

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

Ref.: AL USA 5/2023
(Please use this reference in your reply)

2 March 2023

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, pursuant to Human Rights Council resolution 49/6.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the negative human rights impact of the extraterritorial jurisdiction asserted by the United States in connection with its unilateral sanctions. Specifically, this involves primary and secondary sanctions against foreign nationals for alleged activities outside of the United States that circumvent or fail to comply with the U.S. sanctions. It also involves penalizing foreign companies that are owned or controlled by U.S. persons, as well as certain other foreign companies, for doing business with sanctioned states. These situations raise grave concerns about human rights and adherence to the rule of law.

According to the information received:

The United States maintains numerous unilateral sanctions regimes in which foreign individuals may be / are designated as targets on various grounds. These include inter alia their alleged involvement in or support of terrorism; financial crimes such as money laundering; corruption; human rights abuses; the undermining of democratic systems; and violations of existing U.S. sanctions against states, economic sectors, entities or individuals.

The activities for which foreign individuals are sanctioned occur outside of U.S. sovereign territory and may or may not have a significant U.S. nexus, or any apparent U.S. nexus at all. At the same time, some of these activities may be entirely lawful under the jurisdictions of the states in which they occur. Furthermore, certain expressed grounds reportedly justifying the imposition of unilateral coercive measures of an economic or other nature, such as alleged financial misconduct, fraud or corruption, expropriation of private or public assets for personal gain, do not fall into the category of international crimes.

U.S. sanctions regimes that result in the targeting of individuals abroad generally entail prohibitions on their entry into the United States and the freezing of their U.S. assets, which involves blocking transactions in the individual's property and interests in property within the United States, or that comes within the United States, or that comes under the possession or control of a U.S. person; and bringing civil or criminal charges for violation of primary sanctions regimes.

U.S. sanctions provisions are often extremely broad in scope, by also extending to the ownership status of businesses and entities, irrespective of their geographic location or their corporate nationality. For example, some U.S. sanctions provisions that prohibit trade with other states extend U.S. jurisdiction to outlaw trade

with those states by foreign companies that are owned or controlled by U.S. persons, regardless of whether such trade is lawful under the foreign jurisdictions where the companies are based or hosted.

In addition, most U.S. sanctions regimes are introduced on the grounds of declarations of national emergencies that the U.S. President makes through Executive Orders, that are announced in violation of the requirements of art. 4 of the International Covenant on Civil and Political Rights (ICCPR). My concerns on the point have been transmitted to Your Excellency's Government in previous communication 5/2021.

The U.S. assertion of extraterritorial jurisdiction in connection with sanctions is widely considered to encroach on other states' territorial sovereignty, and to be contrary to the international legal principle of non-intervention in the domestic affairs of other states.

While I do not wish to prejudge the accuracy of the information received, I share my assessment that the extraterritorial assertion of U.S. jurisdiction in applying and enforcing U.S. sanctions does not appear aligned with its obligation to respect and protect the human rights of foreign individuals.

Although I have previously expressed to your Excellency's Government my concerns about the legality of unilateral sanctions imposed without or beyond the Security Council's authorization and outside of any other context that confers legal legitimacy, my focus here is on the extraterritorial nature of U.S. sanctions as it is precisely this aspect that negatively impacts the foreign individuals' rights.

I take note that targeted individuals are sanctioned for their presumed involvement in activities that are deemed serious enough to prompt the U.S. President to declare national emergencies through Executive Orders as authorized by U.S. laws, primarily the International Economic Emergency Powers Act and the National Emergencies Act and also at times the Trading with the Enemy Act. The reasons for the emergency declarations and the corresponding sanctions against foreign nationals include, inter alia, activities that are not recognized as international crimes. Secondary U.S. sanctions target foreign individuals who are presumed to have interacted with sanctioned parties in ways that violate the primary sanctions.

In previous communications, I respectfully drew your Excellency's Government's attention to the fact that national emergencies declared by the United States do not conform to the criteria elaborated in the ICCPR for authorized derogations from certain human rights obligations during national crises. As the United States accepted to be bound by these criteria by ratifying the ICCPR on 8 June 1992, its non-conforming emergencies do not absolve it from its obligation to protect all human rights.

It also bears mention that the extraterritorial aspect of U.S. sanctions penalizes foreign individuals without any determination of their guilt or innocence, usurping the role of justice through due process and breaching the due process rights enshrined in the ICCPR, notably the principle of presumption of innocence. As these rights entail no geographic limits, your Excellency's Government is required to protect them for individuals anywhere in the world who are affected by its actions.

More specifically, I observe that the United States frequently imposes sanctions against foreign nationals who are physically abroad without taking steps toward prosecuting them for their alleged acts, such as charging them with crimes within the U.S. legal system or seeking their extradition for trial. This signals an awareness by the United States that it lacks jurisdiction on territorial or any other grounds to carry out the procedures of due process in such cases.

Moreover, I observe that when the United States does, on occasion, seek to extradite and prosecute a foreign individual it has sanctioned, the reason may not be the alleged act giving rise to the sanctions but rather the alleged violation of U.S. laws that result in the sanctions being breached.

It thus appears that the extraterritorial exercise of jurisdiction by your Excellency's Government to sanction a foreign individual typically involves (1) a presumption that the individual has engaged in activities that are serious enough to be addressed by U.S. declarations of national emergencies, but that are not international crimes; (2) a recognition that the United States lacks lawful jurisdiction to charge and prosecute the individuals in such cases; and (3) a willful disregard for this absence of jurisdiction in order to impose a penalty without a finding of guilt, thereby denying the individual from enjoying due process rights and various other human rights elaborated below.

This is particularly egregious when primary or secondary sanctions are imposed against foreign individuals for presumed activities that are lawful in the state(s) with recognized jurisdiction over the individuals and the activities.

Other rights that are harmed when the United States imposes sanctions against foreign individuals include the right to not be punished as guilty for activities that are not crimes, and the right to one's reputation. Further affected are the right to freedom of movement and the right to not be arbitrarily deprived of one's property. Moreover, prohibiting a sanctioned foreign national from acquiring goods or using services from the United States can deprive that individual of rights associated with the purpose of the goods or services, such as the rights to education, to freedom of expression and to work. When a sanctioned individual cannot obtain medicines or access necessary medical equipment or services from the United States, the right to health, and by extension the right to life, are impacted.

While some of these rights are set out in the ICCPR, others are elaborated in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which the United States signed on 5 October 1997 and which creates obligations for all states as customary international law, and most are contained in the Universal Declaration of Human Rights (UDHR).

In addition to U.S. sanctions against foreign individuals, I note that human rights are also breached when U.S. sanctions that ban trade with certain states subject foreign companies to U.S. jurisdiction with respect to business they may do with such states, if the companies are owned or controlled by U.S. persons; or, if the companies make use of facilities whose ownership had been transferred from U.S. persons without compensation. This impedes the companies from engaging in activities that can be lawful in the countries with territorial jurisdiction over them, to the detriment of labor rights, freedom of movement and other rights of foreign individuals who are employed or associated with these companies, and also to the detriment of individuals

whose enjoyment of certain rights depends on access to the goods or services the companies provide, such as medical equipment. I stress in this regard that customary international law considers a company to be a legal person of the state where it is established.

The extraterritorial application of the U.S. sanctions and legislation gives rise to growing over-compliance by all sorts of actors: banks, businesses, delivery and insurance companies, donors of humanitarian aid and humanitarian actors, which often affects populations of targeted countries as a whole with special negative impact on the most vulnerable groups.

I highlight to your Excellency that the damage caused to the rights of foreign individuals is not alleviated by the humanitarian exemptions that U.S. sanctions typically contain to prevent such harm. It is well-documented that the exemptions are largely ineffective for numerous reasons such as complexity, lack of clarity and costs. These reasons are also cited for the widespread over-compliance with sanctions that exaggerate the impact they have on foreign individuals' rights.

I wish to further note that that while international law has no fixed parameters for the exercise of extraterritorial jurisdiction, and while the European Court of Human Rights in particular has viewed the concept rather broadly to take into account a state's de facto authority, the prevalent view is more aligned with the international legal principle of non-intervention in the domestic affairs of other states. This has prompted numerous countries to protect their sovereign authority from encroachment by promulgating "blocking statutes" that outlaw compliance with U.S. sanctions, effectively forcing those carrying out activities with a U.S. nexus to choose whether to comply with the U.S. sanctions or with local law.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, we would be grateful for your information and observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain the legal basis under international law for asserting U.S. jurisdiction extraterritorially through sanctions that target foreign individuals in the absence of any finding of their guilt. In elaborating this response, please also explain the basis for asserting jurisdiction when no international crime is committed.
3. Please clarify whether the United States has a jurisdiction and provides a mechanism to carry out legal proceedings that constitute due process (charges, fair trials, presumption of innocence unless proven guilty) against foreign individuals who are targeted by U.S. sanctions. If so, please explain why this due process is often not carried out in the first instance, or at all. If jurisdiction does not exist for carrying out due

process, I would be grateful if your Excellency's Government could please describe the legal basis for the lack of jurisdiction and how it is aligned with the assertion of jurisdiction when U.S. sanctions are imposed against foreign individuals.

4. Please explain how U.S. sanctions are aligned with the international obligation of your Excellency's Government to protect the human rights of foreign individuals including those targeted by the sanctions, in particular due process rights enshrined in the ICCPR but also other rights that are denied by the sanctions.
5. If your Excellency's Government justifies the imposition of sanctions against foreign individuals based on a U.S. nexus, please clarify in detail the forms that this nexus may assume, and the thresholds for U.S. jurisdiction to exist on the basis of it.
6. Please clarify the grounds for U.S. jurisdiction when secondary sanctions are imposed against foreign individuals who have no apparent U.S. connection and who are presumed to violate U.S. sanctions regimes through activities that also have no apparent U.S. nexus.

As an independent expert on international law appointed by the United Nations Human Rights Council, I would be grateful for a response. I would also welcome any opportunity to discuss these matters to seek the views of Your Excellency's Government.

I may publicly express my concerns in this regard as I believe that this is an important matter of public international interest. Any expression of concern on my part will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

Alena Douhan
Special Rapporteur on the negative impact of unilateral coercive measures on the
enjoyment of human rights

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described.

I first refer to article 14 of the International Covenant on Civil and Political Rights, ratified by the United States of America on 8 June 1992, which addresses the rights and procedures that constitute due process. Article 14(2) establishes that all persons charged with a criminal offence are to be presumed innocent until their guilt is established through legal procedures. As a criminal charge can be essential for establishing one's innocence as well as guilt, the presumption of innocence can only be strengthened if no criminal charges are levied. As for determining whether a crime has been committed, article 14(1) holds that everyone charged with a crime "shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law," during which the accused person has the right to defend himself in person or through legal assistance of his or her own choosing (article 14(3)(d)). This allows the presumption that if no charge is brought, the act in question does not rise to the level of a crime for which a fair hearing shall be held.

I further note that article 15(1) of the ICCPR states that "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed."

I wish to recall that the due process is also addressed in article 2 of the ICCPR, which states that "any person whose rights or freedoms as herein recognized are violated shall have an effective remedy" (ICCPR, article 2(3)(a)), and that "any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy" (ICCPR article 2(3)(b)).

I additionally refer to article 17 of the ICCPR, which prohibits "arbitrary or unlawful interference with [a person's] privacy, family, home or correspondence" as well as "unlawful attacks on his honour and reputation."

Regarding freedom of movement, I refer to article 12 of the ICCPR, which states that "No one shall be arbitrarily deprived of the right to enter his own country." While this may apply to sanctioned U.S. persons who can be blocked from returning to the United States, the UN Human Rights Committee, in General Comment No. 27 (1999), specified that "(t)he scope of 'his own country' is broader than the concept 'country of his nationality.' It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien."

As constraints on freedom of movement can deny the right to a family life, I refer also to article 23(1) of the ICCPR, article 10(1) of the ICESCR and article 16(3) of the UDHR, which stress the importance of this right and its protection by states.

With respect to the right to enjoy one's property, I return to article 14 of the ICCPR for its pertinence to the blockage of property and related financial transactions, and to article 17(2) of the Universal Declaration of Human Rights, which states that "No one shall be arbitrarily deprived of his property."

With reference to rights that may be affected by the extraterritorial application of sanctions, I refer to the International Covenant on Economic, Social and Cultural Rights with respect to the right to health; the ICESCR enshrines "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (article 12(1)). I also call your attention to General Comment No. 14 (2000) of the UN Committee on Economic, Social and Cultural Rights,¹ which states that the agreed interpretation of the right to health includes, *inter alia*, the availability and the physical accessibility of goods necessary to ensure this right (paragraph 12(a, b)).

As for the right to life, I call attention to article 6(1) of the ICCPR, which states that "Every human being has the inherent right to life."

I refer to the ICESCR regarding the right to education, recognized in article 13(1), while the right to freedom of expression is addressed in the ICCPR, in which article 19(2) states that "Everyone shall have the right to freedom of expression."

With reference to labor rights, I refer to the UDHR's stipulation in article 23(1) that "Everyone has the right to work (and) to free choice of employment."

I also remind that as a party to the ICCPR, the United States is authorized under article 4 to derogate from the obligations it imposes on States Parties "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed." The ICCPR allows derogations from its obligations only "to the extent strictly required by the exigencies of the situation." Thus, a derogation may only occur in the case of a threat to "the life of the nation," which the UN Human Rights Committee, in General Comment No. 29 (2001), deems to be an actual and direct existential threat to the state rather than a threat of disruption to daily life within the state; and it must be limited only to those obligations in the ICCPR that are absolutely necessary for addressing such a threat.

¹ UN C 14 (2000), 11 August 2000, document E/C.12/2000/4.