



Deutscher Bundestag

Ausschuss für Menschenrechte
und humanitäre Hilfe

Ausschussdrucksache 20(17)70

Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Prof. Alena DOUHAN

The creation in 2015 of the mandate of the UN Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights was a response to the observed proliferation in the last two to three decades of unilateral measures and actions of coercion designed and enforced by States and other stakeholders outside the UN multilateral legal and institutional framework, with serious implications for the protection and promotion of the rights of millions of people around the world.

The mandate is part of the UN human rights mechanism called “[Special Procedures](#)”, which is composed of a total of 45 thematic and 14 country-specific mandates and with experts appointed by the UN Human Rights Council for a specific period of time to undertake diverse activities, including research, reporting, advocacy and awareness-raising, capacity-building, as well as fact-finding missions. Their work complements and feeds in the work of other international and regional human rights mechanisms, as well as of the UN entities and specialized agencies, including through reporting and sharing of information, and formulation of recommendations.

Cognisant of the significant emotional and ideological charge of the international debates around unilateral sanctions, their legality, lawfulness, legitimacy, as well as their expected and intended purpose, effectiveness, intended and unintended consequences, I have since my appointment in 2020 sought to keep the mandate away from politicisation. I’ve instead strived to pursue a diligent, international law-based and facts-based approach in the conviction that the only constructive way forward is the thorough research on these measures and relevant regulations, their content and the mechanisms they trigger, with their adverse effects on the lives of people, not only in the targeted by such measures countries but in general around the world, with even possible implications for regional and international security.

The mandate’s exclusive focus is on unilateral coercive measures, which are unilateral sanctions undertaken without or beyond the authorization of the UN Security Council, and

which cannot be qualified as “retortions” (unfriendly but legal acts under international law) or “countermeasures” taken in full conformity with the law of international responsibility. This particular focus is well established through the UN Human Rights Council Resolution 27/21 creating the mandate and the subsequent resolutions renewing it. At this stage, it is important to clarify the terms used.

Unilateral coercive measures are any type of measures or activity applied by States, groups of States or regional organizations without or beyond authorization of the UN Security Council, not in conformity with international obligations of the sanctioning actor or with standards of counter-measures under the law of international responsibility. Such measures may be of economic, financial, political, cyber; comprehensive, sectoral or targeted or any other nature, in order to induce a change in policy or behaviour, to impede the exercise of sovereign rights, to secure advantages of any kind, or to signal, coerce or punish ([A/HRC/48/59](#)). It is important to mention that the illegality of unilateral coercive measures, has been affirmed and reaffirmed by the international community in numerous resolutions of the UN Human Rights Council and the UN Security Council.

The term **unilateral sanctions** is used without any prejudice as to the legality or illegality of such measures and refers to any means of pressure applied by States or international organizations without or beyond the authorization of the UN Security Council. Unilateral sanctions which are not a response to an unfriendly act (“**retortions**”) or a collective or individual response to an observed violation of an internationally wrongful act (“**countermeasures**”), and/or who do not comply with the principles of proportionality, temporality and respect for human rights, are considered illegal and therefore constitute UCMs. Therefore, **unilateral sanctions constitute the bulk of unilateral coercive measures, but not all unilateral sanctions are UCMs and thus illegal.**

Another observed phenomenon is the growing use of sanctions and other restrictive measures to punish third States, individuals or entities, who allegedly maintain relationships with the primary targets of unilateral sanctions. Such punitive measures are called “**secondary sanctions**” and they represent a clear proof of unilateral extraterritorial enforcement of jurisdiction for alleged violations or circumvention of existing unilateral sanctions regimes. Such measures are often framed as a means to ensure efficiency and compliance with unilateral sanctions regimes, but they constitute an undeniable violation of international law, given that by their nature such unilateral sanctions regimes are illegal and unlawful. In my thematic

reports to the UN Human Rights Council in 2022¹ and to the UN General Assembly in 2023², I have demonstrated how secondary sanctions, along with the enforcement of civil and criminal penalties for the alleged circumvention or assistance in circumvention of primary sanctions regimes, operate as a spider-web aiming at discouraging any stakeholder seeking to enter into any interaction with the targeted by unilateral sanctions, State, entity or individual, expand jurisdiction of the sanctioning states which does not exist otherwise, thus leading to the complete isolation of the country under sanctions and its people.

A characteristic example of secondary sanctions is the adoption and enforcement in 2019 by the United States of the **Caesar Syria Civilian Protection Act**, which expanded the extraterritorial jurisdiction of the US to third-country individuals or entities who provide significant financial, material or technological support to the Government of the Syrian Arab Republic (including entities owned or controlled by the Government itself) or engage in transactions with it, or who supply goods or services to the country's military forces and energy sector as a whole, as well as directly or indirectly provide significant construction or engineering services.

For several years in my mandate and following interactions and consultations with many actors, governmental and non-governmental, as well as official visits to countries under sanctions, I have noted with concern how the proliferation and complexity of unilateral sanctions regimes along with the growing use of secondary sanctions, civil and criminal penalties, have exacerbated the overall uncertainty and fear about their scope and enforcement, which have become a serious disincentive even for otherwise authorised and permissible conduct and actions involving sanctioned States, individuals or entities. This is what we call as “**over-compliance**” and “**excessive de-risking**”, which has been also reportedly causing disruptions to supply chains for essential goods and undermining effective delivery of humanitarian assistance and the life-saving work of humanitarian actors, even in emergency situations.

My mandate has repeatedly raised concerns about over-compliance and its negative impact on human rights through numerous letters sent to concerned States and businesses. These letters made specific reference to challenges in the delivery of specialised life-saving medicine³ and

¹ See thematic report [A/HRC/51/33](#)

² See thematic report [A/78/196](#)

³ See communications by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Nos. AL USA 25/2022; AL CHE 5/2022; AL OTH 135/2022; AL OTH 134/2022; AL FRA 5/2022; AL USA 19/2022; AL SWE 4/2022; AL OTH 95/2022; AL SWE 3/2021; and AL OTH 230/2021. Available at: spcommreports.ohchr.org/TmSearch/Mandates?m=263

medical equipment⁴, with medical and pharmaceutical companies unwilling to deliver the goods, with catastrophic consequences particularly for people suffering from rare or severe diseases, and for persons with disabilities; disruptions in money transfers for medical operations to/from countries under sanctions⁵ due to banks' excessive de-risking; obstacles in delivery of humanitarian assistance to mitigate negative impacts of natural disasters.⁶

Overcompliance magnifies the harm that sanctions cause to individuals' human rights by widening the scope of effective targets to include non-sanctioned individuals, entities and sometimes entire populations, and that the overall effect on human rights of overcompliance alone can be enormous. Overcompliance also entails measures that are inspired by sanctions, or are linked to them, but that precede their introduction or continue after they are lifted, and thus harm human rights outside of the time period when the sanctions are formally in effect, possibly in ways that the sanctions themselves do not.⁷

Primary sanctions, secondary sanctions, as well as over-compliance and excessive de-risking, incur broad economic and social disruptions with also significant developmental implications not only for the targeted countries but also for those maintaining economic and trade relations with them. During this year's Biennial Panel Discussion organised during the 54th session of the UN Human Rights Council, expert participants and governmental delegations highlighted the challenges posed by unilateral sanctions and over-compliance in national and international efforts for the implementation of the 2030 Development Agenda and the attainment of the specific targets of the Sustainable Development Goals. Every single SDG is affected, regardless of the type and nature of the enforced unilateral sanctions, while financial restrictions, travel bans and technological and other blockades, all close potential channels of communication and hinder international cooperation.⁸

My mandate has also noted and acknowledged the existence of **humanitarian carve-outs** contained in relevant provisions of the unilateral sanctions regulations. These carve-outs have often been described by sanctioning States as the reflection of their genuine humanitarian considerations and as a major humanitarian mitigating tool. However, it has been demonstrated in numerous occasions, and reported also by humanitarian actors, that such humanitarian

⁴ See communication No. [AL USA 13/2022](#) of 7 September 2022

⁵ See communications Nos. [AL USA 23/2021](#) and [AL OTH 207/2021](#) of 12 July 2021

⁶ See communications Nos. [OL USA 7/2023](#), [OL GBR 6/2023](#) and [OL OTH 21/2023](#) of 3 April 2023

⁷ See thematic report [A/HRC/51/33](#)

⁸ See 2023 Biennial Panel Discussion: <https://media.un.org/en/asset/k1s/k1s7us31b7>

provisions are de facto ineffective and inefficient due to the complexity and over-lapping nature of unilateral sanctions regimes, their vague wording regarding their scope, the complex and costly procedures for granting humanitarian licences, as well as the persistent fear of secondary sanctions, civil and criminal penalties that exacerbate over-compliance. Humanitarian actors feel unprotected in the face of allegations of sanctions circumvention and at the same time they have neither the human nor financial resources to navigate the complex and overlapping unilateral sanctions regimes, thus preferring to disengage completely and ultimately discontinuing their life-saving operations. This situation has particularly affected the operations of small civil society and humanitarian organisations.

In my communications to sanctioning States and organisations I have argued that existing frameworks of humanitarian exemptions and exceptions cannot counter-balance or effectively compensate for the deep social and economic disruptions caused by the extensive and multifaceted restrictions and obstacles emanating from the imposed sanctions regimes. I have also stated that the nature of humanitarian exemptions may only allow for ad hoc micro-level interventions which do not suffice in the context of broad macro-level structural changes caused by the imposed sanctions regimes and the high economic and social costs experienced by sanctioned countries, which are translated into severe suffering among these countries' general populations.

At the **EU level**, there is **no global system of humanitarian exemptions** incorporated in the sanctions framework. Despite the existence of few specific sectoral exemptions that do not require for prior authorisation,⁹ businesses and humanitarian actors are requested to apply for specific permissions ("derogations"), the decision upon which falls within the competence of relevant national institutions of each of the EU 27 Member States. Both exemption and derogation clauses are included in EU Council's Decisions and Regulations and require additional effort and expertise by concerned actors who may not be familiar with the technical language and the information contained in the lists of goods and services attached as annexes in such documents.

In this context, civil society organisations have raised concerns about the **absence of a simplified and harmonious process** of derogation application and assessment among EU

⁹ See for example articles 6a(1) and 16a(1) of Council Regulation (EU) 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No. 442/2011; and, article 4 of Council Regulation (EU) 356/2010 of 26 April 2010 imposing certain specific restrictive measures directed against certain natural or legal persons, entities or bodies, in view of the situation in Somalia.

member states, as well as the lack of clear guidance throughout the process, while reports have indicated that, in some cases and on specific sanctioned countries, derogations are granted only to organisations that receive funding from the EU, thus significantly narrowing the pool of beneficiaries of such authorisations. An EU-level **humanitarian contact point** was established in 2021, but it is only a mailbox for humanitarian actors to submit requests for information with regards to humanitarian derogations (“EU contact point”), and there is also a **factsheet** guiding EU member states on how to grant authorisations for derogation for humanitarian purposes. However, there is no clear assessment about the efficacy of such tools, their ability to effectively respond to the complexity and the scope of sanctions, to address the reported fragmentation of the process of granting humanitarian exceptions or to overcome the reported inconsistency among EU member states regarding this process.

The inefficiency and ineffectiveness of humanitarian carve-outs has been felt by humanitarian actors even in **emergency situations**. For example, following the catastrophic earthquakes of February 2023 in Türkiye and Syria, humanitarian deliveries to Syria were according to reports hampered by sanctions-induced financial and other restrictions, despite efforts by sanctioning states (US, EU, and the UK) to ease sanctions regulations by issuing time-bound general licences. My mandate has analysed these licences and raised concerns about their de facto ability to effectively facilitate humanitarian work and address instances of over-compliance.¹⁰ In particular, reference was made to the restrictive interpretation of “humanitarian assistance”, which often is limited to essential goods to cover people’s “basic needs”, instead of broader interventions which would also include rehabilitation of critical infrastructure (water and electricity, among others) which would enable more sustainable interventions and impact.

On the occasion of the adoption in December 2022 of the **UN Security Council resolution 2664** laying down a limited, standing humanitarian-related carve-out, I wish to draw the attention of all relevant stakeholders to the potential adverse effects of existing unilateral sanction regimes, their imposed restrictions and the growing over-compliance with such regimes on the effective implementation of relevant humanitarian provisions contained in UN resolutions. The international community’s commitment to alleviate human suffering through multilateral actions may not in the end suffice in the current context of generalised uncertainty around competing and overlapping unilateral sanctions regimes, and the prevalence of unilateral actions. Initiatives such as the UNSC 2664 resolution, with their limited scope, may

¹⁰ See communications Nos. [OL USA 7/2023](#), [OL GBR 6/2023](#) and [OL OTH 21/2023](#) of 3 April 2023

not ultimately contribute towards an enabling environment for humanitarian actors to freely undertake their humanitarian activities, even for the procurement and delivery of sanctions-exempted goods, such as food and medicine.

Unilateral primary sanctions, secondary sanctions and over-compliance have undoubtedly serious and multifaceted adverse effects on food security and adequate access to water and sanitation in the targeted countries. This has been a recurrent observation during my official country visits and my numerous interviews with governmental and non-governmental interlocutors, as well as local communities. Financial restrictions, designations of banks and businesses, and foreign asset freezes impede transactions for import/export of basic goods, including food, and they constitute obstacles in obtaining credits and financing for investments and infrastructure maintenance and development. Furthermore, multifaceted economic and trade pressures and blockades lead to inflationary pressures with direct impact on the prices of basic commodities, while at the same time these same pressures have catastrophic effects on the overall economy and the households' purchasing power. They also create disruptions in the procurement of machinery, spare parts, seeds, fertilisers, animal medicine and vaccines, other agricultural input, reagents for water treatment, among others. Particularly with regards to agricultural input and fertilisers, sanctions imposed on producer companies of such goods may have broader regional and international implications with regards to food security, not limited to the countries under sanctions.¹¹

In addition, unilateral sanctions imposed on energy and fuel lead to serious shortages affecting production and distribution of essential goods, including agricultural goods. For example, energy shortages coupled with unavailability of spare parts and specialised machinery may directly affect the water distribution systems for irrigation purposes, thus significantly impacting on agricultural production altogether, with devastating nutritional effects, as well as health-related implications.¹²

In **Venezuela**¹³, between 2015 and 2019, food availability reportedly decreased by 73% as food imports fell, while the minimum wage in the country would cover only 2% of the food basket, with 88% of households receiving, as of December 2020, supplementary food through

¹¹ See communication No. [USA 7/2022](#) of 4 May 2022

¹² An example is the cholera outbreak in Syria in 2022 due to water scarcity and distribution deficiencies, which reportedly forced farmers to rely also on sewage water for irrigation purposes. See Syria country visit report [A/HRC/54/23/Add.1](#)

¹³ See country visit report [A/HRC/48/59/Add.2](#)

Government programmes. Regarding water supply, at the time of my visit in February 2021 only 50% of the system's distribution units were running because of the impossibility to purchase spare parts and perform maintenance work, as more than two-thirds of the water-supply systems and infrastructure were using technology emanating from sanctioning countries. Sanctions and financial and travel restrictions have made it impossible to seek international expertise and collaboration for maintenance of water supply systems, while the sustained economic crisis has resulted in a "brain-drain" of experienced professionals, including engineers.

In **Zimbabwe**¹⁴, the agricultural sector's inability to borrow funds or perform bank operations have rendered it incapable of properly retooling, buying spare parts and reagents, maintaining equipment and infrastructure, or investing in better plant and machinery technology. Foreign partners were also reluctant to sell seeds, equipment and spare parts directly. The main agricultural bank of Zimbabwe, Agribank, could not finance the sector adequately with credits due to its listing under United States sanctions from 2003 to 2016. Additional challenges in the agricultural sector appeared following sanctions on Belarusian producers of potassium fertilisers, who used to cover the totality of the country's needs. Significant challenges in maintaining and upgrading water and sewage treatment plants, and obstacles in the procurement of reagents and water chemicals and other equipment were also reported, with waterborne disease outbreaks occurring almost every rainy season, infecting thousands and killing hundreds.

In **Syria**¹⁵, following 12 years of human suffering and destruction, the isolation through long-standing unilateral sanctions has created a suffocating reality for millions of Syrians. The agricultural sector has been severely affected by the sanctions-induced restrictions, including prohibition of the importation of agricultural machinery, fertilizers and seeds, the lack of water for irrigation and diesel and the loss of fertile lands, currently located in areas outside the Government's control, mainly in the north-east of the country. The production of wheat – a fundamental ingredient in the Syrian daily diet – fell from 3.1 million tonnes in 2019 to less than 1.7 million tonnes in 2022. At the same time, inflationary pressures and frequent currency devaluations caused by the sanctions-induced prolonged economic and financial restrictions, compounded by the loss of the terrestrial trade route with Lebanon, have resulted in price spikes. Prices for food commodities and agricultural goods rose more than 150 per cent

¹⁴ See country visit report [A/HRC/51/33/Add.2](#)

¹⁵ See country visit report [A/HRC/54/23/Add.1](#)

between 2019 and 2020, and retail prices for wheat flour, rice and sugar almost doubled between 2021 and 2022. Other essential goods, such as vegetable oil and cooking gas tripled and doubled in price, respectively, following the enactment of the Caesar Act in 2019. Between August 2021 and August 2022, the price of the standard food basket rose by 85 per cent; at the time of my visit it presented more than twice the average public sector salary.

According to the World Food Programme (WFP), more than 12 million Syrians – more than half of the population – are grappling with food insecurity (51 per cent more than in 2019) and 2.4 million are severely food insecure. Between 2020 and 2021, an additional 4.5 million Syrians became food insecure. Moreover, WFP and the United Nations Children’s Fund (UNICEF) reported a rise in malnutrition, stunting and maternal malnutrition to unseen levels, with more than 600,000 children under the age of 5 suffering from acute malnutrition and stunting, with an increase of 48 per cent between 2020 and 2021.

In Syria, I was also informed about the impact of unilateral sanctions and overcompliance on the implementation of projects aimed at rehabilitating the food production industry, including industrial bakeries and mills, even if such projects are led by international organizations. Procurement of machinery and specialized spare parts are almost impossible due to trade and financial restrictions, thus significantly affecting the production of basic food items, such as bread, which also constitutes an important element of Syrian culture. Similar challenges occur with regards to the maintenance and reparation of damaged water distribution and sewage systems, with sanctions and over-compliance by foreign businesses resulting in severe shortages of the much-needed material, with consequent frequent water outages. According to reports, only 50% of water and sanitation systems function properly in the country due to destruction, lack of maintenance and reduced power generation capacity.

In this context of clear humanitarian and human rights impact, my mandate has repeatedly called on sanctioning States and organisations to:

- review measures taken without or beyond authorization of the UN Security Council, and to lift those, which do not fit criteria of retortions or counter-measures in full conformity with standards and limitations of the law of international responsibility;
- refrain from imposing secondary sanctions, civil and criminal penalties as a means of enforcing primary unilateral sanctions;
- ensure that unilateral sanctions and over-compliance with unilateral sanctions do not impact on critical infrastructure and services relevant to healthcare, food, agriculture,

electricity, water supply, irrigation, sanitation, seeds and fertilizers, all of which are necessary for the survival and well-being of populations;

- take all necessary legislative, institutional and administrative measures to eliminate or mitigate cases of over-compliance and ensure that activity of businesses under their jurisdiction and control does not violate human rights extraterritorially, in accordance international standards of human rights due diligence such as the UN Guiding Principles on Business and Human Rights¹⁶;
- interpret due-diligence principles in good faith to ensure adherence to international law and human rights. The use of the term “due diligence” in the context of enhancing the efficacy of implementation of unilateral sanctions is misleading and contrary to international law;
- ensure that individuals affected by unilateral sanctions and over-compliance are not prevented from accessing justice through appropriate resources and legal representation.

In addition, businesses shall avoid zero-risk policies and overcompliance, which are incompatible with their obligations under the Guiding Principles on Business and Human Rights framework, in particular with regards to essential goods and services.

Finally, since my appointment as a Special Rapporteur I have been regularly highlighting the need for a systematic and thorough human rights impact assessment of unilateral sanctions and over-compliance. Such an assessment could be led by States and international organisations for the purpose of shedding light on the mechanisms triggered by such unilateral measures and on their concrete effects on peoples’ lives. My mandate has embarked on a consultative process towards the elaboration of a universal and uniform impact assessment methodology, which could become the basis for further consultations and discussions, and which could encourage relevant work by governmental and non-governmental stakeholders.¹⁷

¹⁶ https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf

¹⁷ See draft tool here: <https://www.ohchr.org/sites/default/files/documents/issues/ucm/cfis/assessment-tool/SR-Draft-assessment-tool.pdf>

See call for input here: <https://www.ohchr.org/en/calls-for-input/2023/call-input-draft-monitoring-impact-assessment-tool>