary justification behind freezing Iran's assets was to safeguard the financial interests of the United States and to facilitate negotiations for the release of the American hostages held in Tehran.⁴ The embassy's diplomatic and consular personnel were held captive by the students for 444 days until Algerian mediators successfully persuaded both sides of the crisis to agree to the Algerian Declaration on January 19, 1981.⁵

In accordance with the Algerian Declaration, "the United States pledges that it is and from now on will be the policy of the United States not to intervene, directly or indirectly, politically or militarily, in Iran's internal affairs".⁶ Moreover, the US agreed to return the Iranian assets to Iran and nullify all the sanctions directed against Iran in the period November 4, 1979, to the date of issuance of the Declaration. The parties also agreed to establish the Iran-United States Claims Arbitral Tribunal to settle the claims between the two States arising out of contractual arrangements

2. See C. J. College, "The Iran-United States Claims Tribunal: The Effect of Future Awards on International Terrorism", *Yearbook and Arbitration and Mediation* 9, p. 4, <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1206&context=arbitrationlawreview>, visited on 6 January 2024.

3. See e.g.: M. Ayatollahi Tabaar, "Causes of the US Hostage Crisis in Iran: The Untold Account of the Communist Threat", *Security Studies*, vol. 26(4) (2017): 665-697, DOI: 10.1080/09636412.2017.1336390; F. Jahanpour, "The Roots of the Hostage Crisis", *The World Today* 48(2) (1992): 33-36, <http://www.jstor.org/stable/40396377>, visited on 6 January 2024.

4. H. Mafi, "A Review of the Iran-United States Claims Tribunal", *Revista Misión Jurídica* 13(19) (2020): 98-119, p. 100, DOI:10.25058/1794600X.1789.

5. For further details, see 40 Years Later: The Role of Algerian Diplomacy During the Iran Hostage Crisis, nesa-center.org/40-years-later-the-role-of-algerian-diplomacy-during-the-iran-hostage-crisis/, visited on 6 January 2024; See also the text of the Declaration of the Government of the Democratic and Popular Republic of Algeria (General Declaration), 19 January 1981, iusct.com/wp-content/uploads/2021/02/1-General-Declaration_.pdf, visited on 6 January 2024.

6. *Ibid.*, point I (1).

between them for the purchase and sale of goods and services, as well as, claims of nationals of the US against Iran and claims of nationals of Iran against the US arises out of the contract, transaction or occurrence, if such claims or counterclaims are outstanding on the date of the issuance of the Claims Settlement Declaration of 19 January 1981.⁷

The “General Declaration” and the “Claims Settlement Declaration”, collectively “Algiers Declarations”, were then adhered to by Iran and the United States.⁸ Between October 20, 1981, and January 1982, a total of 3,816 claims were filed. Among these, over 2,800 were categorized as small claims amounting to less than \$250,000, while 965 were classified as large claims and 74 as official claims (B-cases). Additionally, there were 25 disputes related to the interpretation or performance of the Algiers Declarations (A-cases).⁹ The Tribunal consists of nine arbitrators and sits in The Hague. To date, almost all of the private claims against the two governments have been resolved, while a few inter-governmental claims remain outstanding.¹⁰

The resolution of the cases mentioned above by the Arbitral Tribunal did not lead to a resolution of the underlying mistrust between the two States. On September 22, 1980, Iraq invaded Iran, and this conflict persisted for eight years until August 20, 1988.¹¹ Iran levelled accusations against the US for backing the Saddam Hussein regime, and the emergence of leaked documents substantiates that these allegations were not baseless. In a 2013 report, Foreign Policy disclosed that “in 1988, during the waning days of Iraq’s war with Iran, the United States learned through satellite imagery that Iran was about to gain a major strategic advantage by exploiting a hole in Iraqi defenses. U.S. intelligence officials conveyed the location of the Iranian troops to Iraq, fully aware that Hussein’s military would attack

7. Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, (Claims Settlement Declaration), 19 January 1981, [iusct.com/foundingdocuments-2/#1691403316137-6fcd4efb-918f](https://www.uscis.gov/foundingdocuments-2/#1691403316137-6fcd4efb-918f), visited on 6 January 2024.

8. See Iran-United States Claims Tribunal website, iusct.com/introduction/.

9. H. Mafi, *supra* note 4, p. 101; see also D. Charlotin, “A Data Analysis of the Iran-US Claims Tribunal’s Jurisprudence - Lessons for International Dispute-Settlement Today”, *Journal of International Dispute Settlement* 10(3) (2019): 443-471, DOI: 10.1093/jnlids/idz010.

10. Iran-United States Claims Tribunal, Georgetown Law Library, <https://guides.ll.georgetown.edu/c.php?g=371540&p=4191654>, visited on 6 January 2024.

11. Iran-Iraq War, History.com, 13 July 2021, <https://history.com/topics/middle-east/iran-iraq-war>, visited on 6 January 2024.

with chemical weapons, including sarin, a lethal nerve agent”.¹² In October 1987 and April 1988, there were attacks by US troops against Iranian oil platforms, leading to the issuance of a judgment by the International Court of Justice (ICJ) in November 2003 confirming that these attacks were not justified.¹³

Iran has consistently faced accusations from the US for human rights violations and supporting terrorism. Following the 9/11 attacks, former US President George W. Bush included Iran in the so-called “axis of evil.”¹⁴ These accusations have led to the filing of numerous cases against Iran in the domestic courts of the US. Iran does not participate in these proceedings because it believes that they violate Iran’s judicial immunity. Nevertheless, the US courts have convicted Iran of paying billions of dollars to the alleged victims.¹⁵ On one occasion, a judgment against the Central Bank of Iran (Bank Markazi) prompted Iran to bring the case to the ICJ. In its 2016 application, Iran stated that: “the USA has for many years adopted the position that Iran may be designated a State sponsoring terrorism (a designation which Iran strongly contests). Consequent upon the enactment of the legislative and executive acts [...], a wide series of claims and enforcement proceedings have been determined or are underway against Iran and Iranian entities in the USA. As at the date of this Application, US courts had awarded total damages of over USD 56 billion (consisting in approximately USD 26 billion in compensatory damages and USD 30 billion in punitive damages) against Iran in respect of its alleged involvement in various terrorist acts mainly outside the USA. On 9 March 2016, the US District Court for the Southern District of New York ordered

12. S. Harris and M. M. Aid, “Exclusive: CIA Files Prove America Helped Saddam as He Gassed Iran”, *Foreign Policy*, 26 August 2013, <https://foreignpolicy.com/2013/08/26/exclusive-cia-files-prove-america-helped-saddam-as-he-gassed-iran/>, visited on 6 January 2024.

13. *Oil Platforms (Islamic Republic of Iran v. United States of America)*, ICJ, Judgment, 6 November 2003, para. 125, <https://icj-cij.org/sites/default/files/case-related/90/090-20031106-JUD-01-00-EN.pdf>, visited on 6 January 2024.

14. A. Glass, “President Bush cites ‘axis of evil’ Jan. 29, 2002”, *Politico*, 29 January 2019, <https://politico.com/story/2019/01/29/bush-axis-of-evil-2002-1127725>, visited on 6 January 2024.

15. See C. A. Bidwell, “US Courts Say Iran Owes Terrorism Victims Billions; That’s An Obstacle to a New Iran Nuclear Deal”, 3 August 2021, *Bulletin of the Atomic Scientists*, <https://thebulletin.org/2021/08/us-courts-say-iran-owes-terrorism-victims-billions-thats-an-obstacle-to-a-new-iran-nuclear-deal/>, visited on 6 January 2024.

Iran to pay more than USD 10.5 billion to families of people killed in the 11 September 2001 terrorist attacks, and to a group of insurers”.¹⁶

These allegations, along with the concerns raised by the US regarding Iran’s ballistic missiles and nuclear programs, also led the US authorities to enact laws and regulations to impose various types of UCMs against Tehran. According to the US Treasury website, the Iran Sanctions program represents the implementation of multiple legal authorities, including executive orders issued by the President and public laws (statutes) passed by Congress.¹⁷ The US also played a key role in persuading the international community to impose sanctions on Iran through the United Nations (UN) Security Council over its nuclear program.¹⁸

In the wake of these developments and the complications presented by the Security Council sanctions, diplomatic endeavors were initiated to reach a comprehensive resolution to the Iranian nuclear issue. This culminated in the conclusion of the Joint Comprehensive Plan of Action (JCPoA), also referred to as the “Iran Deal”, on July 14, 2015. The accord was a collaborative effort involving China, France, Germany, the Russian Federation, the United Kingdom, the United States, the High Representative of the European Union (also known as the E3/EU+3 or P5+1), and the Islamic Republic of Iran.¹⁹ In short, this complex document encompasses two main issues: (1) Iran agrees to limit its civilian nuclear program and enhance the inspection regime by the International Atomic Energy Agency (IAEA) to verify the continued peaceful nature of the program; and (2) In return, the P5+1 agree to a coordinated lifting of the economic and financial sanctions linked to Iranian nuclear activities that have been applied against Iran over the past six years, both by the UN Security Council acting multilaterally and the United States and EU acting unilaterally.

Although the finalization of the JCPoA was lauded by both parties, and numerous analysts speculated that the agreement could facilitate

16. *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, ICJ, Application by Iran, 14 June 2016, para. 7, [icj-cij.org/sites/default/files/case-related/164/164-20160614-APP-01-00-EN.pdf](https://www.icj-cij.org/sites/default/files/case-related/164/164-20160614-APP-01-00-EN.pdf), visited on 4 January 2024.

17. See Iran Sanction, Office of Foreign Assets Control (OFAC), ofac.treasury.gov/sanctions-programs-and-country-information/iran-sanctions, visited on 6 January 2024.

18. See <https://www.armscontrol.org/factsheets/Security-Council-Resolutions-on-Iran>.

19. The Joint Comprehensive Plan of Action, (JCPoA), 14 July 2015, Vienna (came into effect on 18 October 2015), https://eeas.europa.eu/archives/docs/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf, visited on 6 January 2024.

the resolution of other political strains between Iran and the US, this endeavor ultimately fell short in practice. On May 8, 2018, former US President Donald Trump declared the US's withdrawal from the agreement and launched the "maximum pressure campaign" against Iran, imposing hundreds of unilateral sanctions.²⁰ The international community widely criticized this decision and in reaction, Iran decided to refer the case of re-imposition of the sanctions to the ICJ.²¹

Subsequent political developments in the relations between Iran and the US, particularly the assassination of a senior Iranian commander by the US in Baghdad in January 2020 and the 2023 war in the Gaza Strip, only led to further serious tensions between the two states and an increase in UCMs imposed by the US against Iran.²²

The Impact of US Coercive Measures on the Enjoyment of Human Rights by the Iranian People

As mentioned in the preceding section, the US sanctions against Iran have persisted for almost as long as the Islamic Revolution of Iran. Over the past four decades, initiatives such as the establishment of the Iran-US arbitral tribunal, the conclusion of the JCPOA, and the filing of cases before the ICJ were undertaken to reduce the level of tension between the two states and to resolve their conflicts in a peaceful manner. However, tensions remain at a very high level, especially after the US withdrawal from the nuclear deal in May 2018 and the reimposition of sanctions on Iran, leading to an increase in the threshold of suspicion.

The US withdrawal from the nuclear deal not only led to the re-imposition of the UCMs that were lifted based on the JCPOA and the UN Security Council Resolution 2231²³, which endorsed the deal but also marked the beginning of a new round of sanctions by the US against Iran. The US

20. U.S. Government Fully Re-Imposes Sanctions on the Iranian Regime As Part of Unprecedented U.S. Economic Pressure Campaign, U.S. Department of the Treasury, 5 November 2018, <https://home.treasury.gov/news/press-releases/sm541>, visited on 6 January 2024.

21. Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), ICJ, Application by Iran, 16 July 2018, <https://icj-cij.org/sites/default/files/case-related/175/175-20180716-APP-01-00-EN.pdf>, visited on 6 January 2024.

22. See e.g. New US Sanctions Target Illicit Financial Network Aiding Iran Military, Aljazeera, 29 November 2023, <https://aljazeera.com/news/2023/11/29/us-slaps-sanctions-on-21-people-entities-allegedly-linked-to-iran>, visited on 6 January 2024.

23. UN Doc. S/RES/2231, 20 July 2015.

administration has explicitly stated that it is using the UCMs as a tool of foreign policy to influence Iran's behavior.²⁴ It was also clearly mentioned in the US President's order that the sanction will be applied with extraterritorial effect: "any nation that helps Iran in its quest for nuclear weapons could also be strongly sanctioned by the United States".²⁵ On one occasion, the former US Secretary of State Mike Pompeo said that "it is in Iran's best interests to toe the line and listen to Washington, or else its people will pay the price."²⁶

This new round of sanctions began on November 5, 2018, and continued during the Covid-19 pandemic and beyond, resulting in a high price paid by the people of Iran. In its memorial submitted to the ICJ on 24 May 2019, Iran highlighted that the UCMs reimposed by the US are targeting key sectors of the Iranian economy and as a result "it is becoming difficult or impossible for Iranian companies and nationals to engage in international financial transactions and to purchase even items which are supposedly exempt from the US measures such as food or medical supplies."²⁷ Concerning the impact of sanctions on the Iranian oil and gas industry, the memorial indicates that the tangible consequences of the US measures result in more than just a blockade on the Iranian energy industry;²⁸ Iranian companies are forced out of business, leading to unemployment for their employees and a detrimental impact on the economic growth of the regions where these businesses operate. Furthermore, the indirect repercussions of the US measures have a much broader reach, negatively affecting the entire Iranian population. This is due to the fact that nearly 32 percent of government budget sources, including funding for essential public services, are derived from revenue generated by the export of crude oil and natural gas

24. See e.g.: Press Briefing by Secretary of State Mike Pompeo and Secretary of the Treasury Steven Mnuchin on Iran Sanctions, 10 January 2020, <https://trumpwhitehouse.archives.gov/briefings-statements/press-briefing-secretary-state-mike-pompeo-secretary-treasury-steven-mnuchin-iran-sanctions/>, visited on 6 January 2024.

25. Remarks by President Trump on the Joint Comprehensive Plan of Action, 8 May 2018, <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-joint-comprehensive-plan-action/>, visited on 6 January 2024.

26. Mike Pompeo Says Iran Must Listen to U.S. 'If They Want Their People to Eat', *Newsweek*, 9 November 2018, <https://newsweek.com/mike-pompeo-says-iran-must-listen-us-if-they-want-their-people-eat-1208465>, visited on 6 January 2024.

27. Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), ICJ, Memorial Submitted by Iran, 24 May 2019, p. 77, www.icj-cij.org/sites/default/files/case-related/175/175-20190524-WRI-01-00-EN.pdf.

28. *Ibid.*, p. 87.

condensate.²⁹ The memorial also refers to the termination of aircraft sale and purchase agreements, as well as, the calamitous consequences of the US measures on the safety of Iranian civil air transportation and states that: “the practical impact of the U.S. measures extends far beyond matters of convenience and creates a risk to the safety of Iranian civil aviation with potentially tragic consequences”.³⁰

In summarizing the impact of UCMs on the economy, we can also refer to the statements made by senior US Administration officials in a briefing on August 6, 2018:

“The rial [the Iranian currency] is tanking, unemployment in Iran is rising, and there are widespread protests over social issues and labour unrest. [...] in the last 90 days we have seen company after company after company announce that they are getting out, so there’s no question that this pressure is already working.”³¹

Furthermore, the sanctions directly impact the lives of millions of Iranians and Iranian residents, jeopardizing their health, security, living conditions, and access to humanitarian relief and environmental safety. The situation was exacerbated by the Covid-19 pandemic.³² Iran was one of the countries that significantly impacted by the Covid-19 in the early stages of the pandemic.

Despite the international community³³ and Iran’s appeals for the removal of sanctions, they remained in place from the perspective of the United States. The rapid spread of disease presented a significant challenge to the healthcare system and created obstacles for the government in delivering humanitarian goods, including medicine and relief supplies.

29. *Ibid.*

30. *Ibid.*, p. 94.

31. Senior Administration Officials Previewing Iran Sanctions, 6 Augst 2018, <https://2017-2021.state.gov/senior-administration-officials-previewing-iran-sanctions/>, visited on 6 January 2024.

32. See D. Salehi Isfahani, “Iran: The Double Jeopardy of Sanctions and Covid-19”, Brookings, 23 September 2020, <https://brookings.edu/articles/iran-the-double-jeopardy-of-sanctions-and-covid-19/>, visited on 6 January 2024.

33. See e.g. US: Ease Sanctions on Iran in COVID-19 Crisis - Ensure Access to Essential Resources, Human Rights Watch, 6 April 2020, hrw.org/news/2020/04/06/us-ease-sanctions-iran-covid-19-crisis, visited on 6 January 2024; see also Bachelet Calls For Easing of Sanctions to Enable Medical Systems to Fight Covid-19 and Limit Global Contagion, 24 March 2020, <https://ohchr.org/en/2020/03/bachelet-calls-easing-sanctions-enable-medical-systems-fight-covid-19-and-limit-global>, visited on 6 January 2024.

Sanctions obstructed Iran's entry into the international financial system, restricting its capacity to purchase and transport goods not prohibited by sanctions, and potentially hindering Iran's access to coronavirus vaccines.³⁴ Infrastructure limitations were a major challenge for Iran's health system, especially in certain cities. The country's banking system restrictions limited the purchase of raw materials for drug synthesis, as well as medical equipment and supplies for hospitals and health centers. Iran also faced restrictions on importing essential high-tech equipment, including testing equipment (e.g., real-time PCR and X-ray machines) and hospital equipment necessary for CCU and ICU beds, as a result of sanctions. Although Iran began producing some personal protection equipment (PPE) such as facial masks, disinfectants, and antiseptics, the country still faced limitations in providing high-tech testing and hospital equipment due to sanctions.³⁵ As of the end of 2023, Iran reported 146,751 deaths according to the World Health Organization (WHO) reports.³⁶

Alena Douhan, the UN Special Rapporteur on the negative impacts of unilateral coercive measures on the enjoyment of human rights, conducted an official visit to Iran in May 2022. Her aim was to assess the impact of UCMs on the country's human rights and its right to development. In her report, she outlines the consequences of UCMs on Iran's economy and trade. She emphasizes that the combined trade and financial restrictions, along with businesses' overcompliance and their general reluctance to engage in economic activities with Iran, have had a significant effect between 2011 and 2015, as well as after 2018. This has led to a decrease in foreign direct investment, which fell to approximately USD 1.3 billion in 2020, accounting for only about 0.15 percent of the national GDP. Data

34. A. Karimi, H.S. Turkamani, "U.S.-Imposed Economic Sanctions on Iran in the COVID-19 Crisis from the Human Rights Perspective", *International Journal of Health Services*, vol. 51 (4), 2021, pp. 570-572, DOI: 10.1177/00207314211024912; see also H. Pormasoumi H, D. Rostami, K. Jamebozorgi, H. Mirshekarpour, J. Heshmatnia, "COVID-19 management in Iran and international sanctions", *European Journal of Transnational Myology* 32(4) (2022), DOI: 10.4081/ejtm.2022.10777.

35. A. Abdoli, "Iran, Sanctions, and the COVID-19 Crisis", *Journal of Medical Economics* 23(12) (2020), p. 1462, DOI: 10.1080/13696998.2020.1856855.

36. Iran Data, WHO Covid-19 Dashboard, <https://data.who.int/dashboards/covid19/deaths?m49=364&n=c>, visited on 6 January 2024. It is worth mentioning that the UN General Assembly in its latest resolution on UCM in December 2023 called upon the international community "to condemn and reject the imposition of unilateral coercive economic measures that are inconsistent with the principles of international law and the Charter of the United Nations, which impede the capacity of targeted countries to promote post-COVID-19 pandemic recovery", UN Doc. A/Res/78/135, 21 December 2023, para. 6.

from the Iranian Organization for Investment, Economic and Technical Assistance, covering the period from autumn 2017 to spring 2018, show a drastic drop in the number of approved foreign investments from 72 to 20, along with their total monetary value (from roughly USD 4.4 billion to USD154 million). The imposed trade and financial restrictions have directly affected the Iranian job market, particularly in sectors closely tied to international markets, as well as the lives of Iranians living abroad and actively participating in business activities. The evolving sanctions regimes have led to instability and insecurity in the job market and increased risks for those working in the informal economy without access to social protections.³⁷

Douhan report further highlights that sanctions and the ensuing economic strains have distinctly impacted women. Traditional sectors of employment for women, such as manufacturing, handicrafts, and family businesses, have been considerably affected. Consequently, a growing number of women have resorted to the informal economy to maintain their livelihoods and address their households' financial requirements amidst escalating inflation. Moreover, women's entrepreneurship, which has been encouraged and backed by the Government across various economic sectors in recent years, has also been impacted. The unemployment rate among women is roughly twice that of men, with a rate of 36 percent for young women aged between 15 and 24, compared to 21.2 percent for young men in the same age group.³⁸

The report also details how the UCMs impinge on the Iranian people's right to health. It mentions that the Special Rapporteur has received reports of acute shortages and exorbitant prices for essential life-saving medicines, as well as medications to alleviate pain. Testimonies include instances of patients rationing medical doses due to severe economic conditions, which has led them to resell their medications to fulfill basic necessities, such as food. Since November 2018, healthcare costs have surged by 67 percent.³⁹ Besides, the Special Rapporteur highlights that "Iranian war veterans and civilians who survived nerve agent and mustard gas attacks during the war with Iraq in the 1980s make up a vulnerable group affected by the shortages of specialized medicines and medical equipment."⁴⁰

37. *Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, Visit to the Islamic Republic of Iran*, UN Doc. A/HRC/51/33/Add.1, 4 October 2022, paras. 22-23.

38. *Ibid.*, para. 63.

39. *Ibid.*, para. 30.

40. *Ibid.*, para. 32.

In addition, this report demonstrates that the UCMs also infringe upon the right to food. According to the report, the reimposition of sanctions on Iran has significantly impacted the average cost of food, particularly in towns and cities. Official data indicates that food prices increased by 64 percent between 2017 and 2019, resulting in dietary changes, reduced food consumption, and a rise in food insecurity rates among the population, reaching 60 percent in certain regions.⁴¹ The report also discovers that the Covid-19 pandemic has worsened these trends, with households in 2020 being compelled to spend an estimated 41.4 percent more than in 2019 for the same products. Humanitarian organizations reported that the cost of the food basket increased by more than three times between 2018 and 2022.⁴²

The UN report also highlights that: “sanctions have also prevented the Government from accessing resources and equipment for disaster preparedness, response and recovery interventions.”⁴³ Observing such consequences the report indicates that these difficulties raised due to UCMs directly impact the economic and social rights of Iranians, including the right to live in a healthy environment, access to clean water, freedom from poverty, the right to development, and even the right to life. This significantly undermines the attainment of the Sustainable Development Goals (SDGs).⁴⁴

On another occasion, the independent experts of the UN Human Rights Council addressed the challenging issue of air pollution in Iran and noted that: “it is no surprise that Tehran is one of the world’s most polluted cities. US sanctions force people to prolong the use of older vehicles that burn fuel less efficiently, while making it impossible for Iran to obtain equipment and technology to reduce vehicle emissions.”⁴⁵

Being an academician herself, Professor Douhan also explores the challenges posed by UCMs for scientific activities in Iran such as “reluctance or refusal of international academic institutions and scholars to collaborate with their Iranian counterparts; impossibility of paying contributions to international professional associations; termination of foreign grants for

41. *Ibid.*, para. 43.

42. *Ibid.*, para. 43.

43. *Ibid.*, para. 50.

44. *Ibid.*, para. 54.

45. US Sanctions Violate Iranian People’s Rights to Clean Environment, Health and Life: UN experts, 20 December 2022, <https://ohchr.org/en/press-releases/2022/12/us-sanctions-violate-iranian-peoples-rights-clean-environment-health-and>, visited on 6 January 2024.

academic exchanges and research; travel constraints; exclusion of Iranian scholars from editorial boards abroad; summary rejections of Iranian academic submissions and articles by foreign journals and publishers on the grounds of nationality; and obstacles in accessing foreign online academic, technological and medical databases and libraries.”⁴⁶

Considering all the devastating impacts of sanctions on Iran and the people, the Special Rapporteur concludes that: “the Islamic Republic of Iran has experienced a panoply of economic and other sanctions for over the past 40 years, coupled with secondary sanctions, overcompliance and de-risking policies that have substantially affected the country’s economy, the humanitarian situation and people’s lives, including with regard to access to basic goods, services, and infrastructure. Almost all of the Special Rapporteur’s interlocutors, both governmental and non-governmental, have qualified such measures as a form of “economic warfare”, with serious adverse effects on the lives of millions of Iranians inside and outside the country.”⁴⁷

The latest available country report from the UN High Commissioner for Refugees reveals that Iran hosts over 4.5 million forcibly displaced people, the majority of whom are Afghans with varying statuses, including refugees, refugee-like populations, and undocumented foreign nationals.⁴⁸ The report prepared by the Special Rapporteur indicates that the UCMs imposed on Iran also affect this population. The report states that the economic impact of sanctions, financial transaction restrictions, and reduced donor interest, compounded by the pandemic, has had a detrimental effect on the government’s ability to protect this population and on humanitarian actors’ capacity to carry out projects. This includes providing basic goods and constructing schools and health centers. Additionally, due to inflationary pressures, the costs of humanitarian assistance have significantly increased, and imports from foreign donors and suppliers continue to be hindered by overcompliance, despite humanitarian exemptions.⁴⁹ The report further states that the prevailing circumstances have resulted in numerous Afghan and other migrant children being compelled to live on the streets, thereby subjecting them to the dangers of violence, exploitation, and substance abuse.⁵⁰

46. A/HRC/51/33/Add.1., *supra* note 37, para. 57.

47. *Ibid.*, para. 78.

48. UHCHR Operation Data Portal, Iran, <https://data.unhcr.org/en/country/irn>, visited on 6 January 2024.

49. UN. Doc. A/HRC/51/33/Add.1, *supra* note 37, para. 68.

50. *Ibid.*

The influence of UCMs in exacerbating conditions for Iranians, those living in Iran, or those seeking to engage in work and commerce with Iran, surpasses the few elements previously mentioned. In addition to the earlier discussed adverse effects, which predominantly underscore the macro impacts of UCMs on the enjoyment of human rights in Iran, it's essential to recognize that these sanctions also affect the daily lives of the Iranian people. The micro impacts, which may not be directly reflected in reports by international organizations or NGOs.

Furthermore, it's crucial to remember that living under the sanctions profoundly affects the morale of the people and the life expectancy indices. It's also significant to mention that the rate of brain drain and migration in Iran is escalating rapidly.⁵¹ The conducted studies indicate that the substantial migration of Iranians is, among other factors, associated with the challenges in economic life resulting from sanctions.⁵²

Conclusion

Unilateral sanctions have severely destructive effects on human rights. As the UN Secretary-General reflected in his October 2023 report on UCMs, as of the end of June 2023, 71 unilateral economic measures against developing countries were in effect⁵³ and these States reported to the Secretary-General that UCMs: "can engender severe humanitarian consequences and curtail vital economic sectors, including through overcompliance, thereby harming the welfare of the population. Some Member States reported that unilateral measures against their trading partners or neighboring countries were imposing indirect economic costs on them owing to the decline in bilateral trade".⁵⁴

In Iran, as mentioned above, UCMs imposed by the US have predominantly negative impacts on all dimensions of human rights enjoyment,

51. See P. Azadi, M. Mirramezani, M. B. Mesgaran, Migration and Brain Drain from Iran, Working Paper 9, Stanford Iran 2040 Project, Stanford University, April 2020; and B. Ghaffari, "No Hope for the Future': Iran Faces Brain Drain as Emigration Surges", Financial Times, 21 November 2023, <https://www.ft.com/content/909e0958-54e6-42ec-b879-0fcfe49deb62>, visited on 6 January 2024.

52. See Iran Migration Outlook 2022, Iran Migration Observatory, 2022, <https://imobs.ir/outlook/detail/22>, visited on 5 January 2024.

53. Report of the UN Secretary-General on Unilateral Economic Measures as a Means of Political and Economic Coercion Against Developing Countries, UN Doc. A/78/506, 4 October 2023, para. 9.

54. *Ibid.*, para. 6.

including civil, political, economic, cultural, and social rights, as well as the right to development. However, from a legal perspective, attributing human rights violations directly to the sanctioning State is complex due to serious differences of opinion regarding the extraterritorial nature of human rights obligations.⁵⁵ Moreover, accurately measuring the effects of sanctions requires complex data and calculations that are currently unavailable.

Therefore, it appears that innovative solutions are required to maintain the discussion of the negative impact of UCMs on human rights as a prominent issue within the realm of international law. A key aspect that requires attention in discussing the relationship between unilateral sanctions and human rights is the actions taking place in the UN Human Rights Council to provide a new perspective on human rights.

Article 28 of the Universal Declaration of Human Rights (UDHR) emphasizes that everyone is entitled to a social and international order in which all human rights and fundamental freedoms can be fully realized. The establishment of an international order, as underscored in Article 28 of the UDHR, is in itself a human right that is essential for the realization of other human rights. Special rapporteurs of the Human Rights Council, focusing on the right to development, equitable and democratic international order, right to clean and healthy environment, and the international right to solidarity, have made noteworthy contributions in this domain. They stress that all participants in the international sphere, encompassing States and non-states, must contribute to the achievement of the envisaged international order. Collaboration among all participants in this domain should be regarded as an international legal duty that is consistent with other obligations of States to respect and ensure respect for human rights.

The debate on the legitimacy of UCMs should be closely linked with discussions about an equitable and democratic international order. An equitable and democratic international order considers some human rights obligations to have a transnational character, providing a strong argument to counter the non-extraterritorial nature of other human rights obligations. The right to development, the right to healthy environment, and the right to international solidarity are being redefined in a different way

55. For further reading, see: M. Gibney, G. Erdem Türkelli, M. Krajewski, and W. Vandenhole (eds), *The Routledge Handbook on Extraterritorial Human Rights Obligations* (Routledge, 2022); P. Askari, "The Principle of Non-Intervention and the Dilemma of the Legality of the Unilateral Coercive Measures", in K. Kirkham (ed), *The Routledge Handbook of the Political Economy of Sanction* (Routledge, 2023), pp. 318-329, DOI:10.4324/9781003327448-31.

from “traditional human rights” or rights belonging to the first and second generations of human rights.⁵⁶ Discussions about the right to development, the right to clean environment, and the right to international solidarity consider all states and the international community as addressees of these rights and duty bearers. In this regard, more attention should be paid to the right to international solidarity, for which the former special rapporteur in May 2023 presented a new draft.⁵⁷ According to this draft, the realization of international solidarity is a prerequisite for fulfilling the obligation mentioned in Article 28 of the Universal Declaration of Human Rights.

If more attention is given in human rights discourse, especially by global south countries, to the view that some rights, including the right to development, the right to clean and healthy environment, and the right to international solidarity, are obligations towards the international community, it will be easier to argue that UCMs contradict human rights because they clearly violate the international right to development, the right to clean and healthy environment, and the international right to solidarity in a gross way.

It’s crucial to recognize that this proposal encounters formidable challenges from both legal and political standpoints, and its realization won’t be straightforward. Nevertheless, it’s imperative to devote more attention to such diverse interpretations of human rights obligations, particularly in relation to the right to development, the right to clean and healthy environment, and the right to international solidarity. It’s vital for Iran and the broader global south to champion the adoption of the draft convention on the right to development and the revised draft declaration on the right to international solidarity. States targeted by economic warfare should collaborate with each other and with the UN thematic human rights experts to offer novel interpretations of human rights and principles of international law, thereby continually presenting UCMs with new legal challenges.

56. For further reading on the three generations of human rights, see J. Ife, *Human Rights and Social Work: Towards Rights-Based Practice* (Cambridge University Press, 2001), pp. 24-42.

57. Revised Draft Declaration on the right to international solidarity, UN Doc. A/HRC/53/32, 2 May 2023, <https://ohchr.org/sites/default/files/documents/issues/solidarity/reviseddraftdeclarationrightInternationalsolidarity.pdf>, visited on 6 January 2024.

CHAPTER XII

Impact of unilateral sanctions on human rights in Cuba

(Prof. R. Rodrigues)

The use of economic sanctions as a foreign policy tool is not new in international relations. However, over the past three decades, there has been a noteworthy increase in the use of unilateral economic sanctions as coercive measures that have an impact on target states and their entire population. This has been highlighted by many experts, international, multilateral and non-governmental organizations. In addition to that, scholarly debates have proliferated over the effectiveness, the legality under international law, and the ethical justification of the use unilateral economic sanctions.

One of the most prominent and practicable starting points to consider the nature, the scope, and the impact of unilateral coercive measures on human rights of a whole population is the study of the Cuban case. The island nation has been a target of such measures by the neighboring United States policy for over six decades as the consistent action of U.S. policy makers has been to use U.S. economic power to undermine Cuba's socio-economic and political system and bring about regime change.

It is clear that the humanitarian impact of that system of unilateral coercive measures on the target population of Cuba is intended a means to achieve the geopolitical objective. The US government has sought to reduce income for the Cuban state by systematically denying access to the geographically advantageous U.S. market and more importantly by disrupting the normal development of the island nation's international economic relations, especially since the last decade of the 20th Century.

Moreover, the U.S. sanctions violate principles of sovereign equality of state and of non-intervention in the domestic affairs of state viewed as a right of a nation to independently fashion its policies free of coercion and interference by other countries.

This chapter will discuss the impact of the U.S. system of unilateral coercive measures on human rights in Cuba as a case study highlighting aspects that are specific of the island nation, the unilateral character of the sanctions, the specific objectives, the extraterritoriality, the humanitarian

impact and most importantly the impact on the human rights of the Cuban population.

The U.S. system of unilateral coercive measures over more than six decades

Two aspects quickly stand out, the United States is the world's most active user of unilateral economic sanctions at an increased rate of 993% in the last two decades¹ and that United States is literally alone in imposing unilateral coercive measures on Cuba. These actions have been rejected by the United Nations General Assembly for more than 30 years uninterruptedly, on November 2nd, 2023, the UNGA voted 187 in favour, 2 against a Cuban resolution calling for the end of U.S. unilateral coercive measures against Cuba². No other state joins the U.S. sanctions regime against Cuba.

Beginning with the Eisenhower administration's cut on Cuban sugar imports to the United States in July 1960³ and proceeding on up through the actions of the current U.S. administration well into the third decade on the 21st century, U.S. unilateral coercive measures on Cuba stand out for its longevity and comprehensiveness.

The oft-quoted Mallory memorandum of April 6, 1960, admitted that the new Cuban government had popular support and that "the only foreseeable means of alienating internal support is through disenchantment and disaffection based on economic dissatisfaction and hardship." It goes on to suggest, "If the above are accepted or cannot be successfully countered, it follows that every possible means should be undertaken promptly to weaken the economic life of Cuba."⁴

1. U.S. Department of Treasury (2021) The Treasury 2021 Sanctions Review, 18 October 2021 [online], <http://home.treasury.gov>, visited on 9 July 2023.

2. United Nations General Assembly, seventy-eighth session Agenda item 38 Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba.11 October 2023, <https://documents-dds-ny.un.org/doc/UNDOC/LTD/N23/299/80/PDF/N2329980.pdf?OpenElement>, visited on 9 July 2023.

3. Cuba provided one-third of the U.S. total sugar supply. Dwight D. Eisenhower, Statement by the President upon Signing Bill and Proclamation Relating to the Cuban Sugar Quota. Online by Gerhard Peters and John T. Woolley, the American Presidency Project, <https://www.presidency.ucsb.edu/node/235042>, visited on 9 July 2023.

4. L. Mallory, Memorandum to the Assistant Secretary of State for Inter-American Affairs (Secret) (1960). Department of State, Central Files, 737.00/4-660. Secret. Drafted by Mallory. [online], <https://history.state.gov/historicaldocuments/frus1958-60v06/d499>, visited on 9 July 2023.

In his book *Treasury's War*, Juan Zarate asserts that the Office of Foreign Assets Control (OFAC) then became the hub for administering sanctions on Cuba, "restrictions [which] were placed on what and who could enter Cuba in an attempt to strangle the Castro regime economically".⁵ It is hard to dispute the fact that such an economic confrontation has a negative humanitarian impact.

Cuba is still the only country in the world sanctioned under the Trading with the Enemy Act of 1917, enacted as a wartime measure⁶. This law authorizes the U.S. Treasury Department's regulations that constitute what is referred to as the "embargo" on Cuba. This "embargo" prohibits transactions by "U.S. persons" (including corporations), with Cuba and Cuban unless they are specifically authorized.

An embargo can be described as a measure in which one nation forbids its nationals from doing business with another nation. The case of Cuba the system of unilateral coercive measures is tantamount to a blockade and it is different as it obstructs and prevents third-country nationals from dealing with Cuba. In sum, what's commonly known as the "U.S. embargo against Cuba" is a comprehensive set of unilateral coercive measures with strong extraterritorial reach that leads to over-compliance and generates a "chilling effect" on potential trading partners of Cuba.

In the specific case of Cuba, the scope of sanctions imposed is very broad: trade control; suspension of aid and technical assistance; freezing of financial assets;⁷ and more recently, the listing of foreign companies that do business with Cuba. Blacklisting specifically seems and is presented as a way to target specific individuals and entities, thus narrowing their impact to those intended.

However, OFAC's Specially Designated Nationals and Blocked Persons List covers natural persons; ships and specially designated nationals. For example, in 2019, the U.S. Treasury Department listed four maritime firms and vessels transporting Venezuelan oil to Cuba, amid an acute fuel

5. J. Zarate, *Treasury's war: the unleashing of a new era of financial warfare*. Published in the United States by Public Affairs, a Member of the Perseus Books Group New York (2013), p. 24.

6. The U.S. system of unilateral coercive measures is enforced mainly through six statutes: The Trading with the Enemy Act of 1917, the Foreign Assistance Act of 1961, the Cuban Assets Control Regulations of 1963, the Cuban Democracy Act of 1992, the Helms-Burton Act of 1996, and the Trade Sanctions Reform and Export Enhancement Act of 2000.

7. Margaret P. Doxey, *Economic Sanctions and International Enforcement*, 2nd ed. (New York: Oxford University Press, 1980), pp. 14-15.

scarcity in the island that had an impact on electricity generation and cargo and public transport⁸. This single measure has a humanitarian impact on the Cuban population as it affects its living standard and the enjoyment of its human rights.

The U.S. system of unilateral coercive measures is a combination of statutes and regulations that have been modified over time⁹. The most important modifications were added in the 1990s, during Cuba's post 1959 worst economic crisis; then economic sanctions came to be the core element of United States foreign policy toward Cuba, and the policy of seeking regime change.

Since the beginning of the 1990's, two pieces of legislation were passed by the United States Congress: the Torricelli Act of 1992¹⁰ and the Helms-Burton Act of 1996¹¹, which codified the sanctions in a way that stripped the President of the right to lift or modify major parts of the system of unilateral sanctions. Both pieces of legislation often serve foreign policy purposes of the United States without necessarily constituting a reaction to a prior breach of international law by Cuba.

Since these two pieces of legislation became law, the U.S. government has employed threats of secondary sanctions and maximum pressure campaigns. These have resulted in growing fear among third-party actors of losing access to U.S. markets. The risk of fines and the cost of unintentional violations of OFAC compliance regulations have further encouraged zero-risk policies by non-U.S. private corporations, including banks,

8. It is noteworthy that the press release title includes the word "further" meaning that the listing was already in place as a coercive measure and was updated. This is not a minor element as it suggests unilateral coercive measures are implemented in incremental progression. Treasury Further Targets Entities and Vessels Moving Venezuelan Oil to Cuba, U.S Department of the Treasury Press Releases, September 24, 2019, <https://cu.usembassy.gov/treasury-further-targets-entities-and-vessels-moving-venezuelan-oil-to-cuba/>, visited on 9 July 2023.

9. Some of the statutes and executive orders include: the Export Control Act of 1949; President Kennedy Executive Proclamation 3447, based on the Foreign Assistance Act of 1961 section 620a; provisions of the Trading with the Enemy Act of 1917, section 5b; Cuban Assets Controls Regulations in 1963 (Department of the Treasury). This legal framework has primarily been enforced by the Treasury Department's Office of Foreign Assets Control (OFAC).

10. Cuban Democracy Act of 1992, Pub. L. No. 102-484, 106 Stat. 2575 (1992) (codified at 22 U.S.C.S. §§ 6001-10 (1993)).

11. Cuban Liberty and Democratic Solidarity (LIBERTAD) Pub. L. No. 104-114; 22 U.S.C. 6021-6091 Act, 22 U.S.C. §§ 6021-6091 (1996).

insurance companies, even humanitarian intergovernmental and non-governmental organizations (NGOs). These actors prefer not to engage with anyone related to Cuba even if such engagement is not explicitly prohibited by sanctions regimes which often leads to **over-compliance and affect Cuba's international economic relations**.

Additionally, U.S. unilateral coercive measures against Cuba are multifaceted, since they involve not only various types of measures but also different sectors. For instance, the measures prohibit travel, as the sanctions regime pays particular attention to prohibiting practically all travel by U.S. citizens to the island¹², transactions in U.S. currency, trade with U.S. companies, export of medical equipment to treat certain pathologies, export of technologies which impaired the development of Cuba's agricultural and food processing sectors, among others¹³. Additionally, U.S. blocks Cuba's access to international financial institutions¹⁴, and they also impose restrictions on third countries, as secondary sanctions, that trade with Cuba. The combination of all these measures on a small undeveloped island's economy is devastating and has an impact of quality of life and the human rights of the whole population.

There are also other actions and measures taken by the United States' government that generate economic sanctions and constitute acts of coercion, such as, the inclusion of Cuba in the list states sponsors of international terrorism. This action is unilateral and coercive as it targets the entire financial landscape of Cuba and it was mostly imposed indiscriminately and without any justification without taking into regard the common

12. There are provisions in the sanction's regulations, called "general licenses" for some U.S. citizens to travel to Cuba regardless of the travel sanctions. The 12 categories of such authorized travel to Cuba are: family visits; official business of the U.S. government, foreign governments, and certain intergovernmental organizations; journalistic activity; professional research and professional meetings; educational activities; religious activities; and public performances. One conceivably could apply to the U.S. Treasury Department for a "specific" (i.e., individual, good for one trip only) license in order to go to Cuba for medical services, but such a request would almost certainly be denied.

13. Joy Gordon, *"Economic Sanctions as 'Negative Development': The Case of Cuba*, Journal of International Development 28 (2015), p. 474.

14. Sec. 104(a), Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034(a) (The Helms Burton Act) Requires the Secretary of the Treasury to instruct U.S. executive directors to the international financial institutions to oppose Cuba's admission to such institution; Dianne E. Rennack, Mark P. Sullivan . "Cuba Sanctions: Legislative Restrictions Limiting the Normalization of Relations". Congressional Research Service, May 4, 2018, <https://sgp.fas.org/crs/row/R43888.pdf>, visited on 9 July 2023.

people of the island state who are the most affected due to the consequent economic shocks.

The terrorist list designation creates additional obstacles to delivering humanitarian aid at a time when the country is grappling with shortages of basic goods and medical supplies as financial institutions, companies, and investors are hesitant to engage with Cuba.

Another action is the international campaign against Cuban medical internationalism¹⁵ that seeks to reduce revenues for the Cuban health care sector. While Cuban doctors typically provide health services for free to patients from underserved populations in host countries in the global south that face a scarcity of doctors, there are other instances of export of Cuban medical services.

U.S. unilateral coercive measures and extraterritoriality

Every nation possesses the exclusive authority to regulate activity within its territory. But it has no inherent authority to legislate and regulate beyond its borders. Nevertheless the U.S. routinely does this when it comes to Cuba. The prohibition on the use of the U.S. dollar in transactions involving Cuba and Cubans is an assertion of U.S. extraterritoriality. European banks have incurred civil penalties in the hundreds of millions – and even billions – of dollars for processing mundane Cuba-related international funds transfers denominated in U.S. dollars. Payments made for ordinary international commercial transactions, e.g., wire transfers for food shipments to Cuba are penalized savagely. This constitutes a restraint on trade that impinges on the rights inherent in international law for non-U.S. companies to engage in lawful trade with Cuba without brutal third-party interference. Over the past decades several banks including HSBC, Barclays, Credit Suisse, Royal Bank of Canada and the Bank of Nova Scotia, also known as Scotia bank, have closed accounts of Cuban companies or reduced business tied to Cuba year to comply with U.S. regulations.

U.S. unilateral coercive measures act as a significant disincentive for foreign investors, international organizations, and foreign companies to engage in trade and commerce with Cuba due to the constant threat of secondary sanctions which could inadvertently target them. These economic measures affect whole sectors of the economy and consequently

15. U.S. says Cuban medical missions are trafficking doctors, Ellen Wulforst, Reuters, September 26, 2019, <https://www.reuters.com/article/us-usa-cuba-trafficking-idUSKBN1WC00X>, visited on 9 July 2023.

the life and human rights of every person, especially the most vulnerable section of the population.

By severely undermining Cuban economic performance, unilateral coercive measures affect the enjoyment of human rights as enshrined in United Nations covenants such as, the International Covenant on Economic Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).¹⁶

Humanitarian exemptions, over-compliance and the “chill effect” as an extension of U.S. sanctions on Cuba

For many years, the U.S. has maintained that it allows humanitarian exemptions and issues special licenses for humanitarian projects. However, the U.S. system of sanctions on Cuba often deters authorized transactions by requiring cumbersome, onerous documentation or certification, causing individuals and companies to expend considerable resources in applying for licenses, or imposing discouraging long delays. There are several obstacles that prevent Cuba from importing medical equipment from the U.S. One issue was the perception among companies that obtaining an export license is a complicated process. Another problem was the fear among business people that they would not be able to receive their sales revenue, as U.S. banks tend to be extremely cautious when processing any transactions involving Cuba. Humanitarian organizations face significant barriers to sending a medical shipment to Cuba even when they can secure a shipper to take a container of supplies to the island, banks refuse to process the transactions arguing the need for a special license from the U.S. Office of Foreign Assets Control. Usually, applications for licenses do not get a response, effectively blocking the shipment.

In other instances, air carriers have refused to handle cargo for Cuba. In particular in March 2020, a shipment of COVID-19 aid from Asia's richest man, Jack Ma, was blocked as a result of the extraterritorial reach of U.S. sanctions. On March 21, Ma's foundation announced that it sent masks, aid ventilators, gloves, and diagnostic kits to twenty-four countries in Latin America, and Cuba was one of them. However, the selected cargo carrier, Colombia-based Avianca, declined to carry the aid to Cuba because

16. Both covenants mention in their common Article 1 that “in no case may a people be deprived of its own means of subsistence”, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>, visited on 9 July 2023; <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>, visited on 9 July 2023.

Synergy Aerospace Corp. (“Synergy”), a majority shareholder, is incorporated in the state of Delaware and therefore falls under the laws of the United States. Avianca had suspended passenger service to Havana since January 2020 for the same reason. On November 18, the U.S. Transportation Department denied exemptions for two charter flight companies to deliver humanitarian cargo to Cuba, including personal parcels containing food, medicine, hygiene, and other medical supplies. One U.S. operator, Skyway, argued the flights should be permitted to address coronavirus pandemic impacts, as Reuters reported “The Transportation Department said the State Department determined the flights did not fall within exemption guidelines and said they “would not be in the foreign policy interests of the United States.”¹⁷

In recent years, there has been an added dimension to the extraterritoriality of the U.S. measures, enhanced by over-compliance. Over-compliance occurs when there is an excessive avoidance of risk associated with inadvertent violations. A bank or a business engages in over-compliance, for example, when it forgoes even legally permissible trade, because the risk of penalties for even inadvertent violations is so high that it makes more sense, commercially, to withdraw altogether from the market. For example, as the U.S. Treasury Department issues regulations and blacklists Cuban entities and individuals, banks do not receive sufficient, and sufficiently clear, guidance as to their due diligence requirements.

Consequently, the bank may never be sure whether it has met its legal obligations under U.S. regulations. In the face of this uncertainty, banks have increasingly chosen to withdraw altogether from countries perceived as high-risk, even for transactions that are quite legal. For example, Swiss banks UBS, Banque Cler and Cantonal Bank of Basel refused to transfer donations made to Cuba by Swiss solidarity organizations MediCuba-Switzerland and Swiss-Cuba Association, that would be used for the purchase of surgical instruments for the burn and reconstructive surgery unit at the Hermanos Ameijeiras Hospital¹⁸.

17. U.S. agency denies exemptions for Cuba cargo relief flights: statement, David Shepardson, Reuters, November 18, 2020, <https://www.reuters.com/article/us-usa-cuba-flights/u-s-agency-denies-exemptions-for-cuba-cargo-flights-statement-idUKKBN27Y2QL>, visited on 9 July 2023.

18. “Necesidad de poner fin al bloqueo económico, comercial y financiero impuesto por los Estados Unidos de América contra Cuba”, p. 22, <https://cubaminrex.cu/sites/default/files/2023-10/INFORME%20CONTRA%20EL%20BLOQUEO%202023.pdf>, visited on 9 July 2023.

Over-compliance also occurs when banks decide to freeze assets that are not explicitly targeted by sanctions, or deny individuals the possibility to open or maintain bank accounts or to engage in transactions, simply because they are nationals of a sanctioned country. Some over-compliance policies of banks prevent states, international organizations, diplomats, and individuals in targeted countries from participation in international cooperation, the cancellation or suspension of membership or voting rights in international organizations and international sports federations. They impede the normal functioning of diplomatic missions, missions of international organizations, and the implementation of humanitarian and development projects. For example, in 2021, the Société Générale Bank closed the accounts of the permanent delegation of Cuba to UNESCO and the Cuban Embassy to the French Republic, which has substantially affected the normal functioning of both diplomatic offices.¹⁹

A U.S. organization, Cubatrade.org, reported in October 2022 that an increasing number of financial institutions located in third countries are refusing to process transactions which include a sender located in the Republic of Cuba or a recipient located in the Republic of Cuba, the main reason being the fear of the cost for an unintentional violation of OFAC regulations²⁰. All the above financial difficulties have an impact on Cuba's overall economic situation as it limits the imports and exports and has a high cost for average Cubans.

The United Nations Conference on Trade and Development's contribution to the "Report of the UN Secretary-General: Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba" concludes that "The essential elements of the embargo remain in force and continue to restrict a healthy development of commercial relations between the two neighboring countries. This continues to be a matter of concern to Cuba as trade plays a crucial role in its economy. To date, the embargo has frustrated the country's efforts to

19. Update to the Report of Cuba on resolution 75/289 of the United Nations General Assembly entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba" (August 2021 - February 2022), pp. 9-10, <https://cubaminrex.cu/en/update-report-cuba-resolution-75289-united-nations-general-assembly-entitled-necessity-ending>, visited on 9 July 2023.

20. *Facing Extinction Like Javan Rhino? Non-U.S. Banks Engaging with U.S. And Non-U.S. Entities for Authorized Transactions Involving Cuba Due To Risk Of OFAC Penalties Since 2015, Only Two U.S. Banks*, <https://www.cubatrade.org/blog/2022/10/17/ztiioaz9m3hky8hdnb8n6ilvl0h7ee>, visited on 9 July 2023.

use trade as an instrument of sustainable development, including through further expansion of promising tourism and professional services exports, as well as the productive use of remittances”.²¹ Taken as a whole, the U.S. sanctions on Cuba have done considerable damage not only to Cuba’s overall economic health, but have also inflicted considerable damage to the Cuban population, and have interfered in many ways with the realization of Cuba’s development goals.

The US government has punished targeted states like Cuba while violating Cubans’ right to development. Articles one and two of the U.N. declaration on the right to development provide that “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized”. And article expands “The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources”²²

It cannot plausibly be denied that Cuba’s post-1959 development strategy has been severely impacted by the system of unilateral economic sanctions imposed by the U.S. US sanctions target each of the main pillars of the Cuban economy: exports, such as nickel and cobalt; revenue from tourism; and major investments in infrastructure, such as the port of Mariel. The sanctions also target Cuba’s most dynamic sectors and limit the competitive advantages that Cuba has such as Biotechnology.

The Human Impact of US Unilateral Coercive Measures: The case of Cuba

In 2000, a report commissioned by the UN Human Rights Commission was published, the well-known Bossuyt Report²³. In its section dedicated

21. UNCTAD’s contribution to the Report of the UN Secretary-General: Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba (A/74/91, 19 August 2019), p. 4, https://unctad.org/system/files/official-document/a74d91_UNCTADcontribution_en.pdf, visited on 9 July 2023.

22. Declaration on the Right to Development, UN General Assembly resolution, 04 December 1986, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-development>, visited on 9 July 2023.

23. 583Economic and Social Council (2000) Review of Further Developments in Fields with Which the Subcommission Has Been or May Be Concerned, E/CN.4/Sub.2/2000/33,

to the case of Cuba noted that “health and nutrition have been two of the primary victims of the sanctions” by quoting a highly critical report from the American Association for World Health confirming that the embargo caused “malnutrition, poor water quality, and the denial of access to medical equipment and drugs” and amounted to “the deliberate blockading of the Cuban population’s access to food and medicine.”²⁴ In 2009 Amnesty International also documented the effects of the sanctions on economic and social rights, and repeatedly called for the lifting of the “embargo”²⁵.

Humanitarian organizations, activists, international agencies, policy-makers, and scholars alike have questioned the rationale and the ethical quandaries²⁶ behind economic sanctions. However, few had examined the actual effects on the sanctioned residents among them a recent study Francisco Rodriguez. This paper provides a comprehensive survey and assessment of the literature on the effects of economic sanctions on living standards in target countries. 30 of the 32 studies find that sanctions have negative effects on outcomes ranging from per capita income to poverty, inequality, mortality, and human rights²⁷. But this work does not include Cuba among its 32 case studies.

The right to health was again recognized as a human right in the 1966 International Covenant on Economic, Social and Cultural Rights. Since then, other international human rights treaties have recognized or referred to the right to health or to elements of it, such as the right to medical care. Cuba’s commitment to its people’s health and the excellence of its health education are well recognized and were lauded by former WHO Director-General Margaret Chan who called on the world to model their health

item 12 of the provisional agenda, <https://www.globalpolicy.org/global-taxes/42501-the-adverse-consequences-of-economic-sanctions.html>, visited on May, 2024.

24. Richard Garfield, Sarah Santana, “The Impact of the Economic Crisis and the US Embargo on Health in Cuba”, *American Journal of Public Health* 87(1) (January 1997).

25. The US embargo of Cuba: Its impact on economic and social rights, Amnesty International, September 2, 2009, <https://www.amnesty.org/en/documents/amr25/007/2009/en/>, visited on May, 2024.

26. Robert W. McGee, “The Ethics of Economic Sanctions”, *Economic Affairs*, Wiley Blackwell 23(4) 2003): 41-45; Raul Rodriguez, “U.S. Economic Sanctions on Cuba: An International Ethics Perspective”, *LASA Forum Spring* xlvii (2): 16-20.

27. Francisco Rodriguez, “The Human consequences of Economic Sanctions”, May 2023. Center for Economic Policy and Research, <https://www.cepr.net/report/the-human-consequences-of-economic-sanctions/>, visited on May, 2024.

systems on Cuba's in 2014²⁸. The right to health, which has been recognized as a right since the Cuban constitution of 1976, has been extended in the new constitution of 2019, in which the state now recognizes its responsibility for the protection of older people, the rights to dignified housing, and the rights to public health, water, and food.

For a small developing country have to have national public health system where all services and related support elements are available to all citizens completely free of most charges is quite remarkable.

The Cuban government established the National Center for Scientific Research in 1965, and has made substantial investment in this area since the 1980s, with the founding in 1986 of the Center for Genetic Engineering and Biotechnology. It is estimated that, in the period 1990-1996, the state invested on the order of \$1 billion for biotechnology to emerge as an important branch of the Cuban economy.²⁹ Today, the main biotech institutions belong to what is known as the Scientific Pole, which includes ten major centers and more than 50 related research and production institutions, employing more than 1,500 researchers. Cuban biotechnology production provides about 70% of Cuba's domestic need for pharmaceuticals.³⁰ Cuba's globally recognized BioCubaFarma Enterprise Group consists of 31 enterprises and 8 commercial companies with over 20,000 employees and 62 manufacturing facilities. These enterprises have made significant strides in developing vaccines and other medications/treatments in a wide range of high profile and challenging areas (some examples being various cancers, meningitis, Covid-19, Alzheimers, diabetic foot ulcers, dengue, and hepatitis B).

However, U.S. unilateral coercive measures undermine Cuba's biotech industry at every juncture. The sanctions interfere in importing components of the drugs the biotech industry is developing and manufacturing. The sanctions make research difficult, since Cuba's biotech institutes depend on the cross-border exchange of ideas.

Since the United States is the major regional economic power and a source of new medicines and technologies, Cuba's biotech effort is subject

28. Salim Lamrani, "The Health System in Cuba: Origin, Doctrine and Results", *Regards sur Cuba, Etudes Caribéennes* (July 2021), <https://journals.openedition.org/etudescaribeenes/24110>, visited on May, 2024.

29. López E, Acevedo B.E, Silva R, Tormo B, Montero R, Herrera L., "Development of Cuban biotechnology", *Journal of Commercial Biotechnology* 9 (2) (2002), p. 147.

30. H. Yaffe, "The Curious Case of Cuba's Biotech Revolution", In: I. Inkster (ed.), *History of Technology* 34 (2019), Bloomsbury Academic, p. 15, <https://eprints.gla.ac.uk/181175/7/181175.pdf>, visited on May, 2024.

to deprivations that impinge on its citizens' human rights. Moreover, the U.S. makes its own foreign trade policy extraterritorial, through a system of secondary sanctions which force third-party countries also into limiting its deals with Cuba. The island's biotech sector Cuba has long struggled to gain access to medical equipment and various technologies because of patent regulations that fall under the edicts of unilateral coercive measures from the issuing nation, mostly the U.S. This has resulted in Cuba relying on other countries to import much needed resources at increased cost and complex payment schemes. It also leads to chronic shortages of key items and chains crisis can occur anywhere this has a strong impact on the right to health care of the Cuban population.

Cuban companies are systematically denied the right to acquire technologies, raw materials, reagents, diagnostic tools, medicines, devices, equipment and the necessary spare parts as a result to the enforcement of unilateral coercive measures and the concomitant chilling effect and over compliance. Obstacles range from outright denial to enter into commercial transactions to refusal to update the documentation needed to give continuity to the trade relations to acquire lifesaving drugs in areas such as oncology and pediatrics or reagents for Cuba's Covid-19 vaccine candidates. From January to July 2021, the Cuban state agency charged with importing medical goods, MEDICUBA S.A., contacted 65 U.S. companies to inquire about the possibilities of importing medicines, equipment, devices and other supplies necessary for the care of the Cuban people in the national public health system. Of these, 56 companies did not respond to the Cuban entity's requests, while 3 responded negatively, even though medical sales are ostensibly permitted under U.S. law³¹.

Even when some of the hurdles are overcome by taking a more costly and time-consuming route and the products are developed, the sanctions hinder their commercialization with overall economic consequences for the Cuban biotech industry. U.S. sanctions have even blocked the use of critical software and cyber platforms such as Zoom, that would be employed, among other things, to facilitate training for doctors and telemedicine services not only in Cuba but around the world.

31. Cuba's report on Resolution 75/289 of the UN General Assembly entitled "Necessity of ending the economic, commercial and financial blockade imposed by the United States of America against Cuba", January - July 2021, <https://cubaminrex.cu/en/cubas-report-resolution-75289-united-nations-general-assembly-entitled-necessity-ending-economic>, visited on May, 2024.

This is outstandingly visible in the case of Cuba's biotechnology initiative. This particular sector has an impact on the right to health care, a basic human right of the Cuban population. Overall, restrictions imposed on U.S. companies block Cubans citizens from the island from some cloud services, file transfer sites, social media managers, editing software, development apps, video calling, free education platforms and NFT marketplaces.in all more than 60 Software, sites, and services restricted for Cuba.³² Open and secure internet access an essential enabler of social and economic rights.

U.S. unilateral coercive measures target each of the areas in which Cuba is positioned to produce goods and services on a par with highly developed countries. Most significantly, the Torricelli Act specifically targets the biotechnological sector, by regulating and imposing end user verification conditions on any U.S. export of medical equipment and goods that can be used in the production of any biotechnological product. In addition, there is a broader rule, updated by the U.S. Department of Commerce's Bureau of Industry and Security in October 2019, that prohibits the export of goods to Cuba – by companies in third countries – if they have even 10% *de minimis* U.S.-origin contents.³³ For example, in 2006, Nikon Corp. refused to present a digital camera as a prize to a Cuban boy who was one of the winners of a U.N. painting competition, citing a U.S. economic embargo on the Caribbean Island state. Faced with protests, Nikon said it could not present a digital camera to the boy because it contains U.S.-made parts whose export to Cuba is banned³⁴.

The impact of sanctions on health and health services are not limited to problems relating to the supply of medicine and healing drugs. Health and health services also depend on water and sanitation infrastructure,

32. Software, sites, and services restricted for Cuba, <https://github.com/cuban-opensourcers/cuban-restricted>, visited on May, 2024.

33. No item may be sold by a third-country national (e.g., Spain) to Cuba or Cubans if it contains more than a de minimis 10% or less U.S. content by value. For example, if a German medical image equipment sells for \$1,000 and a U.S. component of the equipment has a value of \$100, then a German national requires an export license from a U.S. government agency to sell the piece of equipment to Cuba, even if it is designed and manufactured in Germany n and 90% of its content is of non-U.S. origin, <https://www.federalregister.gov/documents/2019/10/21/2019-22876/restricting-additional-exports-and-reexports-to-cuba>, visited on May, 2024.

34. Nikon slaps U.S. embargo on Cuban boy's U.N. prize, The Japan Times, 2006, <https://www.japantimes.co.jp/news/2006/10/28/business/nikon-slaps-u-s-embargo-on-cuban-boys-u-n-prize/>, visited on May, 2024.

electricity and other functioning equipment such as medical equipment, hospital facilities and ambulances.

Conclusion

The regulations deployed and enforced by the U.S. Department of the Treasury today in its various economic sanction's programs had their origins in the declared hostilities against the Kaiser's Germany in World War I. More controversially in terms of international law, economic warfare against Cuba has been implemented used to compel a country to change its form of government or its behaviour.

Additionally, U.S. unilateral coercive measures have no mechanisms for evaluating their humanitarian impact. it has been intended to have a humanitarian effect by affecting the overall economic performance of Cuba and consequently the living standards of the population.

The U.S. targets the sectors that reduce export revenues and consequently affect the overall capacity of the Cuban state to provide essential elements for the life of Cubans. In the particular case of Cuba, due to its economic structure, size and geographical location, unilateral coercive measures affect areas of economic strength such as tourism and the export of professional services, and exploit vulnerabilities such as imported energy dependence and Cuba's reliance on foreign direct investment. By undermining Cuba's overall economic performance, and significantly the Cuban state revenues, U.S. unilateral coercive sanctions are explicitly geared toward bankrupting the Cuban state, which leads to import cuts and scarcity of essential goods. As a main consequence, the living standards of the Cuban population, who rely mostly on the Cuban state for health care, education, transportation, and subsidized food is affected.

The Cuban health care infrastructure is impacted by the unilateral coercive measures. Even if humanitarian exemptions were effective, which in practice they are often not, this would not be sufficient to maintain adequate health services. Inadequate physical, meaning hospital buildings and medical infrastructure overall on the one hand and decreasing revenue of sanctioned state – as a consequence of unilateral coercive measures – for financing investment, maintenance and running costs on the other hand, reduce the ability of the Cuban health system to deliver services and respond to medical emergencies on a whole range of procedures. The state of the healthcare sector of Cuba has been gravely affected by the imposition of sanctions by the US, the citizens' right to health and access to medicines and medical care.

CHAPTER XIII

Impact of unilateral sanctions on human rights in Venezuela

(Y.D. Arellán Zurita)

Unilateral coercive measures (UCM) are an illegitimate mechanism used to inflict inhumane collective punishment to target countries such as Venezuela. This has been evidenced by this and other international studies. Their impact on the enjoyment of human rights is multidimensional¹ and multiform².

Evidence clearly indicates that their repercussions resemble those caused by weapons of mass destruction (bombs), since they not only have an impact on the socioeconomic body of the target country, destroying everything in their path, but also, due to their longlasting effects, they irreversibly change social customs and dynamics³.

Venezuela has been a constitutional democracy for more than sixty years. In the decade preceding 2013 it exhibited progress and positive trends in the enjoyment of human rights as a result of a growing economy. After 2014, however, the Venezuelan population suffered greatly as a result of the imposition of UCMs that undermined the possibilities to counter the fall in oil prices⁴.

The evidence provided by the study, in light of counterfactual and linear regression models, shows that oil production, the infant mortality rate and the Human Development Index (HDI) were severely impaired by the UCMs. Without the 9 year exposure to the exogenous phenomenon of the UCM, it is plausible to say that Venezuela could have received additional revenues of USD 150 billion, produced more oil, had a better HDI and, most probably, 30,000 children would be alive today.

1. Because it generates an expansive wave of effects in different areas of the target country. The socioeconomic dimension is the most visibly disturbed. Other dimensions: cultural, technological and intergenerational damage.

2. Due to the diversity of forms and channels of transmission.

3. UCMs generate deeper damage that implies drastic cultural changes and unsuspected setbacks in the enjoyment of human rights. For example, some villages in Venezuela returned to the use of firewood to cook their food.

4. Between June 2014 and June 2016, the price of the Venezuelan oil basket fell by 70%.

Introduction

This knowledge production is part of the academic research line on UCM that began in 2019 under the guidance of Professor Elsie Rosales⁵, with the purpose of characterizing and evaluating the effects of the Unilateral Coercive Measures applied to Venezuela since 2014, formally and mostly by the government of the United States and other international actors.

The general objective of the research is to generate scientific knowledge in order to know, describe, explain and establish factors, dynamics and their links with human and social consequences, which have had a relevant influence on the enjoyment of the rights of the Venezuelan population, in particular the right to development, which can be reasonably attributed to (explicit or implicit, direct or indirect) threats deployed against Venezuela among which the UCM systematically administered by governments, as well as reproduced by international organizations and private entities, stand out.

The unilateral coercive measures have become one of the illicit instruments of foreign policy used to prompt changes in the behaviour of other States (punished country), according to the interests of the sanctioning state. Empirical evidence shows that US-imposed UCMs have historically affected the human development of the targeted nations. Abundant UN expert statements⁶ and academic research⁷ in this regard support this assertion.

5. Elsie Rosales, PhD. Researcher. Professor (Catedrático) of Criminal Law at the Universidad Central de Venezuela.

6. See more at *Venezuela: Save Lives of Cancer Patients Endangered by U.S. Sanctions – Experts*, 21 July 2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27328&LangID=E>, visited on May, 2024., visited on May, 2024; *UN News: Additional Statements on Unilateral Coercive Measures*, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27373&LangID=E>, visited on May, 2024; *UN Document A/72/370*, <https://undocs.org/pdf?symbol=es/A/72/370>, visited on May, 2024; *UN Document A/HRC/39/47/Add.1*, <https://undocs.org/es/A/HRC/39/47/Add.1>, visited on May, 2024.

7. See more at CEPR Report: *Venezuela Sanctions*, <https://cepr.net/images/stories/reports/venezuela-sanctions-2019-05-spn.pdf>, visited on May, 2024; CiteseerX: *Academic Analysis on Economic Sanctions*, <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.950.2427&rep=rep1&type=pdf>, visited on May, 2024; CESifo Report on Economic Sanctions and Human Rights, <https://www.cesifo.org/DocDL/wp-2016-229-neumeier-et-al-economic-sanctions-human-rights.pdf>, visited on May, 2024; University of Trier Research Paper on Economic Sanctions, https://www.uni-trier.de/fileadmin/fb4/prof/VWL/EFW/Research_Papers/2017-06.pdf, visited on May, 2024; Econstor Report:

The literature points out that while the imposition of the UCM on various economies has failed in its illicit objective of achieving political change, their application generates, among others, increased inequality, migration and the destruction of large part of the productive capacity of the economies.

Although they had already been informally enforced for more than a decade through international multiform threats⁸, it is on December 18, 2014⁹ that the UCMs are formally applied on Venezuela. After 2014 an escalation occurred with more than 650¹⁰ UCMs imposed until February 2023, which have been characterized by their progressive harmful character. Thus, in 2023 Venezuela completes nine consecutive years¹¹ of exposure to UCM.

The application of the set of UCM against Venezuela has been unprecedented in the world. This assertion is based on two actions never applied to any other target country:

Impact of Sanctions, https://www.econstor.eu/bitstream/10419/121131/1/N_138.pdf, visited on May, 2024.

8. At the international level, *threats* are not only understood as situations in which there is a risk of intentional harm, whether or not justified by the perpetrator. A threat is considered to be any conduct by another State or States (or their governments) or by international agencies or large private organizations (such as a transnational corporation), whether prohibited or not legally permitted, which, in a relevant way, generates or increases a risk that is capable of affecting a population or its rights by real harm or danger. It is a threat to undermine the territorial integrity, to promise to change a constitutional government and to direct diverse actions to it, to organize lobbies to affect the financial, banking, investment or monetary flow, to expropriate or freeze goods, effects or public assets of a State without it being the result of a judicial decision of a competent court, to extort creditors, holders, investors, contractors, payers, service providers of any nature with punishing them in case of doing business or transactions with the affected State. Concept by Elsie Rosales and Yosmer Arellán.

9. Passing of Law 113-278: "Public Law for the Defense of Human Rights and Civil Society in Venezuela". The Act authorizes the Treasury Department to sanction and block assets of Venezuelan officials, <https://ofac.treasury.gov/media/5821/download?inline>, visited on May, 2024.

10. Source: Statista. See more at <https://www.statista.com/chart/27015/number-of-currently-active-sanctions-by-target-country/>, visited on May, 2024.

11. It is fair to point out that on October 18, 2023, the US government eases the UCM on Venezuela through "licenses" that, in theory, relax the "prohibitions" on Venezuelan oil trade and other economic areas. However, the U.S. legal framework instruments underpinning the UCMs remain in place and intact.

Simulation of a non-existent international presidential representation

The object and symbolic simulation of an “interim” president by the US for purposes of international recognition to facilitate the expropriation, disempowerment and obstruction of the business of the republic is unprecedented for target countries. This resulted, among other things, in an increased political risk and the fictitious duality of governments before international institutions.

IMF denies¹² financing to Venezuela to deal with COVID-19

Another fact that gives an unprecedented character to the UCM applied to Venezuela is the refusal by the IMF in 2020 to grant financing to deal with the COVID-19 pandemic. The financing was granted to other countries under a UCM regime such as Libya, Nicaragua, Sudan and Myanmar.

This research provides robust evidence on the impact of the UCM on human rights in Venezuela. The effects are comparable to those produced by the bombing of a country: intergenerational damage, destruction of the productive apparatus, damage to public services and health infrastructure, increased infant mortality, exacerbated migration and setbacks in all dimensions of human development that materially impede the achievement of the 2030 Sustainable Development Goals. Some of their magnitudes were assessed using counterfactual and linear regression models. The impact on oil production, HDI and infant mortality rate will reflect the criminal collective punishment of the illegal and inhumane application of the UCMs.

Although the figures give evidence of an economic collapse, with a cumulative fall of at least 75%¹³ of real output between 2014 and 2020, these results cannot be attributed to poor internal management but rather, as pointed out by researchers Rodríguez (2019)¹⁴ and Weisbrot, and Sachs (2019)¹⁵, to exogenous variables that modified the expected behaviour of

12. See <https://www.france24.com/en/20200318-imf-rejects-crisis-hit-venezuela-s-request-for-5-bn-virus-aid>, visited on May, 2024.

13. See https://www.imf.org/external/datamapper/NGDP_RPCH@WEO/OEMDC/ADVEC/WEO_WORLD/VEN, visited on May, 2024.

14. F. Rodríguez, “Sanctions and the Venezuelan Economy: what the data say”, *Latam Economics Viewpoint*, Torino Economics (2019).

15. M. Weisbrot and J. Sachs, “Economic Sanctions as Collective Punishment: The Case of Venezuela”, *Center For Economic and Policy Research* (2019).

the Venezuelan economy, with the application of UCM by the US being the most influential and determining variable.

Methodological considerations on the evaluation of the impact of the UCM in Venezuela and any target country

Impact evaluation: how would Venezuela fare without the application of UCMs?

The debate on methods to evaluate the impact of the UCMs is still incipient, however, there are some studies that use linear regression and counterfactuals¹⁶. In our experience, moving from the description of the behavior of some variables before and after UCM application to a plausible estimate of the possible incidence of UCM on that behavior requires maximum rigor to avoid biases and to be able to isolate effects. In this sense, the study contemplates three basic stages:

Background and trends in time windows prior to the UCMs

The first stage involves analyzing antecedents and trends in the behaviour of socioeconomic variables that may have undergone alterations post UCM. This makes it possible to capture the predictability of any abrupt changes.

A key attribute of this stage is the observation of alternative variables. Mismanagement¹⁷, raw material crises, financial crises, natural catastrophes, wars, among others, are live variables before and after the application of the UCM, therefore observing their possible impact on the economy of the target countries in the past contributes to isolate the effect of the UCMs.

Description of possible effects of UCMs

In view of the target country's background and trends in its main socioeconomic variables, it is appropriate to observe its post-UCM behaviour. Describing this behaviour provides signals that empirically establish an impact of the UCMs.

16. In this regard, there are several experts who have rigorously addressed the effects of UCMs on the economy and the enjoyment of human rights throughout their imposition on more than 70 countries. We highlight the Germans *Matthias Neuenkirch and Florian Neumeier of the University of Trier* and their studies on the impact of economic sanctions.

17. For the author, the term "mismanagement" encompasses all the terms associated with harmful effects on the development of the country derived from the management of the state. Some subsumed terms are: negligence, corruption and inefficiency.

Methodological evaluation of the impact of UCMs

*The Counterfactual Method*¹⁸

Based on a systematic analysis, the impact assessment attempts to determine the capacity of an event (UCMs) to modify the course of situations and the magnitude of this modification, by constructing counterfactual hypotheses (based on control groups that meet the condition of having similar characteristics), making it possible to verify precisely what would have happened in the absence of the event. Assessing the impact of an event implies being able to isolate the effect of the event in relation to other phenomena affecting the situation¹⁹. For this research, the selection of the control group will rely on the synthetic control method as a theoretical basis.

In order to construct an adequate counterfactual, it is crucial that the group of countries with which Venezuela's situation before and after the UCMs (control group) will be compared guarantees the minimum distance between the trajectories of the selected variables. This can be recreated by several methods²⁰, however, we will use the synthetic control method. The synthetic control methodology was originally developed in the seminal paper by Abadie and Gardeazabal (2003) and later in Abadie, Diamond, and Hainmueller (2010)²¹. In principle, the methodology provides robustness to the evaluation of public policies.

For the case under study, UCMs amount to a “harmful public policy” imposed extraterritorially without legitimacy²². For Burgoa and Herrera (2017)²³: “... The synthetic control method is based on the assumption that a weighted combination of untreated units²⁴ can better shape the

18. It is an estimate of what the outcome (Y) would have been in the variables of interest to a participant in the program, if he or she had not taken the program (P). By definition, the counterfactual cannot be observed. Therefore, it must be estimated using the comparison or control groups. (World Bank, 2011); See more at http://siteresources.worldbank.org/INTHDOFFICE/Resources/IEP_SPANISH_FINAL_110628.pdf, visited on May, 2024.

19. D. Casado, J. Blasco, “Practical guide 5, Impact evaluation” (First edition), *Iválua collection of practical guides on public policy evaluation* (2009).

20. D. Pomeranz, *Impact evaluation methods* (Harvard Business School, 2011).

21. See <https://economics.mit.edu/files/11859>, visited on May, 2024.

22. The Evaluation of Public Policies Through Synthetic Controls by Alberto Abadie, John F. Kennedy 2014 is recommended.

23. R. Burgoa, A. Jiménez, “Synthetic control analysis of the domestic impact of the restriction on meat exports in Bolivia”, *Latin American Journal of Economic Development* (2017).

24. For our study it is countries without UCM.

characteristics of the treated unit²⁵ better than a single untreated unit. From the main characteristics of the treated unit, what is called a synthetic unit²⁶, based on a broad set of individual information from the other units (i.e., individual units) that were not targeted by the policy. This synthetic unit is constructed on the basis of weights that minimize the square of the differences between the ex ante or pre-treatment values of the characteristics of the treated unit and of the untreated units...”

The distance between the synthetic Venezuela (counterfactual) and the real Venezuela will be the most plausible sign of the possible incidence of UCMs (impact of UCMs) and will determine the probable losses.

Linear Regression Model

To estimate the significance of the impact of the UCM and to be able to assess the losses, a linear regression model was applied in parallel to the counterfactual method, using a dummy variable that takes values of zero (0) for the periods without UCM and one (1) when these have been imposed and maintained over time.

The studies carried out do not attempt to calculate with irrefutable accuracy the incidence per se of UCMs, but rather to provide plausible signals about this possible incidence. Because of their purely scientific nature, it is not necessary to ascribe a priori all the incidence to the UCMs or to deny that other variables have an impact. However, it is necessary to move away from the stubborn denial²⁷ of the impacts of the UCMs.

In this regard, there are two other methodologically important issues that are the subject of debate among analysts of the impact of the UCMs. The first concerns the *isolation of the UCM phenomenon* from other possible causes. The second relates to the *causal link and causal chains* between the UCMs and their possible socioeconomic impact. Regarding these issues, we have that:

On the isolation of effects

Alternative hypotheses to the impact of UCM should be considered in any study. However, and for the case of Venezuela, the alternative hypotheses are practically incommensurable, since they are pre-existing variables

25. For our study it is Venezuela.

26. For our study it is the synthetic control group.

27. It is unwise to deny that there are harmful effects when the provider indicates that its main objective is that this is so.

without evidence of any incidence in abrupt variations of oil production or infant mortality rate.

Selecting mismanagement, falling oil prices or others, as plausible cause(s) of the eighty per cent plunge in Venezuela's oil production since 2016, will merit rigorously demonstrating why none of those pre-existing alternative hypotheses (plausible causes) led in the past (before and without UCM) to such abrupt variations?

On the causal link

Establishing the causal link between UCM and their impact on socio-economic variables is a lengthy analytical task. In the case of Venezuela it has been a little clearer because of its high dependence on oil. Thus, any disturbance to the stability of oil revenues will immediately generate effects on the availability of resources for social investment. The de facto embargo on Venezuela's oil trade had an impact on the source of 90% of the country's foreign exchange income.

There is a causal order in the effects. On the understanding of this order rests the clear establishment of the causal link. In this sense, the order and causal link between the UCMs and the great suffering of the Venezuelan population between 2014 and 2023 can be summarized as follows:

UCMs constitute a de facto embargo to Venezuela's free oil trade with the world. The UCMs was applied by Venezuela's main oil partner²⁸, treacherously targeting the main and almost sole source of wealth of the country. Possible alternatives or solutions to mitigate the de facto embargo were cut off by the same UCMs (basically, international financing, decumulation of assets and foreign direct investment). Venezuela's oil revenues collapse (up to 90%) and become the causal link or the main channel of transmission of great suffering to the population. The severe drop of income automatically generates the collapse of social investment, therefore, serious and multiple wounds in the social body.

Impact of the UCM on human rights in Venezuela

The impact of the UCMs on human rights in Venezuela is presented in two main blocks. The first block will deal with the impact of the UCMs

28. The geographical proximity between Venezuela and the US also has a negative impact. In M. Neuenkirch, F. Neumeier, "The Impact of UN and US Economic Sanctions on GDP Growth", *European Journal of Political Economy* (2015), the effect of MCUs according to distance and trade with the US is studied.

on economic rights and the second block will focus on the impact of the UCMs on the right to life. This order facilitates the understanding of the causal links and causal chains. Simply put, the impact of the UCMs is felt first on the economy (Venezuela's income) and this is quickly transmitted through various channels to human rights related to life.

Impact on Venezuela's economic rights

Background and trends. Has the fall in prices affected oil production? What was the Venezuelan economy like before the UCMs?

Venezuela's economic rights were the main target of the UCMs. The perpetrator knew that the maximum pressure (stifling) had to start at that point. In addition, he knew the oil price crisis between 2014 and 2016 would generate a revenue problem for the Nation²⁹.

On the subject of the price crisis, it is necessary to specify that, historically, Venezuelan oil production has not suffered an impact of such magnitude as a result of the fall in crude oil prices. It is clear that the fall in oil prices has a direct impact on Venezuelan national income, which will reduce the resources to expand production capacities and perhaps complicate the maintenance of the oil industry. However, there is no plausible evidence³⁰ to determine a causal relationship between the fall in prices and the fall in Venezuela's oil production.

The following Table 1 shows some variables that serve as background information on the state of the Venezuelan economy prior to the UCM and, in addition, their trends over a period of 11 years before 2014.

Table 1 – Economic indicators of Venezuela. Average, variation, value, and status.

No.	Indicators	Annual average (2003-2013)	Value (2013)	Variation (2003-2013)	Status
1	Foreign currency income	USD 31.649 millions	USD 42.690 millions	213,2%	Positive
2	Oil production	2.415 tbd	2.325 tbd	-0,4%	Stable
3	Oil price	USD 67,59	USD 99,5	287,9%	Positive
4	Oil exports	USD 63.345 millions	USD 85.603 millions	288,6%	Positive
5	GDP (USD million at current prices)	USD 260.285 millions	USD 371.005 millions	343,7%	Positive

29. This intentionality determines the possible commission of crimes against humanity, since it provides the act with a notorious premeditation, immanent to the actions of any criminal executing such atrocities.

30. The variation in oil prices does not explain the variation in production; in fact, the correlation between the two since 1984 (for 448 observations) is equal to -0.03, which means that the association between the two variables is null.

No.	Indicators	Annual average (2003-2013)	Value (2013)	Variation (2003-2013)	Status
6	GDP per capita (USD at current prices)	USD 9.255,6	USD 12.456,7	280,6%	Positive
7	Unemployment	9,3	7,5	- 55%	Positive
8	Inflation	26,1%	56,2%	872,4%	Negative
9	International reserves	USD 30.182 millions	USD 21.487 millions	3.9%	Stable
10	Foreign direct investment in the country	USD 2.409 millions	USD 2.680 millions	11,2%	Positive
11	Income from external financing	USD 16.094 millions	USD 14.711 millions	77,7%	Positive
12	Cereal production*	3.665.059 tm	3.693.974 tm	18,5%	Positive
13	Protein consumption (% of population)	89,4%	96,1%	7,4%	Positive
14	Services index FFP**	6,3	6,5	-7,1%	Positive
15	Oil Exports to the US***	1.200 tbd	805 tbd	-41,3%	Negative

Sources: EIA***, OPEC, BCV, International Monetary Fund, Data scope, World Bank, Fund for Peace**, FAO* and Ministry of Petroleum of Venezuela.

The Venezuelan economy, analysed from the 15 preceding indicators between 2003 and 2013, yielded compelling evidence of mostly positive background and trends. No evidence was found of any accurate prediction on the behaviour of the Venezuelan economy between 2014 and 2019; in fact, the IMF³¹ estimated in October 2014 that Venezuela would have a 1% GDP growth for 2019. However, for 2019, according to the multilateral, the Venezuelan economy contracted 35%.

The Venezuelan economy grew in 85% of the quarterly time windows between 2003 and 2013 (in 34 of the 40 quarters prior to 2014). In this period it grew economically for 22 consecutive quarters, as a result of stable levels of oil production and high crude oil prices.

Description of possible effects on Venezuela's economic rights

The following section shows the possible effects on variables associated with Venezuela's economic rights. It is worth noting that our original research has evaluated more than 150 economic variables that present important alterations post UCM.

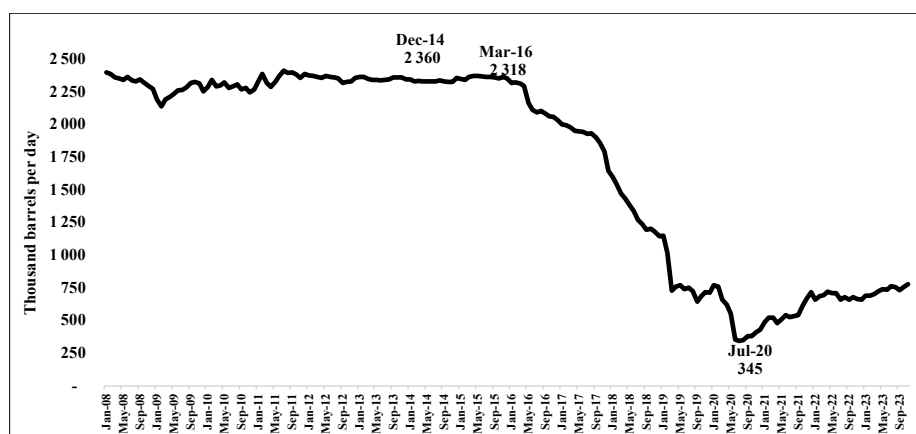
31. Source: International Monetary Fund, <https://www.imf.org/en/search?q=WEO%20&sort=relevancy>, visited on May, 2024.

Effect 1.- Venezuela's oil production before and after the UCMs

Oil production **decreased 85.4%** between Dec-2014 and Jul-2020³². The absolute difference between the two dates is 2,015 million barrels per day (mbpd).

By Nov-2023 oil production **is still only one third (1/3)** of what it was in Jan-2016.

Regarding the average production 12 months before the UCM, *the amount of non produced barrels*, between Jan-2016 and Nov-2023, was estimated at **3.613 million barrels**.



**Figure 1. – Venezuela's monthly oil production in thousands of barrels per day.
January 2008 – November 2023.**

Source: OPEC (secondary sources).

Effect 2.- Venezuela's Oil Revenues in foreign currency before and after the UCMs

Foreign currency oil revenues from PDVSA to the BCV fell 98.1% between 2014 and 2020. In 2020 Venezuela had only 1.9% of the foreign currency oil revenues it had in 2014.

The accumulated income 8 years before the UCM was USD 372,279 million. The accumulated income 8 years after the UCMs was USD 38,787 million. The difference between both incomes is USD 333,492 million, namely a 89.6% drop.

32. Historical low point of Venezuela's oil production after UCMs.

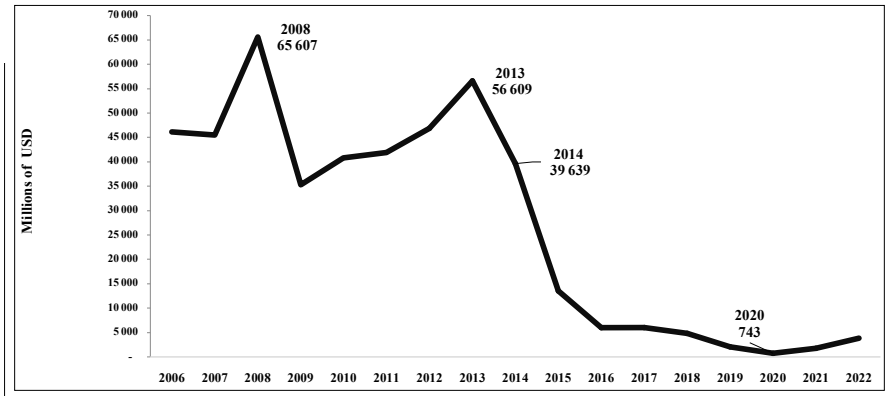


Figure 2. – Venezuela’s Oil Revenues- PDVSA’s foreign currency sales to the BCV in Millions of USD. Years 2006 – 2022.
Source: BCV.

Effect 3.- Gross Domestic Product – GDP – Before and after the UCMs.

GDP dropped 79.6% between 2014 and 2020, the sharpest contraction for the country in its history and for any³³ country with UCMs. During World War II Greece’s economy shrank by less than 65%.

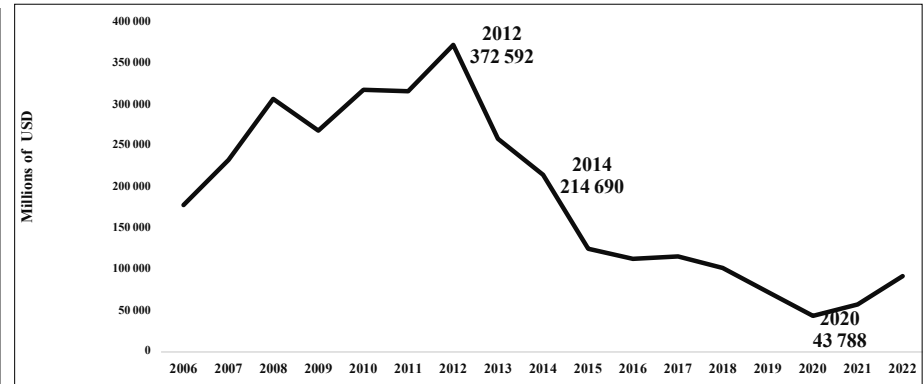


Figure 3. – GDP at current prices in Millions of USD. Years 2006 – 2022.
Source: IMF.

By the year 2020 the Venezuelan economy declined drastically to only one fifth of what it was before the UCM. According to our research, the enterprise death rate was around 75%.

33. The assertion is based on the results of research conducted. See https://www.econstor.eu/bitstream/10419/121131/1/N_138.pdf, visited on May, 2024; See <https://cup.columbia.edu/book/economic-sanctions-reconsidered/9780881324129>, visited on May, 2024.

Important clarification³⁴. The Venezuelan economy until 2006 (before the boom) averaged a GDP of USD 80 billion per year. Therefore, 2014 was a very good year despite the drop from the historical peak of 2012. It is inaccurate to say that, before the UCM, Venezuela's economy was in "bad shape". On the contrary it expanded almost five times. Even though there was a contraction compared to the historical peak, the GDP in 2014 was almost three times what it was historically before 2006.

Evaluation of the impact of UCMs on Venezuela's economic rights

Counterfactual method. More than 30 oil producing countries were evaluated in order to form the synthetic control group, countries with UCMs and those with abrupt variations in their oil productions between 2010 and 2017 were eliminated beforehand. The synthetic control group was composed of 18 countries.



**Figure 4. – Counterfactual Oil Production.
Venezuela versus Synthetic Control Group. Jan-2010- Aug-2023.**

Source: EIA – PEC – PDVSA – Own calculations.

Figure 4 shows the results on the monthly evolution of oil production (expressed in Log) of the synthetic control group and Venezuela for the treatment period Jan-2010 - Aug-2023.

34. This clarification is a counter-argument to the denialist hypotheses on the impact of the UCMs in Venezuela, which state in summary that: "Venezuela was and was going to be very bad and the UCMs had no impact at all" or "Venezuela was in very bad shape and the UCMs only aggravated what was already unstoppable". The UCM were not a "push" towards an economic body that was on the edge of the precipice, they were rather a "bullet" in the head to the body of an economy that had just expanded almost five times. This does not deny the existence and incidence of other factors.

The synthetic Venezuela neatly models the country's original series until October 2017, the difference between both trajectories is not statistically significant. But, after October 2017, both series become distant with no possibility of reunion according to their trends, in other words, Venezuela without UCM advances and follows a stable trend, while Venezuela with UCM plummets severely. The distance between both series will be the "*Impact of the UCM's*" on oil production.

Estimated loss due to the impact of UCMs on oil production – Counterfactual Method

The production loss caused by UCMs was determined to be 64.2% between Jan-2017 and Aug-2023. This translates into an average production reduction of 1.1 million barrels per day (mbpd) and accumulative loss in the period equal to 2,817 million barrels.

The loss of oil revenues derived from the impact on production between Jan-2017 and Aug-2023 was established at USD 158,253 million, a figure similar to Mozambique's accumulated GDP³⁵ of the last 10 years. Every day that the UCMs remain in force on oil trade, Venezuela could be expected to lose at least USD 62.7 million, only due to the impact on oil production.

Linear regression model. The impact was estimated through the application of a linear regression model, explaining oil production (expressed in logarithm) through the use of a representative variable of the UCM, according to a sample of 470 monthly observations.

Estimated Loss from the Impact of UCMs on Oil Production – Linear Regression Model

Based on the model in question³⁶, the application and maintenance of UCMs are responsible for 61.2% of the drop in cumulative oil production since Dec- 2014.

The remaining percentage (38.8%) could be attributed to factors such as falling crude oil prices, capital flight, mismanagement and the pandemic.

Under the regression model, the evidence determines that 949 mbpd were eliminated, accumulating between Dec-2014 and Nov-2023 a total

35. Mozambique is a country in Africa with a population similar to Venezuela, between 30 and 33 million people.

36. According to the linear regression model, the results showed that UCMs had been responsible for an average monthly drop of 0.86% in oil production since 2014.

of 3,119 million barrels. The loss of oil revenues derived from the impact on production since 2014 was determined at USD 162,577 million by the linear regression model.

The lost income and the reduction in oil production are convergent by both impact evaluation methods. Correspondingly, it could be indicated that 9 years of UCM prevented Venezuela from earning USD 150,000 million in oil income due to the loss, on average, of 1 million barrels per day of production.

Impact on the right to life in Venezuela

This section presents the second block on the impact of the UCMs on human rights in Venezuela. The block will focus on variables related to the right to life, namely: Human Development Index and Infant Mortality Rate.

Background and trends: How was the enjoyment of human rights in Venezuela before the UCMs?

The performance of the national economy between 2003 and 2013 allowed Venezuela to achieve significant progress in most social indicators associated with improvements in the enjoyment of human rights, meeting the 2015 sustainable development goals. The acceleration of social welfare was recognized by the UN, Venezuela was one of the eighteen countries in the world that met the hunger eradication goals. Indeed, this was confirmed by FAO³⁷.

Another important background. Between years 2003 and 2013, the behavior of HDI of Venezuela was undoubtedly increasing. Figure 5 shows the sustained growth of Venezuela's HDI between 2003 and 2013, from 0.69 to 0.77. According to the evidence, the enjoyment of human rights up to 2013 showed a positive evolution. However, the following section describes abrupt changes in variables related to human rights, in many cases, just after the application of the UCM.

37. See <https://www.telesurtv.net/news/FAO-El-hambre-en-Venezuela-es-tema-superado-20141127-0062.html>, visited on May, 2024; See <https://www.telesurtv.net/news/FAO-destaca-lucha-venezolana-por-la-seguridad-alimentaria-20141212-0031.html>, visited on May, 2024.

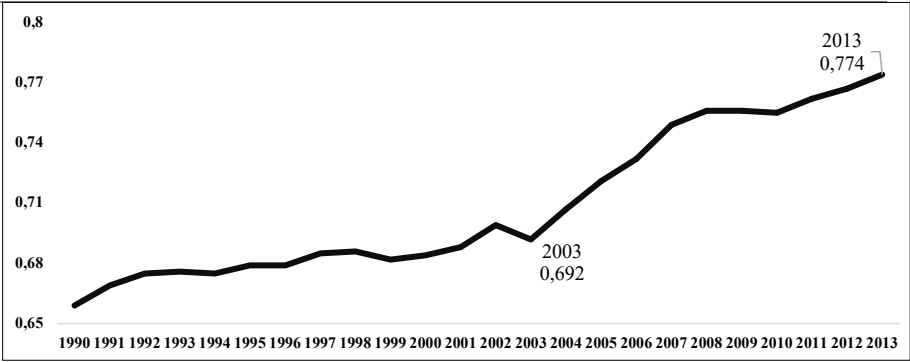


Figure 5. Venezuela’s Human Development Index. Years 1990 – 2013.
Source: Human Development Reports, UNDP.

Description of possible effects of UCMs on the right to life in Venezuela

The following section shows the possible effects on the right to life in Venezuela as a result of the impact of the UCM on only two (2) variables. It should be noted that our original research has evaluated more than 100 social variables that present important alterations post UCM.

Effect 1.- Human Development Index

Venezuela’s HDI falls 0.08 points between 2014 and 2021, i.e. 10.4%.

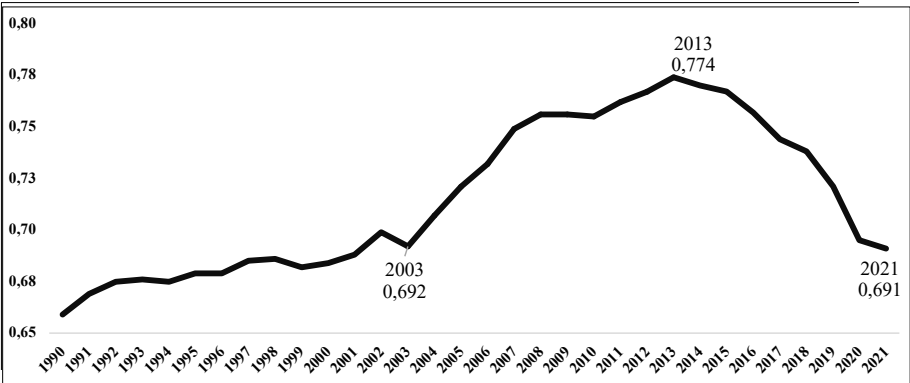


Figure 6. – Venezuela’s Human Development Index. Years 1990 – 2021.
Source: Human Development Reports, UNDP.

Venezuela’s HDI loses the progress achieved between 2003 and 2013, ten years (10) before the UCM.

According to the United Nations Development Program (UNDP) Venezuela had a high HDI in 2013 (between 0.70 and 0.79). Post UCM it becomes a medium HDI (between 0.55 and 0.69), evidencing a setback in the country's human development.

Effect 2.- Infant Mortality Rate

The infant mortality rate has risen since 2014, from 18.02 to 32.98 (83% increase). In real terms, for every 1,000 live births, 15 more children died in 2022 than in 2014.

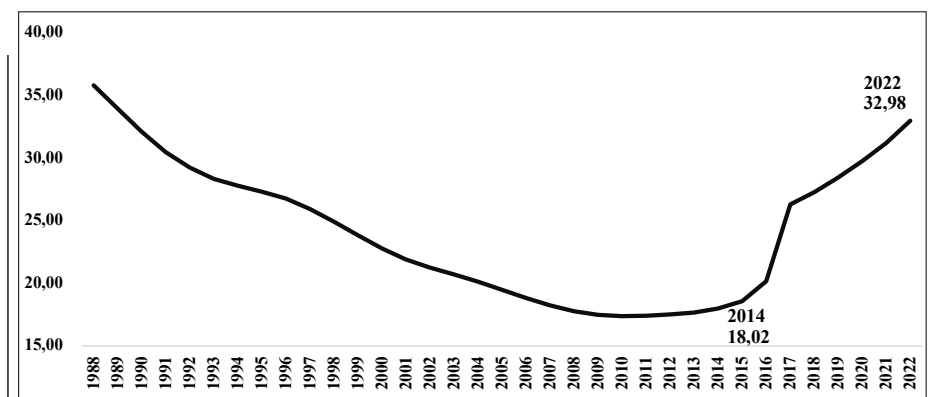


Figure 7. – Mortality rate, under 5 years of age (per 1,000 live births). Years 1988- 2022. Source: UNICEF.

Evaluation of the impact of UCMs on the right to life in Venezuela

Impact on infant mortality rate - Without UCM between 2014 and 2022
How many children under 5 years old would be alive in Venezuela?

Counterfactual Method. More than 65 countries were evaluated, all without UCM. The control group consisted of 32 countries and was generated by multiple mathematical exercises leading to the least square of the pre-UCM differences.

Figure 8 presents the results on the annual evolution of the mortality rate of the synthetic control group and the real Venezuela for the period 1988-2022. The counterfactual Venezuela adequately models the original series for the country prior to 2016. However, from 2016 onwards both series diverge. Venezuela without UCM follows a decreasing trend, while Venezuela with UCM accelerates rapidly.

Estimated human losses due to the impact of the UCM on the infant mortality rate – Counterfactual Method.

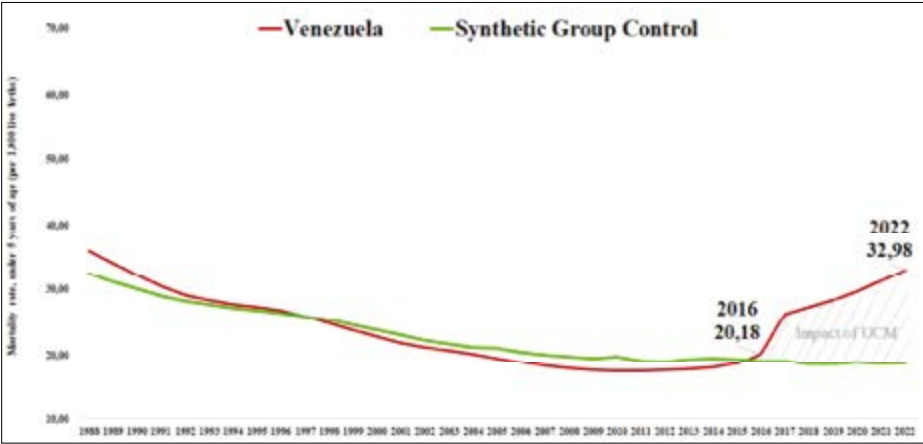


Figure 8. – Counterfactual mortality rate, under 5 years of age (per 1,000 live births). Venezuela versus Synthetic Control Group. 1988- 2022.

Source: UNICEF – Own calculations.

Venezuela’s infant mortality rate, on average, increased due to the UCMs by 49.6% since 2016. Without the presence of UCM between 2016 and 2022 (7 years) it is plausible to indicate that, probably, 34,136 children would be alive.

For every day that the UCMs are maintained over Venezuela, there is an imminent risk that 10 to 13 children will die who could be saved without UCMs.

Human development reversals due to the impact of the UCMs - Contrafactual Method

The HDI is one of the best estimators of the impact of the UCM because it contemplates three (3) major elements of the 2030 Sustainable Development Goals: Income, Health and Education. For this reason, the synthetic control method was applied to generate a control group³⁸ that will recreate as best as possible Venezuela’s HDI without UCMs. The results are shown in Figure 9.

According to the exercise, Venezuela’s HDI in 2021 would be 0.78 without the impact of the UCMs, which would be classified as a high level of human development. The reality is that Venezuela’s HDI for 2021 is at 0.69, indicating a medium level of human development and, in particular, a regression in time to the country’s situation generated by the oil sabotage of 2002-2003.

38. The control group consisted of 26 countries.

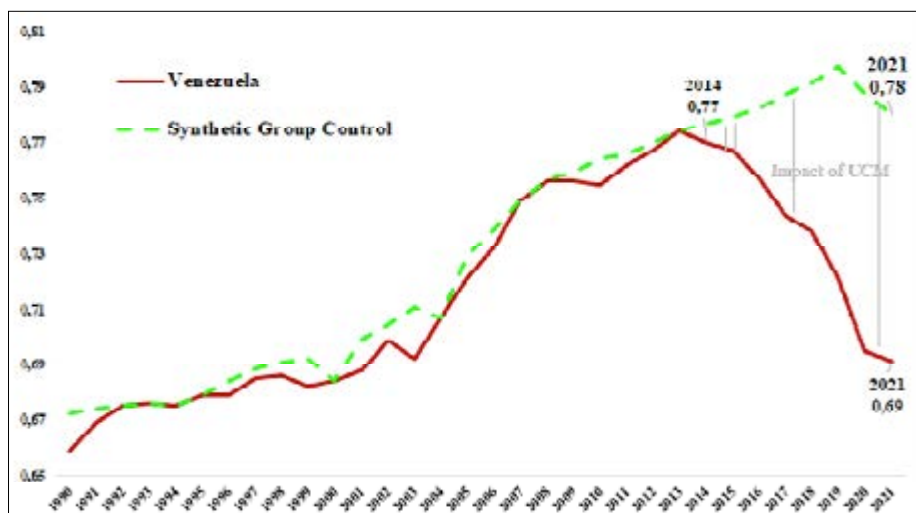


Figure 9. – Counterfactual Human Development Index. Venezuela versus Synthetic Control Group. 1990- 2021.

Source: Human Development Reports, UNDP – Own Calculations.

Conclusions

The evidence shows that the harmful and destructive effect of the Unilateral Coercive Measures (UCM) on human development in Venezuela – and therefore on the enjoyment of its human rights – is similar to that provoked in the Second World War in some European countries³⁹ militarily bombed⁴⁰ and occupied. The collective punishments (great sufferings) range from the continuous worsening of public services, through the largest migration in the history of the country and the social destructuring it leaves residually, to undernourishment and increased infant mortality.

The causal link between the UCMs and the effects and the transmission channels seem to be clear. On the one hand, the causal link exists in the intentional effect of oil production and commercialization capacity, implying a reduction of national income and, therefore, the reduction of resources to sustain human development in Venezuela. On the other hand, the transmission channels are multiple and allow for the materialization of the effects. An example: the reduction of vaccines for children and the deterioration of water quality, both of which will have an impact on infant mortality.

39. The fall of Greece's GDP during 6 years of war was less than the fall of Venezuela's GDP in 6 years with UCM.

40. Victims of weapons of mass destruction.

The counterfactuals of what Venezuela's oil production, infant mortality rate and human development index would have been, without UCM, are clear evidence of the historical, disruptive and destructive interference that UCM have had on Venezuela's sustainable development and the full enjoyment of its human rights.

In light of the evidence provided by the research, without the exposure to the UCMs for 9 years, Venezuela would have received at least USD 150 billion additional from the oil business, would be producing at least 2 mmbd, would have a high HDI (0.78) and probably at least 30,000 children would be alive.

For all these reasons, it is advisable to:

Evaluate the implementation of a system of indicators on the impact of the UCM that estimates the human and material damage to the countries affected.

Evaluate the establishment of a global fund for reparation and compensation for human and material damage resulting from the UCM.

Reflect on a new Sustainable Development Objective (number 18) that aims to "Eradicate the imposition of unilateral coercive measures".

CHAPTER XIV

Impact of unilateral sanctions on human rights in Syria

(E. Tronc)

By early 2023, prior to “Syria - Türkiye earthquake crisis”, an estimated 15.3 million of people needed humanitarian assistance in Syria, and more than 90% of the population was living below the poverty line as a consequence of the exceptional multifaceted protracted crisis affecting the country for more than a decade.

When referring to the restrictive measures (RMs) towards the Syrian Arab Republic, the only consensual element is their unique level of complexity: “*In totality, the U.S. and EU sanctions on Syria are some of the most complicated and far-reaching sanctions regimes ever imposed*”¹. Further considerations are all subject to passionate deliberations involving experts, governmental and supranational entities, regulators, humanitarian actors and lobbies, mixing political, legal, economic and humanitarian sensitivities, revealing deep-seated positions between “pro” and “anti-sanctions”.

Mirroring the overall situation of the country and highly influenced by the local, regional and international context, the sanctions issue is being used by all parties in the conflict to justify positions in front of their respective public opinions. The Damascus authorities and allies’ official narrative got fully harmonized in 2019, during the early stages of the “Caesar act” drafting. The COVID-19 and the 2023 earthquake crises became opportunities to stress the negative impact of the measures, underrating the existence of other factors. In parallel, the main sanctioning entities have been insisting on the innocuity of their measures on the population and the delivery of humanitarian aid in the media with more emphasis during the above mentioned and Ukrainian crises. Misleading statements, circular references, and semantic contortions regarding the appropriateness of the measures labelling are overshadowing the main aspect of the deliberation: Up to what extent the measures imposed officially in the name of the protection of the population of Syria and their human rights are negatively

1. Justine Walker et al, *Humanitarian Impact of Syria-related unilateral Restrictive Measures, National Agenda for the Future of Syria*, Office of the United Nations Resident Coordinator in the Syrian Arab Republic, (ESCWA, 2016), p. 6.

impacting the fulfilment of those rights by that same population, whose voice remains unheard?

In this polarized context, the neutrality of any work on RM impact in Syria is systematically questioned. Many independent works remain confidential, by fear of either reprisals or negative repercussions on access or funding.

This chapter, meanwhile acknowledging those challenges and the methodological limitation related to the collection of reliable quantitative data, tries to bring a neutral systemic look on the impact of unilateral measures on the population and the delivery of humanitarian aid in Syria.

Overview of the unilateral restrictions on Syria

By April 1979, Syria was already the subject of intense debates and thus faced significant restrictions in terms of access to international cooperation aid by the USA, linked to the end of 70's cold war and troubled Middle Eastern context. The main mentioned reasons were Syria's role in Lebanon, its closeness to USSR and that *"One of the major obstacles to the US peace initiative [in Middle East] is the activity of the government of Syria"*². It was followed on December 29th, 1979 by the Syrian Arab Republic inclusion on the "States sponsors of terrorism" list of the U.S. State Department, under the Export Administration Act of the same year, as a country that has *"repeatedly provided support of international terrorism"* and since then has kept that designation with implications on export control and financial restrictions.

On December 12th, 2003, the *"Syria Accountability and Lebanese Sovereignty Restoration Act"* was approved by the US congress to *"deal with the Government of Syria's policies in supporting terrorism, continuing its occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining U.S. and international efforts to stabilize Iraq"*. It was followed by the Executive Order 13338 of May 11th, 2004 that severely restricted US imports and investment in Syria, and blocked transactions for properties in which the Government of the Syrian Arab Republic had any interest, initiating the so called *"Syria Sanctions programme"* amended by Executive Order 13460 of February 15th, 2008.

In 2005, following the assassination of Lebanon's former Prime Minister, Rafik Hariri, the United Nations security council *considered* through

2. Congressional Record – House, p.7746-7747, April 9 1979.

UNSCR 1636 the imposition of sanctions on Syrian individuals that could be involved in that murder. It was formalized at US level by Executive Order 13399 of April 25th, 2006.

The year 2011 marked a turning point. The initial measures linked to the conflicting interest between US geopolitics and Syria foreign policy shifted towards Syria internal affairs and implicated more countries:

On the US side, Executive Orders: 13572 of April 29th, 2011, 13573 of May 18th, 2011, 13582 of August 17th, 2011, 13606 of April 22nd, 2012 and 13608 of May 1st, 2012 built on the previous ones and reinforced the “Syria Sanctions programme”, targeting more individuals and entities involved in repression, human right abuses, sanctions violations as well as oil industry information, technology and communication sectors and establishing links with Iran.

On the EU side, on May 9th Council Regulation 442/2011 and Council Decision 2011/273/CFSP set -up asset freeze on individuals and export restrictions on materials and equipment that could be used for repressive purposes and reinforced those measures through Council Regulation 36/2012 of January 18th, 2012, and Council Decision 2013/255/CFSP of May 31st, 2013 by imposing bans on energy sector among others.

Other countries adopted similar measures: United Kingdom followed EU ones and transposed to its own regulation after the Brexit, Switzerland through the Federal council ordonnance of May 18th, 2011, reinforced on June 8, 2012, as well as Canada, Australia, Norway, Türkiye, Japan and the Arab league.

On October 14th, 2019 the executive order 13894 set up the basis of the “*Syria related sanctions*” apparently related to the Turkish intervention in North-western Syria (Operation Peace Spring), overlapping in many aspects with the “*Syria sanctions*” that were themselves completed in December 2019 by the “Caesar Act” whose “*secondary*” *dimension pressures neighbouring and Asian countries in their trade with Syria, and even the EU, in case it intends to ease its own unilateral measures*”³. It is in the frame of the “Caesar Act” that designations under the “Captagon Act” (signed as part of the 2023 National Defence Authorization Act (NDAA) on December 23, 2022) became possible.

3. S. Aita, *The Unintended Consequences of U.S. and European Unilateral Measures on Syria's Economy and Its Small and Medium Enterprises* (The Carter Center, 2020), p. 69.

Sanctions lists of designated individuals and entities are regularly updated and more constraining texts have been submitted to US legislative bodies since 2018: “*No Assistance for Assad Act*” H.R.1706 (116th), “*Stop UN Support for Assad Act*” H.R.4868 (116th), “*Stop the Killing in Syria Act*” H.R.8931 (116th) or are currently under revision “*Assad Regime Anti-Normalization Act*” H.R.3202 (118th), “*Safeguarding Syria Sanctions Act*” H.R.4847 (118th).

By 2023, the only United Nations Sanctions linked to Syria are Counter Terrorism measures targeting “*Islamic State in Iraq and the Levant (ISIL, also known as Daesh), Al-Nusrah Front (ANF) and all other individuals, groups, undertakings and entities associated with Al-Qaida*” through different resolutions summarized in UNSCR 2199 of February 12th, 2015. The negative humanitarian impact of counter terrorist measures is mitigated by the UNSCR 2664 of December 9th, 2022, and its transposition in the respective national regulations.

Motivations of the post March 2011 measures

While urging “*the Syrian leadership to agree and grant access to an urgent mission of the Office of the High Commissioner for Human Rights to the country, as requested by the United Nations Human Rights Council*”, “*the EU decided to impose restrictive measures against Syria and persons responsible for the violent repression against the civilian population with a view to achieving a fundamental change of policy by the Syrian leadership without delay*”⁴, In E.O. 13572, USA additionally considers the use of unilateral sanctions towards Syria “*finding that the Government of Syria’s human rights abuses, including those related to the repression of the people of Syria, [...] by police, security forces, and other entities that have engaged in human rights abuses, constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.*”

The official – non-Syria specific- objectives of the financial sanctions according to UK are:

“*coerce a regime, or individuals within a regime, into changing their behavior (or aspects of it) by increasing the cost on them to such an extent that they decide to cease the offending behavior; constrain a target by denying them access to key resources needed to continue their offending behavior, including the financing of terrorism or nuclear proliferation; signal*

4. Council conclusions on Syria 3091st Foreign Affairs Council meeting Brussels, 23 May 2011, paras. 2, 8.

disapproval, stigmatizing and potentially isolating a regime or individual, or as a way of sending broader political messages nationally or internationally; and/or *protect the value of assets that have been misappropriated from a country until these assets can be repatriated*⁵.

Official targeting

Across the different unilateral measures' regimes, the basic common denominators are:

Sanctions on individuals and entities belonging to a broad definition of "Government of Syria" (including members of the Syrian Arab Army, the Central Bank of Syria (CBS)) or linked to it (private companies, businessmen), considered responsible of human rights abuses by repression or use of information technology. The principal restrictions are: travel bans, asset, properties, funds and economic resources freeze, prohibition to directly or indirectly engage in transactions, provide resources / services and participate in activities aiming at circumventing restrictions.

Sectoral restrictions of goods, funds, activities, or cooperation related to:

- Defence / repression - including a wide range of dual use goods.
- Energy: including fossil energy industry and trade as well as electricity production.
- Transport and communication.
- Trade and financial restrictions on transactions, credit, grants, loans and insurance related but not limited to the above-mentioned sectors.

Most of the sanction regimes have relatively defined frames and are strictly territorial. Nonetheless, USA measures unique accumulation, complexity and restrictive aspects, combined with their continuity in time and extraterritorial scope (secondary sanctions) reiterated through the Caesar Act confer them an unequaled level of comprehensiveness.

Even if all sanction regimes related to Syria include exemptions to mitigate their impact on sectors such as food security or health, and the possibility to apply for derogation in other cases, the scope of those exceptions and modalities of obtention varies between regimes.

5. UK Financial Sanctions General guidance for financial sanctions under the Sanctions and Anti-Money Laundering Act 2018 (version 2022), p. 8.

Unintended consequences

Imposing sanctions on dual use goods and economic sectors implies per-se vagueness in targeting and thus unexpected consequences. The lack of harmonization between the regimes and the reinforcement of potential secondary sanctions, particularly since the entry into force of the Caesar Act, increased the fear of sanctions exposure called “Chilling effect”. This effect is a multiplier of the RMs dissuasive aspect, increasing their range due to overcompliance reflexes albeit the nature of the considered goods, services or activities is theoretically not targeted, or covered by exemptions. It fosters the reluctance of the private sector to engage in transactions related to Syria and even prevent sovereign states to liaise with Syria and neighboring countries.

- Assessment of their impact on human rights in the country
- Distinctions, constraints and precautions

The quantitative measurement of the impact of RMs on the population of Syria is constrained by several main factors:

De-facto fractioning of the country: all of Syria is under several layers of unilateral and counter terrorism measures, but each area is impacted at different degrees depending on their respective context.

Diversity, complexity and multiplicity of regimes with manifold scopes and targets resulting in sophisticated mechanisms of action.

Long lasting and living nature of the RMs imposed on Syria, with on one side, an incremental character of the measures, and in parallel, a proactive attitude of the authorities to take complex initiatives to adapt and mitigate their impact.

Difficulty to develop tools in the ***absence of trustable baseline***, as the reference data should theoretically be considered prior to 1979 and the application of the first sanctions on Syria.

Absence of indicators adapted to the Syrian context distinguishing RMs effects from other ***simultaneous interdependent deterioration causes***:

- Pre-Syrian crisis factors, including economic model and orientations, corruption and clientelism.
- Conflict and consequences in terms of destruction, lootings, services interruption, presence of foreign forces limiting access to natural resources.

- Economic crisis fueling the inflation / Syrian Pound (SYP) devaluation spiral.
- Regional context as neighboring countries security and financial instability,
- Natural factors including the climate change, drought, earthquake and COVID19 pandemic.
- Levels of uncertainty of the figures, source's reliability, data fragmentation collections, prevalence of "informal sector" and volatility of the numbers due to continuous context deterioration.
- Difficulty to quantify the impact of the *overcompliance*.

Nonetheless, the intricacy to establish direct, univocal, and quantifiable causality links between RMs and specific population challenges should not screen the fact that they constitute an undisputable qualitative aggravating factor. Beside the ongoing intends to develop quantitative methodologies, the study of RMs impact in Syria should be considered at sectoral level, encompassing granular analysis of accumulative and combined effects, as well as including a systematic and systemic evaluation of intersectoral cascade effects.

Systematic assessment of sectoral impacts

In order to assess the final impact on the population of Syria, the following sectors are arbitrarily defined through transversalities identified between Human Rights, economic, and humanitarian sectors definition, right columns describe the links with RMs and other factors, left columns the consequences (Table 2).

Table 2 – Assessment of sectoral impacts on the population of Syria.

Public sector – (Sovereign ministries)	
The main negative impact of the RMs on the “Government of Syria” is linked to the broadness of the considered definition⁶ and the non-distinction between the decision-making political bodies “Government” and the social entity represented by the “public sector”. This impact is increased by the historically high importance of the public sector in Syria and levels of state implication in social benefits and subsidies. The methodical targeting of the state resources (reserves and incomes) through the designation of the CBS, all public financial institutions, and energy and trade sector, are drastically reducing the public sector capacity to fulfill its duties with extremely detrimental consequences at several levels.	Reduction of the quality and quantity of basic public services by decreasing: Financial and material support in <u>Agriculture, Health, Education, social services, transport, access to water, energy</u> (fossil resources and electricity) and subsidized goods, not targeted by RMs. Number of public servants in those sectors due to low remunerations. Fostering damageable countermeasures such as: Increasing fiscal pressure on an already impoverished <u>population</u> and struggling <u>private sector</u>. Deliberate over estimation of the value of the SYP creating discrepancies between the market prices and its appreciation by the CBS in order to finance the public and subsidized sectors through gains made on international transactions, followed by regular corrective devaluations. It results in mistrust of the private sector, which proceeds to goods retentions and overpricing in anticipation of further degradation, feeding the inflation spiral and reducing the population’s available resources to cover its needs and depleting its savings. Increased reliance and pressure on the private sector to offer alternatives for banking and importing vital goods. Discouraging any national or international activity or investment in infrastructures that could be perceived as assisting the Government and increasing the scrutiny of financial institutions. Generalized deterioration of public services and infrastructures maintenance and general living conditions with increased pressure on other sectors and living costs.

6. 31 CFR 542, para. 542.305.

Table 2 – Assessment of sectoral impacts on the population of Syria. (cont'd)

Energy

A wide range of causes explains the initial disruption of the services: conflict consequences (destruction, lootings, foreign forces presence in Syria), low water levels and lack of maintenance. Nonetheless, RMs are the main factor explaining the non-re-establishment of the energy related services.

The negative impact on this key sector can be divided into two interconnected pillars with cross-cutting consequences on all sectors:

- Fossil energy sources
- Electricity production,

Fossil energy sources: International supply of fossil resources was pre-crisis a main source of income, but became an unfordable source of expenditures for the resource-lacking Syrian state and one of the most targeted sectors. Restrictions are related to:

exploration, extraction, transformation (refining/liquefaction) and imposing restrictions on import and export.

Investments, maintenance, construction of new facilities, technical cooperation and exportation of spare parts, equipment or technology towards Syria

State owned oil derivates distributors.

Electricity: Impacted by the lack of fossil energy sources;

RMs, are prohibiting: investments, loans or credits, technical cooperation and exportation of spare parts, equipment or technology, towards Syria for the construction of new power plants (after 2011) for production of electricity. Maintenance is also impacted by the overcompliance linked to USA measures particularly after the enforcement of the Caesar Act.

The fossil resources shortages are impacting the electricity production, either at national grid level or local and individual units managed through generators (either public or private ones). It leads to:

Constant shortages and power fluctuations severely damaging electrical machinery across all sectors: Agriculture, Health, Industry, Water, Communication.

Increasing energy prices due to decreasing levels of subsidies, and development of black market, speculation and benefiting illegal sector.

At Household Level

Recurrent shortages and limitations of the associated subsidized products and services: cooking gas (impacting cooking practices and thus nutritional balance), electricity (impacting house lighting, food conservation) and heating fuel in winter with consequences on health.

Increasing grievances over unequal access to electricity and limiting returns in rural areas (without power networks).

Table 2 – Assessment of sectoral impacts on the population of Syria. (cont'd)

Absence of street lighting increasing criminality as well as exposure to sexual and gender-based violence. Limiting essential administrative services by reducing operational hours. Impact on WASH: Pumping: extraction, treatment, and distribution of drinking water Wastewater treatment plants, solid waste recycling and compression machinery cannot operate and contaminate groundwater and surface wells. Agriculture, Food Security / Nutrition: Production: in addition to decreased water availability, limitation of local fertilizer production due to lack of gas, lack of combustible to run machinery and pumps for irrigation or heating and ventilation systems for greenhouses, Challenges in processing and conservation systems: cold chains, steering or storage ventilation. Reliance on generators or solar panels increases production costs. Long-term impact on agriculture-linked livelihood: workers leave their lands due to reduction of yields and working hours. Fruit trees cutting to produce wood for heating purposes. Health sector: Dramatic impact of cuts and damages on vital machinery in hospitals, laboratories and patient services. Fuel shortages and prices are reducing the ambulances availability and home visits, increasing their cost. Toxicity of fumes and particles linked to the use of generators and fuel heating systems. Cascade effect of decreased energy related to water and food quantity and quality on nutrition and diseases prevalence. Private sector: Feeding a vicious circle of production reduction (working hours – damages) and costs increase (alternative energy sources), leading to reduced employment levels and shift to informal sector. Education: Lack of light and heating systems (electricity, fuel) inside the schools undermine the learning environment and electric devices use is limited. Transport: Crude oil derivatives increasing costs are repercussed on goods shipments (<u>food</u>, <u>water</u> trucking) and movements (students, <u>health and education</u> professionals...). Alteration of vital services with consequences on <u>industry</u>, <u>health</u>, <u>education</u>, <u>water</u>, <u>food</u> quality and quantity with increased prices.

Table 2 – Assessment of sectoral impacts on the population of Syria. (cont'd)

Transport	
Beside the damages on infrastructures linked to the conflict (roads, bridges, railways destruction) and impact of crude oil derivate restrictions and shortages, this sector is directly targeted by: - Prohibition of the provision of jet fuel, spare parts and technical upgrades to Syrian airlines companies. - Flights ban and vessel's restrictions. - Designation of entities involved in international shipment by air and sea. - Restrictions on the scope of infrastructure related interventions with associated chilling effect on foreign investment and banking sector.	The RMs on transport are increasing: - Transportation costs at national (individuals and goods) and international level (impact on shipment prices of the complexification of import export routes). - Risks of accidents related to the obsolescence of the infrastructures and machinery.
Communication	
In addition to electricity shortages, this sector is directly targeted by: - Restriction on many technologies and all IT hardware or software containing > 10% of USA components. - Designation of public and private entities involved in telecommunications. And affected by comprehensive overcompliance linked to the use of Syrian Internet Protocol addresses.	With results in restricted access to: - International platforms for commercial, research or training purposes, with impact on education (in particular learning materials for persons with disabilities), health and trade. - Banking, and online payment (cf. Finance sector).

Table 2 – Assessment of sectoral impacts on the population of Syria. (cont'd)

Finance sector	
Interface between the world and the Syrian economies, this sector is heavily impacted by the designation of the CBS, all public financial institutions and two private banks. Other private banks (and associated international groups) are directly threatened by the trade and foreign investment restrictions, including the prohibition of opening branches out of Syria and new correspondent banking relationship. In relation to Syria, the banking sector is scrutinized as it is the chokepoint for all traceable transactions in a “High risk jurisdiction” and facing a double transfer of responsibilities: Remitting, corresponding, and receiving banks are considered liable for the compliance of their customers’ transactions. Syrian private banks had to substitute the public banks in making hard currencies available for transactions related to the import of vital non sanctioned goods (food / medicines). Due to the financial penalties and reputational risks incurred in case of breach, the whole banking sector became over compliant on de-risking measures.	Restrictions have the following repercussions: Reduction of banking channels by withdrawal of correspondent banking service providers and decreased engagement of remitting banks. The word “Syria” became a “red flag” in the bank’s compliance departments, leading to: Refusals to engage in Syria related transactions. Delays / cancelations of transactions due to de-risking procedures linked to derogation/licensing processes. Restrictions on transactions and accounts of Syrian individuals / entities located out of the country. Suspicion on transfers towards Syria neighboring countries. Reduction of the number of official remittances channels and increased costs. With two main consequences: Regular interruption of international transactions related to basic population needs (food, medicine), <u>industry and agriculture</u> (spare parts, raw materials) even if not sanctioned. Fostering transactions through <u>informal and black-market</u> networks.

Table 2 – Assessment of sectoral impacts on the population of Syria. (cont'd)

Private Industry and services	
The Private Sector is partially targeted: entities (companies, holdings) and individuals considered as contributing to the Government of Syria actions through services or financial resources are designated by different sanction regimes. Affected by the combined effect of the conflict consequences (destructions, lootings) and local normative framework, the accumulation of lack of energy, water and fiscal pressure, this sector is also directly impacted, meanwhile not targeted, by: Restrictions on: Dual use goods: spare parts for machinery and raw materials. Trade and foreign investment Officially unintendedly by the overcompliance of foreign companies and banks, drastically reducing the number of suppliers and service providers ready to engage with Syrian partners.	Due to the RMs and the resulting risks, the Syrian private sector is facing several trade impediments gradually eroding their competitiveness: Rupture of preexisting license agreements Limited foreign investment and partnerships Increased production costs linked to the previously mentioned factors, as well as: Reduced competition between suppliers and goods scarcity Higher insurance and shipping costs. “Transaction costs” inherent to informal foreign trade and crossline internal trade⁷ repercussed on the customers prices and fostering smuggling activities and illegal trade networks benefiting to warring parties and sanctioned individuals. Meanwhile, affecting the production capacity of vital sectors, such as food transformation or pharmaceutical industry, those restrictions have severe negative impacts on the population by: Increasing prices, inducing job losses and limiting livelihoods opportunities. Leading to negative coping mechanisms -and related protection issues- as well as brain drain (migration).

7. S. Aita, *The Unintended Consequences of U.S. and European Unilateral Measures on Syria's Economy and Its Small and Medium Enterprises* (The Carter Center, 2020), p. 21.

Table 2 – Assessment of sectoral impacts on the population of Syria. (cont'd)

Impact on non-targeted sectors : Water	
Already impacted by the combined effect of climate change (drought), conflict consequences, (destruction, looting, weaponization of water), lack of maintenance, the accumulative effect of lack of energy and decreased public sector capacity, the water sector is directly impacted by restrictions related to: Dual use goods: spare parts, equipment, machinery and reagents to properly run the water extraction, treatment, distribution and depuration. Restrictions / redlines impacting public, private and humanitarian WASH projects scope. Overcompliance at international supplier and banking sector level for WASH related projects.	Direct, indirect and combined impacts of sanctions on the water sector have detrimental effects on the right to water, (quantity, quality and price) with waterfall sectoral effects on: At <u>household level</u>, long water cuts undermining hygiene practices and unequal access to water, generating tensions between communities. Agriculture /food production: lower quality, quantity with higher cost, further impacting nutrition and health. Education: limited water quantity in schools is particularly affecting girls and female teachers. Health: resurgence of water-borne diseases (typhoid, cholera).
Impact on non-targeted sectors : Food and agriculture	
Already affected by: Combined effect of climate change, economic crisis, conflict (destruction, crops weaponization) and country fragmentation. Accumulative impacts of RMs on <u>energy</u>, <u>water</u>, <u>transport</u> and decreased <u>public sector</u> capacity. Agriculture and food production are directly impacted by: Dual use goods ban on: Inputs (fertilizer, pesticides and herbicides) Spare parts, heavy machinery (bulldozers) and equipment for processing agricultural products. Restrictions and redlines impacting agriculture related projects scope, in particular: rehabilitation works, level of interaction with authorities, capacity building of public servants. Food imports are affected by the chilling effect on banking operations, shipping, and insurances.	In addition to the previously mentioned factors and due to the direct impact of RMs, this sector witnesses: Severe drop in production yields Additional increase in production costs linked to the scarcity of available inputs, spare parts, and machinery. Delays in projects implementation and sometimes cancelation. Conducting to: Degradation of farmers livelihood situation, with decreased margins, return to manual harvesting / transformation practices and withdrawal from their activity or lands. Vulnerating the right to food by reducing the available quantity, quality, and diversity with increased prices, implying food insecurity, malnutrition and consequences on <u>health</u>.

Table 2 – Assessment of sectoral impacts on the population of Syria. (cont'd)

Impact on non-targeted sectors : Health	
Affected by: The conflict consequences (Staff loss, destruction, looting of health facilities and pharmaceutical factories) and economic collapse. Accumulative impacts of RMs on <u>Energy</u>, <u>Water</u>, <u>Transport</u>, <u>Agriculture</u>, and decreased <u>Public Sector</u> capacity. The health sector, even if theoretically exempted from sanctions, is indirectly impacted by: Restrictions on dual use goods such as protection material for X-rays and specific molecules for the pharmaceutical industry Overcompliance of foreign companies (exporters, banks, insurance companies) linked to trade and finance restrictions.	Health sector situation is symptomatic of the unintended impact of the RMs, increasing needs and costs while decreasing resources. The direct impact is characterized by: Withdrawal of licenses from Syrian medicines manufacturers. Refusal / delay in the supply of raw materials and spare parts for hospitals and laboratories. Refusal to work with state owned companies and institutions. Meanwhile waterborne diseases are re-appearing and food insecurity is increasing, the different restrictions are decreasing the operability of the outdated medical material, and accelerating the decay of the public health services and pharmaceutical industry. It leads to an increased reliance on scarce and unaffordable private services and imported medicines, in a clear infringement of the right to health of the population and fuels the brain drain of Syrian doctors and nurses.
Impact on non-targeted sectors : Education	
Affected by: The conflict consequences (destruction of schools, looting of equipment) and economic crisis. Accumulative impacts of RMs on <u>Energy</u>, <u>Water</u>, <u>Transport</u>, <u>Communication</u> and decreased <u>Public Sector</u> capacity. The education sector is not targeted by RMs, but overcompliance linked to trade, finance, and communication restrictions, associated to donors redlines are impacting the scope of education related projects.	The inappropriate learning environment fostered by the lack of energy, to the increasing costs for transportation and school supplies added to the limitations faced for school rehabilitation works, IT equipment refurbishing, and limitation of academic and scientific exchanges have deleterious consequences by increasing: Number of drop-out students and child labor. Teachers' withdrawal and brain drain. Increasing illiteracy. It is significantly impacting the right to education.

Table 2 – Assessment of sectoral impacts on the population of Syria. (cont'd)

Informal sector	
Rarely considered due to its blurry limits and difficulties to assess, this sector allows the survival of numerous Syrian households engaged in precarious undeclared work. The most lucrative activities (smuggling, black market, narcotrafficking), are flourishing thanks to huge levels of corruption and collusion with key stakeholders. Boosted by the conflict, it has capitalized on the war economy. It is benefitting from the RMs: As “alternative way” to get access to restricted goods or services for regular citizens. Allowing capital fructification and money laundering of some designated individuals and entities under different sanction regimes (counter terrorism, Syria sanctions, etc.).	“Informal sector” is the last resort livelihood activity enabling all forms of abuses. The capacity of adaptation of the “illegal sector” highlights its parasitic and autocatalytic nature: it is reinforced by the antagonistic factors it is fueling: Weakening of the public institutions (decreased taxes revenue, corruption) Increasing the number of designations and overcompliance. Key for the import of dual use goods, spare parts, untraceable financing, and exchange, thanks to expertise in laws and sanctions circumvention, the development of this sector is an illustration of the negative impact of the RMs, and a proof of their counterproductive nature.

Systemic consequences and mechanisms of impact

Based on the systematic sectoral assessment, the following chart (Figure 10):

- *Categorizes* RMs between: designated individuals and entities, sectoral, dual use goods and overcompliance
- *Systemizes* the approach on consequences according to “mechanism of impact” across different sectors, meanwhile highlighting their level of interpenetration.

Univocal mechanisms:

- *Directly* impacting *Targeted sectors*.
- *Directly* impacting *Non targeted* sectors due to the wide scope of the imposed restrictions (as it is the case for dual use goods).
- *Directly* impacting by *Overcompliance* linked to the fear generated by RMs.

In parallel, as evidence of the chilling effect, the international private stakeholders became extremely reluctant to engage in transactions involving Syria:

The number of remitting and corresponding banks drastically reduced. The ones accepting to proceed with transfers towards humanitarian stakeholders have put in place time consuming due diligence processes, generating bottlenecks and delaying payments to workers and suppliers, exposing international organizations to financial penalties and security threats.

International procurement is reduced due to the averseness of foreign companies to deliver goods or services to customers established in Syria, including United Nations agencies. This disinclination is even stronger in the case of products classified as “dual use goods”.

Those challenges are not tackled despite the existence of humanitarian exemptions and licensing/derogation processes. The complexity, ambiguity and contradictions of the waivers, in addition to the lack of clarity and length of the protocols to follow are leading to divergent interpretations, despite the publication guidelines and FAQs. As non-legally binding, those explanations are often not considered as sufficient guarantees by international organizations and private sector actors. The February 2023 earthquake highlighted those challenges: the ad-hoc exemptions provided, beside tacitly acknowledging the dysfunctionality of the licensing/derogation processes had a limited impact due to their lack of harmonization, time-limitation, and scope. In this complex environment, the humanitarian stakeholders that are not benefitting from broad humanitarian exemptions are progressively adopting extremely conservative approaches, self-limiting their activities and becoming internally over-compliant encouraged by cautious legal departments.

In addition, humanitarian organizations operations are hampered by export control restrictions and redlines that can be considered as over-compliance from the donors’ side as they are more constraining than RMs.

Consequences of the RMs on the humanitarian response

In addition to the risks related to the exposure to sanctions, and the pertinent questions related to their legal basis and conformity with international law, RMs are directly challenging the humanitarian principles of impartiality, independence, and neutrality as they are imposed by governmental entities, including explicit and implicit political references in their

formulation. From a practical perspective, RMs consequences are severely impacting the right to humanitarian assistance at three levels:

- First by limiting the public sector capacity to ensure its basic duties with perverse effects on the population and private sectors, thus *increasing the need of humanitarian assistance* and jeopardizing Syria Sustainable Developments Goals achievements.
- Second by *undermining the humanitarian response*, by limiting activities' scope in particular for reconstruction / energy, restraining the efficiency of rehabilitated facilities or equipment by lack of energy, delaying the implementation by lengthy licensing and de-risking processes and deeply affecting the possibilities of success of economic recovery projects.

Third by *increasing the cost of the response*:

- Directly due to the higher levels of needs to be responded to, the necessary adaptation of the projects to the constraints linked to RMs, such as solar panels instead of connection to the electrical grid for vital facilities (Hospitals, schools, boreholes, and water treatment plants), and CBS decisions.
- Indirectly because of the local and international private sectors prices respectively impacted by the measures taken to compensate for the SYP instability and the cost of goods transport / insurance. Meanwhile the goods scarcity generated by the RMs is mathematically increasing their price, the operational costs of humanitarian stakeholders are amplified by the additional fees linked to legal support services related to compliance.

Conclusions and recommendations

The humanitarian situation in Syria is constantly decaying and developments are alarming across all sectors, with reported increasing needs.

As no improvement is reported in regard to the intended goals of the RMs, the negative nature of their direct, indirect and unintended consequences is qualitatively tangible. The combination with other contextual factors and accumulative effects on non-targeted sectors such as water, agriculture / food or health represent a vital threat for the population of Syria.

Inside and outside the country, transactions and activities related to Syria are exposed to multiple layers of restrictions which effect is amplified by overcompliance from private operators, international organizations and donors' redlines.

RMs are increasing protection risks through the recourse to negative coping mechanisms by increasingly bigger segments of the population and fostering illegal practices in the benefit of designated individuals as clear illustration of their counter-productive impact.

Meanwhile the responsibility of all warring parties in the Syrian conflict is acknowledged, the capacity of the public services to respond to the population's basic needs should be preserved to avoid transferring an already unbearable caseload towards resourceless humanitarian actors. It demonstrates the artificiality of the distinction between "*impact on the Population*" and "*impact on the Aid Delivery*" and the fact that sanctions are increasing the humanitarian needs, and the associated costs.

Bearing in mind the internationally witnessed destabilizing impact of the Syrian crisis during the last decade, disastrous consequences are expectable beyond the Syrian borders if those trends are not thwarted.

As a result, the following recommendations can be made:

Step by step corrective actions must be undertaken to alleviate the suffering of the population, meanwhile decreasing the sanctioning countries responsibility in the current situation and further degradation, through depoliticizing the aid delivery and adhering to a human right based approach:

- First: providing open-ended and harmonized humanitarian exemptions / licenses to the existing RMs.
- Second: mitigating overcompliance effects by: reassuring the private stakeholders in regard of those exemptions and underlining their obligations in terms of human right protection.
- Third: removing redlines and financially support all needed activities, including the reconstruction of vital infrastructures.
- Fourth: neutrally assess outcomes of the present measures in consultation with the population living inside Syria to reshape and integrate them in the frame of United Nations mandate, ensuring full conformity with principles and norms of international law and removing any civilian sectoral, comprehensive, or extraterritorial dimension.

CHAPTER XV

Impact of unilateral sanctions on human rights in Nicaragua

(Dr. É. Pomès)

Introduction

“Gentlemen, a man’s home is his castle. We are a sovereign state; whatever this individual says is none of your business. We do what we like with our socialists, our pacifists and our Jews, and we are not subject to the control either of humanity or of the League of Nations”, Joseph Goebbels declared before the League of Nations. “National sovereignty cannot justify indiscriminate violations of human rights and massacres” was the response of the UN Secretary-General in his Millennium Report¹. S. Krasner believed that these words highlight the contradiction in international law between the principle of non-intervention and human rights². This contradiction can be explained in part by the many different definitions of sovereignty, which can be either the guarantor of a State’s independence or the servant of a population. Yet it is difficult to maintain today that when a state massacres its population or collapses, the protection of human rights is exclusively a national responsibility. The question then arises as to how other states can respond in a way that respects international law.

The current situation in Nicaragua provides an opportunity to reflect on these contradictions. Daniel Ortega, leader of the Sandinista National Liberation Front (FSLN) which overthrew the Somoza dictatorship, was first elected President of Nicaragua in 1984 before being defeated in 1990. Over the following decade, Nicaragua underwent a democratic changeover. In 2006, Daniel Ortega was democratically re-elected president. Since these elections, Daniel Ortega has remained in power thanks to elections considered to have been marred by serious irregularities³. During his first terms in office, Daniel Ortega put in place social welfare programmes that

1. Kofi Annan. “The Role of the United Nations in the 21st Century”. The United Nations Secretary-General’s Millennium Report. <http://www.un.org/french/millenaire/sg/report/summ.htm>, visited on March, 2023.

2. Stephen D. Krasner, *Sovereignty Organized Hypocrisy* (Princeton: Princeton University Press, 1999), 6.

3. OEA/Ser.G, CP/RES. 1188 (2355/21), 8 December 2021.

improved the standard of living of Nicaraguans, thereby strengthening his political base. However, since 2018, Daniel Ortega has been undermining Nicaraguan democracy by erasing the separation of powers, amending the constitution, controlling judicial decisions and manipulating elections. His government has also restricted freedom of the press, expression and assembly, and violated human rights by using police violence to terrorise the population.

In his report on the human rights situation in Nicaragua, Volker Türk denounced the serious human rights violations committed by the Nicaraguan government, including extrajudicial executions, arbitrary detentions, torture, arbitrary deprivation of nationality, etc.⁴. An expert report also stressed that “these violations and abuses have been perpetrated in a widespread and systematic manner for political reasons, constituting crimes against humanity of murder, imprisonment, torture, including sexual violence, forced deportation and politically motivated persecution”, and indicated that the population “lives in fear of the actions that the government itself may take against them”⁵.

Referring to that, as early as 2018, the United States adopted “sanctions”. The US Congress passed the *Nicaragua Investment Conditionality Act* (NICA)⁶ and the *Nicaragua Human Rights and Anticorruption Act*⁷, which provide for the punishment of anyone involved in abuses of power and against human rights. These laws were strengthened in 2021 with the adoption of the *Reinforcing Nicaragua’s Adherence to the Conditions for Electoral Reform* (RENACER) Act. Since 2018, the US administrations have been imposing targeted “sanctions” aimed at individuals (Specially Designated Nationals) or certain sectors of the country’s economy (gold). The stated aim of these measures is to secure the organisation of free and fair elections in Nicaragua, the release of political prisoners and the defence of human rights.

4. A/HRC/54/60, August 2023.

5. “Nicaragua: expert report reveals crimes against humanity”, <https://news.un.org/fr/story/2023/03/1132862>, visited on 2 March 2023.

6. *H.R.1918 - Nicaraguan Investment Conditionality Act (NICA) of 2017*, <https://www.govinfo.gov/content/pkg/COMPS-16554/pdf/COMPS-16554.pdf>, visited on March, 2023.

7. *Text of H.R.1918 - Nicaraguan Investment Conditionality Act (NICA) of 2017*, <https://www.congress.gov/bill/115th-congress/house-bill/1918/text>, visited on March, 2023.

The United States considers such measures to be a legitimate means of achieving foreign policy and security objectives⁸. However, the definition, scope and legality of such measures remain a grey area in international law. This difficulty of classification is reflected in the terminology used by the American administration, which uses the term “sanction” (II). This term poorly conceals the American desire to impose liberal standards on all States, even if such an imposition implies a weakening of the principle of non-interference (III). This questioning of this central principle of international order is justified by the idea of “sovereignty as responsibility” which emerged in the 1990s (IV). The majority of States, however, remain attached to a classic vision of sovereignty that justifies a rejection of unilateral coercive measures (V).

Terminology revealing a desire to impose liberal standards

The use of the term “sanctions” in political discourse requires, in order to understand what is not said, a distinction to be made between sanctions adopted in a multilateral institutional framework (United Nations, etc.) and countermeasures decided by states⁹. In both cases, there are coercive measures aimed at influencing the behaviour of a state deemed to be in violation of international rules. However, the term “sanctions” should be reserved for coercive measures adopted by an organ of an international organisation in accordance with its constitutive treaty¹⁰. This conclusion is necessary because the measures are taken by an organ with the competence to adopt them in order to enforce the legal order of the organisation on member States. Therefore, the taking of sanctions by States derives from the decision of the organization¹¹. The logic of countermeasures is quite different: to compensate for the damage suffered by a State as a result of the

8. U.S. Statement at the UNGA Third Committee, A/C.3/70/SR.52 (20 November 2015), para. 32.

9. Marisa R. Bassett and Ali Z. Marossi, eds, *Economic Sanctions under International Law: Unilateralism, Multilateralism, Legitimacy, and Consequences* (The Hague: Springer, 2015).

10. Georges Abi-Saab, « De la Sanction en Droit International : Essai de Clarification », in *Le Développement Du Droit International: Réflexions d'un Demi-Siècle. Volume I Théorie Générale Du Droit International*, ed. Marcelo G. Kohen and Magnus Jesko Langer (Geneva: Graduate Institute Publications, 2013), 147-63.

11. Linos-Alexandre Sicilianos, « Sanctions Institutionnelles et Contre-Mesures : Tendances Recentes » in *Les Sanctions Économiques en Droit International*, ed. Laura Forlati and Linos-Alexandre Sicilianos, *Les Livres de Droit de l'Académie* (Leiden: Martinus Nijhoff, 2004), 3-98.

breach by another of its obligations; their object is limited to putting an end to the wrongful act and, above all, they are adopted by the injured State.

Having clarified the terminology, it is worth highlighting what sanctions and countermeasures have in common. Neither should be understood – contrary to what official discourse suggests – as the execution of international justice, but rather as an attempt to compensate for the absence of such justice by trying to influence the behaviour of the target state to bring it back into compliance with international rules¹². But whereas the decisions of international courts are based on the law, independence and impartiality of judges, countermeasures are based on the values and interests of those who take them. Far from being neutral and objective measures based on an indisputable interpretation of international law, they have a strong political dimension and are based on a “personal” interpretation of the law.

The use of the term “sanctions” is justified for the states that adopt them because, in addition to suggesting a collective decision, it also makes it possible to highlight the fact that these measures do not seek to compensate for personal harm, but to defend collective interests.

In order to highlight their true nature, it is preferable to use the term “unilateral coercive measures”. According to the definition used by Idriss Jazairy in his report, these are “economic, political or other measures imposed by States or groups of States to compel another State to subordinate to them the exercise of its sovereign rights with a view to bringing about specific changes in its general policy”¹³.

Such measures are justified by the structural and legal liberal transformation that the international order has undergone since the end of the Cold War. The West, which emerged victorious from this confrontation, sets itself up as the judge of the political quality of states; only states that respect liberal norms would be legitimate, as opposed to non-liberal states¹⁴.

The post-Cold War era is characterised indeed by the reintroduction of a number of postures such as democratic governance and liberal internationalism, all of which threaten the pluralist tradition of the UN Charter. This liberalism seeks to undermine the inclusive orientation of the international

12. Serge Sur, « Observations Sur Les "sanctions" Internationales », *Annuaire Français de Relations Internationales* XIX (2018): 117-31.

13. Report of the Special Rapporteur on the adverse effects of unilateral coercive measures on the enjoyment of human rights, Mr Idriss Jazairy, A/HRC/30/45, 2015.

14. Russell Buchan, *International Law and the Construction of the Liberal Peace* (Oxford: Hart Publishing, 2013), 18.

legal order and replace it with one in which the status of states depends on their adherence to certain individual rights and international norms. These ideologies thus lead to the construction of new categories of “outlaws” that justify, with or without the support of the Security Council, the interventions of the major Western powers¹⁵. The stigmatisation of these “outlaws” is achieved through the use of a medical and moral vocabulary that illustrates a biopolitical vision of international relations.

However, as the Secretary-General of the United Nations pointed out in relation to the debate on economic measures used to exert political and economic pressure on developing countries, “international law does not reveal any well-defined criteria as to what constitutes inappropriate economic measures”¹⁶. The use of unilateral coercive measures demonstrates the coexistence of competing rules in international law. For example, the US measures in Nicaragua raise the question of how to reconcile the principles of non-intervention and self-determination of States with the protection of human rights.

Sovereignty seems to constitute a legal obstacle to the use of such measures. To use a metaphor sometimes used in legal doctrine, sovereignty is like the right of ownership: the freedom to do what one wants within one’s territorial limits¹⁷. In reality, as one author has pointed out, this principle “is seen as a legal-historical product (static conception) without questioning its political origins and its reflection of power (dynamic conception)”¹⁸. Sovereignty is not an immutable concept; its content has varied according to the needs of the times¹⁹, reflecting the practice of States²⁰.

15. Wolfgang Wagner, Wouter Werner, and Michal Onderco, “Rogues, Pariahs, Outlaws: Theorizing Deviance in International Relations”, in *Deviance in International Relations*, ed. Wolfgang Wagner, Wouter Werner, and Michal Onderco (London: Palgrave Macmillan UK, 2014), 1-14.

16. Note by the Secretariat of 25 October 1993, doc. A/48/345.

17. Henry Shue, “Limiting Sovereignty”, in *Humanitarian Intervention and International Relations*, ed. Jennifer M. Welsh (New-York: Oxford University Press, 2004), 11-28.

18. Hideaki Shinoda, *Re-Examining Sovereignty: From Classical Theory to the Global Age* (Basingstoke: Macmillan, 2000), 1.

19. Samantha Besson, « Post-Souveraineté ou Simple Changement de Paradigme ? Variation sur un Concept Essentiellement Contestable », in *La Souveraineté au XXI^e siècle*, ed. Tiziano Balmelli, Alvaro Borghi, and Pierre-Antoine Hildbrand (Genève: Edis, 2003), 7-58.

20. Shinoda, *Re-Examining Sovereignty: From Classical Theory to the Global Age*, 1.

The protection of human rights as a source of weakening of the principle of non-intervention

Sovereignty is traditionally considered to be the major obstacle to unilateral coercive measures since, as the guarantor of national independence, it prohibits interference in the internal affairs of a State. Article 2 of the Charter lists the principles of sovereign equality, non-intervention, the prohibition of the use of force and the peaceful settlement of disputes. Since 1945, sovereignty has been seen as a bulwark against political and economic imperialism, particularly by the member countries of the non-aligned movement and the states that have emerged from the process of decolonisation²¹.

Numerous United Nations General Assembly resolutions reiterate this absolute concept of sovereignty and the principle of non-intervention²². Indeed, one of the main changes to the international order, introduced by the United Nations Charter in Article 2 par. 1, is the legal recognition of the equality of States. In order to establish this principle, Article 2 par. 7 postulates non-intervention in internal affairs, allowing each State to freely choose its economic, political and social system. This idea provides protection for weak States against interference, understood as interference by strong States in the affairs of others. The scope of this prohibition defends any intervention whatever its motivation, as recalled for example by General Assembly Resolution 2625 of 24 October 1970 on friendly relations between States.

However, like any principle, this principle of non-intervention can lead to abuses, in this case the oppression of individuals and serious violations of fundamental rights.

Sovereignty is not absolute, however; the freedom of the State is constrained by international law, which “is for each State the sum of the limitations on its primitive legal freedom; wherever it has allowed it to

21. Christopher Saporita, “Reconciling Human Rights and Sovereignty: A Framework for Global Property Law”, *Indiana Journal of Global Legal Studies* 10 (2003): 255-81.

22. A/RES/2131 (XX) of 21 December 1965: *Declaration on the inadmissibility of intervention in the internal affairs of States and the protection of their independence and sovereignty*, A/RES/2625 (XXV) of 24 November 1970: *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, A/RES/36/103 of 9 December 1981: *Declaration on the inadmissibility of intervention and interference in the internal affairs of States*, A/RES/48/124 of 14 February 1994: *Respect for the principles of national sovereignty and non-interference in the internal affairs of States with regard to electoral processes*.

intervene, it has consented to other States taking a lawful interest in even its most intimate conduct”²³.

A State can no longer hide behind the protection of the principle of non-intervention in its internal affairs once it has entered into international obligations in the area concerned. Interference only occurs if the measure affects the *domaine réservé* (reserved domain) of the State, *i.e.*, the area in which it has preserved its national competences²⁴. The various international instruments relating to human rights, such as the 1948 Universal Declaration of Human Rights and the 1966 Covenants, limit the State’s “residual freedom” in the area of human rights²⁵; there would therefore be no interference in the areas covered by these texts.

The coercive measures taken against Nicaragua illustrate the liberal idea promoted by the United States according to which, because of the contraction of the *domaine réservé*, any State can act against another State to put an end to human rights violations. To consider that sovereignty is limited because of international commitments relating to human rights is tantamount to recognising a conception of sovereignty limited to what the most powerful States consider to be “standards of civilisation”²⁶.

The liberal international order would thus lead to sovereignty being adapted to humanitarian concerns. Since the end of the Cold War, the international community has replaced international society. This transformation would mean moving from an inter-state order to a humanitarian order defined as “a set of norms, discourses and institutions that legitimise and legalise the intervention of states and non-state actors in order to

23. Jean Combacau, « Pas une Puissance, une Liberté : La Souveraineté Internationale de l’Etat », *Pouvoirs*, no. 67 (1993): 47-58.

24. Resolution of the Institut de Droit International, « La détermination du domaine réservé et ses effets », Session d’Aix-en-Provence (1954) which states in Article 1 that: The reserved area is that of State activities where the State’s jurisdiction is not bound by international law. The scope of this area depends on international law and varies according to its development.

Article 3 states that: The conclusion of an international commitment in a matter falling within the reserved field excludes the possibility for a party to that commitment to invoke the exception of the reserved field in respect of any question relating to the interpretation or application of that commitment.

25. Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, *op. cit.* p. 31.

26. Hans Köchler, *The Concept of Humanitarian Intervention in the Context of Modern Power Politics: Is the Revival of the Doctrine of “Just War” Compatible with the International Rule of Law*, Studies in International Relations 26 (Vienna: IPO, 2001), 3.

preserve human life”²⁷. This transformation would justify all measures and actions to save and safeguard lives and the dignity of individuals.

There is, however, a contradiction between political sovereignty, which illustrates the desire of States not to be hindered in achieving their objectives, and legal sovereignty, which places restrictions on the exercise of power by trying to “limit the outbursts” of the political dimension of sovereignty, yesterday by taking away the power of States to wage war, today by trying to respond to violations of fundamental rights²⁸.

Sovereignty as responsibility: towards a hierarchy of States based on their respect for human rights

While a very strict reading of Article 2 of the United Nations Charter prevailed during the Cold War because of the ideological war, it seems that another analysis may now be emerging, making room for the human being’s protective dimension. Right from its preamble²⁹ the Charter sets out respect for human dignity and worth as a guarantee of peace³⁰.

As human rights are now considered to be an obligation *erga omnes*³¹, *i.e.*, “an obligation under general international law to which a State is bound in all circumstances towards the international community”, they lead to a relativisation of sovereignty. What is more, the idea of “sovereignty as responsibility”³² marks a certain return to a more classical conception of sovereignty in the sense that the question arises as to whether sovereignty is purely legal or whether it has a moral and political dimension that refers back to the theories of the social contract³³. The evolution of the concept of sovereignty has less to do with the principle itself than with its interpretation,

27. Michael N. Barnett, *The International Humanitarian Order* (London: Routledge, 2010), 2.

28. Robert Kolb, *Réflexions de Philosophie Du Droit International* (Brussels: Bruylant, 2003), 140.

29. “We, the peoples of the United Nations, determined (...) to reaffirm faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women”.

30. Elisa Perez-Vera, « La Protection d’humanité en Droit International », *Revue Belge de Droit International*, 1969, 401-24.

31. *Barcelona Traction, Light and Power Company, Limited*, Second Phase, I.C.J. Reports 1970, p. 32 at paras. 33-34.

32. Francis M Deng et al, *Sovereignty as Responsibility* (Washington: The Brookings Institution, 1996).

33. Besson, « Post-Souveraineté ou Simple Changement de Paradigme ? Variation Sur Un Concept Essentiellement Contestable », 20-21.

since the idea of sovereignty as responsibility is to ensure that the protection of sovereignty by international law is not the protection of a totalitarian or tyrannical power, but the protection of the capacity of the people freely to express and choose the principles and persons who shall govern them³⁴.

To reason in this way is to recall that sovereignty not only confers rights and immunities, but “is also the declaration of a political responsibility to govern, defend and promote the well-being of a human community”³⁵: this responsibility is recognised in paragraph 138 of the 2005 World Summit Outcome document. As the authors of the report *A more secure world* also write the signatory states of the United Nations Charter enjoy the privileges of sovereignty, but they also accept its obligations. Whatever the vision of the world that presided over the advent of Westphalian state sovereignty, today it clearly entails an obligation on the part of the state to ensure the well-being of its people and to honour its obligations to the international community³⁶.

Sovereignty as responsibility reminds us that the justification for the existence of the State rests on its commitment to protect, respect and ensure respect for the natural rights of its citizens: the rights of the State are linked to those of its citizens; if it does not respect them, it loses its *raison d’être*³⁷. The idea is that sovereignty rests with individuals who, through a social contract, concede part of their sovereignty to the State in exchange for its protection. Hobbes thus asserted that a society that is not ordered by a sovereign power sinks into anarchy; the Monarch to whom individuals surrender their rights must, in return, ensure the conditions of civil peace. Locke’s conception of sovereignty, on the other hand, indicated that the sovereign’s authority was limited by respect for citizens’ rights to life, liberty and property, and that in the event of non-compliance, citizens acquired the right to rebel³⁸. This principle is further reinforced by article 21 par. 3 of the Universal Declaration of Human Rights, which states that “the will of the

34. W. Michael Reisman, “Sovereignty and Human Rights in Contemporary International Law”, in *Democratic Governance and International Law*, ed. Gregory H. Fox and Brad R. Roth (Cambridge: Cambridge University Press, 2000), 239-58.

35. Michael Ross Fowler and Julie Marie Bunc, *Law, Power, and the Sovereign State. The Evolution and Application of the Concept of Sovereignty* (University Park, PA: The Pennsylvania State University Press, 1995), 12.

36. Report of the High-Level Panel on Threats, Challenges and Change, *A more secure world: our shared responsibility*, A/59/565, 2 December 2004, para. 29.

37. S Neil MacFarlane and Yuen Foong Khong, *Human Security and the UN. A Critical History* (Bloomington, Indianapolis: Indiana University Press, 2006), 40-43.

38. Helen Stacy, “Relational Sovereignty”, *Stanford Law Review* 55, no. 5 (2003): 2029-59.

people shall be the basis of the authority of government". Albert Rigaudière warns, however, against the temptation to "confuse sovereignty as a form of the State with the sovereignty exercised in its name by the bodies responsible for it"³⁹. In reality, sovereignty as responsibility does not undermine sovereignty; it leads to a dissociation between sovereignty, understood as the right of a community to exist within the framework of a State, the legal organisation of political power over a territory, and the government, the people who sensibly embody this community and translate its aspirations⁴⁰. Citizens therefore have a right to the protection of their State, which will retain its sovereignty only insofar as it responds to this right. It is therefore a question of conditional sovereignty, of State responsibility; it is precisely this idea that emerges from the American policy of coercion against Nicaragua.

Before 1945 and the UN Charter, one of the major arguments for intervention was the inability or unwillingness of local authorities to fulfil their international obligations⁴¹. Without going back to this practice, the idea of sovereignty as responsibility is based on a somewhat similar premise. The idea put forward is that the legitimacy of local authorities and the guarantee of their protection against interference depend on compliance with certain standards. This idea would derive from the very idea of the international community, which, in the narrow sense of the term, is understood as the grouping together of all States, but which nevertheless places the emphasis on their acceptance of certain common rules and institutions, in particular those relating to human rights⁴².

Such a vision of sovereignty could lead to a division of states according to their conception of international law⁴³. Sovereignty as responsibility could be seen either as an attempt to make human rights effective, or as a means for the West to control certain States. If such a doctrine were to prevail, the latter would fear the revival of the doctrine of the inequality of States based not on their power but on the way they exercise their sovereignty⁴⁴. In this

39. Albert Rigaudière, « L'invention de la Souveraineté », *Pouvoirs*, 1993, 5-20.

40. Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (New York: Oxford University Press, 2004), 146.

41. Benedict Kingsbury, "Sovereignty and Inequality", *European Journal of International Law*, slaughter, 1998, 599-625.

42. Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton: Princeton University Press, 2001), 13.

43. Anne-Marie Slaughter, "Security, Solidarity, and Sovereignty: The Grand Themes of UN Reform", *American Journal of International Law* 99 (2005): 619-31.

44. Shinoda, *Re-Examining Sovereignty: From Classical Theory to the Global Age*, 108.

extreme understanding of sovereignty and responsibility, the world would be divided between States that respect human rights (“the civilised”) and those that do not (“the barbarians”), between those that deserve protection and those that do not⁴⁵.

Rejection of the lawfulness of unilateral coercive measures

In its General Comment 31, the Human Rights Committee states that each State party to the International Covenant on Civil and Political Rights is “under an obligation to each of the other States parties to fulfil the commitments that it has undertaken under the Covenant”. Thus, any violation by States parties of the rights set out in the Covenant gives rise to an obligation on the part of the other States parties to require the violators to “comply with their obligations under the Covenant”⁴⁶. This raises the question of whether this General Comment paves the way for legitimising the use of unilateral coercive measures against States that fail to comply with their human rights obligations⁴⁷.

These interventions to stop violations of fundamental rights that shock the human conscience are based on the *erga omnes* nature of these obligations⁴⁸.

All States have a legal interest in the protection of human rights. This obligation also implies a duty of solidarity among all States to ensure universal and effective protection of human rights as soon as possible⁴⁹.

In its judgment in the *Case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, the Court set out the conditions for assessing the content of such an obligation to react.

45. Margaret Denike, “The Human Rights of Others: Sovereignty, Legitimacy, and ‘Just Causes’ for the ‘War on Terror’”, *Hypatia* 23 (2008): 95-121.

46. General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (Eightieth Session), U.N. Doc. HRI/GEN/1/Rev.7 (2004).

47. Surya P. Subedi, ed, *Unilateral Sanctions in International Law* (Oxford: Hart Publishing, 2021), 56-57.

48. See for example the resolution of the Institute of International Law, “Obligations and rights *erga omnes* in international law”, Krakow Session (2005), which states in its preamble (...) that there is a broad consensus that the prohibition of acts of aggression, the prohibition of genocide, obligations relating to the protection of fundamental human rights, obligations relating to the right to self-determination and obligations relating to the environment of common spaces are examples of obligations which reflect the said fundamental values.

49. Institut de Droit International, « La protection des droits de l’homme et le principe de non-intervention dans les affaires intérieures des Etats », Santiago de Compostela Session (1989), 13 September 1989.

It states that “the State’s capacity to influence must also be assessed according to legal criteria, since it is clear that each State can take action only within the limits permitted by international law”⁵⁰.

In addition, the measures adopted must not indirectly lead to human rights violations in the target country. In order to comply with this requirement, the US authorities have adopted targeted measures against Nicaraguan leaders, civil servants and business leaders.

It is this difficult reconciliation that explains their denunciation, notably by the United Nations General Assembly and the Human Rights Council⁵¹. The positions taken by many States suggest that there is an *opinio juris* in favour of banning these unilateral measures.

Conclusion

In addition to their dubious legality, there is a certain consensus on the ineffectiveness of unilateral coercive measures⁵². American measures have not prevented an increase in repression. The Nicaraguan government also decided to withdraw from the Organisation of American States, declared the head of the European Union delegation *persona non grata* and closed the Vatican embassy in Managua. These measures have also led Nicaragua to draw closer to Russia and China.

The limitation of US measures to the gold and sugar industries demonstrates both the US desire not to worsen the situation of Nicaraguans and not to penalise their economic relations. Trade between the United States and Nicaragua will reach \$8.304 billion in 2022, an increase of 21.97% compared to 2021.

These unilateral coercive measures ultimately fulfil two functions: to act to demonstrate the importance of human rights and to try to weaken States that challenge liberal standards⁵³.

50. *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia and Montenegro), Merits, Judgment, I.C.J., 26 February 2007, para. 430.

51. A/RES/73/8, A/68/218, A/70/152.

52. Ksenia Kirkham, *The Political Economy of Sanctions Resilience and Transformation in Russia and Iran* (Cham: Springer, 2022).

53. Robert Charvin, « Les Mesures d’embargo : La Part Du Droit », *Revue Belge de Droit International*, no. 1 (1996): 5-32.

CHAPTER XVI
China and coercive measures
against human rights violations
(Dr. M. Grandpierron)

Introduction

Since the end of the Cold war, China has been under the criticisms of Western countries for its alleged bad Human rights records at various occasions. The first was about the Chinese response to a series of violent unrest in the province of Tibet in 2008. The second followed the Chinese response to the unrests that broke out in Hong-Kong in 2019-2020. More recently, Western criticisms concern Chinese policies implemented in the province of Xinjiang and the treatment of the Uighurs minority. Following its economic growth and geopolitical affirmation as a great power, Chinese responses to these criticisms has evolved and this evolution reflects the evolution of how Chinese elites understand the rise of their country and its affirmation on the international scene. In parallel, China also develops an official discourse about the broad practice of using unilateral coercive measures against countries that Western democracies judge as violating Human Rights.

This chapter offers to study how Chinese officials view and publicly describe the concept of unilateral coercive measure, and especially those taken by the United States and its allies. To do so, this chapter will quantitatively and qualitatively be analyzed, following a mixed-method approach to critical discourse analysis, Chinese official discourses related to economic sanctions, from the first occurrence (2001), to its latest (26/10/2022). Studying how such discourses are constructed, which narratives are used and in what context, enable us first to precisely map the Chinese understanding of human rights and associated issues. The second objective is to highlight key elements Chinese official associate to the idea of “economic sanctions” and of “unilateral coercive measures”, to then understand how the concept of human rights should be formulated as to be more acceptable for China. This chapter also aims to investigate what Chinese positions towards human rights reveal about their view of the international order.

Methodology and modelisation of the existing literature

Mixed method approach to critical discourse analysis and coding protocol

This chapter builds on the widely held theoretical assumption that it is not only what we say that matters, but also how we say it.¹ The research method used for this research, is what is called a mixed-method approach to critical discourse analysis that combines both quantitative and qualitative research methods and is supported by the use of QDA Miner software. This method enables the measuring of the frequency of different narratives (explicit and implicit) and rhetorical frameworks (including the relationships between them or their absence) while also taking into the cultural context of discourses, thus avoid the shorting-comings of content analyses and purely quantitative researches. In the light of the development of methods for computer-assisted textual analysis of large datasets, it is important to emphasize that this systematic mixed-methods discourse analysis (involving close interpretations of texts) is not an ‘automated’ content analysis, which is in fact the exact opposite.

To ensure the most reliable and valid results, I designed a coding dictionary and strictly followed a coding protocol inspired by Sandra Halperin and Oliver Heath.² Codes were created based on the literature and each aspect of the theoretical frameworks I wanted to test. Building a coding dictionary is about identifying indicators that need to be found in the data in order for the code to be applied. Coding a text means applying a tag for each category of variable and for each subcategory. When a passage is read, it is compared with the coding dictionary and, depending on how close it is to the dictionary and to previously coded passages, it is coded with the same or a different code. The coding was checked several times to ensure consistency.

In light of these analytical considerations, results were generated using a large database of 100 Chinese official documents collected from 2001 to 2023. These documents consist mainly of transcripts of press conferences held by the Chinese Ministry of Foreign Affairs and Ministry of Defense, as well as speeches delivered either by ambassadors, ministers or Presidents

1. Tully, J., (ed.)(1988). *Meaning and Context: Quentin Skinner and his Critics*. Princeton: Princeton University Press; Fairclough, N. (2010). *Critical discourse analysis*. Routledge; Wodak, R. and Meyer, M. (eds.)(2016). *Methods of Critical Discourse Studies*, 3rd ed. London: Sage.

2. Halperin, S. and Heath, O. (2020). *Political Research: Methods and Practical Skills*. 3rd ed. New York: Oxford University Press.

Hu Jintao or President Xi Jinping. It also includes Chinese legal documents produced on specific occasions.

Operationalisation of the existing literature in a coding dictionary

The coding dictionary is organized in four main sections, each divided into a series of subsections and codes that operationalize the literature.

Section I: Understanding and framing of the situation, aims to: (a) identify how Chinese decision-makers understand the situation, and in which terms they frame the situation; and (b) establish the relative frequency of an explicit argument used to justify the opposition to unilateral coercive measures. In addition to the points mentioned above, the following arguments taken from the literature were tested.

- (1) The hero–villain–victim narrative structure. After being discarded, the study of narratives has been given theoretical and empirical evidence in the IR literature³, following Vladimir Propp’s study of the narrative structure of folktales.⁴
- (2) The importance of emotions (or not). There is a lively debate about leaders and their response to emotions, as well as their own emotions. Scholars have argued that decision-makers are sensible to emotions and that their policies reflect this sensibility⁵; and that negative and positive emotions must be integrated and handled into narratives to create support for foreign policies.⁶
- (3) Is the issue included into a broader conflict? This subsection aims at measuring if Chinese individuals incorporate the issue of unilateral coercive measures into a broader and more global conflict. For example: sovereignty vs colonialism; orthodox interpretation of international law vs international law as power tool; regional stability versus western imperialism.

3. Roberts, G. (2006). “History, theory and the narrative turn in IR”. *Review of International Studies*, 32 (4), 703-714.

4. Propp, V. (1968). *Morphology of the Folktale*, 2d ed. Austin: University of Texas Press.

5. Crawford, N.C. (2000). “The Passion of World Politics: Propositions on Emotion and Emotional Relationships.” *International Security*, 24 (4), 116-156; Saurette, P., (2006). “You dissin me? Humiliation and post 9/11 global politics”. *Review of International Studies*, 32 (3), 495-522.

6. Kaufman, S.J. (2001). *Modern Hatreds: The Symbolic Politics of Ethnic War*. New York: Cornell University Press; Ahmed, S. (2014). *The Cultural Politics of Emotion*. 2nd ed. Edinburgh: Edinburgh University Press.

Section II: Chinese status considerations, aims to investigate if Chinese decision-makers link the issue of unilateral coercive measures with status considerations.

- (1) Status accommodation of rising powers is a developed research agenda.⁷ Seeking a better accommodation in the world hierarchy is an argument often associated with Chinese foreign policies.⁸ Therefore, the coding dictionary measured if Chinese officials express status dissatisfaction.
- (2) Opposition to US and Western understanding of human rights as marker of great power status claims. According to the literature, status has various impacts on the foreign policy of states.⁹ Status-seeking foreign policies include notably the ability to solve international issues¹⁰ and more broadly to shape international norms.¹¹ Specifically, the coding dictionary is designed to investigate if Chinese officials link unilateral coercive measures related to human rights to their own status claims, if they interpret Western use of international norms as a new criteria of great power status to deny China's claimed status.

Section III: Domestic law, international law and human rights. This section aims to investigate how Chinese decision-makers define and understand international law: what is their understanding of international law?

7. Lebow, R.N. (2010). *Why Nations Fight: Past and Future Motives for War*. New York: Cambridge University Press; Paul, T.V. (ed.), (2016). *Accommodating Rising Powers Past, Present, and Future*. Cambridge: Cambridge University Press; Renshon, J. (2017). *Fighting for Status: Hierarchy and Conflict in World Politics*. Princeton: Princeton University Press.

8. Jackson, P. T. (2006). *Civilizing the Enemy: German Reconstruction and the Invention of the West*. Ann Arbor: University of Michigan Press; Forsberg, T., Heller, R. and Wolf, R. (2014). "Introduction: Russia and the Quest for Status". *Communist and Post-Communist Studies*, 47(3-4): 261-268; Paul, T.V., (ed.), (2016). *Accommodating Rising Powers. Past, Present, and Future*. Cambridge: Cambridge University Press; Kupchan, C., (2010). *How Enemies Become Friends: The Sources of Stable Peace*. Princeton: Princeton University Press.

9. Ward, S., (2020). *Status and the Challenge of Rising Powers*. Cambridge: Cambridge University Press; Heimann, G., (2015). "What does it take to be a great power? The story of France joining the Big Five". *Review of International Studies*, 41 (1), 185-206.

10. Nolan, C.J. (2006). "Great Powers and International Society". In: Bain, W. (ed.) *The Empire of Security and the Safety of the People*. London: Routledge, pp. 71-93; Morris, J. (2011). "How Great is Britain? Power, Responsibility and Britain's Future Global Role". *The British Journal of Politics and International Relations*, 13(3): 326-347.

11. Evans, G.; Sahnoun, M. (2002). "The Responsibility to Protect". *Foreign Affairs*, 81(6): 99-110; Jackson, R.H. (2000). *The Global Covenant: Human Conduct in a World of States*. Oxford: Oxford University Press.

How do they define the existing international order and liberal internationalism?¹² Additionally, the following ideas were tested.

- (1) Human rights issues as a global opposition. This subsection attempts to identify whether Chinese officials link the issue of coercive sanctions about human rights to a global challenge of the existing international order? Codes were designed to engage with the questions if Chinese officials want to challenge the roots of the liberal international order and thus replace it¹³, or, if through their opposition to Western understanding of human rights they attempt to bargain a better accommodation of their interest¹⁴ and ultimately leading them to adopt Western behavior and socialize in the liberal international order?¹⁵
- (2) Understanding of international law. This category of codes aims to investigate how Chinese officials understand international law and principles and what kind of ideas they put behind them. More precisely, this section aims at investigating whether Chinese officials accept the western meaning (as universal) of international norms and human rights but oppose the way Western countries apply them; or if they contest their meaning and make the argument they need to be culturally adapted.¹⁶ Said differently, this section aims at measuring if China engages into what the literature called “rhetorical adaptation”.¹⁷

12. Xuetong, Y. (2019). *Leadership and the Rise of Great Powers*. Princeton: Princeton University Press; Lebow, R. N. and Zhang, F. (2022). *Justice and international order: East and West*. New York: Oxford University Press.

13. Ginsburg, T. (2020). “Authoritarian International Law?”. *American Journal of International Law*, 114(2), 221-260; Kwak, J.-H. (2021). “Global justice without self-centrism: Tianxia in dialogue on mount Uisan”. *Dao*, 20, 289-307.

14. Buzan, B. (2010). *Culture and International Society*. *International Affairs*, 86, 1-25; Clark, I., (2014). “International society and China: The power of norms and the norms of power”. *Chinese Journal of International Politics*, 7, 315-340.

15. Kent, A. (2002). “China’s international socialization: The role of international organizations”. *Global Government*, 8, 343-364; Lebow, R. N. (2018). *The Rise and Fall of Political Orders*. Cambridge: Cambridge University Press; Shambaugh, D. (2016). *The China Reader: Rising Power*, Oxford: Oxford University Press.

16. An-Na’im, A.A. (1995). *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*. Philadelphia: University of Pennsylvania Press; Heilman, S.; Schmidt, D. (2014). *China’s Foreign Political and Economic Relations: An Unconventional Global Power*. New York: Rowman & Littlefield Publishers.

17. Dixon, J.M. (2017). “Rhetorical adaptation and resistance to international norms”, *Perspectives on Politics*, 15(1), pp.83-99. Fung, C. (2019). *China and Intervention at the UN Security Council. Reconciling Status*. Oxford: Oxford University Press. Foot, R., (2020). *China, the UN, and Human Protection: Beliefs, Power, Image*. Oxford: Oxford University Press.

- (3) Is international law objective for a common global good or a tool of power? This series of codes aim to measure to what extent are the following ideas present in Chinese discourses about Human rights and coercive sanctions: (A) the use by western countries of international law as a disguise for their geopolitical interests¹⁸ and thus is not truly international.¹⁹ In that case, how do Chinese officials describe such Western practices? The justification for all coercive measures is found in the defense of the ‘values’ of the International Community. In doing so, the discourse on ‘sanctions’ mixes and confuses the register of legality and legitimacy. As such, do Chinese officials consider law as a discourse, and because of this, as an instrument of legitimization?²⁰ (C) Are Human rights and coercive measures seen by Chinese officials as being specifically used by Western powers to unofficially support “secessionist movements” within China.²¹
- (4) The place of individual and human rights. This section aims at exploring how Chinese officials understand and view the notions of individual rights and human rights and what are their relations and interaction with law. This series of codes, thus aims to measure how important in Chinese discourses is the understanding that law enables individual rights and thus defines the very specific perimeter of their applications.²² Codes were also constructed to engage with the literature

18. Hurd, I. (2019). *How to do Things with International Law*. New Jersey: Princeton University Press; Wang, J.; Cheng, H. (2022). “China’s approach to international law: From traditional westphalianism to aggressive instrumentalization in the Xi Jinping Era”, *Chinese Journal of Comparative Law*, 10(1), 140-153.

19. Rühlig, T. (2018). *How China Approaches International Law: Implications for Europe*. Bruxelles; Jorgensen, M. (2018). “Equilibrium and fragmentation in the international rule of law: The rising Chinese geolegal order”, *KFG Working Paper Series*, 21 Berlin Potsdam Research Group The International Rule of Law – Rise or Decline?; Roberts, A. (2017). *Is International Law International?* Oxford: Oxford University Press.

20. Anghie, A. (2004). *Imperialism, Sovereignty and the Making of International Law*. Cambridge: Cambridge University Press; Chimni, B.S. (2017). *International Law and World Order: A Critique of Contemporary Approaches*. 2nd ed. Cambridge University Press; Koskeniemi, M. (2004). “International law and hegemony: a reconfiguration”. *Cambridge Review of International Affairs*, 17(2): 197-218.

21. Béja, J-P. (2010). *The Impact of China’s Tiananmen Massacre*, New York: Taylor and Francis; Rynning, S.; Schmitt, O.; Thensson, A. (eds.) (2021). *War Time. Temporality and the Decline of Western Military Power*. Washington: The Bookings Institute.

22. Nathan, A. (1994). “Human rights in Chinese foreign policy”, *The China Quarterly*, 139, pp. 622-643; Keith, R. (2009). *China from the Inside out: Fitting the People’s Republic into the World*. Chicago: Pluto Press. Li, X. (2010). *Civil Liberties in China*, Santa Barbara: ABC-CLIO.

discussing Chinese understanding of the UN charter, its meanings and the interaction between it and the implementation and protection of individual rights within countries.²³

Empirical study of Chinese position toward Human Rights and coercive measures

The quantitative and qualitative analyses of Chinese discourses related to human rights reveal that Chinese officials argue that human rights are not an international affair but a domestic one, which serves as a starting point to criticize the Western understanding of international law and international order. Both should be replaced by an orthodox approach to international law and by a regionalized international order. This change of paradigm proposed at the occasion of human rights discussion illustrates Chinese claims for great power status.

Chinese understanding of human rights: A domestic issue politically instrumentalized by the West

The question of human rights not only crystallizes tensions between China and Western countries, but also symbolizes the divide between Western and Chinese political thoughts. In the West, individual rights are a philosophical principle upheld and promoted by the liberal internationalist ideology and that should be extended to the entire world as a factor of peace.²⁴ In Chinese political thought, the key political notion, as showed by Pan Wei²⁵ is the notion of “responsibility”, derived from Confucianism. In Confucianism, the government’s role is to pursue a moral agenda of virtues, which gives rise to a natural order of social harmony²⁶, rooted in good education and not in law²⁷, to which the individual is dependent upon.²⁸ This difference in understanding the notions of rights and law is

23. Gill, B. (2010). *Rising Star: China's New Security Diplomacy*. Washington: Brookings Institution. Xiao Yang, S. (2012). *China in UN Security Council Decision-Making on Iraq: Conflicting Understandings, Competing Preferences*. New York: Taylor & Francis.

24. Fukuyama, F. (2020). *The End of History and the Last Man*. London: Penguin Books; Russett, B.M. (1994). *Grasping the Democratic Peace: Principles for a Post-Cold War World*. 2nd ed. Princeton: Princeton University Press.

25. Pan, W. (2009). “Gongheguo yi jiazi: Jiazi shentao Zhongguo moshi” (One sixty-year cycle in the life of the Republic: The search for a China model), *Kaifang shidai* 5.

26. Gill, B. (2010). *Ibid.*

27. Keith, R. (2009). *Ibid.*; Ford, C.A., (2015). *The mind of empire: China's History and Modern Foreign Relations*. Lexington: University Press of Kentucky.

28. Li, X. (2010). *Ibid.*

perhaps best captured by the criticisms made by some human rights groups who have accused China of using administrative detentions as punitive measures. These groups have simply projected their Western approach to law to China, while completely ignoring that for a long time there was no real criminal law in China, and that administrative detentions were used because they were one of the few effective tools available then. These groups also ignore that, in China, minor offenses are not punished by law, but are dealt with rehabilitation and educational procedures.²⁹ The Quantitative analysis reveals that there is a relatively strong Confucian narrative (25,3%). It is first found specifically related to either Tibet, Xinjiang or Hong-Kong³⁰. Then, the Confucian narrative is found more and more frequently associated with other and more global issues, such as global government, international stability³¹, thus illustrating the evolution of China's position on the international scene.

The consequence of Chinese understanding of rights is that they are defined as being collective, not individual, and thus that they belong to the Nation and because of that they are enabled and constrained by law. This idea is explicitly mentioned in Chinese discourses in 14,7% of documents.³² If rights and State interests collide, the latter prevail.³³ When Chinese officials discuss the idea of rights in their discourses or in official documents, either they do so by using a lexical field of the ideal but not yet achieved, such as in the Constitution (that enumerates a list of rights since 2004); or, linking them to economic situations.

The quantitative analysis reveals that human rights are linked to the issue of economic development in 18,9% of discourses, which goes up to 25,2% in discourses specifically related to Tibet and Xinjiang. The idea is that economic development is the necessary conditions for human rights.

29. This practice comes from the Confucian notion of *jiaohua*, which means “transformation through education”. See: Xue, H. (2012). *Chinese Contemporary Perspective on International Law: History, Culture and International Law*. Leiden: Brill.

30. A representative example can be found in: Ministry of Foreign Affairs Spokesperson Liu Jianchao speech, 7 March 2008: “it was precisely to preserve social stability that the relevant departments in the Tibet region took action under the law to deal with the situation”.

31. See for example President Xi Jinping discourses at the SCO CEO summit, 17 November 2022, and at the 17th G20 Summit, 15 November 2022: “It is imperative that all countries embrace the vision of a community with a shared future for mankind”.

32. A representative example can be found in the Ministry of Foreign Affairs Spokesperson Liu Jianchao discourse about the comments made by the US President George W. Bush on the so-called issue of religious freedom in China, 16 July 2008.

33. Nathan, A. (1994). *Ibid*.

Without a strong economic development, human rights can't be developed. As such, the priority should be the economy. At first this idea was just found in Chinese discourses addressing Chinese domestic situations³⁴, to then be found in Chinese discourses addressing situations in other countries after 2014.³⁵ This illustrates the Chinese growth and is part of a broader narrative that the Chinese way of development can be a source of inspiration for others.³⁶

The presence of economic narratives linked to the idea of human rights show two elements. The first element is again a reference of Ancient Chinese political thought when the main duty of a responsible government under the mandate of Heaven was to provide security against starvation. Applied to contemporary China, the emphasis is put on providing economic growth and protecting the population against economic insecurity. Human rights, in their western understanding, are not a priority and cannot be achieved without a strong economic development.³⁷ The emphasis on economic development is consistent with and is part of a larger diplomatic narrative arguing that China is not yet on the same level as major Western countries, despite its growing diplomatic ambitions, but remains a developing country.³⁸ Chinese officials and scholar go further that, while China cannot copy the West and must find its own path to development and the proof that China is protecting human rights and that human rights condition are rapidly improving in China is precisely the economic growth: "China's economic success is a manifestation of China's provision of democratic

34. See for example: Ministry of Foreign Affairs Spokesperson Qin Gong speech on the publication by the US State department of a report on the human rights in China, 12 March 2008: "Always very committed to the protection of human rights and the development of traditional Tibetan culture and religions, the Chinese government has invested important human and financial resources in the protection, renovation and construction of cultural infrastructures in Tibet".

35. A representative example can be found in the Ministry of Foreign Affairs Spokesperson comments about the joint declaration of the friendly countries supporting China in the 47th session of the Human Rights Council, 22 June 2021.

36. See for example the speech "Leaders of many countries and international organizations mourn the passing of Comrade Jiang Zemin", 01 December 2022.

37. deLisle, J. (2013). "From economic development to what and why? China's evolving legal and political engagement between law and economic development", in Yu, G. *Rethinking Law and Development, Rethinking Law and Development: The Chinese Experience*. New York: Taylor and Francis.

38. Luo, Y. (1998). "Facing China's international strategy between human rights and development", in Liang, S. et al. *Facing China's International Strategy in the 21st Century*, pp. 353-362. Beijing: Chinese Academy of Social Sciences Press.

rights because placing priority on economic development reflects the will of the people”.³⁹

The second element is that human rights are understood by Chinese officials as being as being a domestic issue only (29,5%).⁴⁰ Human rights are by no mean an international matter, and concerns about human rights expressed by other countries are illegitimate at best, an attempt to restrain Chinese sovereignty and growth at worst.⁴¹ It is worth mentioning that this approach is not only limited to China, but Chinese officials apply it to other countries such as Iraq and Syria, as the next section will develop. Chinese officials link the question of human rights to a much broader issue expressed in the dichotomic terms of “sovereignty against inference” (46,7% of discourses). What Chinese officials implicit fear is to be confronted to a Western attempt to use minorities at the periphery of China as a geopolitical tool to weaken the Chinese state and Chinese Communist Party⁴², as they did in Kosovo, Iraq, Libya and have tried to do in Syria⁴³, therefore, Human rights are found described as a public security issue (16,8%).

39. See for example: President Xi Jinping discourse “Staying committed to and jointly promoting development to bring Asia-Pacific cooperation to new heights”, 17 December 2022: “As an ancient Chinese historian observed: ‘Governance is all about enriching the people’. China has won the battle against poverty and finished building a moderately prosperous society in all respect”. See also: Yu, G. (2013). *Rethinking Law and Development: The Chinese Experience*. New York: Taylor and Francis, p. 111.

40. See for example: Ministry of Foreign Affairs Spokesperson Jiang Yu comments on the adoption of project of resolution on Tibet by the US House of Representative, 11 April 2008: “Tibetan affairs are purely internal affairs of China”. See also, Ministry of Foreign Affairs Spokesperson Hua Chunying comments on the joint declaration of friendly countries supporting China in the 3rd Commission of the UN General Assembly, 7 October 2020: “when it comes to the protection of human rights, there is no such thing as perfection; there is always room for improvement. Countries must first manage their own affairs correctly”.

41. A representative example can be found in Ministry of Foreign Affairs Spokesperson Jiang Yu comments on the adoption by the German Federal Diet of a resolution about the system of reeducation by work in China, 15 Mai 2007: “We firmly oppose interference in the internal affairs of others under the pretext of human rights”. See also: Ministry of Foreign Affairs Spokesperson response to journalists’ questions on the rejection of the project of decision on the issues related to Xinjiang at the UN Human Rights Council, 6 October 2022.

42. Xue, H. (2012). *Ibid*.

43. See for example: Ministry of Foreign Affairs Spokesperson declaration on the Summit for democracy organized by the United States, 5 December 2022: “While the US and the EU say they will focus on protecting the centrality of the UN Charter, it is the US and some European countries that have ignored principles of the UN Charter (...) and have interfered in China’s internal affairs and even waged war against sovereign countries like Iraq and Syria in the name of human rights”.

To block any Western attempt to geopolitically instrumentalize the issue of Human rights, Chinese officials develop, in their discourses about Tibet, Hong-Kong and Xinjiang, the realist argument that relevant international actors are States, and States only. This argument thus rejects NGOs and individuals as being the subject of international law, which does not apply to them as a consequence. As such, in the 29,5% of discourses, there is the clear qualification of Human rights issues as being domestic political affairs that can only be managed by the State in question. To reinforce this narrative, Chinese officials link Human rights issues to the broader topic of public security (16,8%), which is a prerogative of the State, especially in the Western political thought since Hobbes; and, respond journalists' questions with very technical and factual terms, in the manner of a police report (14,7%).

Chinese officials go further and support this narrative by an orthodox reading and understanding of the UN Charter, and especially of the idea of State equality: the type of regime and the nature of political institutions is not an international concern but a domestic issue only.⁴⁴ The combination of the argument that rights are constrained and enable by law with the ideas that human rights are a domestic affair and with the other idea that only States are subject to international law is an implicit critic of the existing international order.⁴⁵ Instead of doing like the West and promote values in a universal definition, values need to be culturally adapted to regional and local contexts.⁴⁶ This consists of an alternative view of the international system as it opens the door to its regionalization. It is *de facto* a way to illustrate Chinese international ambitions and bid for great power status on its own terms and not on those of the West, as the next section will show.

Human rights perceived as a power tool to maintain Western hegemony

Using unilateral coercive measures ("sanctions") against a country is not new and dates back to the First World War and the practice of the economic blockade against the German empire, at the very moment when liberal

44. Xiao Yang, S. (2012). *Ibid*.

45. See for example: Ministry of Foreign Affairs Spokesperson comments about the joint declaration of friendly countries supporting China in the 47th session of the UN Human Rights Council, 22 June 2021.

46. Chan, G. (2006). *China's Compliance in Global Affairs: Trade, Arms Control, Environmental Protection, Human Rights*. Singapore: World Scientific Publishing Company; Heilman, S.; Schmidt, D. (2014). *Ibid*.

democracy was asserting itself as the only ‘legitimate’ model to act on the international scene.⁴⁷ The aim was to bring about the total isolation of the target state and then its asphyxiation in order to make it aware of the right behavior to adopt on the international scene. This idea has been present in Chinese discourses since the beginning and is associated with the implicit discourse that the West, especially the United States, use international as a power tool.⁴⁸ This idea is found in 26,7% of Chinese discourses with the idea that international law, as practiced by Western countries has become an instrument of neo-colonialism (11,3%). These two ideas recall the works of Antonio Gramsci⁴⁹, Robert Cox⁵⁰, Michel Foucault⁵¹ and Steven Lukes⁵² about how social norms contribute to reproduce power hierarchies. In Chinese discourses, these arguments are articulated in a quantitatively significant narrative describing a fight between national sovereignty, as guaranteed by the UN charter, against political interference (46,3%).⁵³

This understanding that international law is a tool of power explains the apparently ambivalent Chinese positions about the question of Human Rights protection. For example, China did not sign Human Rights Conventions but supported the UN General Assembly Resolution 3/02 about the protection of Human Rights in Armed Conflicts. If China supported taking coercive measures against Iraq after its invasion of Kuwait⁵⁴, this position has been abandoned after Western countries used human rights issues as pretext to implement regime changes.

47. Osborne, E.W. (2004). *Britain's Economic Blockade of Germany: 1914 - 1919*. London: Cass; Mulder, N. (2022). *The Economic Weapon: The Rise of Sanctions as a Tool of Modern War*. New Haven: Yale University Press.

48. Ronzitti, N. (2016). *Coercive Diplomacy. Sanctions and International Law*. Leiden: Brill.

49. Gramsci, A. (2021). *Cahiers de Prison: Anthologie* (ed. J-Y Frétygné). Folio 674. Paris: Gallimard.

50. Cox, R.W. (1983). "Gramsci, Hegemony and International Relations: An Essay in Method". *Millennium* 12(2): 162-175.

51. Foucault, M. (1995). *Discipline and Punish: The Birth of the Prison*. 2nd ed. New York: Vintage Books.

52. Lukes, S. (2004). *Power: A Radical View*. 2nd ed. Houndmills: Palgrave Macmillan.

53. See for example: Ministry of Foreign Affairs Spokesperson comments on the Summit for democracy organized by the US, 1 December 2021: "(They) use democracy as an instrument and as a weapon". See also: Ministry of Foreign Affairs Spokesperson Zhao Lijian's regular press conference, 28 November 2022 and Spokesperson Mao Niang's regular press conference, 5 December 2022.

54. Dittmer, L. ; Kim, S. (eds.) (1993). *China's Quest for National Identity*. Ithaca: Cornell University Press.

Furthermore, China used international law to eliminate colonialism at first⁵⁵, now it uses it to criticize Western hegemony. The evolution of Chinese discourses related to human rights is linked to its status on the international scene. After the end of the Cold war, China was not in a position to explicitly criticize Western approach to human rights, especially as it had to deal with the international consequences of the events in Tian'anmen (1989). As such, China was into dialogues with the West about Human rights. This is no longer the case. More interestingly, there is a general ambiguity about China's status that can also be found in discourses related to human rights. Chinese officials claim that China is still a country in development and thus acknowledge that there are still some internal problems to be solved⁵⁶, while they also argue that China should be better considered as it is a great power. This ambiguous discourse is present in 26,3% of Chinese discourses related to human rights issues.

Since 2008, the issue of human rights has taken a global dimension related to the international status of China. In their discourses, Chinese officials often criticize the West, and more particularly the US to have double standards against China with the objective to prevent a power transition in the favor of Beijing from happening.⁵⁷ This argument is linked to the use of emotions by Chinese officials (15,8%). In this battle for international respectability, China first had a defensive position which consisted in violently responding to Western officials and media comparing the 2008 Olympic games to those organized by Nazi Germany in 1933 specifically⁵⁸, and more broadly to those arguing rule of law did not exist in China.⁵⁹ Then and following its economic and geopolitical growth, China used the issue of human rights to criticize the legitimacy of the US and of its allies to manage

55. Kim, S. (1979). *China, The United Nations, and World Order*. Princeton: Princeton University Press.

56. Wheeler, N.J. (2000). *Saving Strangers Humanitarian Intervention in International Society*. New York: Oxford University Press, p. 21.

57. A representative example can be found in Ministry of Foreign Affairs Spokesperson Qin Gong declaration about the publication by the US State Department of a report on Human Rights in China, 12 March 2008. See: Peerenboom, R. (2005). "Assessing human rights in China: Why the double standard", *Cornell International Law Journal*, 38(1), pp. 71-172.

58. See for example: Foreign Ministry Spokesperson Qing Gong comments on the comparison made by a British journal between the Beijing games and the Berlin games organized by Hitler, 25 March 2008.

59. A representative example can be found in Ministry of Foreign Affairs Spokesperson Jiang Yu comments on the adoption by the German Federal Diet of a resolution about the system of reeducation by work in China, 15 Mai 2007.

the international system. This started by a casting the US in the role of the villain (24,2%) driven by personal interests and unable to respect international rules (17,9%)⁶⁰, at heart of the criticism is the treatment given by US officials, including Barack Obama, to the Dalai-Lama, receiving him like a State official, while he is considered as a criminal by China.⁶¹ More recently, China also used the topic of human rights in connection with historical narrative to argue that US allies are biased when they use the notion of Human rights.⁶² The objective is to delegitimize the western interpretation of the international world order to pave the way for a Chinese alternative interpretation.

Human rights as battleground for great power status and competing visions of the world order

The issue of human rights offers another illustration of the sino-american rivalry about the future of the international order. At the heart of the rivalry are the criteria associated to great power status, such as the ability to solve regional and international problems⁶³, the prevention (and punishment) of physical aggression⁶⁴ that violates international law⁶⁵, to the prevention of potential human rights violations embodied in the recent concept of the responsibility to protect (R2P).⁶⁶ The international order is therefore not neutral. It must certainly maintain the stability of the international scene, but it is above all a tool for the dominant great power (or the

60. See for example: Ministry of Foreign Affairs Spokesperson Wang Wenbin regular press conference, 15 December 2022.

61. See for example: Ministry of Foreign Affairs Spokesperson Ma Zhaoxu declaration about the meeting between US President Obama and the Dalai Lama, 19 February 2010. See also Ministry of Foreign Affairs Spokesperson Liu Jianchao comments on the hearings given to the Dalai-Lama by the Canadian Prime Minister, 30 October 2007.

62. See for example: Ministry of Foreign Affairs Spokesperson Mao Ning's regular press conference, 12 Mai 2022: "The world still remembers the war of aggression waged by Japan (...). Politicizing and instrumentalizing human rights issues to hurt China's image and stall China's development will not succeed".

63. Brown, C., (2004) "Do Great Powers have Great Responsibilities? Great Powers and Moral Agency." *Global Society* 18(1): 5-19; Cai, C., (2013). "New great powers and international law in the 21st century". *European Journal of International Law* 24(3): 755-795; Forsberg et al., (2014). *Ibid.*

64. Morris, J. (2011). *ibid.*

65. Jackson, R. (2002). *The Global Covenant. Human Conduct in a World of States*. Oxford: Oxford University Press.

66. Evans, G.; Sahnoun, M. (2002). *Ibid.*

dominant alliance) to maintain its domination.⁶⁷ International rules can therefore be rewritten according to the interests of the dominant power.⁶⁸ One way for the dominant power to contain dissent is through the use of coercive economic measures, commonly referred to as “sanctions”.

With time, Chinese officials have developed the argument that China would be better than the United States at providing solutions to international issues because China is a more mature country (26,3%) that does not practice double standards⁶⁹; while the United States and its allies are compared to immature children (34,7%).⁷⁰ As such, there can be only one “true” guarantor of international law (as written in the UN Charter): China and not the US (15%). To reinforce their position, Chinese officials often highlight that Chinese positions towards human rights creates consensus among other countries (14,7%).⁷¹

The analysis of official Chinese discourses about human rights show the presence of what scholars working on Chinese discourses and legal strategies at the UN evolution⁷² call, following Jennifer Dixon, “rhetorical adaptation”.⁷³ It is a strategy that simultaneously modifies norm content while reducing critiques of obstructionism. In terms of posture related to human rights, Chinese position follows the evolution identified by Rosemary Foot about the more specific question of responsibility to protect.⁷⁴ From 2000 to 2008, Chinese posture consisted in “norm disregard” (ignoring or rejecting a relevant norm), then adopted a “norm avoidance” posture until 2009 (arguing that action falls outside norm perimeter).⁷⁵ These defensive

67. Schweller, R.L. and Pu, X.(2011). “After Unipolarity: China’s Visions of International Order in an Era of U.S. Decline”. *International Security*, 36 (1), 41-72.

68. Dunne, T. (2003). “Society and Hierarchy in International Relations”. *International Relations* 17(3): 303-320.

69. See: Statement by the Ministry of Foreign Affairs Spokesman on the EU’s condemnation of China’s execution of criminals from the 5 July killings, 13 November 2009; 11 December 2021; President Xi Jinping speech at the G20 Summit, 15 November 2022.

70. A representative example can be found in: the transcript of Foreign Minister Wang Yi discussion with US Secretary of State Antony Blinken, 31 October 2022.

71. See for example: Ministry of Foreign Affairs Spokesperson Mao Ning’s regular press conference, 12 Mai 2022.

72. Fung, C. (2019). *Ibid.*; Foot, R. *Ibid.*

73. Dixon, J. (2017). *Ibid.*

74. Foot, R. (2020). *Ibid.*

75. See : Statement by the Ministry of Foreign Affairs Spokesman Liu Jianchao on the ransacking, sabotage, looting and burning - extremely violent crimes perpetrated in Lhasa, 17 March 2008.

postures started to be replaced by more offensive postures after 2009-2010 and included “norm interpretation” (tweaking norm definition, limitation, or application)⁷⁶ to include, since 2011, “norm signalling” (expressing support for norm practices or suggesting what norm should be applied)⁷⁷. One particular example is the initiative taken by China to create, in the UN Human Rights Commission, a non-western caucus of states that made sure that western-sponsored resolutions against China and other Third world states never come to a vote.⁷⁸

This rhetorical adaptation of human rights by Chinese officials lead to a final element that is implicitly mentioned in Chinese discourses about human rights after 2020: an alternative vision of the international order. Chinese officials develop a view of new organizing principles for the international order that differ from the US and Occidental interpretation. The argument is that international law, and more broadly, the Occidental order needs to be decolonized and that China is a legitimate actor to offer an alternative.⁷⁹ What hides behind the Chinese alternative of international order is an idea of revenge against the West, which deprived it of its rights by imposing compliance with international law and forced it to behave according to rules China did not participate in creating.⁸⁰ The alternative proposed by China is a revenge over centuries of perceived humiliations, because it is based on principles opposite to those sustaining the Occidental order: regionalism of crisis management instead of its internationalization and the need for countries to practice the idea of “harmony”.⁸¹

The vision of a harmonious international order was officially incorporated into Chinese diplomacy and geopolitics by Xi Jinping at the 19th

76. See: Ministry of Foreign Affairs Spokesperson Hua Chunging comments on the joint declaration of friendly countries to support China in the 3rd Commission in the UN General Assembly, 7 October 2020.

77. See for example: Ministry of Foreign Affairs Spokesperson Mao Ning's regular press conference, 12 Mai 2022.

78. Béja, J-P. (2010). *Ibid.*

79. Heritage, A. and Lee, P.K. (2020). *Order, Contestation and Ontological Security-seeking in the South China Sea*. Cham: Palgrave Macmillan.

80. Coicaud, J.-M. (2016). “The question of emotions and passions in mainstream international relations, and beyond”, in Ariffin, Y., Coicaud, J.-M. and Popovski, V. (eds.), *Emotions in International Politics: Beyond Mainstream International Relations*. New York: Cambridge University Press, 23-47; Lowenheim, O., and Heimann, G. (2008). “Revenge in international politics”. *Security Studies*, 17, 685-724; Xuetong, Y., *Ibid.*

81. Orsi, R. (2021). On the relevance of Carl Schmitt's concept of *Großraum* in contemporary international politics. *Journal of International Political Theory*, 17, 295-315.

Communist Party Congress. On that occasion, Xi Jinping explained that the causes of wars and conflicts lay in the violation of the rule of State sovereignty guaranteed by the United Nations Charter, the failure to comply with UN decisions, and the failure of dialogue and consultation in conflict resolution. This serves as a platform for the ideological construction of an alternative to the Western international order. International institutions are to be assessed on their ability to bring peace (preventing imperialism), prosperity (not making development aid conditional on liberal political reforms) and harmony to the world. What would result from this model is a regionalized international order that would be based on a fusion of the ideology of the mandate of Heaven (as opposed to the will of the People) that recalls the Ming ontology.⁸² Because the US is a destabilizing factors of regional harmony (10,9%), they should be expelled not just from Asia (the argument is that they are not Asian and, as such, are alien to its history and practices⁸³; but also, from the management of any other region affairs.

Conclusion

The quantitative and qualitative analyses of official Chinese discourses about Human Rights have revealed multiple important elements to better understand Chinese position towards the question of human rights and towards the Western interpretation of this question. As this chapter attempted to show, Chinese officials are giving a great importance to the fact that international law and norms remain as stated in the UN Charter. As such, they strongly oppose Western practices to interpret international norms solely according to their own political model and political philosophy (liberal universalism) and to make human rights situations international issues. The Chinese vision is that human rights situations are domestic issues and can only be dealt by the State as human rights are seen as the consequence of the economic development of each country. Furthermore, human rights, as any right, are understood as being enabled and thus constrained by law; while the importance is given to social groups and not to individuals.

The analysis of Chinese discourses also showed that Chinese officials link human rights to broader questions such as the status of their country on the international scene. Therefore, images, emotions, narratives

82. Zarakol, A., (2022.) *Before the West: The Rise and Fall of Eastern World Orders*. Cambridge: Cambridge University Press; Ford, C.A. (2015). *Ibid*; Brook, T.(2019). *Great state: China and the World*. London: Profile Books.

83. Hawksley, H. (2020). *Asian waters*. New York: Abrams Books.

and rhetoric play critical roles, especially in the context of strong criticisms addressed to Western countries and to the way they interpret and manage the international system. In the current situation, China develops the idea, in its discourses about human rights, that it is the protector of State's sovereignty against inference of Western countries as they manipulate human rights situations to impose regime changes and use them as tools of neo-colonialism. Therefore, it seems important for Western countries to adapt their rhetoric when engaging with China about human rights if they want to avoid a complete rejection of international law as it stands. Instead, a more productive way of promoting human rights and making them accepted is to link them to local traditions, values, practices and domestic development perspectives and challenges.

AUTHOR'S INFORMATION

Alena Douhan

UN Special Rapporteur, Dr., Dr. hab., Professor, Professor of International Law Department, Faculty of International Relations, Belarusian State University; Chief Researcher, Department of Research in State Building and International law, National Center of Legislation and Legal Research

Michael J. Strauss

PhD, Professor of International Law and International Relations, Centre d'Etudes Diplomatiques et Stratégiques, Paris; Visiting Professor of International Criminal Law, Université Catholique de Lille.

Alfred de Zayas

Professor, Geneva School of Diplomacy; Former UN Independent Expert on International Order (2012–2018); Former Secretary, UN Human Rights Committee; Former Chief, Petitions Section, OHCHR; Author of numerous books, including *Building a Just World Order* (Clarity Press, 2021) and *The Human Rights Industry* (Clarity Press, 2023).

Aslan H. Abashidze

Professor, Doctor of Legal Sciences, Head of the International Law Department, RUDN University; Professor, Moscow State Institute of International Relations (MGIMO); Member, United Nations Committee on Economic, Social and Cultural Rights (2010-2026); Former Member of the UN Working Group on Arbitrary Detention (2008-2010); Honored Lawyer and Scientist of the Russian Federation; Author of over 1,000 scientific publications on international law, including human rights law, humanitarian law, and criminal law.

Robert Huish

Associate Professor, Department of International Development Studies, Dalhousie University, Canada.

Nataliya Maroz

PhD, Associate Professor, Associate Professor of the Department of International Law, Faculty of International Relations, Belarusian State University.

Pouria Askary

Associate Professor of International Law, Allameh Tabataba'i University, Iran; Secretary-General, Iranian Association for UN Studies; Member, Executive Council, Asian Society of International Law.

Raúl Rodríguez Rodríguez

Full Professor, North American History and International Relations, University of Havana; Director, Center for Hemispheric and United States Studies; Head, National Social Sciences and Humanities Program, Cuba; Expert on U.S. economic sanctions on Cuba, with numerous publications in academic journals and books.

Yosmer Daniel Arellán Zurita

Actuary, Central University of Venezuela; Mastering in Economic Theory and Policy.

Emmanuel Tronc

Chemical Engineer, Toulouse National Superior Engineering Chemistry School and Polytech Lille; Country Director for various INGOs in Damascus; Specialist in humanitarian work and documenting the impact of Unilateral Coercive Measures.

Éric Pomès

Doctor of International Law, Nice University; Dean and Associate Professor of Law, Faculty of Law and Economics, Catholic University of Vendée (France).

Grandpierron Matthieu

Ph.D., Ecole Polytechnique; Associate Professor of International Relations, ICES; Visiting Professor, Shanghai University of Political Science and Law; Visiting Researcher, University of Ottawa (2017-2019), Columbia University (2019-2020).