



General Assembly

Distr.: General
4 September 2023

Original: English

Seventy-eighth session

Item 73 (b) of the provisional agenda*

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

Secondary sanctions, overcompliance and human rights

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 [77/214](#) and Human Rights Council resolutions [27/21](#) and [45/5](#).

* [A/78/150](#).

** The present document was submitted after the deadline owing to circumstances beyond the submitter's control.



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

Summary

In the present report, the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, provides an overview of recent factual and legislative developments of overcompliance and criminal and civil penalties for circumvention of sanctions regimes; assesses the legality of some types of recent practice from the point of international law; and focuses on the humanitarian impact of secondary sanctions, as well as civil and criminal responsibility for circumvention of sanctions regimes and the consequent zero-risk policy and overcompliance, including on humanitarian work. The report is submitted in follow-up to the report presented to the Human Rights Council at its fifty-first session ([A/HRC/51/33](#)).

I. Introduction

1. The present report is submitted pursuant to General Assembly resolution [77/214](#) and Human Rights Council resolutions [27/21](#) and [45/5](#). In it, the Special Rapporteur presents information relevant to the negative impact of unilateral coercive measures on the enjoyment of human rights; studies relevant trends, developments and challenges; follows up on her proposals to the Human Rights Council, including on secondary sanctions and criminal and civil penalties giving rise to overcompliance; formulates recommendations on ways and means to prevent, minimize and redress the adverse impact of unilateral coercive measures on human rights; and draws the attention of the Assembly to relevant situations and cases.

2. In the implementation of her mandated activities, including thematic research, official country visits, individual communications, as well as capacity-building and outreach initiatives with different stakeholders, the Special Rapporteur has received information on the multifaceted impact of overcompliance due to secondary sanctions, the risks that civil and criminal penalties for the circumvention of primary sanctions regimes present in terms of the human rights of all people in targeted countries, with disproportionate effects on the most vulnerable, the delivery of humanitarian assistance and the implementation of the right to development.

3. The present report is in follow-up to the research carried out on secondary sanctions, civil and criminal penalties for circumvention of sanctions regimes and overcompliance with sanctions ([A/HRC/51/33](#)) presented to the Human Rights Council in September 2022,¹ and adds updated factual and legislative developments concerning overcompliance, criminal and civil penalties for circumvention of sanctions regimes, and their extraterritorial application. In the report, the Special Rapporteur assesses the compatibility of certain types of conduct with international law and discusses the humanitarian impact of secondary sanctions, civil and criminal responsibility for circumvention of sanctions regimes and the consequent zero-risk policies and overcompliance on humanitarian work and assistance, including in emergency situations.

4. The Special Rapporteur remains concerned about secondary sanctions, civil and criminal penalties for circumvention of sanctions regimes and consequent overcompliance, as they often lead to obstacles in the performance of otherwise permissible transactions with subsequent adverse effects on the effective delivery of goods and services, while their extraterritorial nature severely restricts stakeholders' autonomy in economic and operational decision-making. She also underlines that the focus on secondary sanctions and overcompliance cannot be interpreted as recognition or acceptance of the legality or legitimacy of primary unilateral sanctions.

5. For the preparation of the present report, the Special Rapporteur issued a call for submissions² addressed to States, United Nations entities and other international organizations, civil society, scholars, research institutions and others. Responses were received from the Governments of Armenia, Belarus, China, Cuba, Iraq, the Islamic Republic of Iran, the Russian Federation, the Syrian Arab Republic and the Bolivarian Republic of Venezuela. Responses were also received from the European Union, civil society organizations and associations, lawyers and scholars. The Special Rapporteur expresses her gratitude to all respondents.

¹ [A/HRC/51/33](#).

² See www.ohchr.org/en/calls-for-input/2023/call-input-2023-thematic-reports-un-human-rights-council-and-un-general.

II. Overview of previous findings and work of the Special Rapporteur to address overcompliance, secondary sanctions, civil and criminal penalties for circumvention of sanctions regimes

6. Secondary sanctions and criminal and civil penalties for circumvention of sanctions regimes have been the subject of previous thematic³ and country visits reports by the Special Rapporteur. In the report on secondary sanctions, civil and criminal penalties for circumvention of sanctions regimes and overcompliance with sanctions,⁴ the Special Rapporteur qualified such secondary sanctions and civil and criminal penalties as a means to enforce unilateral sanctions against States or key economic sectors, or to target foreign companies, organizations or individuals for their presumed links with sanctioned parties or for violating or circumventing sanctions.⁵ As a result, foreign companies subject to secondary sanctions can be prevented from doing business in the sanctioning State, banned from using its financial markets or prohibited from transactions involving its currency. In addition, foreign individuals can be refused entry to a sanctioning country and have their assets there seized or frozen.

7. Overcompliance is identified by the Special Rapporteur as self-imposed restraints beyond the restrictions mandated by sanctions, applied as a part of the de-risking process (to minimize the potential for inadvertent violations or to avoid reputational or other business risks), and therefore, the widening of the scope of targets to include non-sanctioned individuals and entities, and sometimes entire populations.

8. The Special Rapporteur also addressed the extraterritorial nature of secondary sanctions and civil and criminal penalties imposed on third States, their nationals and businesses, deterring them from meaningful engagement and cooperation with sanctioned States, entities or nationals. It has been demonstrated that the extraterritorial application of secondary sanctions infringes upon the sovereignty of other States by violating the legal principles of jurisdiction and non-intervention in the internal affairs of States,⁶ and bilateral and multilateral treaty obligations (international trade, friendship and commerce treaties, international investment agreements and international human rights treaties).

9. She also identified the main triggers for overcompliance, such as the multiple, complex, unclear, fast-evolving and overlapping sanctions regimes; the broad, unclear and confusing terminology and wording of sanctions regulations, which bring about uncertainty concerning their scope of application, the types of prohibited conduct and the negative spillover effects on critical sectors of the targeted State; the existence of secondary sanctions, and criminal and civil penalties provisions for circumvention of sanctions regimes; direct threats with sanctions; maximum pressure campaigns; uncertainty around the scope of humanitarian carve-outs; and the complex licensing procedures, even for the delivery of humanitarian goods, along with the burden of proof of the humanitarian nature of the activities imposed on humanitarian actors.

³ [A/76/174/Rev.1.](#)

⁴ [A/HRC/51/33.](#)

⁵ *Ibid.*, para. 11

⁶ Julia Schmidt, “The legality of unilateral extra-territorial sanctions under international law”, *Journal of Conflict and Security Law*, vol. 27, No. 1 (2022), pp. 53–81; and Sascha Lohmann, “Extraterritorial U.S. sanctions: only domestic courts could effectively curb the enforcement of U.S. law abroad”, *Stiftung Wissenschaft und Politik, SWP Comment*, No. 5 (2019).

10. She also identified that the overall effect on human rights of overcompliance alone could be enormous, especially in humanitarian sensitive situations, and it must be recognized as a significant new threat to international law and human rights. As the provision of authorized humanitarian goods and services to sanctioned States often involves an important number of different actors in multiple countries, overcompliance by any of them, including manufacturers, exporters, financial service providers and transportation and insurance companies, may prevent essential goods from reaching persons in need.

11. The Special Rapporteur also identified possible forms of overcompliance, including decisions of companies to halt all business with sanctioned countries, entities or individuals of certain nationality or origin; excessive de-risking by banks and other financial actors; overcompliance in the transportation and insurance sectors, and other related service-producers; refusals to conduct authorized transactions; the deterrence of authorized transactions by requiring onerous documentation or certification, charging higher rates or additional fees or imposing delays; freezing assets that are not targeted by sanctions; denying individuals the possibility to open or maintain bank accounts or to conduct transactions on the grounds of having the nationality, one of multiple nationalities or a place of birth in a sanctioned country; being shut out of critical markets or financial systems; and reputational damage, contract terminations, loss of business opportunities, among others.

12. She has reiterated that, when sanctions affect the rights of an entire population, the impact is felt more among persons in vulnerable situations, including women, children, people with disabilities or with chronic or severe diseases, the elderly, refugees, internally displaced persons, migrants, people living in poverty and others who depend on social or humanitarian assistance.

13. Overcompliance and its negative impact on human rights has been addressed in multiple communications of the Special Rapporteur, including those highlighting challenges in the delivery of specialized life-saving medicine,⁷ medical equipment⁸ or in transferring money for medical operations⁹ to or from the countries under sanctions; risks for the delivery of humanitarian assistance to mitigate negative impacts of natural disasters (the Syrian Arab Republic and Türkiye);¹⁰ challenges in the implementation of humanitarian provisions of Security Council resolutions;¹¹ possible additional challenges in view of ongoing regional initiatives to criminalize violations of unilateral sanctions regimes (European Union directive proposal);¹² extraterritorial application of United States of America jurisdiction to third country nationals for circumvention of United States sanctions regimes;¹³ and challenges in academic research and cooperation.¹⁴

14. The Special Rapporteur regrets that certain countries imposing unilateral sanctions, as well as certain private businesses who reportedly overcomply with

⁷ See communications by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Nos. AL USA 25/2022; AL CHE 5/2022; AL OTH 135/2022; AL OTH 134/2022; AL FRA 5/2022; AL USA 19/2022; AL SWE 4/2022; AL OTH 95/2022; AL SWE 3/2021; and AL OTH 230/2021. Available at <https://spcommreports.ohchr.org/TmSearch/Mandates?m=263>.

⁸ See communication No. AL USA 13/2022 of 7 September 2022.

⁹ See communications Nos. AL USA 23/2021 and AL OTH 207/2021 of 12 July 2021.

¹⁰ See communications Nos. OL USA 7/2023, OL GBR 6/2023 and OL OTH 21/2023 of 3 April 2023.

¹¹ See communications Nos. AL USA 21/2022 and AL OTH 106/2022 of 26 October 2022.

¹² See communication No. OL OTH 75/2023 of 9 June 2023.

¹³ See communications Nos. AL USA 5/2023 of 2 March 2023; AL USA 18/2021 of 6 April 2021; and UA USA 9/2021 of 2 February 2021.

¹⁴ See communications Nos. AL USA 9/2022; AL OTH 37/2022; AL OTH 38/2022; AL OTH 39/2022; and AL OTH 40/2022, of 22 June 2022.

sanctions, refuse to engage with her mandate and to respond to her numerous communications on specific cases, despite her expressed willingness to enter constructively into dialogue with them. She emphasizes the mandate-related resolutions that include a call for States “to cooperate with and assist the Special Rapporteur in the performance of her tasks, and to provide all necessary information requested by her”.¹⁵ She wishes to thank those countries that are open for discussion and constructive dialogue.

III. Overview of developments and recent measures

15. Despite repeated calls by the Special Rapporteur, civil society, international organizations and other bodies about the adverse humanitarian impacts of unilateral sanctions, in recent years the world has experienced a rapid expansion of sanctions regimes; an expansion and enforcement of secondary sanctions; the inclusion of penalty provisions in sanctions regulations; a proliferation of complex non-legal documents, such as guidance documents, frequently asked questions and other forms of non-normative legal acts extensively interpreting legal regulations; a rising number of designations, and of criminal and civil cases for sanctions violations, with extraterritorial application of sanctions regimes; an overlap among various jurisdictions, rendering compliance a very challenging endeavour; an expansion of the grounds for sanctions designations to include facilitation in circumvention of sanctions regimes; and the identification of sanctions as the “first resort” foreign policy tools in the face of crises.¹⁶

16. The above-mentioned phenomena have exacerbated overcompliance and de-risking policies of banks, businesses and other actors, which often prefer to discontinue their activities and exclude any nexus to sanctioned jurisdictions for fear of severe penalties. Due to overcompliance and excessive de-risking, countries under sanctions often struggle to maintain supply chains or develop new ones and face serious delays and exorbitant costs in the delivery of even basic goods. Therefore, products that should normally not be sanctioned end up in practice being subject to restrictions as if they were legally prohibited under the sanctions regulations.¹⁷

17. In addition, there is a significant proliferation of sanctions, some of which have been imposed against certain States and persons who allegedly pose a threat to the national security, foreign policy or economy of sanctioning States. In particular, according to the United States Treasury sanctions review of October 2021, United States sanctions use has increased by 933 per cent between 2000 and 2021, from 912 in 2000 to 9,421 active Office of Foreign Assets Control designations in 2021 within 37 sanctions programmes,¹⁸ with the lists of specially designated nationals and blocked persons (the “specially designated nationals list”) as well as other sanctions lists being drastically expanded in 2022 and 2023.¹⁹ This is without counting other restrictive measures, such as visa restrictions and export controls. Secondary

¹⁵ See Human Rights Council resolution 52/13, para. 28.

¹⁶ Wynn H. Segal and others, “2022 economic sanctions year in review and outlook for 2023”, Akin, 10 February 2023.

¹⁷ Ali A. Asadi-Pooya, Majid Nazari and Nafiseh Mirzaei Damabi, “Effects of the international economic sanctions on access to medicine of the Iranian people: a systematic review”, *Journal of Clinical Pharmacy and Therapeutics*, vol. 47, No. 12 (December 2022), pp. 1945–1951.

¹⁸ United States, Department of Treasury, “The treasury 2021 sanctions review” (October 2021); and Jessica Whyte, “The opacity of economic coercion”, *Yale Journal of International Law*, 21 June 2023.

¹⁹ United States, Department of Treasury, Office of Foreign Assets Control, “Consolidated Sanctions List (Non-SDN Lists)”, 19 May 2023; and “Specially Designated Nationals and Locked Persons List (SDN) Human Readable Lists”, 7 September 2023.

sanctions are also frequently used as a means of coercion with the purpose of discouraging and eliminating all possible engagement with sanctioned economies, independent of the actual nature and purpose of such engagement. Complex compliance procedures involving multiple jurisdictions and their extraterritorial application, as well as the risk of criminal liability and harsh penalties for those businesses that fail to comply, exacerbate fear and uncertainty, resulting in the complete isolation of sanctioned States and their nationals.

18. The Special Rapporteur underscores the dubious character and a lack of legal certainty and juridical assessment of the existing and newly introduced unilateral sanctions. One of the most recent examples,²⁰ the imposition in June 2023 of sanctions by the United States against two Myanmar banks, was based on grounds affiliated to secondary sanctions, but was implemented as a primary measure, the request being to transfer payments sent to those banks to blocked accounts instead.²¹ Uncertainty about the legal nature of secondary sanctions further exacerbates confusion and inconsistency in their application and enforcement.

19. The Special Rapporteur is also concerned by the expanding use of different international organizations to ensure implementation of unilateral sanctions by States or regional organizations, the legality of which is dubious under international law,²² in violation of the constituent goals of the organizations and without considering the adverse humanitarian and human rights effect, and resulting in expanding zero-risk policies and overcompliance.²³

A. Increase in criminal and civil cases for circumvention of sanctions regimes

20. The Special Rapporteur is deeply concerned at the expanding use of civil and criminal penalties as a comprehensive means of unilateral sanctions enforcement, and the criminalization of any activity involving sanctioned countries and their entities and nationals. At the same time, there is a need for more transparency with regard to these enforcement policies, judicial proceedings and decisions and designations emanating from the application of secondary sanctions.

21. In particular, no overview of the criminal charges brought by European Union member States can be found within the European Union online sanctions databases. Information and data are scarce and may be found in a fragmented manner national in competent authorities' web pages. Switzerland in particular reports about 29 "administrative criminal proceedings" for circumvention of Russian Federation sanctions,²⁴ without any clarity about the scope of these "administrative criminal proceedings". Fragmentary information can be found as concerns criminal proceedings against European Union and third countries' nationals (Denmark,²⁵

²⁰ United States, Department of Treasury, Office of Foreign Assets Control, "Burma-related designations and designation removal; issuance of Burma-related general license", 21 June 2023.

²¹ United States, Department of Treasury, Office of Foreign Assets Control, Burma Sanctions Regulations, 31 CFR part 525, General License No. 5, in *Federal Register*, vol. 88, No. 136 (18 July 2023).

²² Council of Europe, "TSI: effective and uniform implementation of the sanctions regime in EU member states". Available at www.coe.int/en/web/corruption/projects/tsi-sanctions.

²³ Council of Europe, "Closing Conference of the Technical Support Instrument (TSI) initiative on effective implementation of EU sanctions' regime", 13 June 2023.

²⁴ Swissinfo, "Criminal proceedings filed against violations of Russia sanctions", 8 May 2023.

²⁵ Charles Szumski, "Oil billionaire accepts verdict in Dan-Bunkering case", Euractiv, 3 January 2022; and Eurojust, Genocide Network Secretariat, *Prosecution of Sanctions (Restrictive Measures) Violations in National Jurisdictions*, pp. 19 and 20.

France,²⁶ Germany,²⁷ Netherlands (Kingdom of the)²⁸ and others²⁹). Similarly, information about several United States sanctions circumvention criminal cases has been published on the web page of the United States Department of Justice.³⁰

22. A similar situation exists regarding the civil penalties for violations of sanctions regimes. In particular, the total amount of pecuniary penalties following settlement agreements with the Office of Foreign Assets Control for alleged violations of United States sanctions regimes, only for the first semester of 2023, was more than \$556 million;³¹ in 2022, that figure stood at \$42.7 million.³² The Special Rapporteur admits that businesses usually prefer to reach a settlement rather than challenging the administrative decisions and risking heavier fines and/or criminal prosecution. In particular, Uphold HQ, a money services business based in Larkspur, United States, agreed to pay \$72,230.32 to settle with the Office instead of the statutory maximum civil penalty applicable of \$44,468,494.00.³³ Bittrex, a private company based in Bellevue, United States, that provides online financial services, agreed to pay \$24,280,829.20 to settle its potential civil liability for 116,421 apparent violations of multiple sanctions regulations.³⁴

23. The Special Rapporteur also notes that, to reach a settlement for civil and criminal cases, businesses often have to withdraw completely from the concerned market, to refuse services to designated countries, individuals and entities, and to review and amend business policies, including their internal rules and practices and internal accountability procedures for employees, among others. On 18 August 2010, Barclays, a corporation based in the United Kingdom of Great Britain and Northern Ireland, agreed to pay \$298 million as a part of a settlement agreement in connection with alleged violations of the United States International Emergency Economic Powers Act and the United States Trading with the Enemy Act related to transactions Barclays had conducted on behalf of customers from Cuba, the Islamic Republic of Iran, the Sudan and other countries targeted through sanctions programmes administered by the Office of Foreign Assets Control. The Federal Reserve Board and the New York State Banking Department consent order required Barclays to improve

²⁶ Sibylle Bauer and Mark Bromley, *Detecting, Investigating and Prosecuting Export Control Violations: European Perspectives on Key Challenges and Good Practices* (Solna, Sweden, Stockholm International Peace Research Institute, 2019), pp. 30 and 31.

²⁷ Stewarts, “GIR Guide to Sanctions third edition”; Eurojust, Genocide Network Secretariat, *Prosecution of Sanctions (Restrictive Measures) Violations in National Jurisdictions*; and Süddeutsche Zeitung, “Haft für Verstöße gegen Russland-Embargo”, 4 March 2021.

²⁸ Stewarts, “GIR Guide to Sanctions third edition: EU sanctions enforcement Pt. 3, recent decisions and future of enforcement”, 19 August 2022; and European Union Agency for Criminal Justice Cooperation (Eurojust), Genocide Network Secretariat, *Prosecution of Sanctions (Restrictive Measures) Violations in National Jurisdictions: A Comparative Analysis* (The Hague, 2021), pp. 15–17.

²⁹ Eurojust, Genocide Network Secretariat, *Prosecution of Sanctions (Restrictive Measures) Violations in National Jurisdictions*.

³⁰ www.justice.gov.

³¹ See <https://ofac.treasury.gov/civil-penalties-and-enforcement-information>.

³² See <https://ofac.treasury.gov/civil-penalties-and-enforcement-information/2022-enforcement-information>.

³³ United States, Department of Treasury, Office of Foreign Assets Control, “Settlement agreement between the U.S. Department of the Treasury’s Office of Foreign Assets Control and Uphold HQ Inc.”, 31 March 2023.

³⁴ United States, Department of Treasury, Office of Foreign Assets Control, “Settlement agreement between the U.S. Department of the Treasury’s Office of Foreign Assets Control and Bittrex, Inc.”, 11 October 2022.

its programme for compliance with United States economic sanctions requirements on a global basis.³⁵

24. In 2014, BNP Paribas, a bank registered and organized under the laws of France, agreed to pay \$9 billion for violation of United States sanctions, to terminate or separate from the bank 13 employees and to suspend United States dollar clearing operations through its New York branch for one year for several business lines.³⁶

B. Compliance requirements

25. The Special Rapporteur is alarmed about the rising level of overcompliance due to complex and unclear requirements of due diligence and compliance with sanctions. For example, proof of non-interaction with any of the 12,000 sanctioned entities and individuals on the United States specially designated nationals list is not sufficient to demonstrate compliance, given that the Office of Foreign Assets Control and other United States financial authorities maintain several sanctions lists.³⁷ Moreover, companies are requested to demonstrate the absence of any nexus with a sanctioned country or location, including users' Internet protocol addresses, mailing addresses and other types of user data. Non-compliance with these requirements is qualified as an aggravating factor, resulting in additional penalties.

26. Similarly, the European Union requires businesses to undertake "multilevel due-diligence compliance", including screening against sanctions lists and media searches for both beneficiaries and any other contractual party with ties to a designated person, even if the concerned party is not itself designated.³⁸

27. The Special Rapporteur notes that implementation of the above-mentioned compliance standards may not only exacerbate and encourage overcompliance but also contribute to violation of the due diligence obligations of States and businesses of their nationality (registration, residence, functioning, etc.) and commercial presence under the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.³⁹ Businesses, in particular, are obliged to take measures to prevent human rights violations, at a minimum those expressed in the International Bill of Human Rights and International Labour Organization Declaration on Fundamental Principles and Rights at Work (paras. 11–13). States are to take all necessary measures to ensure that the activity of private businesses under their jurisdiction and control is exercised in full conformity with human rights standards (paras. 3–6).⁴⁰ The Special Rapporteur is concerned that the use of the term "due diligence" by sanctioning States, to ensure maximum implementation of compliance strategies, is contrary to international legal standards and prevents implementation of human rights obligations.

28. The Special Rapporteur aligns herself with the position set out in the International Covenant on Economic, Social and Cultural Rights that failure to ensure

³⁵ Barbara I. Keller, "Enforcement actions for U.S. sanctions violations offer lessons for compliance", Alacra Compliance Primer, No. 3 (2014), p. 7.

³⁶ United States, Department of Treasury, "Settlement Agreement", Compl-2013-193659 (2014); and United States, Department of Justice, Office of Public Affairs, "BNP Paribas agrees to plead guilty and to pay \$8.9 billion for illegally processing financial transactions for countries subject to U.S. economic sanctions", press release, 30 June 2014.

³⁷ United States, Department of Treasury, Office of Foreign Assets Control, Sanctions programs and country information, "Where is OFAC's country list? What countries do I need to worry about in terms of U.S. sanctions?". Available at <https://ofac.treasury.gov/>.

³⁸ See https://finance.ec.europa.eu/system/files/2023-06/faqs-sanctions-russia-circumvention-due-diligence_en.pdf.

³⁹ A/HRC/17/31, annex.

⁴⁰ Ibid., paras. 11–13 and paras. 3–6.

that business conduct does not violate the rights enshrined in the Covenant, and failure to establish mechanisms to prevent such violations, including extraterritorially, constitute violations of the Covenant⁴¹ as a part of the due diligence obligations of States regardless of their form (act or omission).

C. Access to justice and secondary sanctions

29. The Special Rapporteur adheres to the presumption of innocence, right to fair trial and access to justice as the cornerstones for the protection and enjoyment of all other human rights. She believes that expeditious designations of individuals and companies and instituting civil and criminal proceedings for sanctions violations in the absence of proper access to justice, due process and fair trial guarantees all exacerbate overcompliance.

30. Administrative reviews and delisting procedures, when available, may be lengthy with protracted adverse human rights impact for the concerned persons (“[the Office of Foreign Assets Control] typically endeavours to send the first questionnaire within 90 days from the date the petition is received by [the Office]”, with review timing depending upon “a range of factors”).⁴² A lawyer representing a person on the specially designated nationals list should apply for a general licence in order to provide any services, even “if the person making the payment to the lawyer is not listed (such as a friend, family member or other third party); the lawyer must still be licensed to receive payment for acting on behalf of the [specially designated national] because the [specially designated national] has an interest in the services that the lawyer is providing”.⁴³ Moreover, legal costs are reported to start from \$50,000, with the estimated duration of proceedings between two and five years.⁴⁴

31. Moreover, the extraterritorial application of secondary sanctions, civil and criminal cases for circumvention of sanctions regimes results in prosecution for acts often not criminalized in the country of nationality/residence. This raises a range of legal problems, including low standards of proof, difficulties in gaining access to legal support, and in certain cases an absence of legal grounds for extradition.⁴⁵ The Special Rapporteur is alarmed by the risks of misinterpretation of dual criminality tests traditionally used in cases of extradition.⁴⁶ Practitioners refer to the high risk of arbitrary interpretations of alleged circumventions of sanctions which, on a proper analysis, do not constitute any offence,⁴⁷ even under sanctions regulations. In such

⁴¹ General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, paras. 12, 14, 17 and 27; see *Official Records of the Economic and Social Council, 1999, Supplement No. 3 (E/1999/23)*, chap. II, sect. A, p. 43; and Office of the United Nations High Commissioner for Human Rights (OHCHR) and World Health Organization, *The Right to Health*, Fact Sheet No. 31 (Geneva, 2008), pp. 25 and 26.

⁴² United States, Department of Treasury, Office of Foreign Assets Control, Specially Designated National List (SDN List), “Filing a petition for removal from an OFAC list”, para. 4. Available at <https://ofac.treasury.gov/>.

⁴³ Ibid., para. 5.

⁴⁴ Alexander Martin, “US fails in bid to extradite Brit for helping North Korea evade sanctions with cryptocurrency”, *The Record*, 30 September 2022; and Andrew Smith, “Enforcement of financial sanctions and extradition risk”, Corker Binning, 23 January 2023.

⁴⁵ Ibid.

⁴⁶ Reuters, “North Korean appears in U.S. court on sanctions-evasion money-laundering charges”, 22 March 2021; Martin, “US fails in bid to extradite Brit for helping North Korea”; Cristina Gallardo, “US seeks extradition of Brit over Russian sanctions breach”, *Politico*, 11 October 2022; and United States Attorney’s Office, “Five Russian nationals and two oil traders charged in global sanctions evasion and money-laundering scheme”, press release, 19 October 2022.

⁴⁷ Smith, “Enforcement of financial sanctions and extradition risk”.

cases, penalties for alleged unilateral sanctions circumvention, and the designation of individuals as a result of such alleged conduct, violate standards of fair trial, presumption of innocence and the right to not be punished for activities that do not constitute a crime.

D. Proliferation of interpretative non-binding acts

32. The Special Rapporteur notes with concern the proliferation of legal frameworks providing for criminalization of circumvention of unilateral sanctions, criminal penalties, civil liability and secondary sanctions, as well as interpretative acts complementing the existing sanctions regulations, many of which are of unclear nature within national legal systems.

33. In June 2023, the Special Rapporteur expressed her concerns over the European Union Commission's directive proposal, which seeks to harmonize and strengthen the European Union member States' legal framework in addressing assumed or reported incidents of interactions by European Union nationals, individuals or entities with designated individuals or entities, or with entities owned or controlled by designated individuals or entities.⁴⁸ She raised concerns about the risks of growing overcompliance as a result of such an initiative, possible criminalization of interaction with erroneously designated persons, additional pressure on professionals including legal professionals involved in sanctions-related matters, and further possible restrictions in the work of humanitarian actors engaged in countries targeted by unilateral sanctions. She also raised concerns about the possible serious violations of the right to due process and fair trial guarantees, as well as the presumption of innocence, enshrined in international human rights instruments, including articles 14 and 15 of the International Covenant on Civil and Political Rights.

34. On 28 June 2023, the Office of Foreign Assets Control published "Humanitarian assistance and food security fact sheet: Understanding UK and U.S. Sanctions and their Interconnection with Russia" as a joint position with the United Kingdom.⁴⁹ The fact sheet is designed to be used by humanitarian actors, non-governmental organizations, financial institutions and companies involved in agricultural trade or the provision of medical supplies and assistance "when engaging in transactions that may be impacted by sanctions". The Special Rapporteur welcomes the attempted clarity about humanitarian authorizations but notes with regret that, like all such previous documents, the fact sheet neither addresses overcompliance nor provides guarantees for humanitarian actors, while it interprets basic needs narrowly by considering only food and medicine.

35. The Special Rapporteur advocates for effective, comprehensive and unconditional exemptions for humanitarian organizations instead of the existing narrow and often confusing carve-outs regimes, which do not eliminate overcompliance and may discourage humanitarian and other relevant actors in pursuing their life-saving operations out of fear of potential repercussions. Numerous cases received by her mandate have demonstrated that overcompliance with sanctions prevents, delays or makes more costly procurement and deliveries of goods, including humanitarian goods and services, such as food, medicine, medical equipment and spare parts for such equipment, even in emergency situations.⁵⁰

⁴⁸ Communication No. OL OTH 75/2023 of 9 June 2023.

⁴⁹ Available at <https://ofac.treasury.gov/media/931946/download?inline>.

⁵⁰ OHCHR, "Guidance note on overcompliance with unilateral sanctions and its harmful effects on human rights: Special Rapporteur on unilateral coercive measures". Available at www.ohchr.org/en/.

36. The Special Rapporteur is also concerned about the increasing number of non-binding “explanatory” documents developed and disseminated by competent authorities of sanctioning States, which may influence decisions and policies. Despite their de jure non-binding nature, their provisions are applied as binding and normative.⁵¹ For instance, in a criminal case against a United States citizen who sent more than \$10 million in cryptocurrency from an American cryptoexchange to a user account in a country sanctioned by the United States, the court judge explained his decision by acknowledging that virtual currency may not be subject to United States sanctions owing the absence of any ties with national jurisdictions, but that Office of Foreign Assets Control practice “requires federal courts to find otherwise”.⁵² It potentially raises the issues of normative control, due review of such non-binding documents and redress in case of violations, and may undermine the rule of law given the potential human rights violations emanating from inconsistencies in the interpretation of these documents.

37. On 2 May 2019, the Office of Foreign Assets Control published its framework for compliance commitments in order to offer guidance on compliance with sanctions to entities subject to United States jurisdiction, as well as foreign entities that conduct business in or with the United States or its citizens, or that use goods or services exported from the United States.⁵³ In addition to this framework, the Office issued compliance communiqués,⁵⁴ which are recommendatory in nature. However, these documents refer to businesses’ obligations to comply with “[the Office’s] baseline expectations”. Further complexity on business conduct is added through the United States Department of Justice’s guidance to federal prosecutors in their criminal actions against corporations and their assessment of corporate compliance.⁵⁵ In addition, similar documents are developed and adopted by other United States institutions in the form of alerts, readouts, questions and answers and others.⁵⁶ At the same time, certain regulations are reissued with “additional interpretive guidance and definitions ... and other regulatory provisions that provide further guidance to the public”.⁵⁷

38. In the European Union, sanctions-related regulations (legal acts) are supplemented with a wide range of interpretive and recommendatory “documents and tools”, which “must be read in combination”.⁵⁸ The European Commission’s “guidance note on the provision of humanitarian aid in compliance with European Union restrictive measures (sanctions)” of 30 June 2022 lists “the most relevant guidance documents”, including guidance, questions and answers, frequently asked

⁵¹ See United States, Department of Justice, Office of Foreign Assets Control, “Sanctions compliance guidance for instant payment systems: settlement agreement between OFAC and Tango Card, Inc. – issuance of Libyan sanctions regulations”, 30 September 2022.

⁵² Spencer S. Hsu, “U.S. issues charges in first criminal cryptocurrency sanctions case”, *The Washington Post*, 16 May 2022; and Farhad Alavi, “US Department of Justice can pursue criminal charges for sanctions evasion by cryptocurrency, court rules”, *Akrivis*, 21 May 2022.

⁵³ See <https://ofac.treasury.gov/media/931556/download?inline>.

⁵⁴ See <https://ofac.treasury.gov/media/928316/download?inline>.

⁵⁵ United States, Department of Justice, Criminal Division, “Evaluation of corporate compliance programs”, 1 June 2020 (updated March 2023).

⁵⁶ United States, Department of Treasury, Financial Crimes Enforcement Network, “Supplemental alert: FinCEN and the U.S. Department of Commerce’s Bureau of Industry and Security urge continued vigilance for potential Russian export control evasion attempts”, FIN-2023-Alert004, 19 May 2023.

⁵⁷ United States, Department of Justice, Office of Foreign Assets Control, “Sanctions compliance guidance for instant payment systems”.

⁵⁸ European Commission, “Commission guidance note on the provision of humanitarian aid in compliance with EU restrictive measures (sanctions)” (Brussels, 2022).

questions, etc.⁵⁹ The guidance note includes a non-exhaustive checklist concerning points that humanitarian operators should consider when carrying out due diligence for sanctions compliance, involving binding and non-binding sources, which are ultimately all recommended to be followed in combination, without offering any advice about the approach.

39. The Special Rapporteur is concerned about the proliferation, scope and technicality of documents, the complicated legalistic terms, combined with confusing non-legal terms such as “expectations”, “interpretations”, “behavioural red flags” and “potential red flags indicators”,⁶⁰ as well as terms that are approximative and need further clarity (such as “most relevant”, “non exhaustive” requirements, that “must be read in combination”), all of which may exacerbate uncertainty and result in inconsistent application and enforcement. For example, recent regulations contained in the European Union’s sanctions regimes prohibiting the entry of international transport vehicles registered in Belarus and the Russian Federation have reportedly been misinterpreted by authorities in certain European Union member States, with serious implications for Russian and Belarussian nationals with private vehicles entering these countries.⁶¹

40. There is no established legal mechanism to challenge the legality of these interpretative documents and the scope of their enforcement. All of this moves the current sanctions regimes into a “grey zone” with an absence of accountability.

IV. Expanding effects of secondary sanctions and of overcompliance

A. Affected actors

41. The Special Rapporteur underlines the compounded impact of overcompliance by different actors, such as States, businesses, financial institutions, civil society organizations and humanitarian actors, who choose to cut ties with sanctioned countries out of fear of repercussions, even for otherwise authorized activities,⁶² with

⁵⁹ European Commission, Directorate-General for Financial Stability, Financial Services and Capital Markets Union, “Sanctions: Commission guidance note on the provision of humanitarian aid in compliance with EU restrictive measures”, 30 June 2022; European Commission, “Commission frequently asked questions on EU restrictive measures in Syria” (September 2017); European Commission, “Commission publishes guidance on key provisions of EU Global Human Rights Sanctions Regime”, press release, 18 December 2020; European Commission, “Guidance on the implementation of specific provisions of Council regulation (EU) No. 401/2013 concerning restrictive measures in view of the situation in Myanmar/Burma”, press release, 11 May 2021; European Commission, “Commission opinion, of 8 June 2021, on article 2 (2) of Council regulation (EU) No. 269/2014” (Brussels, 2021); European Commission, European Union and the world, Sanctions (restrictive measures), Sanctions adopted following Russia’s military aggression against Ukraine, “Frequently asked questions concerning sanctions adopted following Russia’s military aggression against Ukraine and Belarus’ involvement in it”. Available at <https://finance.ec.europa.eu/eu-and-world/>; and European Commission, “Q&A due diligence on restrictive measures for EU businesses dealing with Iran”. Available at <https://finance.ec.europa.eu/>.

⁶⁰ United States, Financial Crimes Enforcement Network, “FinCEN and the United States Department of Commerce’s Bureau of Industry and Security urge increased vigilance for potential Russian and Belarusian export control evasion attempts”, 28 June 2022.

⁶¹ Russia Today, “Germany seizing private Russian cars: RBK”, 2 July 2023.

⁶² OHCHR, “Over-compliance with secondary sanctions adversely impacts human rights of millions globally: UN expert”, press release, 14 September 2022.

strong national, regional and international implications.⁶³ In particular, the European Union, being a sponsor of sanctions itself, has highlighted the devastating effects of the United States embargo over Cuba on European Union economic interests, and on European Union citizens' and businesses' economic and commercial relations with Cuba, due to their extraterritorial application "in violation of commonly accepted rules of international trade", including obligations of the World Trade Organization (WTO).⁶⁴

42. Businesses often refer to the "chilling effects" of sanctions⁶⁵ and their reluctance to engage in transactions (including of a humanitarian character) due to the fear of severe penalties, possible restrictions or prohibitions in gaining access to the financial system, trade routes and markets of sanctioning countries and their partners.

43. The Special Rapporteur received accounts from foreign companies and banks that had suspended their activities in Zimbabwe, including 87 correspondent banks, by divesting themselves from their interests and moving funds out of the country shortly after the Zimbabwe Democracy and Economic Recovery Act was passed by the United States Congress in 2001. Currently, only a handful of financial institutions are allowed to act as correspondents (6 out of 27 commercial banks).⁶⁶ In the Bolivarian Republic of Venezuela, businesses have left the market, as is the case of Uphold, a digital asset trading platform that announced its withdrawal from the Bolivarian Republic of Venezuela owing to the reported increasing complexity in complying with United States sanctions.

44. The Special Rapporteur also notes with concern the growing enforcement of United States sanctions regimes on payments in United States dollars, and enhanced control through United States correspondent banks that are either registered and operate in the United States or have shareholders who are nationals of the United States. It creates reputational risks for companies and nationals, preventing them from opening or holding bank accounts. In particular, the Office of Foreign Assets Control imposed large fines of up to \$3.8 billion on various banks in Zimbabwe for alleged circumvention of sanctions and seized \$ 4.1 million from a public agency focusing on industrial investments. It has affected the ability of Zimbabwe banks to perform international transactions, on behalf of both public and private actors,⁶⁷ and has blocked their access to credit lines and insurance services. Restrictive measures against Zimbabwe have also blocked access to the United States dollar, and, given the dollar's status as the global primary reserve and payment currency, they have caused the de facto exclusion of Zimbabwe from the global market.

45. The Special Rapporteur states with regret that overcompliance undermines international cooperation with serious adverse effects not only on the socioeconomic situation in the sanctioned countries but also with broader regional implications involving countries that are not directly targeted by sanctions. Overcompliance disrupts and reshapes supply chains, affects trade routes and established economic relations, including for essential goods, and exacerbates the negative effects of primary unilateral sanctions violating all human rights, including the inalienable right to development.

⁶³ United Nations, "Adopting annual resolution, delegates in General Assembly urge immediate repeal of embargo on Cuba, especially amid mounting global food, fuel crises", press release, 3 November 2022; and European Union, "EU explanation of vote: UN General Assembly resolution on the embargo imposed by the USA against Cuba", 3 November 2022.

⁶⁴ European Union, "EU explanation of vote".

⁶⁵ Ioannis Prezas, "From targeted states to affected populations: exploring accountability for the negative impact of comprehensive unilateral sanctions on human rights", in *Research Handbook on Unilateral and Extraterritorial Sanctions*, Charlotte Beaucillon, ed. (Cheltenham, United Kingdom; Northampton, Massachusetts, United States, Edward Elgar Publishing, 2021), p. 388.

⁶⁶ [A/HRC/51/33/Add.2](#).

⁶⁷ Ibid.

B. Secondary sanctions, overcompliance and access to food

46. Despite the formal existence in many sanctions regimes of humanitarian carve-outs with regards to food, access to and delivery of food is severely affected by secondary sanctions and overcompliance, thus violating the right of everyone to be free from hunger and “to ensure an equitable distribution of world food supplies in relation to need”.⁶⁸ In its general comment No. 12, the Committee on Economic, Social and Cultural Rights holds that the right to adequate food shall include at least access to minimum package of calories, proteins and other specific nutrients in “quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture”.⁶⁹ In practice, however, sanctions pose serious challenges in the effective delivery of food, even in emergency situations, owing to financial and payment restrictions, or overcompliance by different actors in the supply chain (producers or transport and insurance companies, among others).

47. Limited access to foreign currencies and international food markets has significantly reduced the availability of food commodities and machinery for agricultural production in Cuba. Even the implementation of food programmes by United Nations agencies is reported to be hampered by rising costs for imports, cancellations of maritime transport contracts and delays in deliveries of goods, or rejections and delays of banking transactions to and from suppliers. Furthermore, restrictions imposed on Cuban businesses to trade in United States dollars and other currencies hinder payments for certifications of Cuban products, while the impossibility for suppliers to deliver products to Cuba purchased from United States companies results in rising procurement costs via alternative routes.⁷⁰

48. In particular, powdered milk delivery by the United Nations Children’s Fund (UNICEF) took several months in 2022.⁷¹ The shipping companies have reduced their capacity and the volume of goods transported to Cuba. Similarly, only 9 of 518 requests by the agricultural sector of Cuba in international market for tractors, engines, batteries, forklifts and spare parts for agricultural machinery were approved in 2022 owing to the “fear to be punished”.⁷² Food security is still fragile in the country, despite various national mitigation efforts.

49. Furthermore, the Special Rapporteur is concerned at the conduct of certain transportation companies and banks in response to the United States and other unilateral sanctions relating to Belarusian potash. On 1 February 2022, the Government of Lithuania decided to block the transit of Belarussian potash fertilizers through its territory and declared transport contracts void, highlighting the risks of Lithuanian railways being targeted by United States secondary sanctions.⁷³

50. The unilateral decision by the Government of Lithuania to impede the transport of Belarussian potash fertilizers (20 per cent of the global potash fertilizer production comes from Belarus) is a result of the current enforcement of restrictive measures against Belarus, which may have serious adverse effects on agricultural production in

⁶⁸ International Covenant on Economic, Social and Cultural Rights, art. 11.

⁶⁹ Committee on Economic, Social and Cultural Rights, general comment No. 12 (1999) on the right to adequate food, paras. 6 and 8.

⁷⁰ [A/75/81](#).

⁷¹ United Nations Children’s Fund, “UNICEF Cuba continues support in response to the health emergency”, 29 March 2022.

⁷² France 24 English, “Cuba embargo: why does the US continue to reject UN moves to end it?”, video, 2 November 2022.

⁷³ Erika Alonderytė, “Lithuanian railways risk falling under US sanctions for transporting Belarusian cargo: PM”, LRT, 21 December 2021.

countries using them, with consequent food price hikes and food insecurity.⁷⁴ The Special Rapporteur notes the recent observation by the Committee on Economic, Social and Cultural Rights that measures taken by Lithuania that have prevented the transportation of potash from Belarus destined for third countries in Africa and Latin America have led to a shortage of fertilizers and adversely affected food security in those countries, and she echoes the Committee's recommendation calling on Lithuania to review such measures.⁷⁵

C. Secondary sanctions and overcompliance regarding medicines and medical equipment

51. The Special Rapporteur is also alarmed by the growing impact of overcompliance on the right to health, although medicine and medical goods alongside food are formally exempted from unilateral sanctions regimes. She notes that overcompliance by the private sector prevents access to medicine even in the absence of comprehensive or sectoral sanctions (Zimbabwe)⁷⁶ resulting in the shortage or complete lack of life-saving medicines and treatment, late diagnostics, lower quality of medication,⁷⁷ rising mortality rates, reduced life expectancy due to the impediments in delivery or payment, as well as total the withdrawal of medical and pharmaceutical companies from sanctioned countries. Even if they are unintended, these consequences constitute blatant violations of the right to the highest attainable level of health and, in many cases, of the right to life,⁷⁸ which are compounded by businesses' fears of inadvertent violations of unilateral sanctions regimes.

52. In the Bolivarian Republic of Venezuela, within a year of the adoption of the United States Presidential Executive Order 13692, more than a half of foreign pharmaceutical companies left the country (Bayer, Sanofi, Novartis, Janssen, Astra Zéneca, Glaxo, Boehringer, Merck, Servier, Galderma, Novonosdisk, Grunenthal, Abbvie Bristol, Roche and Lundbeck). In the Syrian Arab Republic, the pharmaceutical sector has greatly shrunk since 2011. Furthermore, since the adoption of the Caesar Act in 2019, medical production and imports have halted "due to import bans, technological bans, and banking difficulties".

53. The Special Rapporteur is alarmed by the growing number of reported cases of refusals by pharmaceutical companies to deliver medicine, medical equipment, spare parts, technology or post-sale services to sanctioned countries, breaking decades-long contracts. She also notes the challenges banks face in the countries under sanctions to acquire letters of credit and to perform payments for medical imports, and refusals by delivery and insurance companies,⁷⁹ thus obliging sanctioned countries and their entities to find riskier and costlier alternative procurement routes, with possible adverse impacts on the quality of the procured medical goods,⁸⁰ including due to non-observance of storage conditions for sensitive medicines and vaccines. It was reported that, in early 2022, owing to the ongoing United States embargo against Cuba, the Dutch multinational bank Internationale Nederlanden Groep decided to block all donations intended to be sent to Cuba by an international delegation as part

⁷⁴ See communication LTU 1/2022 of 4 May 2022.

⁷⁵ [E/C.12/LTU/CO/3](#), paras. 20 and 21.

⁷⁶ [A/HRC/51/33/Add.2](#), para. 38.

⁷⁷ Federico Germani and others, "Economic sanctions, healthcare and the right to health", *BMJ Global Health*, vol. 7, No. 7 (2022).

⁷⁸ [A/HRC/54/23](#).

⁷⁹ Dahlia Nehme, "Syria sanctions indirectly hit children's cancer treatment", Reuters, 15 March 2017.

⁸⁰ [A/HRC/54/23](#) and [A/HRC/54/23/Add.1](#).

of an initiative to support access to vaccines against the coronavirus disease (COVID-19) pandemic worldwide.⁸¹

54. Similarly, unilateral sanctions and overcompliance prevent countries from implementing emergency response plans, including in the context of the COVID-19 pandemic. Cuban producers, in particular, have reported on vaccine productions challenges due to overcompliance by banks and the refusal by foreign businesses to continue deliveries of raw material and medical equipment,⁸² especially those containing 10 per cent or more United States components, reportedly resulting in disruptions in various operations, including inputs, reagents, spare parts and filtration material deliveries.⁸³

D. Secondary sanctions and overcompliance in education

55. Sanctions and overcompliance also touch upon the right to education. They have horizontal and indiscriminate impacts on school and university students, academics, teachers and education professionals through the discontinuation of academic programmes, travel restrictions, access restrictions to training material, textbooks and school supplies,⁸⁴ as well as to online databases due to Internet protocol address blocks.⁸⁵ Other cases involve refusals or the inability to process payments of academic fees and memberships to academic and scientific associations, refusals to consider for peer review or editorial processes articles by authors from sanctioned countries,⁸⁶ the removal of academics from sanctioned countries from editorial boards of scientific journals or the reluctance by scholars from sanctioning countries to engage with institutions from countries under sanctions due to reputational fear, with consequent other possible implications.

56. She also notes that overcompliance in this area also occurs due to the practice of direct designation of educational institutions of sanctioned countries, with the purpose of exercising pressure on specific sectors benefiting from scientific research. In 2023, five educational institutions based in the Russian Federation were “designated pursuant to Executive Order 14024 for operating or having operated in the technology sector of the Russian Federation economy” in order to “target training grounds for Russia’s future energy specialists”.⁸⁷

57. Similarly, overcompliance hinders even operational capabilities of international organizations operating in the field of education with projects in sanctioned countries. For example, the United Nations Educational, Scientific and Cultural Organization (UNESCO) in Cuba faces delays for bank transfers, the procurement of goods and

⁸¹ Ed Augustin, “‘Living through a war’: in Cuba, a race to vaccinate as COVID surges”, NBC News, 10 August 2021.

⁸² Ibid.

⁸³ Cuba, Ministry of Foreign Affairs, “Cuba’s report on resolution 75/289 of the United Nations General Assembly entitled ‘Necessity of ending the economic, commercial and financial blockade imposed by the United States of America against Cuba’”, 19 October 2022; and Cuba Solidarity Campaign, “Cuba blames sanctions for the delay in WHO authorisation of its COVID-19 vaccine”, 16 January 2023.

⁸⁴ Spokesman of the Ministry of Education of Cuba reported to spend USD 1,245,000 USD to cover extra shipping costs of the materials and supplies Cuba needs to maintain educational system (Yenia Silva Correa, “Damage caused by the U.S. blockade to education in Cuba”, *Granma* (Havana), 28 September 2016).

⁸⁵ [A/HRC/51/33/Add.1](#), para. 57; [A/HRC/48/59/Add.2](#), para. 73; and [A/HRC/51/33/Add.2](#), para. 86.

⁸⁶ Communication Nos. AL USA 9/2022; AL OTH 37/2022; AL OTH 38/2022; AL OTH 39/2022; and AL OTH 40/2022.

⁸⁷ United States, Department of Treasury, “With over 300 sanctions, U.S. targets Russia’s circumvention and evasion, military-industrial supply chains, and future energy revenues”, press release, 19 May 2023.

services, and applications for licenses for online tools and software, even for the performance of its own activities. Some of the companies with which UNESCO has signed long-term agreements in an effort to lower prices are prevented from bidding in Cuba. In addition, due to the unavailability of the United States market, UNESCO in Cuba is obliged to pay higher freight costs for shipping from remote locations. Obstacles in the procurement of new technologies and equipment are reported to increase the cost of Internet services on the island, while constituting a barrier to gaining access to information and knowledge.⁸⁸

58. The Special Rapporteur notes with regret that overcompliance with unilateral sanctions restricting academic and scientific research violates a broad scope of human rights, including access to information, freedom of expression, rights to education and to benefit from scientific progress,⁸⁹ as well as the right to development.

V. “Creeping” extraterritorial jurisdiction and overcompliance

59. The Special Rapporteur notes with a serious concern a “creeping” character of extraterritorial jurisdiction in the enforcement of secondary sanctions. The grounds for extraterritorial application are overstretched, indirectly connected to the subject matter or a person and interpreted deliberately to expand the scope of primary sanctions and force overcompliance. Creeping extraterritorial jurisdiction obliges foreign businesses with a slight financial or operational nexus to targeted States or entities to terminate any relations in order to avoid allegations of sanctions circumvention.

60. “Extraterritoriality” in sanctions enforcement extends States’ jurisdiction with respect to persons, property or activity beyond their territory. Even sanctioning countries admit that the practice of extraterritoriality violates international law and that the concept of extraterritoriality with regards to sanctions raises questions of compatibility with international law, including international human rights law.

61. The Special Rapporteur recalls the position of the dispute settlement body of the predecessor to WTO, the General Agreement on Tariffs and Trade (GATT), which had found that “embargoes such as the one imposed by the United States, independent of whether or not they were justified under Article XXI, run counter to basic aims of the GATT, namely to foster non-discriminatory and open trade policies, to further the development of the less-developed contracting parties and to reduce uncertainty in trade relations”.⁹⁰ Bilateral treaties and other specific international rules may also be under threat.⁹¹ The attempt to set a low threshold for having a “substantial” connection to the territory (substantial territorial nexus approach) is not supported outside the United States.

62. By adopting a broad geographic approach in the enforcement of sanctions regulations, the Office of Foreign Assets Control issues a number of penalties for prohibited activities linked to presumed United States nexuses, including: (a) a foreign branch of a United States bank;⁹² (b) United States dollars as the main transaction currency or any other transactions in United States dollars or clearance

⁸⁸ A/73/85.

⁸⁹ See, for example, Wiley, “Editorial office guidelines for applying international sanctions”.

⁹⁰ General Agreement on Tariffs and Trade, United States: trade measures affecting Nicaragua – report by the Panel, document L/6053, para. 5.16.

⁹¹ Mathias Audit, «Sanctions contre BNP Paribas: l’extraterritorialité du droit américain est-elle conforme au droit international?», *Les Echos*, 25 June 2014.

⁹² United States, Department of Treasury, Office of Foreign Assets Control, “Settlement Agreement between the U.S. Department of the Treasury’s Office of Foreign Assets Control and Essentra FZE Company Limited”, 16 July 2020.

processes through United States financial institutions;⁹³ (c) United States information technology infrastructure;⁹⁴ and (d) United States-origin goods (in addition to United States export controls).⁹⁵

63. For example, the British Arab Commercial Bank (BACB), which has no offices, business or presence under United States jurisdiction, was found liable for 72 violations of the United States Sudanese sanctions regulations for an amount of \$190,700,000.⁹⁶ The Office of Foreign Assets Control expects non-United States institutions, like BACB, to ensure that their financial transactions in United States dollars involving the United States financial system, including those undertaken through other non-United States banking partners, to comply with the United States sanctions regulations. The United States authorities launched an investigation on BACB for conducting transactions with the Sudan using an account at another non-United States bank funded through two other non-United States banks, which transacted with United States-based banks or United States branches of non-United States banks.⁹⁷

64. Société Internationale de Télécommunications Aéronautiques (or “SITA”), a global information technology services provider for the civilian air transportation industry, agreed to pay \$7,829,640 to settle its potential civil liability for 9,256 apparent violations of the global terrorism sanctions regulations.⁹⁸ It is jointly owned by approximately 400 companies, including the largest international airlines, and owners previously included Mahan Air and Caspian Air, both of the Islamic Republic of Iran, as well as the Syrian Arab Republic-based Syrian Arab Airlines. The Office of Foreign Assets Control penalized SITA for providing services to those three airlines/owners, as well as two other airlines with links to the Islamic Republic of Iran.

65. Like many non-United States companies, SITA could have provided services to the sanctioned airlines without running afoul of United States law. The grounds for the investigation by United States authorities was “the location of computing resources” the company used to deliver services to the sanctioned airlines, as the main online management systems were hosted on United States servers. Other reasons included the use of United States-origin software for managing check-in, baggage and other airline processes that SITA provided to or for the benefit of the sanctioned airlines, although the Office of Foreign Assets Control penalty announcement is unclear on exactly how SITA procured and delivered the software. The Office has thus prohibited the use of United States servers for non-United States business with sanctioned countries and persons. However, recent cases (e.g. case against SITA)⁹⁹ represent a new frontier of extraterritorial jurisdiction and cover foreign information technology companies. SITA became the first non-United States information

⁹³ United States, Department of Treasury, Office of Foreign Assets Control, “Settlement Agreement between the U.S. Department of the Treasury’s Office of Foreign Assets Control and National Commercial Bank”, 28 December 2020.

⁹⁴ United States, Department of Treasury, Office of Foreign Assets Control, “Settlement Agreement between the U.S. Department of the Treasury’s Office of Foreign Assets Control and Société Internationale de Télécommunications Aéronautiques SCRL”, 26 February 2020.

⁹⁵ United States, Department of Treasury, Office of Foreign Assets Control, “Settlement Agreement between the U.S. Department of the Treasury’s Office of Foreign Assets Control and Berkshire Hathaway, Inc.”, 20 October 2020.

⁹⁶ United States, Department of Treasury, Office of Foreign Assets Control, “Settlement Agreement between the U.S. Department of the Treasury’s Office of Foreign Assets Control and British Arab Commercial Bank plc”, 17 September 2019.

⁹⁷ Meredith Rathbone and Peter Jeydel, “OFAC’s case against British Arab Commercial Bank and Offshore use of the US dollar”, 7 October 2019.

⁹⁸ United States, Department of Treasury, Office of Foreign Assets Control, “Settlement Agreement between the U.S. Department of the Treasury’s Office of Foreign Assets Control and Société Internationale de Télécommunications Aéronautiques SCRL”.

⁹⁹ Ibid.

technology company to be penalized by the Office for “routing” otherwise lawful transactions through United States computer servers.

66. The enforcement of sanctions regulations also targets United States parent companies with foreign subsidiaries, which are held liable for sanctions violations allegedly perpetrated by their foreign subsidiaries. For example, the United States company Berkshire Hathaway settled with the Office of Foreign Assets Control for \$4.1 million after one of its Turkish subsidiaries sold cutting tools to the Islamic Republic of Iran, while the United States company Keysight¹⁰⁰ settled with the Office for \$470,000 after its Finnish subsidiary sold mobile network test equipment to the Islamic Republic of Iran.

67. The Special Rapporteur has repeatedly stressed¹⁰¹ that such extraterritorial policies affect a broad scope of human rights, including labour rights, the freedom of movement and the rights of foreign individuals who may be associated with concerned and targeted companies, the rights to property as well as civil and political rights, especially the right to due process and fair trial guarantees (International Covenant on Civil and Political Rights, arts. 14 and 15). None of the above-mentioned or similar grounds may establish any jurisdiction of the sanctioning State, in the absence of a legitimizing link to a territory (territorial jurisdiction), nationals (personal jurisdiction) or universal jurisdiction.

VI. Humanitarian carve-outs

68. The Special Rapporteur is alarmed about the reported inefficacy of humanitarian carve-outs in unilateral sanctions regimes. Their ineffectiveness was recognized by the Committee on Economic, Social and Cultural Rights already in 1997 in its general comment No. 8 (1997) as not having the expected positive effects and not providing for the unhindered flow of essential goods and services destined for humanitarian purposes, even in relation to the sanctions of the Security Council.¹⁰² She echoes the Secretary-General report of 1996 on the ambiguous character of humanitarian exemptions providing for a broad possibility for arbitrarily and inconsistent interpretation, causing delays, confusion and denial of requests to import essential humanitarian goods, leading to resource shortages in the targeted by sanctions countries.¹⁰³

69. The Special Rapporteur notes with concern that the specifics of unilateral sanctions, growing overcompliance by banks, businesses, donors and other actors make humanitarian carve-outs ineffective and inefficient owing to administrative and operational obstacles, with adverse effects on the procurement and delivery of goods that are explicitly exempted from sanctions regimes.¹⁰⁴ Humanitarian organizations report that “overcompliance can prevent, delay, or increase the costs of purchase and shipments of humanitarian goods to sanctioned countries required for the provision of humanitarian assistance, which in turn can pose serious consequences for those in need”.¹⁰⁵ In post-earthquake Syrian Arab Republic, they refer to sanctions-induced

¹⁰⁰ United States, Department of Treasury, Office of Foreign Assets Control, “Settlement Agreement between the U.S. Department of the Treasury’s Office of Foreign Assets Control and Keysight Technologies, Inc.”, 24 September 2020.

¹⁰¹ OHCHR, “United States: efforts to use sanctions to expand jurisdiction abroad violate human rights says UN expert”, press release, 9 March 2023.

¹⁰² General comment No. 8 (1997) on the relationship between economic sanctions and respect for economic, social and cultural rights, paras. 3–5.

¹⁰³ [A/51/306](#).

¹⁰⁴ Caritas Internationalis and Geneva Graduate Institute, *Assessing the Impact of Sanctions on Humanitarian Work* (December 2022), pp. 15 and 16.

¹⁰⁵ *Ibid.*, p. 16.

difficulties “to access essential goods, leading to reduced funding for aid organizations, restricting travel and movement, increasing bureaucratic hurdles, and more generally, impeding economic activity”.¹⁰⁶

70. It is reported that overcompliance with unilateral sanctions prevents, delays or makes more costly the purchase and shipment to sanctioned countries of goods, including humanitarian goods and services such as essential food, medicine, medical equipment and spare parts for such equipment, even when the goods are not under sanctions lists or are exempted from sanctions regimes, and even when the need is urgent and if they are of a life-saving nature.¹⁰⁷ The detrimental effects of overcompliance prevents, therefore, even exempted goods, such as food and medicines, from reaching people in need.¹⁰⁸

71. The Special Rapporteur is also concerned that even the wording in the documents of humanitarian carve-outs, as well as structural and administrative challenges, undermine their humanitarian purpose, maintaining a sense of uncertainty and fear about the real scope of sanctions-related prohibitions and enforcement, and thus exacerbating overcompliance. The reported challenges include: (a) unclear, overlapping, confusing and complicated sanctions regulations; (b) complexity of terms and confusing procedures for granting licences for humanitarian operations in accordance with existing humanitarian exceptions, exemptions or derogations;¹⁰⁹ (c) requirements for multiple licences for a sole humanitarian activity or good;¹¹⁰ (d) serious delays in processing licence applications (up to 1–1.5 years);¹¹¹ (e) cumbersome legal fees for regulatory interpretation and legal support; (f) requirement for humanitarian actors to prove the humanitarian character of their activities (burden of proof);¹¹² (g) impossibility to deliver medical goods even with licences received in the face of banking, financial, insurance and delivery sanctions; (h) embargo on delivery of dual use goods (including toothpaste, water purifying reagents, laboratory equipment and radioisotopes used for radio medicine for diagnosis and the treatment of specific diseases);¹¹³ and (i) absence of mechanisms for the protection of humanitarian actors in their efforts to pursue their principled humanitarian work. These challenges have reportedly shifted humanitarian work from the “needs assessment” to “risk assessment”.¹¹⁴

72. Multiple reports refer to the challenges humanitarian actors faced, even in emergency situations, for the delivery of life-saving medicine, vaccinations, laboratory tests, equipment and software to combat the COVID-19 pandemic¹¹⁵ or dengue fever (Cuba), to procure raw materials and equipment for COVID-19 vaccine manufacturing (Cuba)¹¹⁶ or to pay for the COVAX mechanism (Iran (Islamic Republic

¹⁰⁶ Human Rights Watch, “Questions and answers: how sanctions affect the humanitarian response in Syria”, 22 June 2023.

¹⁰⁷ OHCHR, “Guidance note on overcompliance with unilateral sanctions and its harmful effects on human rights”.

¹⁰⁸ [A/74/65](#), para. 45.

¹⁰⁹ Communication No. AL USA 21/2022.

¹¹⁰ [A/HRC/54/23/Add.1](#), para. 51.

¹¹¹ *Ibid.*, para. 54.

¹¹² Communication No. AL USA 21/2022; and European Commission, “Commission guidance note on the provision of humanitarian aid in compliance with EU restrictive measures (sanctions)”, paras. 3.9 and 3.10.

¹¹³ Submission by the Gujarat National Law University Student Research Development Council; and International Atomic Energy Agency, “IAEA Director General’s introductory statement to the Board of Governors”, 14 September 2020.

¹¹⁴ Human Rights Watch, “Put people’s rights first in Syria sanctions”, 22 June 2023.

¹¹⁵ [A/75/209](#).

¹¹⁶ Cuba, Ministry of Foreign Affairs, “Cuba’s report on resolution [75/289](#) of the United Nations General Assembly”.

of) and Venezuela (Bolivarian Republic of)).¹¹⁷ Recovery from natural disasters, such as Hurricane Ian in Cuba in 2022 or the earthquakes in the Syrian Arab Republic and Türkiye in 2023, has been severely undermined by sanctions and overcompliance. Procurement and delivery of equipment, material or services is more costly, as foreign companies recoup the risk of circumventing United States sanctions by raising prices, on top of the various sanctions-induced logistical and financial obstacles.¹¹⁸ Despite the international community's expressed support to the survivors of the earthquakes in the Syrian Arab Republic, in a country whose peoples have experienced immense human suffering as a result of the 12-year conflict with a catastrophic impact on the right to life, health, housing, access to water, freedom from torture and many others,¹¹⁹ the temporary humanitarian exemptions for the earthquake relief efforts decided by the United States,¹²⁰ the European Union¹²¹ and the United Kingdom¹²² through the adoption of general licences have reportedly not been able to address persisting excessive de-risking by banks, money service providers and other businesses. At the same time, the explicit distinction between the permitted "earthquake relief" on the one hand and the prohibited reconstruction on the other has maintained uncertainty about the scope and nature of the permitted humanitarian assistance, and complicated administrative procedures with competent authorities, and has caused serious delays in the delivery of life-saving assistance, and discouraged those humanitarian operators who did not have the human and financial resources to navigate and interpret the provisions of these general licences and temporary exemptions from undertaking their humanitarian work in such critical circumstances. In addition, these time-bound general licences do not include any guarantees for humanitarian actors to protect them against any liability related to their humanitarian work, including with regards to secondary sanctions. Reports by civil society in the second and third quarters of 2023 indicate that banks outside the Syrian Arab Republic were still blocking most Syrian Arab Republic-related transactions.¹²³

VII. Conclusions and recommendations

A. Conclusions

73. The Special Rapporteur maintains a principled position that the overwhelming majority of unilateral sanctions do not correspond to the criteria of sanctions' legality

¹¹⁷ Cuba, Ministry of Foreign Affairs, "Cuba's report on resolution 75/289 of the United Nations General Assembly"; A/75/209, paras. 37 and 38, 49–57; Isabella Oliver and Mariakarla Nodarse Venancio, "Understanding the failure of the U.S. embargo on Cuba", Washington Office on Latin America, 4 February 2022; and Augustin, "Living through a war".

¹¹⁸ Mikael Wolfe, "Hurricane Ian highlights the devastating effects of the U.S. blockade on Cuba", North American Congress on Latin America, 15 November 2022.

¹¹⁹ See OHCHR, "UN expert calls for lifting of long-lasting unilateral sanctions 'suffocating' Syrian people", 10 November 2022; Syrian Arab News Agency, "Syrian Arab Red Crescent calls for lifting siege on Syria to support rescue efforts", 7 February 2023; Al Mayadeen English, "Middle East Council of Churches: lift sanctions off Syria immediately", 6 February 2023; and American-Arab Anti-Discrimination Committee, "ADC calls on lifting sanctions to allow aid into Syria", 6 February 2023.

¹²⁰ United States, Department of Treasury, Office of Foreign Assets Control, "General License No. 23 on authorizing transactions related to earthquake relief efforts in Syria", Syrian Sanctions Regulations 31 CFR part 542, 9 February 2023.

¹²¹ Council Regulation (EU) 2023/407 amending Regulation (EU) No. 36/2012 concerning restrictive measures in view of the situation in Syria (*Official Journal of the European Union*, L 56 I, 23 February 2023), pp. 1–3.

¹²² United Kingdom, Office of Financial Sanctions Implementation, General Licence INT/2023/2711256.

¹²³ See Human Rights Watch, "Put people's rights first in Syria sanctions".

and therefore constitute unilateral coercive measures condemned in multiple resolutions of the General Assembly and the Human Rights Council. She expresses serious concerns about the compounding effects of secondary sanctions, civil and criminal penalties for alleged circumvention of unilateral sanctions regimes and consequent overcompliance, which have a comprehensive worldwide negative humanitarian impact, affecting a broad range of the human rights of peoples living in countries under any types of sanctions (including targeted ones), in particular those in vulnerable situations, while also disrupting commercial relations and cooperation with those countries, with broader regional implications. In addition, it is important to mention that such measures also affect nationals of sanctioning countries, as well as third-country nationals.

74. The Special Rapporteur notes the growing tendency of businesses to resort to overcompliance due to increasing enforcement of secondary sanctions, and criminal and civil penalties for alleged violations of sanctions regimes, all of which result in complex administrative and judicial proceedings against any activity that may be perceived as violating sanctions regimes. At the same time, the ever-changing sanctions environment and the strengthening of national and international frameworks for criminalization of violations and circumvention of sanctions, as well as the expanding practice of the use of non-legal or quasi-legal interpretative documents and the reaffirmation and further expansion of the scope of extraterritorial jurisdiction, have all exacerbated uncertainty and fear among all relevant actors, in particular humanitarian operators. The Special Rapporteur also observes an increasing coordination of the United States, the European Union and the United Kingdom on sanctions policies, their coordinated advocacy in favour of the legitimacy of the enforcement of unilateral primary and secondary sanctions as a tool of foreign policy, and the determination and expansion of the grounds and criteria for sanctions designations, including facilitation in the circumvention of sanctions regimes.

75. Owing to the illegality of the overwhelming majority of unilateral sanctions, the application of extraterritorial jurisdiction, as a means of coercion, through secondary sanctions and civil and criminal penalties for alleged circumvention of these unilateral sanctions regimes, is contrary to international law. States can only exercise their authority on the grounds of universal, territorial or personal jurisdiction. No other nexus to the target (national interests, security concerns, payment in national currency, etc.) provides any grounds for the extraterritorial application of national jurisdiction. The Special Rapporteur holds that, owing to the illegality of the existing practice of secondary sanctions enforcement, as well as of criminal enforcement of unilateral sanctions, no extradition can be requested and/or granted in sanctions-related criminal cases.

76. Overcompliance with unilateral sanctions by States, international organizations, businesses, banks, donors or civil society, including humanitarian organizations, results in the violation of nearly all civil, economic, social and cultural rights, as well as the right to development of peoples, including those of the country under sanctions, and those whose countries maintain economic and other relations with sanctioned countries. Zero-risk policies and overcompliance may be qualified as discriminatory practices against nationals and residents of countries under sanctions on the grounds of their nationality, descent, origin or residence, and violate the human rights principles enshrined in international human rights treaties including the International Covenant of Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. Fear of secondary sanctions, civil and criminal penalties, complex, confusing and unclear sanctions regulations and interpretations, high costs of legal assistance in sanctions cases, and risks of additional charges

against legal professionals all prevent targeted individuals from gaining access to justice, or benefiting from the presumption of innocence and the right to a fair trial.

77. Overcompliance with unilateral sanctions prevents the delivery of humanitarian assistance, even in emergency situations, owing to the following: unclear, overlapping, confusing and complex sanctions regulations; challenges in acquiring licences for humanitarian activities (administrative complexity, cost and delays); overly broad and ill-defined terminology; cumbersome legal fees for regulatory interpretation and legal support; the burden of proof of the humanitarian nature of the activities imposed on humanitarian actors; the impossibility to deliver medical goods, even when licences have been received, in the face of banking, financial, insurance and delivery sanctions; the embargo on the delivery of dual-use goods; and the absence of any mechanism of protection for humanitarian actors.

78. Zero-risk policies and overcompliance by businesses and the failure of States to ensure that such practices do not violate human rights, are incompatible with international human rights principles and standards. References to the “unintended” humanitarian consequences of unilateral primary and secondary sanctions, and statements that businesses are solely responsible for instances of overcompliance and excessive de-risking, do not provide any grounds for the legality or legitimacy of the adoption and enforcement of unilateral primary and secondary sanctions, or the imposition of civil and criminal penalties for their alleged circumvention.

79. Unilateral sanctions and overcompliance with unilateral sanctions hinder the implementation of Security Council humanitarian resolutions. Humanitarian assistance, even if delivered, may be rendered ineffective owing to serious delays, operational impediments, financial obstacles and, finally, overcompliance by concerned actors.

B. Recommendations

80. **States and regional organizations should:**

(a) **Review the measures taken without or beyond the authorization of the Security Council, and to lift those that do not meet criteria of retortions or countermeasures in full conformity with the standards and limitations of the law of international responsibility, as constituting unilateral coercive measures. Humanitarian concerns shall always be taken into account by States when deciding on the imposition of any unilateral measures, including countermeasures (humanitarian precaution), as well as in the course of their enforcement and implementation;**

(b) **Avoid imposing secondary sanctions, civil and criminal measures to enforce unilateral primary sanctions as contrary to international law, and lift those that have already been applied;**

(c) **Cease the practice of issuing sanctions-related non-binding interpretative documents, which become treated as law and one of the grounds of uncertainty and confusing resulting in overcompliance;**

(d) **Reject any requests for extradition in criminal cases for circumvention of unilateral sanctions;**

(e) **Ensure that unilateral sanctions and overcompliance with unilateral sanctions do not have an impact on critical infrastructure and services relevant to health care, food, agriculture, electricity, water supply, irrigation, sanitation, seeds and fertilizers, all of which are necessary for the survival and well-being of populations;**

(f) Take all necessary legislative, institutional and administrative measures to eliminate or mitigate cases of overcompliance and ensure that the activities of businesses under their jurisdiction and control do not violate human rights extraterritorially. Non-fulfilment of this obligation can be used as a grounds for establishing the responsibility of relevant States regarding violations of treaty obligations to protect specific human rights and to cooperate in this sphere;

(g) Ensure the protection of humanitarian actors against liability and charges in connection with their humanitarian work in countries under sanctions;

(h) Ensure that individuals affected by unilateral sanctions and overcompliance are not prevented from gaining access to justice through appropriate resources and legal representation. Risks of secondary sanctions or other penalties cannot be used by national courts as a justification of overcompliance;

(i) Interpret due-diligence principles in good faith to ensure adherence to international law and human rights. The use of the term “due diligence” in the context of enhancing the efficacy of implementation of unilateral sanctions is misleading and contrary to international law.

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

82. As the work of United Nations agencies is increasingly affected by unilateral sanctions and overcompliance, preventing those entities from the effective exercise of their functions and their mission to promote and protect human rights within the scope of their competence, the Special Rapporteur calls for the assessment of the humanitarian impact of unilateral sanctions and overcompliance to be included in the agendas of all United Nations organs and specialized agencies, including the Office of the United Nations High Commissioner for Human Rights (OHCHR), the World Health Organization, UNICEF, the United Nations Population Fund, the World Food Programme, the Office for the Coordination of Humanitarian Affairs, the Office of the United Nations High Commissioner for Refugees, the International Labour Organization, UNESCO and the International Civil Aviation Organization.

83. States affected by secondary sanctions and overcompliance with unilateral sanctions are recommended to provide detailed information on all types of sanctions- and overcompliance-induced challenges in their engagement with all relevant United Nations mechanisms, including United Nations specialized agencies, the universal periodic review, treaty bodies and special procedures of the Human Rights Council.

84. In view of the indiscriminate and horizontal impact of overcompliance with unilateral sanctions, treaty bodies should consider addressing in their work the issue of the human rights impact of unilateral coercive measures, the right to equality and the principle of non-discrimination in international human rights law.

85. Any discrimination on the basis of nationality, origin or place of residence should be eliminated and prevented in the future legislation and policies of States, and in the regulations and policies of banks, businesses and other relevant actors.

86. United Nations entities, including OHCHR and the Rule of Law Unit should consider addressing the problem of enforcement of secondary sanctions and enforcement of civil and criminal penalties, and their legality, within the broader discussions around extraterritoriality, the expanding use of complex non-binding and non-legal documents as a part unilateral sanctions mechanisms, and the challenges of access to justice as a threat to the rule of law.

87. States, human rights organizations, civil society and human rights defenders, academics and legal professionals are invited to assess the impact of sanctions enforcement on the independence of lawyers and judges, and the compatibility with international human rights standards, including fair trial guarantees and due process.
