Mandates of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights and the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights and Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, pursuant to Human Rights Council resolutions 54/15 and 52/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the adoption of the Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859. This directive may have a detrimental effect on human rights internationally, especially in conflict-affected and high-risk areas, by encouraging zero-risk policies as well as business overcompliance with the EU's restrictive measures.

The EU Global Human Rights Sanctions Regime creates an excessively broad and vague normative basis for the imposition of restrictive measures, since it permits the introduction of sanctions which restrict derogable human rights[1], whose limitation is not illegal if the criteria set forth in the International Covenant on Civil and Political Rights (ICCPR) are met. Moreover, it provides for the imposition of sanctions against third parties for the violation of human rights that do not reach the threshold of widespread and systematic criteria[2] to justify the adoption of countermeasures under international customary law.

The 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 introduces criminal penalties for the violation of unilateral sanctions/restrictive measures imposed by the EU,[3] and therefore it is used as a means of enforcement of the EU restrictive measures. As noted in the communication forwarded to the European Union in June

1 Article 1(1)(d)(iii, iv), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02020D1999-20240722
2 Article 1(1)(d), Ibid.
3 A/HRC/51/33, https://docs.un.org/en/A/HRC/51/33

2023[4], and reflected in the thematic report on the impact of unilateral sanctions on access to justice[5], criminalization of sanctions circumvention may exacerbate over-compliance, which is often compounded by inter alia maximum pressure policies and smear campaigns.

Directive (EU) 2024/1760 provides for due diligence obligations of companies and even persons working for companies[6] (corporate due diligence) to identify and assess actual or potential adverse human rights and environmental impacts[7]. Companies are requested to take appropriate steps to set up and carry out corporate due diligence measures, with respect to their own operations, those of their subsidiaries, as well as those of their direct and indirect business partners throughout their chains of activities in accordance with this Directive[8], controlling therefore the whole supply chain.

Furthermore, the same Directive (EU) 2024/1760 encourages companies to resort to digital tools and technologies to exercise corporate due diligence such as those used for tracking, surveillance or tracing raw materials, goods and products throughout the value chains, including for example satellites, drones, radars, or platform-based solutions.[9]

The list of rights to be covered by the corporate due diligence obligations under the Directive (EU) 2024/1760 includes a range of civil, social and economic rights, both derogable and non-derogable[10], including those that are guaranteed through taking "*steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights*"[11],

It also provides for the establishment of supervisory mechanisms aimed at the due implementation of its provisions, including the designation of one or more supervisory authorities at national level to supervise compliance with the obligations as well as the establishment of a European Network of Supervisory Authorities[12]. In addition, it stresses that "Member States shall lay down the rules on penalties, including pecuniary penalties, applicable to infringements of the provisions of national law adopted pursuant to this Directive".[13]

In our view the Directive 2024/1760 provides for a comprehensive corporate due diligence obligation which may be imposed on companies and their employees to assess not only their human rights compliance, but also of those of their subsidiaries and of their direct and indirect business partners throughout their chains of activities, which might lead to unprecedented expansion of zero-risk policies and overcompliance with the EU's restrictive measures.

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4 OTH 75/2023
5 A/79/183, para. 34
6 https://eur-lex.europa.eu/eli/dir/2024/1760/oj, para 93
7 Ibid., para 41
8 Ibid., para 19
9 Ibid., para 68
10 Annex, Part I, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights
11 Article 2, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights
12 Articles 24, 28, https://eur-lex.europa.eu/eli/dir/2024/1760/oj
13 Article 27, Ibid.

The EU Global Human Rights Sanctions Regime, due to its broad discrepancy in qualification, may by itself trigger illegal compliance with the EU restrictive measures and extensive practice of overcompliance and zero-risk policies by companies contrary to international human rights law. Such overcompliance and zero-risk policies may be further intensified with the implementation of the EU Directive 2024/1226 on the definition of criminal offences and penalties for the violation of EU restrictive measures and of above-mentioned Directive 2024/1760 on corporate sustainability due diligence, the latter of which requires also businesses to inform their decisions based on information received by digital means without any possibility of factual verification.

We would like to note that the primary obligation to guarantee civil, political, social, economic and cultural rights lies with the States and not with companies or private individuals in accordance with article 2 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Unilateral coercive measures are illegal under international law as reflected in multiple resolutions of the UN Human Rights Council and the UN General Assembly and, therefore, decision on imposition of UCMs cannot be used as an authority establishing the fact of actual and potential human rights adverse impacts or human rights violations. As unilateral coercive measures are illegal under international law, businesses shall challenge their implementation and enforcement by all available legal means[14]. Possible violations of most rights and freedoms contained in Annex (Part I) to the Directive in fact constitute crimes (violations of the right to life, the prohibition of torture, cruel, inhuman or degrading treatment etc.)[15] only when a state has properly established jurisdiction over the case. Any criminal charge against a person should be brought by a competent, independent and impartial tribunal established by law. No conviction could be made by administrative bodies, private companies or individuals.

In this regard, we would like to refer to article 14 of the International Covenant on Civil and Political Rights (ICCPR), which provides for the principle of presumption of innocence, the right to fair trial and a standard of due process. In the determination of any criminal charge against any person everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law under article 14(1) of the ICCPR. No substitution of such a procedure is permitted. 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)). The companies and the people working for them can't be held responsible for the identification of either the facts or the guilt of any person with respect to such acts.

We also wish to recall Human Rights Committee's General comment No. 32 which stresses that "*deviating from fundamental principles of fair trial, including the*

[14] Para 24.1, https://www.ohchr.org/sites/default/files/documents/issues/ucm/commentary-gpssbhr-2025.pdf
[15] https://eur-lex.europa.eu/eli/dir/2024/1760/oj

presumption of innocence, is prohibited at all times.[16]" We would like to stress that businesses, as not owing judiciary capacities, are not entitled to assess and qualify any situation as including human rights violations.

We note with great concern that unclear and vague provisions of the Directive (EU) 2024/1760 on the notion of "corporate due diligence", being not in conformity with the customary norm of due diligence in international public law, as well as on the supervisory mechanisms and the penalties to be established for violations of the Directive's provisions, may potentially place an excessive burden on companies, who may decide to interrupt their operations in certain countries. This may have serious adverse human rights impact in those countries due to the increasing compliance and over-compliance with unilateral sanctions, and potential violations of the freedom from discrimination, the right to development and other basic human rights. We also note with concern that any measures taken in order to exercise control over the whole supply chain can extensively broaden the practice of overcompliance, halting business in sanctioned countries.

Article 1 of the 1986 Declaration on the Right to Development states 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. The same Declaration stipulates that the realization of the right to development requires full respect for the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations (art. 8). Any impediments to development through the imposition of any restrictions, including in indirect manner through the shifting the responsibility to assess actual and potential human rights adverse impacts and environmental adverse impacts to businesses pushing them to overcompliance contradicts international human rights law, in particular, article 1(1) of the ICCPR. States are obliged to ensure that businesses under their jurisdiction and/or control do not comply and/or over-comply with such unilateral sanctions[17].

We further recall that the spirit of solidarity and international cooperation is enshrined in the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, which provides that States have a duty to cooperate in the various fields irrespective of differences in their political, economic and social systems. The Declaration stipulates that States are obliged to cooperate, inter alia, in the protection and promotion of human rights; in the economic, social and cultural fields as well as the field of science and technology; in the promotion of international cultural and educational progress; and in the promotion of economic growth, especially in developing countries[18]

In relation to the supply of essential goods and services, the termination of existing contracts, the refusal to continue supplies, and the inclusion of sanctions

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[16] CCPR/C/GC/32, para 6, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGC%2F32&Lang=en

[17] Para 17.4, https://www.ohchr.org/sites/default/files/documents/issues/ucm/commentary-gpssbhr-2025.pdf

[18] A/RES/2625 (XXV), Annex, principle 4, https://treaties.un.org/doc/source/docs/A_RES_2625-Eng.pdf

clauses are incompatible with the principle of non-discrimination and the duty of care, especially in those cases where the concerned business is a monopolist supplier of life-saving and/or essential goods and/or equipment.[19] Businesses shall comply with the "duty of care," which is defined as "a legal obligation requiring adherence to a standard of reasonable care while performing any act that could foreseeably harm others", and which is inherently part of the due diligence obligation in the broader human rights context[20].

The principle of non-discrimination is fundamental for all human rights systems and is embodied in numerous human rights instruments (preamble, article 34 of the Charter of the United Nations; art. 7, 23 of the Universal Declaration of Human Rights; articles 4, 24, 26 of the ICCPR; art. 2 of the ICESCR; article 2 of the Convention on the Rights of the Child) and reiterated in the Guiding Principles on Sanctions, Business And Human Rights. States should not purport to derogate from their human rights obligations, including their obligation not to discriminate against any person on the basis of race, nationality, gender, political opinion or any other recognized ground, and should ensure that businesses and other entities under their jurisdiction or control do not formulate or implement discriminatory policies[21].

Corporate due diligence requirements contained in the Directive 2024/1760, and the way they are formulated, may not conform standards of due diligence under international law. Businesses are requested to undertake corporate due diligence procedures and methods in interpreting and implementing all sanctions' requirements, exemptions, exceptions and derogations. However, in accordance with the principle of due diligence under international law, national legislation shall never be interpreted in a way legitimizing unilateral coercive measures or promoting overcompliance with them.

We would like also to stress that human rights due diligence concerns all stakeholders, and in the case of States it involves the obligation of action. States are obliged under international law to take all necessary legislative, organizational or operational measures to ensure that the activities of businesses under their jurisdiction or control do not violate human rights, including extraterritorially[22]. As unilateral coercive measures are illegal under international law, businesses shall therefore challenge their implementation and enforcement by all available legal means[23].

States should take all possible measures to assist businesses in the performance of human rights due diligence as a mandatory behavior under the obligations in the context of compliance policies and practices. For that reason, the right of businesses to seek exemptions from compliance obligations should be safeguarded to prevent any risk of bankruptcy, in order to minimize overcompliance with sanctions and therefore to mitigate any humanitarian impact. Furthermore, businesses should have the right to challenge any compliance obligation through effective access to justice. Any rules concerning the application of unilateral sanctions must be embodied in law and

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19 Guiding Principles on Sanctions Business and Human Rights, Commentary, para 24.2, https://www.ohchr.org/sites/default/files/documents/issues/ucm/commentary-gpssbhr-2025.pdf

20 Ibid., p. 84

21 Para 14/1, Ibid.

22 Ibid., para 29.4,

23 Ibid., para 24.1

approached and worded in the clearest and most transparent way possible[24]. In this regard, the interpretation of due diligence under the Directive (EU) 2024/1760 undermines the very idea of it and therefore constitutes a violation of customary international law.

States can be held responsible for the failure to ensure that businesses under their jurisdiction and control do not violate human rights and are equally responsible for the violation of human rights in such situations[25]. The existence of sanctions decisions by international organizations other than the UN Security Council does not exclude the responsibility of States for complying with or enforcing them in accordance with the law of international responsibility[26].

In this context, we would like to recall that international human rights obligations of States include their obligations to refrain from committing human rights abuses and to respect, protect and fulfill the human rights set forth in the International Bill of Rights, including via the adoption of "legislative, judicial, administrative, educative and other appropriate measures" or "all appropriate means, including particularly the adoption of legislative measures[27]." The term "appropriate means" in addition to legislation, includes the provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable.[28]

The obligation to respect, protect and fulfill economic, social and cultural rights is violated when States parties prioritize the interests of business entities over Covenant rights without adequate justification, or when they pursue policies that negatively affect such rights"[29]. The obligation to protect means that States parties must prevent effectively violations of economic, social and cultural rights in the context of business activities. This requires that States parties adopt legislative, administrative, educational and other appropriate measures, to ensure effective protection against violations of these rights due to business activities, and that they provide victims of such violations with access to effective remedies"[30]. States thus retain at all times the obligation to regulate private actors to ensure that the services they provide are accessible to all, adequate, regularly assessed in order to meet the changing needs of the public and adapted to those needs[31]. The obligation to fulfil requires States parties to take necessary steps, to the maximum of their available resources, to facilitate and promote the enjoyment of Covenant rights, including directing the efforts of business entities towards the fulfilment of Covenant rights[32].

Unilateral sanctions by international organisations, taken without or beyond authorization of the UN Security Council constitute a violation of international law, giving rise to the responsibility of such international organisations[33]. Therefore, any

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24 Ibid.
25 Ibid., p. 83
26 Ibid., para. 30.1
27 Art. 2(1), https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights ; CESCR, general comment No. 3: The Nature of States Parties' Obligations (art. 2, para. 1 of the Covenant), para. 3.
28 https://www.refworld.org/legal/general/cescr/1990/en/5613, para. 5
29 https://docs.un.org/en/E/C.12/GC/24, para 12
30 Ibid, para. 14
31 Ibid, para. 22
32 Ibid. paras. 23-34
33 Ibid., p. 103

measures taken by the EU, as well as its member states to encourage the businesses to comply with illegal unilateral sanctions, overcomply or to carry out zero-risk policies, invoke international responsibility of all actors involved in such human rights violations. Shifting responsibility between international organizations, States and businesses does not provide any ground for excluding such responsibility or liability under international public law, international private law or national law (civil or criminal)[34].

We would like to note that states and regional organizations shall not adopt or implement any means of pressure that are incompatible with their obligations under international law, in relation to substantive content, exercise of jurisdiction and access to remedies[35].

All actors shall be held responsible for violations of international law and human rights resulting from the adoption, enforcement of or compliance with unilateral coercive measures, and from over-compliance with any form of sanctions[36]. Shifting responsibility between international organizations, States and businesses does not provide any ground for excluding such responsibility or liability under international public law, international private law or national law (civil or criminal). Provisions of national law of sanctioning States cannot be invoked to avoid responsibility under international law and/or liability for damages thereof [37].

The obligation imposed by the Directive (EU) 2024/1760 is of "a transnational dimension, as many companies are operating Union-wide or globally and their value chains extend to other Member States and to third countries"[38]. We would like to note that extraterritorial application of this Directive, which is reasonably to be expected to be applied alongside with the implementation of the EU Global Human Rights Sanctions Regime and relevant EU restrictive measures regulations, may result in rising over-compliance and zero-risk policies by different actors, including banks, businesses, delivery and insurance companies, donors of humanitarian aid and humanitarian actors, which would inevitably affect populations of targeted countries as a whole with disproportionate impact on the most vulnerable. It may de facto result in the assertion of extraterritorial jurisdiction in connection with sanctions and in such a case it may be contrary to the principles of sovereign equality and non-intervention in the domestic affairs of other states, which are binding on all states. States shall not exploit or distort human rights issues as a means of interference in the internal affairs.

Article 2(1, 7) of the Charter of the United Nations provides for the principles of sovereign equality and non-intervention into domestic affairs. The 1981 Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States provides for, among others, the duty of a State, in the conduct of its international relations in the economic, social, technical and trade fields, to refrain from measures which would constitute interference or intervention in the internal or external affairs of another State, thus preventing it from determining freely its political, economic and social development; this includes, inter alia, the duty of a State not to use its external

[34] Ibid., para 29.2
[35] Ibid., para 17.2
[36] Ibid., para 29.1
[37] Ibid., paras 29.2-29.3
[38] Para 99, https://eur-lex.europa.eu/eli/dir/2024/1760/oj

economic assistance programme or adopt any multilateral or unilateral economic reprisal or blockade and to prevent the use of transnational and multinational corporations under its jurisdiction and control as instruments of political pressure or coercion against another State, in violation of the Charter of the United Nations; and the duty of a State to refrain from the exploitation and the distortion of human rights issues as a means of interference in the internal affairs of States, of exerting pressure on other States or creating distrust and disorder within and among States or groups of States.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned observations.

2. Please provide information on the measures undertaken to eliminate overcompliance with EU restrictive measures frameworks, including by providing all necessary information to businesses, as well as the necessary assistance and guidance in order to ensure that businesses residing in the EU do not violate human rights, including as a result of compliance and overcompliance with EU restrictive measures.

3. Please explain how the Directive (EU) 2024/1760 is in line with international human rights norms and standards, including the freedom from discrimination, presumption of innocence, right to fair trial and the right to development.

4. Please explain how the Directive (EU) 2024/1760 is aligned with the obligation of regional international organizations to refrain from imposition of unilateral coercive measures under international law and how the Directive ensures accountability and redress for violations of human rights perpetrated in the context or as a result of sanctions policies.

5. Please explain the legal basis under international law for shifting responsibility for business human rights performance, even for international operations, from States with their competent institutions and judicial authorities, to businesses and their employees.

6. Please explain the legal basis of the extraterritorial effect of the Directive (EU) 2024/1760, anchored in the international operations of businesses, and whether such extraterritorial effect has been assessed.

7. Please, provide information about how the proposed concept of due diligence is compatible with the customary norms of international law on the due diligence of States and businesses, as developed inter alia in the practice of the International Court of Justice and the observations of the Committee on Economic, Social and Cultural rights.

This communication, as a comment on pending or discussed resolutions, regulations or policies, and any response received will be made public via the communications reporting website after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council. We remain open for any further interaction and discussion on this matter.

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

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

Attiya Waris
Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights