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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Access to justice in the face of unilateral sanctions and overcompliance

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, submitted in accordance with Assembly resolution [78/202](#) and Human Rights Council resolutions [27/21](#) and [54/15](#).

* [A/79/150](#).



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

Summary

In the present report, the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, assesses practices and challenges for the exercise of access to justice by various actors, including States, individuals and companies, directly designated under primary and secondary sanctions regimes, those facing criminal and civil charges for circumvention for sanctions regimes and those not designated; impediments in the work of legal professionals, including lawyers and judges; and the functioning of the legal system of States under sanctions in the face of unilateral sanctions, means of their enforcement and overcompliance.

I. Introduction

1. The present report is submitted pursuant to Assembly resolution 78/202 and Human Rights Council resolutions 27/21 and 54/15. In the report, the Special Rapporteur aims to gather information relevant to the negative impact of unilateral coercive measures on the enjoyment of human rights; to study relevant trends, developments and challenges; to follow up on the exercise of the right to access to justice in the face of unilateral sanctions, means of their enforcement and overcompliance; to formulate recommendations on ways to prevent, minimize and redress the adverse impact of unilateral coercive measures on access to justice as a means of protecting all other human rights affected by unilateral sanctions; and to draw the attention of the General Assembly to relevant situations and cases.

2. In the implementation of her mandated activities, including thematic research, official country visits, individual communications, capacity-building and outreach initiatives with different stakeholders, the Special Rapporteur has received information on the challenges in implementing access to justice in the face of unilateral sanctions.

3. For the preparation of the present report, the Special Rapporteur issued a call for submissions¹ addressed to States, United Nations entities and other international organizations, civil society representatives, scholars, lawyers, research institutions and others. Responses were received from the Governments of the Dominican Republic, Guatemala, Iraq, Serbia, the Syrian Arab Republic and the Bolivarian Republic of Venezuela. Responses were also received from civil society representatives, lawyers and scholars. She expresses her gratitude to all respondents.

4. In the present report, references to the humanitarian impact of unilateral sanctions include the impact of sanctions, means of their enforcement and overcompliance, unless otherwise indicated.

II. Notion and elements of access to justice

A. Content of access to justice in the face of unilateral sanctions

5. The right of every individual to be protected by the law is inherent in many international human rights documents as a means of ensuring that other human rights are protected effectively.² Article 26 of the International Covenant on Civil and Political Rights contains explicit reference to the equality of all persons before the law and sets forth their entitlement “without any discrimination to the equal protection of the law”. Similarly, article 14 thereof provides for a list of safeguards in the face of criminal charges against the person, with special emphasis on ensuring the presumption of innocence.

6. The Special Rapporteur notes the approach of sanctioning States to qualify unilateral sanctions as a foreign policy tool and an administrative rather than criminal mechanism³ in order to prevent the use of due process, the presumption of innocence and fair trial guarantees. Secondary sanctions and criminal and civil penalties for the circumvention of sanctions regimes have been the subject of previous thematic⁴ and country visit reports by the Special Rapporteur. She insists that, in view of the

¹ See www.ohchr.org/en/calls-for-input/2024/call-input-2024-thematic-report-79th-session-un-general-assembly.

² International Covenant on Civil and Political Rights, art. 6, para. 1, art. 17, para. 2, and art. 18, para. 3; Convention on the Elimination of All Forms of Discrimination against Women, art. 2 (c).

³ See A/HRC/48/59. See also www.akingump.com/en/insights/alerts/2022-economic-sanctions-year-in-review-and-outlook-for-2023.

⁴ For example, A/76/174/Rev.1.

illegality of primary sanctions, means of their enforcement are equally illegal⁵. Foreign companies and individuals with any nexus to designated countries, economic sectors, regions, companies or individuals face serious consequences, including prohibition on doing business in the sanctioning State, using its currency in transactions, using its financial markets, seizing goods and facing civil, administrative or criminal charges with no clear mechanism of appeal.

7. Access to justice has been repeatedly addressed in a number of United Nations documents. According to general recommendation No. 33 of the Committee on the Elimination of Discrimination against Women, access to justice encompasses “justiciability, availability, accessibility, good quality and accountability of justice systems, and provision of remedies for victims”. Integral parts of general comment No. 32 of the Human Rights Council include access to legal assistance; access to the documents, evidence and other relevant materials; access to the “duly reasoned, written judgement of the trial court”; and access to the tribunal at the appeal level.⁶ Guidance on access to justice for women additionally refers to non-discrimination; widespread legal awareness and literacy among the population; affordable and high-quality legal advice and representation; accessible, affordable, timely, effective, efficient, impartial, corruption-free and trustworthy dispute settlement mechanisms; respect for human rights standards; and the availability of efficient and impartial mechanisms for the enforcement of judicial decisions.⁷

8. Access to justice is also an integral part of adherence to the rule of law. The Secretary-General, in his report entitled “The rule of law and transitional justice in conflict and post-conflict societies” (S/2004/616), stated that “the rule of law shall rely on measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law ... legal certainty, avoidance of arbitrariness and procedural and legal transparency”, capacity, performance, integrity and accountability.⁸

9. The right of individuals to the judicial protection of their rights is guaranteed in both international practice and legal doctrine. All procedural guarantees, including the right to due process⁹ and the right not to be held guilty for any offence that was not an offence at the moment of its commission,¹⁰ are considered inalienable by human rights institutions,¹¹ legal scholars¹² and international treaties.¹³ Violating

⁵ A/HRC/51/33, para. 11.

⁶ See CCPR/C/GC/32; General Assembly resolution 60/147, annex, para. 12 (c) and d); General Assembly resolution 67/187, para. 3.

⁷ United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and Council of Europe, *Framework for measuring access to justice including specific challenges facing women*, Guidance note, (New York, 2016), p. 7.

⁸ *The United Nations Rule of Law Indicators: Implementation Guide and Project Tools* (United Nations publication, 2011), p. v. The need for the existence of the right to appeal and legal certainty is supported even by those institutions which support sanctions (submission by the Association of Reintegration of Crimea).

⁹ International Covenant on Civil and Political Rights, art. 14, paras. 2–7.

¹⁰ Ibid., art. 15, para. 1.

¹¹ CCPR/C/21/Rev.1/Add.11, para. 16.

¹² Roberta Arnold, “Human Rights in Times of Terrorism”, in *Heidelberg Journal of International Law* (Heidelberg, 2006) p. 305; *Handbook on Criminal Justice and Responses to Terrorism* (United Nations publication, 2009), pp. 40–41.

¹³ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (Geneva, 12 August 1949), United Nations, *Treaty Series*, vol. 75, p. 287 ff., arts. 72 and 73 and art. 146, 4th para.; Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention) (Geneva, 12 August 1949), *ibid.*, p. 135 ff, arts. 105–108, and art. 129, 4th para.; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (Geneva, 8 June 1977), United Nations, *Treaty Series*, vol. 1125, p. 3 ff., art. 75; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) *ibid.*, p. 609 ff, art. 76.

these rights, even in time of war, is considered a serious breach of international humanitarian law.¹⁴

10. The Special Rapporteur also refers to the generally accepted principle that every right must be accompanied by the availability of an effective remedy in case of its violation.¹⁵ It is relevant not only to the obligation of States to provide effective remedies for the victims of crimes or abuse of power in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985¹⁶ but also to the possibility of obtaining judicial protection for all human rights as an exercise of the due diligence obligation,¹⁷ including economic, social and cultural rights as reflected in a number of general comments of the Committee on Economic, Social and Cultural Rights.¹⁸

11. The Special Rapporteur aligns herself with the position of the Human Rights Committee that the right to access courts as an integral part of the right to a 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”.¹⁹ The same protection shall be provided even if rights are violated extraterritorially.²⁰ Notwithstanding 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, the Special Rapporteur believes that reasons cited by sanctioning States as grounds for unilateral sanctions do not change their status from a legal perspective.

12. The consequences of designations and of criminal and civil charges for the circumvention of sanctions regimes are much higher than those for minor administrative delicts; therefore, sanctioning States are obliged to ensure access to justice for the protection of rights affected by sanctions and civil, administrative, criminal or other penalties. The Special Rapporteur aligns herself with the Parliamentary Assembly of the Council of Europe with regard to 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, and to appeal, as well as the right to redress and compensation in the case of targeted sanctions.

¹⁴ Fourth Geneva Convention, art. 147; Protocol I Additional to the Geneva Conventions of 1949, art. 85, para. 4 (e).

¹⁵ International Commission of Jurists, *Adjudicating Economic, Social and Cultural Rights at National Level: Practitioners Guide No. 8* (Geneva, 2014), para. 24.

¹⁶ General Assembly resolution 40/34, annex.

¹⁷ See www.icj.org/wp-content/uploads/2021/09/Module-3-Access-to-justice-for-economic-social-and-cultural-rights.pdf; International Commission of Jurists, *Adjudicating Economic, Social and Cultural Rights at National Level*, p. 14; and International Commission of Jurists, “International Principles and Guidelines on Access to Justice for Persons with Disabilities” (September 2021), p. 6.

¹⁸ Committee on Economic, Social and Cultural Rights, general comment No. 9 (1998), paras. 2, 3 and 10; Committee on Economic, Social and Cultural Rights, general comment No. 12 (1999); Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009); see also International Commission of Jurists, *Adjudicating Economic, Social and Cultural Rights at National Level*, para. 24; and International Covenant on Economic, Social and Cultural Rights, art. 2.

¹⁹ Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.

²⁰ International Commission of Jurists, *Adjudicating Economic, Social and Cultural Rights at National Level*, pp. 64–67; see also ETO Consortium, “Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights” (FIAN International, Heidelberg, 2013), principles 8 and 9; Olivier de Schutter and others, “Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights”, *Human Rights Quarterly*, vol. 34, No. 4 (November 2012), p. 1,089; Jessica Almqvist, “Human rights critique of European judicial review: counter-terrorism sanctions”, *International and Comparative Law Quarterly*, vol. 57, No. 2 (9 May 2008), p. 308.

13. The Special Rapporteur is alarmed that overlapping unilateral sanctions of various types, confusing wording of sanctions regulations and the risk of severe 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 foreign courts and face challenges in obtaining proper legal assistance, travelling to present a case and transferring money to cover legal expenses and court or commercial arbitration fees. The extraterritorial application of secondary sanctions and civil and criminal cases for the circumvention of sanctions regimes results in prosecution for acts often not criminalized in the country of nationality or residence.

14. The above approach raises a range of legal problems, including low standards of proof, the non-justiciability of cases and even extradition without any legal grounds.²¹ Practitioners refer to the high risk of arbitrary interpretations of alleged circumventions of unilateral sanctions that, under proper analysis, do not constitute an offence²² even under sanctions regulations. In such cases, penalties for alleged circumvention, and the designation of individuals as a result of such alleged conduct, violate standards of fair trial, the presumption of innocence and the right not to be punished for activities that do not constitute a crime. The Special Rapporteur is also alert about the fact that, notwithstanding the obvious illegality of unilateral coercive measures and the official position of sanctioning States that unilateral sanctions do not constitute criminal penalties, such sanctions are nevertheless implemented by third States, businesses and even United Nations organs.

15. The Special rapporteur is also concerned about multiple reports that the high costs of sanctions-related cases make the use of judicial institutions affordable for huge corporations only, leaving small and medium-sized businesses and individuals unprotected.²³ She recalls that every individual has the right to judicial protection and to remedies in full conformity with fair trial and procedural standards, without discrimination. Therefore, sanctioning States are obliged to ensure that all individuals affected by unilateral sanctions can protect their rights in court within a reasonable time and at reasonable, affordable cost, including affordable legal assistance.²⁴

16. She notes with regret the growing use by sanctioning States of rhetoric defending the legality of unilateral sanctions while denying their punitive nature, which results in the violation of the presumption of innocence of designated individuals²⁵ and seeks to transfer the burden of proof to the targets of sanctions. She underlines that the presumption of innocence constitutes a peremptory norm of human rights law and cannot be derogated even in time of emergency, pursuant to article 4, paragraph 2, of the International Covenant on Civil and Political Rights.

17. In accordance with international law, neither national law nor domestic policy interests can be used to justify the non-fulfilment of international obligations.²⁶ Any unilateral measures may be taken without the authorization of the Security Council only if they do not violate international obligations or if their illegality is excluded as countermeasures. The burden of proof of the legality of any unilateral activity thus lies with the imposing or enforcing actors rather than on the designated State, company or individual. No reference to “high goals” or “common concerns” establishes any

²¹ See <https://therecord.media/us-fails-in-bid-to-extradite-brit-for-helping-north-korea-evade-sanctions-with-cryptocurrency>; see also <https://corkerbinning.com/enforcement-of-financial-sanctions-and-extradition-risk/>.

²² See <https://corkerbinning.com/enforcement-of-financial-sanctions-and-extradition-risk/>.

²³ A/HRC/57/55/Add.1, paras. 57 and 86.

²⁴ Council of Europe, *Framework for measuring access to justice including specific challenges facing women*, p. 7; Committee on the Elimination of Discrimination against Women, general recommendation No. 33 (2015).

²⁵ Submissions by Guatemala and the Bolivarian Republic of Venezuela.

²⁶ Vienna Convention on the Law of Treaties, arts. 26 and 27.

legality, legitimacy or justification of otherwise illegal activity, nor can it be used to hinder access to justice. As the cited grounds for designations often do not have anything to do with possible violations and are extremely broad and vague – such as the “need to ensure protection of national security”²⁷ – and secondary sanctions are imposed for circumvention/alleged circumvention/assistance in circumvention of sanctions regimes, the burden of proof is shifted de facto to the targets of unilateral sanctions, even if they are not explicitly designated, and unilateral coercive measures specify only nationality, place of residence or registration or any other nexus with the country, territory or entity under sanctions, which constitutes, inter alia, discrimination on the grounds of nationality, place of residence or birth.

18. The Special Rapporteur is alert about the introduction into sanctions regulations of the United States of America of the concept of the “rebuttable presumption” of wrongfulness used to supplement the presumption of innocence and the shifting of the burden of proof of the legality of activity conducted to the individual or entity.²⁸ In particular, the Uyghur Forced Labor Prevention Act is based on the rebuttable presumption that “any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region of the People’s Republic of China or produced by” designated entities are produced with the use of forced labour (section 3), shifting the burden of proof of the non-use of the forced labour to the entities,²⁹ similarly to the shifting of that burden in section 321 of the Countering America’s Adversaries Through Sanctions Act towards North Korea,³⁰ without any clear instruction as to what can be used as evidence of production not employing forced labour.

19. The Special Rapporteur is also concerned about numerous reports of the lack of transparency regarding the grounds and evidence provided for any type of designation or penalty while enforcing the seizure of cargoes or imposing administrative and civil charges. The scope and the means of implementation of sanctions regulations are often broad and ambiguous and are often interpreted through non-binding acts and contradictory statements. During the Special Rapporteur’s country visit to China, a Chinese business reported on its efforts to engage with the United States authorities through the Administrative Procedure Act³¹ by filing a modification petition for its delisting and produced more than 10,000 pages demonstrating the absence of any nexus to Xinjiang in its supply chain, but the petition was denied without any indication that the submitted evidence had been reviewed and assessed and without any explanation of the denial decision,³² which constitutes a clear violation of the right to full access to the materials used as a ground for the accusations.

20. The Special Rapporteur emphasizes that the presumption of the wrongfulness of any nexus to a specific country, region, sphere of economy, company or individual contradicts the very idea of the presumption of innocence in criminal or administrative law. She recalls that the burden of proof of the illegality of action lies with the prosecuting entity and constitutes an integral part of the presumption of innocence in accordance with general comments No. 13 (para. 7) and No. 32

²⁷ United States of America, Executive Order on Addressing the Threat From Securities Investments That Finance Communist Chinese Military Companies, 12 November 2020; United States, Countering American’s Adversaries Through Sanctions Act, H.R. 3364 (2 August 2017).

²⁸ See www.afslaw.com/perspectives/alerts/uyghur-forced-labor-prevention-act-coming-are-you-ready-cbp-issues-hints-the; United States, Countering America’s Adversaries Through Sanctions Act, sect. 321.

²⁹ United States, An act to ensure that goods made with forced labor in the Xinjiang Uyghur Autonomous Region of the People’s Republic of China do not enter the United States market, and for other purposes, Public Law 117–78 (23 December 2021), sect. 3.

³⁰ Ibid., Countering America’s Adversaries Through Sanctions Act, sect. 32.

³¹ Ibid., Administrative Procedure Act, Public Law 404 (11 June 1946).

³² A/HRC/57/55/Add.1, paras. 55 and 59.

(para. 30); therefore, the State shall establish the fact of violation without reasonable doubts.³³ Under administrative law, the State is to provide clear and sufficient evidence to support the accusation.³⁴ The burden of proof in customs law lies with customs authorities.³⁵ With regard to access to information and limitations on mass media, the burden of proof of the wrongfulness of information also lies with the State.³⁶

21. The Special Rapporteur is alarmed by the tendency to shift the burden of proof from sanctioning States to third States, regional organizations and businesses where human rights are violated as a result of the enforcement of, for example, United States sanctions by European companies.³⁷ Humanitarian actors are obliged to bear the burden of proof of the purely humanitarian nature of humanitarian deliveries to countries under sanctions;³⁸ businesses, to prove that they fully complied with unilateral sanctions regimes. All of the above hinders the possibility of identifying the accountable actor and competent court and results in impunity for human rights violations, preventing victims from accessing effective remedies and redress.

B. Access to justice for different targets of unilateral sanctions

22. The Special Rapporteur underlines that access to justice in the face of unilateral sanctions shall be guaranteed for all groups of actors: people and companies, including those directly designated by primary or secondary sanctions; those facing civil and criminal charges for circumvention of sanctions regimes; those affected by sanctions against a specific State, economic sector or region; the general population of countries under sanction; people affected by reputational pressure campaigns as the means of sanctions enforcement; humanitarian actors; and lawyers.

23. The impact of primary and secondary unilateral sanctions on the directly designated individuals and companies is rather straightforward and affects the right to property, to freedom of movement, to liberty and security, to privacy and family life, to freedom of expression, to work, and the rights to health to life and to reputation.³⁹ Sanctions deprive targeted individuals of the entire range of due process rights, including the right to a fair trial, to be presumed innocent until proven guilty, to be informed promptly about the nature of any accusations, and to defend oneself and one's reputation, as well as the right to an effective remedy and to accessibility of legal assistance.⁴⁰

24. Numerous reports refer to the challenges that individuals and companies face in obtaining access to adjudication at the national level, including the identification of a competent country of adjudication; uncertainty as to the means of judicial protection: administrative, civil, criminal, customs, constitutional law mechanisms; high costs of

³³ Human Rights Committee, general comment No. 13 (1984), para. 7; *ibid.*, general comment No. 32 (2007), para. 30.

³⁴ United States, Code of Federal Regulations, title 5, chap. XIV, subchap. C, part 2423, subpart C, sect. 2423.32, Burden of proof before the Administrative Law Judge. Available at www.law.cornell.edu/cfr/text/5/2423.32.

³⁵ Calcutta High Court, *Commissioner of Customs (Preventive) v. Rajendra Kumar Damani @ Raju Damani*, CUSTA No. 16 of 2023, Judgment, 15 May 2024. See <https://taxguru.in/custom-duty/case-analysis-burden-proof-customs-law-commissioner-customs-vs-rajendra-kumar-damani.html>; European Commission, "Guidelines on the consequences of the Judgment of the Court of 9 March 2006 in Case C-293/04 'Beemsterboer'", working paper, 24 June 2008.

³⁶ A/HRC/29/32, paras. 32–35 and A/67/357, paras. 41 and 45; A/66/290, para. 24; A/67/357, para. 45; and A/77/296, paras. 70 and 83.

³⁷ See, for example, communication Nos. AL USA 25/2023, AL SWE 3/2023 and AL OTH 108/2023.

³⁸ A/78/196, paras. 9, 71 and 77.

³⁹ A/76/174, para. 19.

⁴⁰ Submissions by the Bolivarian Republic of Venezuela and Partners for Transparency.

and lengthy processes for obtaining access to legal advice;⁴¹ non-transparency of the grounds for designation; the reluctance of lawyers in both sanctioning and targeted countries to represent sanctions cases;⁴² obtaining visas and travelling to the sanctioning country for the adjudication; and the reluctance of banks to engage in transactions for paying fees to lawyers representing targeted clients⁴³ or unfreezing money to pay judicial fees.

25. The Special Rapporteur notes with regret that targeted unilateral sanctions are used as substitutes for criminal penalties in the absence of the criminal jurisdiction of the sanctioning State and with lower standards of proof. She underlines that, if a crime has been committed, a criminal case shall be initiated if a State has the necessary jurisdiction over the case with full respect for the standards of due process, in order to avoid impunity on the one hand and to prevent any violation of the human rights of and reputational risks of the alleged suspects on the other.⁴⁴

26. The Special Rapporteur is alarmed about reports of the expanding lists of those subjected to secondary sanctions and facing administrative and criminal charges, civil suits and seizure of goods by customs as part of sanctions enforcement.⁴⁵ According to information received, such designations and charges are open to extensive and broad interpretation⁴⁶ and do not provide for any legal certainty. Information about civil, criminal or other charges is very fragmentary and non-transparent.

27. The Special Rapporteur warns of damage to the reputation of the directly affected individuals, lawyers⁴⁷ and other people subjected to reputational pressure to enforce sanctions.⁴⁸ She is not currently aware of any legal procedure aimed at the protection of reputation, but as reputational campaigns in sanctions cases are primarily conducted online, starting a defamation case might be very problematic. Any attempt to protect the right to reputation by judicial means will be limited to civil suits regarding the protection of dignity and reputation, with all of the above-mentioned challenges of access to the court.

28. The Special Rapporteur is concerned about targeted sanctions regimes against high-level State officials that are broadly interpreted, often based on geopolitical concerns⁴⁹ and affect the whole areas or sectors for which these targeted individuals are responsible, or even the whole country. In particular, the court of first instance of the United Kingdom of Great Britain and Northern Ireland ruled that everything that was happening in the Russian Federation was under effect of targeted sanctions against the President of the Russian Federation due to the “command economy” in the country.⁵⁰ The response of the Government of the United Kingdom to the requests to review the situation of control⁵¹ does not provide much clarity, requires courts to

⁴¹ Submissions by the Syrian Arab Republic and Partners for Transparency.

⁴² Submissions by Broken Chalk and McNair International; Eastern Caribbean Supreme Court, *JSC VTB Bank v. (1) Sergey Taruta (2) Arrowcrest Ltd*, BVIHC (COM) 2014/0062, para. 16.

⁴³ Submissions by McNair International and M. Swainston; Solicitors Regulation Authority, “Complying with the UK Sanctions Regime”, 28 November 2022.

⁴⁴ A/77/296, paras. 56–59.

⁴⁵ A/78/196, paras. 20–24.

⁴⁶ Communication No. AL DEU 1/2024.

⁴⁷ Josh Salisbury, “MP names ‘amoral’ British lawyers silencing press for Vladimir Putin’s ‘henchmen’”, *Evening Standard*, 4 March 2022.

⁴⁸ Yale School of Management, “Over 1,000 Companies Have Curtailed Operations in Russia—But Some Remain”, 28 January 2024.

⁴⁹ Submission by A. D. Bolivar.

⁵⁰ High Court of Justice, *PJSC National Bank Trust and Bank Otkritie Financial Corporation v. Mint* [2023] EWHC 118 (Comm), Judgment, 27 January 2023; *ibid.*, *Litasco SA v. Der Mond Oil & Gas Africa SA & another* [2023] EWHC 2866 (Comm), Judgment, 15 November 2023.

⁵¹ Foreign, Commonwealth and Development Office, “Statement following the judgment in *Mints & others v. PJSC National Bank Trust & another*”, 16 October 2023.

conduct additional, usually lengthy assessments and prevents access to judicial review, as affected companies and individuals might be not directly designated.

29. The Special Rapporteur notes the serious impact on the population of other types of unilateral sanctions, including economic, trade, financial, transportation and sectoral sanctions, as well as those against State property and assets of central banks. She believes that access to judicial protection in such cases is very limited. In particular, a dispute concerning gold of the Bolivarian Republic of Venezuela held in the Bank of England has been reclassified from an international public law dispute over the immunity of State property to a private law dispute over the authority.⁵² Immunities of central bank reserves were lifted in the United States with reference to the domestic qualification of a State as a sponsor of terrorism that violates the principle of the sovereign equality of States.⁵³ Immunities of diplomats are refused in violation of the Vienna Convention on Diplomatic Relations of 1961 by decisions of district-level judges, one of which resulted, for example, in the arrest, extradition from Cabo Verde and lengthy detention in the United States of special envoy of the Bolivarian Republic of Venezuela, Alex Nain Saab Morán, despite the decision for his immediate release by the Court of the Economic Community of West African States and recommendations of the African Commission on Human and Peoples' Rights.⁵⁴

30. The Special Rapporteur has repeatedly underlined the devastating comprehensive effect of sanctions regimes on the whole population of the countries affected,⁵⁵ violating a broad range of civil, economic, social and cultural rights, multiplying mortality rates and reducing life expectancy.⁵⁶ Owing to the severity of the consequences, she believes that, in some cases, people affected might be qualified as victims of gross human rights violations⁵⁷ and refers to the well-recognized obligation of States to ensure meaningful remedies for the victims of such violations, including the adoption of appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice; adequate, effective, prompt and appropriate remedies, including reparation; and the provision of at least the same level of protection for victims as that required under the international obligations of States.

31. The Special Rapporteur notes with concern that members of the general population are usually deprived of any possibility of protecting their rights, as they are not directly affected by a specific sanctioning act. Existing judicial mechanisms do not provide for any possibility of addressing the extraterritorial impact of unilateral sanctions.⁵⁸ Attempts by Iranian thalassemia and epidermolysis bullosa patients severely affected by the unavailability of necessary medicine to bring a case before the United States courts in order to protect their right to life were dismissed, with the "lack of subject matter jurisdiction" cited.⁵⁹

⁵² Submission by the Bolivarian Republic of Venezuela; communication Nos. JAL GBR 12/2021 and JAL OTH 259/2021.

⁵³ Communication Nos. JAL USA 6/2022 and JAL USA 31/2023.

⁵⁴ Communication No. JAL USA 23/2023.

⁵⁵ See [A/78/196](#), [A/HRC/51/33](#), [A/HRC/54/23/Add.1](#), [A/HRC/51/33/Add.1](#), [A/HRC/51/33/Add.2](#) and [A/HRC/48/59/Add.2](#).

⁵⁶ See [A/HRC/54/23](#).

⁵⁷ General Assembly resolution [60/147](#), paras. 2 (b–d), 3 (c–d), 11 and 13.

⁵⁸ Submissions by Broken Chalk and the Bolivarian Republic of Venezuela; see also Özgür Özdamar and Evgeniia Shahin, "Consequences of economic sanctions: the state of the art and paths forward", *International Studies Review*, vol. 23, No. 4 (December 2021), pp. 1646–1671.

⁵⁹ United States District Court, *Iran Thalassemia Society et al v. Office of Foreign Assets Control et al*, case 3:22-cv-01195-HZ, Order, 1 January 2023.

C. Effect of unilateral sanctions on judges and lawyers

32. The Special Rapporteur notes the twofold effect of unilateral sanctions on judges and lawyers, affecting representatives of legal professions directly and hindering the right to legal aid of the individuals affected by unilateral sanctions. The independence of judges and lawyers constitutes an important inalienable mechanism to ensure the right to a fair trial and access to justice. Privileges and immunities of lawyers and judges are provided to ensure the independence of the judiciary as well as proper access to justice for all those whose rights are affected. Under the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,⁶⁰ States are explicitly requested not to treat judges and lawyers “with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics”.

33. The Special Rapporteur underlines that United States sanctions against judges and officials of the International Criminal Court⁶¹ constitute a violation of their privileges and immunities, undermine the Court’s efforts to investigate, prosecute and sanction international crimes and thwarts victims’ access to justice, giving rise to the impunity of wrongdoers.⁶² She insists that bill S.4484, passed by the House of Representatives on 5 June 2024 to impose sanctions with respect to foreign persons of the International Criminal Court engaged in any effort to investigate, arrest, detain or prosecute any protected person of the United States and its allies,⁶³ and for other purposes, contravenes standards of judicial professions.

34. Following several rounds of expert consultations with lawyers, the Special Rapporteur is alert about the challenges faced by lawyers when dealing with sanctions cases, including:

- The requirement to obtain a licence for every sanctions-related case. For example, a general licence issued for lawyers in the United Kingdom is considered insufficient and inefficient.⁶⁴ The United States general licences are provided only under specific sanctions regimes⁶⁵
- The lengthy and uncertain process of obtaining licences to represent clients under sanctions and to be entitled to be paid for that service (the United

⁶⁰ General Assembly resolution 67/187, annex, principle 12.

⁶¹ United States, Executive Order on Blocking Property of Certain Persons Associated With the International Criminal Court (15 June 2020).

⁶² Communication No. USA JAL 15/2020.

⁶³ See [www.congress.gov/bills/118th-congress/senate-bill/4484/text](https://www.congress.gov/bills/118/congress/senate/bills/4484/text).

⁶⁴ Submissions by M. Swainston and McNair International.

⁶⁵ See Satindar Dogra and others (Global Investigations Review), “The guide to sanctions – fourth edition: key sanctions issues in civil litigation and arbitration”, 29 September 2023.

Kingdom,⁶⁶ the United States⁶⁷ and the European Union),⁶⁸ even in relation to international adjudication, including the International Court of Justice⁶⁹

- Geopolitical motivation in licensing decision-making, “even where the grounds of a licensing purpose have been satisfied”⁷⁰
- Challenges in receiving payments for the work done, as banks are blocking accounts of clients, related bank transfers or money already transferred
- The fear of being subjected to criminal prosecution owing to the adoption of legislation criminalizing the circumvention of sanctions regimes and providing for greater responsibility of legal professionals⁷¹
- Requests to report on the content of their discussions with clients and to monitor all details of the clients’ structure, including piercing of the corporate veil
- The obligation to report on the violation of unilateral sanctions of the European Union “when providing services in the context of professional activities”, as there “is a clear risk of the services of those legal professionals being misused for the purpose of violating Union restrictive measures”⁷²
- Reputational risks, including accusations of amorality or the qualification of efforts to challenge the legality of unilateral sanctions as defamation or disinformation⁷³
- The prohibition of the provision of 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”⁷⁴
- Limited exemptions from the prohibition of the provision of legal services under article 5 (n) of Council Regulation (EU) No. 833/2014, which refers primarily to “services that are strictly necessary for the exercise of the right of defence in judicial proceedings and the right to an effective legal remedy”

35. The Special Rapporteur believes that the above challenges constitute a clear violation of the presumption of innocence, the right to reputation⁷⁵ and standards aimed at guaranteeing the impartiality and independence of legal professionals. She

⁶⁶ Designated persons face delays of many months in receiving licences, even for subsistence; see Tasha Benkhadra (The Law Society Gazette), “Time for a general licence to cover basic needs”, 10 November 2023. There is massive obstruction of businesses; see Liza Tetley and Giulia Morpurgo (Bloomberg), “Investors fume at UK Treasury’s license delays for Russian firms”, 13 September 2022. Lawyers face lengthy delays in obtaining licences to represent clients; see Andrew Smith (Corker Binning), “Russian sanctions and the law of unintended consequences”, 18 August 2022.

⁶⁷ Submission by A.D. Bolivar; United States, Code of Federal Regulations, title 31, sect. 542.201, 542.507, 542.508 and 594.517; see also <https://ofac.treasury.gov/media/6191/download?inline>.

⁶⁸ Submission by Partners for Transparency; see also Claire DeLelle and Nicole Erb (Global Investigations Review), “The guide to sanctions – first edition: key sanctions issues in civil litigation and arbitration”, 17 August 2020.

⁶⁹ Submission by M. Swainston.

⁷⁰ Government of the United Kingdom of Great Britain and Northern Ireland, “Office of Financial Sanctions Implementation designated individuals licensing principles”, 12 June 2024.

⁷¹ 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).

⁷² Ibid., preambular para. 18.

⁷³ Josh Salisbury, “MP names ‘amoral’ British lawyers silencing press for Vladimir Putin’s ‘henchmen’”.

⁷⁴ See https://finance.ec.europa.eu/system/files/2023-07/faqs-sanctions-russia-services-provision_en.pdf.

⁷⁵ A/77/296, paras. 10 and 20.

notes with regret that concerns that she has shared about the vulnerability of legal professionals in the face of recent developments of sanctions regulations in the European Union⁷⁶ have not been taken into account.

III. Access to justice in sanctions cases in judicial institutions

A. International courts

36. The Special Rapporteur notes that the use of international courts as the means of settling international disputes in sanctions cases is currently limited. She admits that, in the absence of a special international court authorized to review sanctions-related cases, adjudication is possible only in relation to the violation of other international legal norms in force between the parties to the dispute. Owing to the inter-State character of proceedings, the countries involved mostly refer to violations of non-human rights treaties, in particular the Treaty concerning the formation of a General Postal Union of 9 October 1874,⁷⁷ the TRIPS agreement concerning intellectual property rights, 2020,⁷⁸ the International Air Services Transit Agreement of 1944,⁷⁹ the Treaty of Amity, Economic Relations and Consular Rights of 1955⁸⁰ and customary international law on the immunity of State property.⁸¹

37. The Special Rapporteur notes with concern that, in the case concerning the Treaty of Amity, Economic Relations and Consular Rights, neither the order on interim measures nor the decision itself⁸² have been implemented or enforced by the United States. In the case concerning Certain Iranian Assets, the International Court of Justice ruled on the obligation of the United States to compensate for damages caused by freezing assets in violation of the Treaty of Amity after the unilateral qualification of the Islamic Republic of Iran as a State sponsoring terrorism.⁸³ She notes with regret, however, the decision of the United States District Court for the Southern District of New York to use frozen money, being the matter of the dispute, instead of releasing it at the time when the decision was to be taken by the International Court of Justice,⁸⁴ as well as the United States denunciation of the Treaty in the process of adjudication to avoid compliance with the request to restart fulfilment of the obligations of which it was in breach.

38. In February 2020, the International Criminal Court received a submission from the Bolivarian Republic of Venezuela indicating that the use of unilateral sanctions against the country constituted a crime against humanity.⁸⁵ The Special Rapporteur

⁷⁶ See communication No. OL OTH 75/2023.

⁷⁷ See Gulf Times, "Qatar's resolution on postal services gets UPU backing", 29 February 2020.

⁷⁸ World Trade Organization, document WT/DS567/R.

⁷⁹ International Court of Justice, *Appeal Relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt and United Arab Emirates v. Qatar)*, Judgment, I.C.J. Reports 2020.

⁸⁰ Ibid., *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, I.C.J. Reports 2021, p. 9; ibid., *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Judgment, I.C.J. Reports 2020.

⁸¹ Ibid., *Alleged violations of State immunities (Islamic Republic of Iran v. Canada)*, Application instituting proceedings, I.C.J. Reports 2023.

⁸² Ibid., *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, I.C.J. Reports 2021, p. 9.

⁸³ Ibid., *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*.

⁸⁴ Jody Godoy (Reuters), "U.S. judge orders \$1.68 bln payout to families over 1983 Beirut bombing", 22 March 2023.

⁸⁵ Available at www.icc-cpi.int/sites/default/files/itemsDocuments/200212-venezuela-referral.pdf.

regrets that the Court has not yet taken a decision on the admissibility of the case,⁸⁶ as such a decision might become a useful precedent for the possibility of using the Court as a means to prevent the negative effects of unilateral sanctions and ensure proper access to effective remedy. In her report on the country visit to the Syrian Arab Republic,⁸⁷ she addressed the devastating effect of unilateral sanctions and recommended to assess whether they qualified as “other inhuman acts of the similar character intentionally causing great suffering or serious injury to body or to mental and physical health”, pursuant to article 7 (k) of the Rome Statute.

39. In the opinion of the Special Rapporteur, data on the catastrophic impact of unilateral sanctions and overcompliance reflected in the country reports on visits to the Bolivarian Republic of Venezuela and the Syrian Arab Republic, the lack of response to these findings and of any action to minimize such an impact, the announcement of a maximum pressure campaign against the Bolivarian Republic of Venezuela and the enactment of the so-called Syria Anti-Normalization Act⁸⁸ to prevent any reconstruction and rebuilding of that country, the adoption of legislation criminalizing the circumvention of sanctions regimes, which reportedly also undermines the work of humanitarian organizations in sanctioned countries,⁸⁹ and the narrow interpretation of humanitarian needs and humanitarian goods despite repeated calls to lift all sanctions against critical infrastructure and critical services⁹⁰ are all testament to the intentional character of humanitarian damage caused, and therefore these activities might meet the criteria outlined in article 7 of the Rome Statute.

40. The Special Rapporteur notes several attempts to use the World Trade Organization (WTO) dispute settlement mechanism for the adjudication of unilateral sanctions-related cases. Although the discussion on the possibility of using security exemptions under article XXI (b) (iii) of the General Agreement on Tariffs and Trade as a justification of the non-application of the WTO rules due to unilateral sanctions was only reflecting the difference in the approaches of States members of WTO for a long,⁹¹ recent practice reveals another tendency.⁹² WTO ruled on the duty of States to respect their obligations under WTO agreements and interpret security concerns under international law⁹³ rather than through domestic “self-judging”.⁹⁴ The Special Rapporteur notes with regret that, since November 2020, the WTO dispute settlement body has not been able to function,⁹⁵ as the filling of vacancies is blocked by the United States,⁹⁶ which undoubtedly limits access to justice at WTO.

⁸⁶ See www.icc-cpi.int/venezuela-ii.

⁸⁷ A/HRC/54/23/Add.1.

⁸⁸ United States, Assad Regime Anti-Normalization Act, S.2342 (18 July 2023).

⁸⁹ A/78/196, paras. 10–13 and 67–71.

⁹⁰ A/HRC/54/23/Add.1, para. 88 (b); A/78/196, para. 78 (e)

⁹¹ World Trade Organization, “Article XXI – security exceptions”, in *Analytical Index of the GATT* (Geneva, 1993).

⁹² Tania Voon T, “Testing the limits of WTO security exemptions”, *East Asia Forum Quarterly* (June 2023), pp. 13–15.

⁹³ See www.wto.org/english/tratop_e/dispu_e/cases_e/ds544_e.htm; see also www.wto.org/english/tratop_e/dispu_e/cases_e/ds597_e.htm.

⁹⁴ Daria Boklan and Amrita Bahri, “The First WTO’s Ruling on National Security Exception: Balancing Interests or Opening Pandora’s Box?”, *World Trade Review*, vol. 19, No.1 (January 2020), pp. 129 and 135.

⁹⁵ See www.wto.org/english/tratop_e/dispu_e/appellate_body_e.htm.

⁹⁶ See United States, *Report on the Appellate Body of the World Trade Organization* (Washington, D.C., 2020).

B. United Nations human rights institutions

41. United Nations human rights treaty bodies, although quasi-judicial institutions not authorized to review the substance of a case, do offer some possibilities for remedies and redress, in particular when these cannot be achieved in domestic courts. In view of the challenges to accessing justice in the face of unilateral sanctions, the Special Rapporteur believes that individuals whose rights are affected by unilateral sanctions should have the possibility to submit a complaint against a sanctioning State to the relevant treaty body in order to protect affected rights.

42. While recognizing existing challenges, including the multiplicity of sanctioning and enforcing States and the violation of human rights by the overcompliance of private actors, shifting responsibility between public and private actors, the Special Rapporteur nevertheless insists that the United Nations treaty bodies shall admit complaints when the causal link between the unilateral sanctions and overcompliance on the one hand and human rights violations on the other can clearly be established. She refers to the steady practice of a lenient approach to the domestic remedies in treaty bodies⁹⁷ and insists that the requirement to exhaust national remedies shall not be applicable in sanctions situations for the reasons outlined in section II. Complaints about the violation of access to justice shall be reviewed directly by the Human Rights Committee under articles 14 and 15 of the International Covenant on Civil and Political Rights.

43. The Special Rapporteur urges the United Nations treaty bodies to assess the impact of unilateral sanctions while reviewing reports submitted by targeted States, as sanctions hinder their ability to implement their international obligations under relevant human rights treaties, as well as reports submitted by sanctioning States regarding the implementation of the prohibition on violating human rights set forth in relevant treaties extraterritorially or the obligation to cooperate.

C. Regional courts

44. Regional courts rarely address the impact of unilateral sanctions under the relevant conventions, as sanctioning countries are not their parties.⁹⁸ The only decision of the Economic Community of West African States Community Court of Justice requesting the release of the Bolivarian Republic of Venezuela special envoy, Alex Nain Saab Morán,⁹⁹ has been ignored.¹⁰⁰ As a result, only the European Court of Justice and the European Court of Human Rights have an intensive sanctions-related practice.

45. Access to justice encompasses the right to a fair trial and to an effective remedy under articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and article 47 of the Charter of Fundamental Rights of the European Union. At the same time, jurisdiction over sanctions-related cases for both the European Court of Justice and

⁹⁷ Vera Shikhelm (Michigan Journal of International Law), “Access to Justice in the United Nations Human Rights Committee”, vol. 39, No. 3 (2018), pp. 461 and 489–490.

⁹⁸ See <https://afribar.org/wp-content/uploads/2023/08/PP-05-Unilateral-Coercive-Measures-Sanctions-and-the-African-Continental-Free-Trade-Area-ACFTA.pdf>; Leonel Eustáquio Mendes Lisboa, “Direitos Humanos em um mundo de sanções, para além da distinção entre o legal e o ilegal: O Direito ao Desenvolvimento e as Medidas Coercitivas Unilaterais”, master’s dissertation, p. 150.

⁹⁹ See Community Court of Justice of the Economic Community of West African States, *Alex Nain Saab Morán v. Republic of Cabo Verde, Judgment*, 15 March 2021.

¹⁰⁰ See communication No. JAL USA 23/2023.

the European Court of Human Rights is still restricted. In accordance with article 275 of the Treaty on the Functioning of the European Union, natural and legal entities subjected to restrictive measures by the European Union may apply to the General Court of the European Union to annul their inclusion in the sanctions lists, with an appeal to the European Court of Justice. National courts of the European Union member States are not authorized to declare European Union sanctions acts invalid.¹⁰¹

46. The Special Rapporteur notes that the European Court of Justice took a rather restrictive approach to access to justice and the review of designations. Its practice can be summarized as follows:

- Designated individuals have the right to defence and to access judicial institutions¹⁰²
- Sanctions shall not violate international legal norms obligatory to the European Union,¹⁰³ but the European Court of Justice does not review the legality of European Union sanctions from an international law perspective
- Restrictive measures are presumed to be legal under European law
- The European Council has broad discretion to decide on the grounds for restrictive measures as part of European Union foreign policy,¹⁰⁴ including when acting beyond the authorization of the Security Council of the United Nations¹⁰⁵
- Assessment of the appropriateness of the grounds for designations is not consistent. The European Council shall prove the existence of good reasons to designate a person in targeted cases,¹⁰⁶ but in many other cases, it is incumbent upon the applicant to demonstrate the “manifest inappropriateness” of sanctions in view of their general objective¹⁰⁷
- Provisions of resolutions of the Human Rights Council and the General Assembly of the United Nations on the illegality of unilateral coercive measures are not recognized as customary norms of international law by the court¹⁰⁸
- Groups of individuals can be listed, but listing shall be limited to the leaders of the groups and those associated with them.¹⁰⁹ The existence of an association

¹⁰¹ See Luca Pantaleo, “Sanctions cases in the European Courts”, in *Economic Sanctions and International Law*, Paul Eden and Matthew Happold, eds. (Oxford and Portland, Oregon, Hart Publishing, 2019); Rachel Barnes, “United States sanctions: delisting applications, judicial review and secret evidence”, in *Economic Sanctions and International Law* (2016), pp.171–196.

¹⁰² See Court of Justice of the European Union, *Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities*, Joined Cases C-402/05 P and C-415/05 P.

¹⁰³ See *ibid.*, *European Parliament v. Council of the European Union (Smart Sanctions)*, Case C-130/10; Lonardo L., “Challenging EU sanctions against Russia: the role of the court, judicial protection, and common foreign and security policy”, *Cambridge Yearbook of European Legal Studies*, vol. 24 (December 2023), pp. 1–24.

¹⁰⁴ Court of Justice of the European Union, *RT France*, Case T-125/22, Judgment, 27 July 2022, para. 52; *ibid.*, *North Drilling Co. v. Council of the European Union*, Case T-552/12, Judgment, 12 November 2013, para. 25; *ibid.*, *National Iranian Tanker Company v. Council*, Case T-565/12, Judgment, 3 July 2014, para. 58; *ibid.*, *Rosneft*, Case T-715/14, Judgment, para. 159.

¹⁰⁵ *Ibid.*, *Bolivarian Republic of Venezuela v. Council of the European Union*, Case T-65/18 RENV, Judgment, 13 September 2023, paras. 95–96.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*, *PAO Rosneft Oil Company and Others v. Council of the European Union*, Case C-732/18 P.

¹⁰⁸ *Ibid.*, Judgment, 17 September 2020, para. 97.

¹⁰⁹ *Ibid.*, *Pye Phyto Tay Za v. Council of the European Union*, C-376/10 P, Judgment, 13 March 2012, paras. 62–65. See also *Rosneft*, Case T-715/14, Judgment, para. 152.

with leaders of the group shall be based on the criteria of the “commonality of interests”,¹¹⁰ which is rather vague and allows for broad discretion

- A person shall be informed of the reasons for designation at the moment of designation rather than in the courtroom¹¹¹
- Standards for the documentation collected and used as a ground for designation vary and may include unverifiable materials, including media statements¹¹²
- Individuals and companies not directly designated by the European Union cannot appeal to the European Court of Justice even if they are affected by the European Union sanctions enforcement measures and overcompliance¹¹³
- States affected by the European Union sanctions do not have locus standi to seek judicial remedy¹¹⁴
- The existence of family links alone is recognized to be not sufficient for listing, so the majority of delisting decisions refer to family tie designations¹¹⁵
- Delisting judgments usually do not provide for penalties or lifting conditions that can lead to issues in effective judicial protection.¹¹⁶ In rare instances in which the Court granted compensation for an error in imposing restrictive measures, the compensation awarded was relatively low¹¹⁷

47. The Special Rapporteur underlines that, although the European Court of Justice provides for some elements of access to justice, it cannot ensure efficient access to justice, the right to a fair trial and the right to adequate remedy and redress for the protection of rights violated by the restrictive measures of the European Union.

D. National courts of sanctioning countries

48. Although States bear primary responsibility for ensuring access to justice within their jurisdiction under international law, domestic practice of the judicial review of sanctions cases in sanctioning States is fragmentary, limited and inconsistent. The Special Rapporteur notes in particular admissibility problems, as traditionally only directly designated individuals and companies can apply to the court. Non-directly designated individuals are usually prevented or hindered from bringing a case to protect their rights affected by unilateral sanctions or overcompliance. Applicants often report physical impediments to get to the country of adjudication, discrimination, unequal treatment, and geopolitical motivation of courts.¹¹⁸

¹¹⁰ Ibid., *Violetta Prigozhina v. Council of the European Union*, Case T-212/22, Judgment, 8 March 2023, para. 93.

¹¹¹ Ibid., *Bank Mellat v. Council of the European Union*, Case T-496-10, Judgment, 29 January 2013, paras. 47, 49; *ibid.*, *Bank Melli Iran v. Council of the European Union*, Case T-390/08, Judgment, 14 October 2009, para. 80.

¹¹² Nadia Zelyova, “Restrictive measures – sanctions compliance, implementation and judicial review challenges in the common foreign and security policy of the European Union”, *ERA Forum*, vol. 22 (31 March 2021), pp. 159–181.

¹¹³ Ibid., *Ville de Paris, Ville de Bruxelles and Ayuntamiento de Madrid v. European Commission*, Joined Cases T-339/16, T-352/16 and T-391/16, Judgment, 13 December 2018, para. 50.

¹¹⁴ Ibid., *Bolivarian Republic of Venezuela v. Council of the European Union*.

¹¹⁵ Ibid., *Tomana*, Case T-190/12, Judgment, 22 April 2015, para. 235.

¹¹⁶ Heleen Over De Linden, “The Court of Justice’s Difficulty with Reviewing Smart Sanctions as Illustrated by Rosneft”, *European Foreign Affairs Review*, vol. 24, No. 1 (February 2019), p. 27.

¹¹⁷ Court of Justice of the European Union, *Safa Nicu Sepahan Co. v Council of the European Union*, Case T-384/11, Judgment of the General Court (First Chamber), 25 November 2014, paras. 68 and 69; *ibid.*, Judgment of the Court (Grand Chamber), 30 May 2017, paras. 55 and 111.

¹¹⁸ Satinder Dogra and others, “Key sanctions issues in litigation and arbitration”.

49. The Special Rapporteur is also concerned that, in many instances, directly designated individuals and companies are prevented from submitting an appeal to the court due to the executive or administrative mechanism used for their designation.¹¹⁹ In the United States, the use of judicial constitutional protection is only possible when the applicant proves the existence of close ties with the United States.¹²⁰ It has been reported that, even when access to adjudication is possible, it is limited to the review of procedural aspects of designation rather than its substance and is based on the non-transparent classified materials provided by executives,¹²¹ shifting the burden of proof to the applicant and accepting ex post facto oral justifications as compliant with due process standards.¹²² Additional challenges cited include difficulties in obtaining access to legal advice and its high cost, fear of lawyers, the non-disclosure of documents and grounds for designation, the uncertainty of legal regulation and interpretation, the use of non-binding explanations, challenges in unfreezing and transferring money to enforce rare delisting or unfreezing decisions,¹²³ and many other elements addressed in section II.

50. The Special Rapporteur notes the attempts of targeted States to move trade and private law cases to their jurisdiction to protect rights of individuals and companies affected by unilateral sanctions,¹²⁴ including due to so-called sanctions clauses.¹²⁵ She notes, however, the rather low efficacy of such measures due to the refusal of sanctioning States to apply agreements on the mutual recognition of judicial decisions and to recognize and enforce judicial and arbitration decisions,¹²⁶ providing for anti-suit injunctions¹²⁷ “to prevent circumvention of sanctions regimes by judicial means”.¹²⁸

E. International commercial and investment arbitration

51. The Special Rapporteur notes with regret the negative impact of unilateral sanctions on arbitration institutions and procedures, although arbitration institutions reportedly mostly follow the position on the arbitrability of sanctions-related cases¹²⁹. Apart from the general challenges in obtaining access to adjudication regarding travel and visa restrictions, licences to participate in the proceedings in any capacity,

¹¹⁹ Nigel D. White, “Autonomous and Collective Sanctions in the International Legal Order”, *The Italian Yearbook of International Law Online*, vol. 27, No. 1 (14 November 2018), p. 21; Rachel Barnes, “United States sanctions: delisting applications, judicial review and secret evidence”, p. 206.

¹²⁰ See www.leagle.com/decision/2001443251f3d19216; www.bernabeipllc.com/wp-content/uploads/sites/1500928/2020/03/Al-Haramain-v-U-S-Dept-of-the-Treasury.pdf; www.courtlistener.com/opinion/2359589/kindhearts-v-geithner.

¹²¹ Rachel Barnes, “United States sanctions: delisting applications, judicial review and secret evidence”, pp. 210–211.

¹²² *Ibid.*, pp. 208–209.

¹²³ Elena Chachko, “Symposium on unilateral targeted sanctions due process is in the details: U.S. targeted economic sanctions and international human rights law”, *American Journal of International Law*, vol. 113 (29 April 2019), p. 159.

¹²⁴ Submission by A.D. Bolivar.

¹²⁵ Submission by the Bolivarian Republic of Venezuela; China, Law on Countering Foreign Sanctions, 2021.

¹²⁶ Submissions by the Dominican Republic and Broken Chalk; A/HRC/57/55/Add.1.

¹²⁷ High Court of Justice, *Renaissance Securities (Cyprus) Ltd v. Chlodwig Enterprises Ltd. and others* [2023] EWHC 2816.

¹²⁸ Katrien Baetens and Camille Laporte (Linklaters), “EU responds to Russia’s anti-suit injunctions with transaction ban”, 25 June 2024; Council Regulation (EU) 2024/1745 of 24 June 2024, art. 5ab.

¹²⁹ Tamás Szabados, “EU economic sanctions in arbitration”, *Journal of International Arbitration*, vol. 35, No. 4 (2018).

clearance from banks,¹³⁰ legal representation¹³¹ and information technology sanctions¹³² addressed above, the Special Rapporteur has been reported about difficulties with the choice of legal regimes or arbitral institutions, the appointment of arbitrators,¹³³ the increasing number of breaches of contracts with the reference to force-majeure,¹³⁴ disputes regarding the jurisdiction of arbitral tribunals with reference to sanctions regulations,¹³⁵ and the submission of disputes to several arbitration centres¹³⁶ that results in parallel proceedings.¹³⁷

52. The Special Rapporteur also refers to the negative impact on the enforcement of arbitral awards. In the European Union, while the arbitration proceedings themselves are made possible through the derogation granted under article 4.1 (c) of Council Regulation (EU) 269/2014, the impact of such a derogation is negated by article 5 (1) (a) of the same regulation when an arbitral award is rendered against a party after that party's inclusion in the list.¹³⁸ As a result, unilateral sanctions hinder the performance of contractual obligations and prohibit the satisfaction of claims "in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under Regulation 833".¹³⁹

IV. National capacity to ensure the right to a fair trial

53. The Special Rapporteur notes multiple reports on the challenges caused by unilateral sanctions to the judicial systems of States, which become more vulnerable in the face of political and economic pressure and scarcity of resources.¹⁴⁰ Submissions include reflections on the high level of vacancies in the police, investigators, secretaries, experts, judges, prosecutors and other legal professionals (up to 50 per cent);¹⁴¹ the absence and insufficiency of spare parts, machinery and

¹³⁰ See <https://viac.eu/en/arbitration/content#II.e>; <https://arbitrationblog.kluwerarbitration.com/2022/10/08/how-can-u-s-secondary-sanctions-as-foreign-overriding-mandatory-rules-intervene-in-arbitration-disputes-arising-from-the-ukraine-russia-conflict/>.

¹³¹ High Courts of Justice, *Obiter* in *Barclays Bank PLC v. VEB.RF*, [2024] EWHC 1074, Judgment, 10 May 2024, para. 46.

¹³² Diplomatic Service of the European Union, "European Union sanctions", 7 October 2023, available at <https://www.acerislaw.com/wp-content/uploads/2024/06/European-Union-sanctions-EEAS.pdf>; Moscow City Arbitration Court, *Linde GMBH v. Ruschemchemalliance*, Case No. A40-155367/2020, Judgment, 20 April 2021, pp. 24–25, available at www.garant.ru/files/5/6/1539065/reshenie_arbitragnogo_suda_g_moskvi_ot_20_aprelya_2021_g_po_delu_n_a40_155367_2020.rtf.

¹³³ Court of Appeal of Quebec, *La Compagnie Nationale Air France v. Libyan Arab Airlines*, Judgment, 31 March 2003, para. 15.

¹³⁴ See <https://iccwbo.org/wp-content/uploads/sites/3/2020/03/icc-forcemajeure-hardship-clauses-march2020.pdf>; Council Regulation (EU) No. 833/2014, art. 11.1.

¹³⁵ Stockholm Chamber of Commerce, *Stati v. Kazakhstan*, Award, of 19 December 2013, pp. 154–161, available at www.italaw.com/sites/default/files/case-documents/italaw3083.pdf.

¹³⁶ Katrovskaya E. A., "Sanctions challenges in the field of international commercial arbitration in 2022 and the ways to overcome them", *International Law*, vol. 1 (2023), p. 3. Available at <https://cyberleninka.ru/article/n/sanktsionnye-vyzovy-v-sfere-mezhdunarodnogo-kommercheskogo-arbitrazha-v-2022-godu-i-sposoby-ih-preodoleniya/viewer>.

¹³⁷ Freshfields, "International arbitration in 2024", p. 9. Available at <https://www.freshfields.us/492fb0/globalassets/our-thinking/campaigns/international-arbitration/2024/pdfs/arbitration-top-trends-2024--english.pdf>.

¹³⁸ See https://viac.eu/en/arbitration/content#c_Enforcement_of_arbitral_awards; Melissa Ordonez and Lucas Aubry, "Impact of Russian Sanctions on International Arbitration – an update", *Legal Industry Review*, vol. 3 (2023), p. 28.

¹³⁹ Hong Kong International Arbitration Centre, *Linde v. RusChemAlliance*, Case No. A23039, Decision, 27 September.

¹⁴⁰ Submission by Asociación Civil Grupo SURES; A/HRC/51/33/Add.2, paras. 58 and 59.

¹⁴¹ Submission by Asociación Civil Grupo SURES.

reagents for forensic expertise, logistical and transportation resources and supplies, and resources and software for proper online judiciary; the stockpiling of court materials; the absence of resources for the establishment of new courts;¹⁴² hindered access to courses, experiences, techniques and technologies and hindered exchange of information preventing staff from acquiring skills and qualification;¹⁴³ decreasing State capacities to provide legal aid free of charge;¹⁴⁴ and the need to use alternative, often online means of court proceedings,¹⁴⁵ which is also problematic due to connectivity, software and operational challenges.¹⁴⁶

54. The above-mentioned reasons, together with the need to seek alternative ways of conducting transactions and money transfers, increase the risk of influencing judicial decisions and of corruption.¹⁴⁷ Multiple reports serve to reflect on the unwillingness of individuals and companies to use judicial mechanisms for the protection of their rights in sanctions cases owing to the absence of trust in the courts in sanctioning countries or to the impossibility of enforcing decisions taken by national courts in the country of residence.¹⁴⁸

55. The Special Rapporteur is also alert about the impact of unilateral sanctions on international cooperation, in particular in criminal matters. Reports demonstrate that sanctions affect the exchange of information, the collection of evidence abroad, extradition, collective operations to suppress terrorism and other types of transboundary crimes and undermine implementation of the United Nations Global Counter-Terrorism Strategy and the suppression of transboundary crime conventions, treaties on cooperation and mutual assistance in criminal matters, resulting in impunity and affecting access to justice for the victims of crimes.¹⁴⁹

56. The designation of high judicial officials and other legal professionals is reported to affect effective cooperation in criminal and judicial matters,¹⁵⁰ prevent active engagement in the international forums and limit the establishment and implementation of inter-institutional cooperation agreements and other relevant conventions.¹⁵¹ Such politically motivated designations usually do not provide for any possibility of appeal, reportedly violating the presumption of innocence, property rights, the right to reputation, freedom of movement and the right to a fair trial.¹⁵²

¹⁴² Submissions by the Syrian Arab Republic, the Bolivarian Republic of Venezuela and Asociación Civil Grupo SURES.

¹⁴³ Submissions by the Syrian Arab Republic, Broken Chalk and Asociación Civil Grupo SURES; see also [A/HRC/48/59/Add.2](#); Alexander Evert Gerritsen, *The value and limitations of the European Union's restrictive measures/sanction regimes as a foreign policy tool to achieve objectives*, master's dissertation (2022).

¹⁴⁴ Submissions by the Dominican Republic and the Syrian Arab Republic.

¹⁴⁵ Submission by the Bolivarian Republic of Venezuela.

¹⁴⁶ Submission by Asociación Civil Grupo SURES.

¹⁴⁷ Submission by the Dominican Republic; [A/HRC/51/33/Add.2](#), paras. 58–59; [A/HRC/48/59/Add.2](#), para. 58.

¹⁴⁸ See [A/HRC/57/55/Add.1](#).

¹⁴⁹ Submission by the Dominican Republic; Anton Moiseienko, “Due process and unilateral targeted sanctions”, *Research Handbook on Unilateral and Extraterritorial Sanctions* (Cheltenham, Edward Elgar Publishing Limited, 2021), pp. 405–423.

¹⁵⁰ Submission by Asociación Civil Grupo SURES.

¹⁵¹ Submission by Guatemala.

¹⁵² *Ibid.*

V. Conclusions and recommendations

A. Conclusions

57. The Special Rapporteur expresses serious concerns about the compounding effects of all types of primary sanctions, means of their enforcement and consequent overcompliance on all categories of human rights, not only of the directly designated people but also of those with any nexus to the country under sanctions, including the general population. Main concerns relate to the fact that none of these rights are safeguarded by effective access to justice as an integral part of the universally recognized right to remedy in the case of human rights violations.

58. The right to a meaningful remedy, access to justice alongside the right to a fair trial, and the presumption of innocence constitute a primary system for the protection of all categories of human rights, among them economic, social and cultural rights, in all situations, including in the face of all types of unilateral sanctions. The right to judicial protection, including the right to access justice for the protection of violated rights, is not limited to situations of criminal charges against individuals concerned.

59. Access to justice as a primary safeguard of all categories of human rights shall be understood broadly and include:

- Equal protection of the law without any discrimination
- Presumption of innocence
- Due process in the face of penalties and other elements of fair trial guarantees
- Justiciability of all categories of human rights
- Access to the means of protection of human rights through adjudication
- Access to affordable legal assistance
- Access to documents and evidence, and transparency
- Access to duly reasoned written judgments
- Access to appeal
- Awareness of the means to access justice
- Respect for the rule of law rather than rules-based order
- Legal certainty
- Access to remedies and redress

60. Access to justice and the consequent right to remedy for human rights violations in the face of unilateral sanctions constitute an integral part of the human rights protection that is currently underdeveloped at the universal, regional and national levels. It also constitutes an important means of establishing mechanisms of restitution, compensation and redress for human rights violations resulting from unilateral sanctions, means of their enforcement and overcompliance.

61. As unilateral sanctions are qualified as a means of foreign policy, the use of civil and criminal penalties for their circumvention contradicts universal standards of criminal law. Non-criminal measures cannot be enforced by criminal means, in particular as the primary unilateral sanctions contravene international law.

62. Unilateral coercive measures, means of their enforcement and overcompliance result in gross violations of human rights of the general population of the country

under sanctions; therefore, United Nations norms on remedies for gross human rights violations shall be fully applicable by all United Nations organs.

63. Uncertain and extensive compliance requirements, non-transparency of decision-making, non-transparency and non-disclosure of information used as a ground for designation and the seizure of property by customs, lengthy, expensive and inefficient processes of appeals for delisting or administrative processes, challenges in obtaining access to any form of protection in sanctioning and other countries, and the unwillingness of legal professionals in the sanctioning countries to represent cases of companies and individuals affected by unilateral sanctions constitute violations of the right of access to justice and the right to effective remedies.

64. The presumption of the legality of unilateral sanctions and the rebuttable presumption of the guilt of entities and individuals under sanctions are contrary to international law, including principles of responsibility for wrongful acts at the international and national levels, including the presumption of innocence, being a peremptory norm of international law. States shall not shift the burden of proof of the legality of their activity to the individuals or entities under sanctions. The burden of proof of the illegality of acts or omissions of the entities and individuals subjected to any types of penalties lies with the States, and only if the existence of State jurisdiction is properly grounded.

65. The current development of legislation on the provision of legal assistance, the suppression of defamation and disinformation and the criminalization of the circumvention of sanctions regimes and relevant policies undermine principles and standards of the exercise of the legal profession and make lawyers the victims of sanctions rather than guarantors of the promotion and protection of human rights. They are therefore prevented from properly exercising their functions, which affects the human rights of those they seek to protect.

66. Despite the existence of extensive unilateral sanctions-related case law, neither the Court of Justice of the European Union nor national courts of sanctioning States provide for adequate access to justice and the right to remedy and redress in accordance with international legal standards.

B. Recommendations

67. **States Members of the United Nations shall:**

(a) **Use all available mechanisms of international adjudication, including the International Court of Justice and the World Trade Organization (WTO) dispute settlement body, as the mechanisms to enforce international obligations and protect human rights. Unilateral sanctions, means of their enforcement and overcompliance violate the broad scope of international treaties in various areas of international law, including obligations from membership in WTO, trade, fiscal, investment and cooperation agreements, agreements on mutual assistance in civil and criminal matters, the mutual enforcement of court decisions, international security law, the suppression of transboundary crimes and struggle against international terrorism, air and sea law, and judicial immunities of States and their property. Using unilateral sanctions as a means of settlement of international disputes and a foreign policy tool is illegal under international law;**

(b) **In accordance with the principle of due diligence, ensure that international agreements of all types are implemented in accordance with the law of international treaties. No unilateral withdrawal of suspension as a form**

of unilateral sanction is allowed unless performed in conformity with the law of international treaties;

(c) Use means of diplomatic protection to protect the rights of those affected by unilateral sanctions;

(d) Establish instruments of pro bono legal assistance for affected individuals to bring sanctions cases at both the national and the international levels.

68. Sanctioning States and regional organizations shall:

(a) Ensure that all unilateral means of pressure do not violate their international obligations and stay within the limits of counter-measures in accordance with the law of international responsibility. All measures not in conformity with the above requirements and not directly authorized by the Security Council of the United Nations constitute unilateral coercive measures and shall be lifted;

(b) Provide, without any discrimination, access to the judicial protection of all human rights, including economic, social and cultural rights, affected by unilateral sanctions, means of their enforcement and overcompliance, through affordable, fast, clear and transparent procedures, with unimpeded access to legal assistance without unreasonable costs, licensing requests, and use of intelligence information, regardless of the national qualification of unilateral sanctions regimes;

(c) Ensure that international agreements of all types are implemented in accordance with the law of international treaties and the principle of due diligence. No unilateral withdrawal or suspension of an international treaty as a form of unilateral sanction is allowed unless performed in conformity with the law of international treaties;

(d) Ensure that the exercise of legal services in sanctions cases is not qualified as a civil and/or criminal offence of lawyers in order to preserve the integrity of legal professionals. No reputational risks shall be faced by lawyers in such cases;

(e) Revoke all national legislation aimed at criminalizing or penalizing the circumvention of sanctions regimes as contradictory to the standards of fair trial and the presumption of innocence;

(f) Cease the practice of adopting sanctions-related non-binding explanatory or interpretative documents, as they exacerbate uncertainty and confusion and result in widespread overcompliance;

(g) Eliminate and prevent in the future any discrimination based on nationality, origin, place of residence, phone, Internet protocol (IP) address in the country under sanctions, or the existence of any other nexus to such a country and address such discrimination by establishing effective access to justice;

(h) Enable the appointment of the new members of the WTO Appellate Body to restart its functioning as an authorized dispute settlement mechanism in the area of trade.

69. The International Criminal Court shall facilitate the acceleration of the exercise of its jurisdiction in the Venezuela II case¹⁵³ to assess the humanitarian impact of unilateral sanctions, means of their enforcement and overcompliance, as

¹⁵³ See www.icc-cpi.int/sites/default/files/itemsDocuments/200212-venezuela-referral.pdf; see also www.icc-cpi.int/venezuela-ii.

similar cases might be brought by other countries, such as the Syrian Arab Republic, experiencing a devastating humanitarian crisis, exacerbated dramatically by the use of unilateral sanctions.

70. United Nations treaty bodies shall accept cases on human rights violations by sanctioning States within the scope of relevant human rights treaties as a means of ensuring access to justice and effective remedies. Access to United Nations treaty bodies in sanctioning cases shall not be conditioned upon exhausting local remedies, as individuals affected are not able to access justice meaningfully.

71. The Human Rights Committee shall:

(a) Address the issue of the impediment to exercising the right to a fair trial, the presumption of innocence, access to justice and the right to remedies when human rights are affected by unilateral sanctions, means of their enforcement and overcompliance;

(b) Amend general comment No. 32 (2007), on article 14, right to equality before courts and tribunals and to a fair trial, to take due account of the challenges and hindrances to the access to justice in the face of unilateral sanctions, means of their enforcement and overcompliance.

72. The Secretary-General, the Office of the United Nations High Commissioner for Human Rights and other United Nations entities shall address the problem of the legality and humanitarian impact of primary unilateral sanctions, means of their enforcement and overcompliance within the broader discussions around extraterritoriality, the expanding use of complex non-binding and non-legal documents interpreting sanctions regimes, and the challenges of access to justice as a threat to the rule of law.

73. All stakeholders shall assess the possibility of and algorithm for establishing a mechanism for accountability and redress for victims of unilateral sanctions, means of their enforcement and overcompliance from the side of third States and private actors on the basis of monitoring data collected by States and other actors as a means of ensuring access to justice and effective remedy for human rights violated by unilateral sanctions.
