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Impact of Unilateral Sanctions and Over-compliance on Food security

Douhan Alena F.

Prof., Dr., Dr. hab.

Professor of the Department of International Law, Belarusian State University
Minsk, Belarus

E-mail: alena.f.douhan@gmail.com

ORCID: <https://orcid.org/0000-0002-8797-8858>

JEL-code: K33 International Law

Abstract. The World community is currently observing the expanding use of sanctions by states and regional organizations without or beyond authorization of the UN Security Council. Unfortunately, majority of this measures violate international obligations of states and their illegality cannot be excluded via the mechanism of counter-measures. They constitute therefore unilateral coercive measures. The current article is providing an overview of unilateral sanctions currently used by states and regional organizations worldwide, qualifies them from the point of international law, demonstrates impact of unilateral sanctions. Means of their enforcement and over-compliance on the human rights in general, and provides for the detailed analysis of the impact various types of unilateral sanctions to the right to food and food security.

Keywords: unilateral sanctions, unilateral coercive measures, over-compliance, right to food, food security.

Біржақты санкциялар мен артық сәйкестіктің азық-түлік қауіпсіздігіне әсері

Довгань Елена Федоровна

заң ғылымдарының докторы, халықаралық құқық кафедрасының
профессоры, Беларусь мемлекеттік университеті,

Минск, Беларусь

e-mail: danecker@mail.ru

E-mail: alena.f.douhan@gmail.com

ORCID: <https://orcid.org/0000-0002-8797-8858>

JEL-code: K33 Международное право

Түйіндеме. Қазіргі әлем жекелеген мемлекеттер мен аймақтық ұйымдардың БҰҰ Қауіпсіздік Кеңесі берген санкциясыз немесе одан тыс біржақты санкцияларды белсенді қолдануымен бетпе-бет келеді. Мұндай шаралардың басым көпшілігі, өкінішке орай, мемлекеттердің халықаралық міндеттемелерін бұзады және қарсы шаралар тәртібімен әрекеттің

заңсыздығын жою критерийлеріне жатпайды. Осылайша, мұндай біржақты санкциялар біржақты мәжбүрлеу шараларын білдіреді. Осы бап қазіргі уақытта қолданылатын біржақты санкцияларға шолуды қамтиды, оларды халықаралық құқық тұрғысынан бағалайды, біржақты санкциялардың, олардың орындалуын қамтамасыз ету жөніндегі шаралардың және жалпы адам құқықтарына овер-комплаенстің әсерін көрсетеді, біржақты санкциялардың әртүрлі санаттарының тамақтану және азық-түлік қауіпсіздігіне әсерін егжей-тегжейлі бағалауды қамтамасыз етеді.

Негізгі сөздер: біржақты санкциялар, біржақты мәжбүрлеу шаралары, артық сәйкестік, тамақтану құқығы, азық-түлік қауіпсіздігі.

Влияние односторонних санкций и овер-комплаенса на продовольственную безопасность

Довгань Елена Федоровна

Доктор юридических наук, профессор

Профессор кафедры международного права, Белорусский государственный университет

Минск, Беларусь

E-mail: alena.f.douhan@gmail.com

ORCID: <https://orcid.org/0000-0002-8797-8858>

JEL-code: K33 Международное право

Аннотация. Современный мир сталкивается со все более активным использованием отдельными государствами и региональными организациями односторонних санкций без либо за пределами санкции, выданной Советом безопасности ООН. Подавляющее большинство таких мер, к сожалению, нарушают международные обязательства государств и не подпадают под критерии исключения противоправности деяния в порядке контрмер. Таким образом, такие односторонние санкции представляют собой односторонние принудительные меры. Настоящая статья содержит обзор односторонних санкций, применяемых в настоящее время, дает их оценку с точки зрения международного права, демонстрирует влияние односторонних санкций, мер по обеспечению их выполнения и овер-комплаенса на права человека в целом, обеспечивает детальную оценку влияния различных категорий односторонних санкций на право на питание и продовольственную безопасность.

Ключевые слова: односторонние санкции, односторонние принудительные меры, овер-комплаенс, право на питание, продовольственная безопасность.

Introduction

The rapid expansion of various forms of unilateral sanctions is taking place in the face of intensive political debate, with very little attention paid to their legality and humanitarian impact especially as regards the right to food and food security.

Working paper provides on overview of the scope of unilateral sanctions and other relevant activities: examples of the humanitarian impact of unilateral sanctions and over-compliance as regards the right to food, other relevant human rights and shares some recommendations developed by the Special Rapporteur in the course of the work.

Materials and methods

Current article reflects information included in the thematic reports of the Special Rapporteur presented to the UN Human Rights council and the UN General Assembly [52; 22], and country visit reports, as well as her academic publications [9; 10; 11].

Discussion

1. Scope of unilateral sanctions

No clear or uniform definition of sanctions appears to exist in international law. The terminology used is also very inconsistent. States and regional organizations identify their unilateral activity as “sanctions”, “restrictive measures” [7] and “unilateral measures not in accordance with international law” [54, para. 1; 55, para. 2]. UN organs refer to economic sanctions and their humanitarian impact assessment [53; 12].

Numerous resolutions of the UN Human Rights Council (from 15/24 of 6.10.2010, paras. 1–3 [20]; to 45/5 of 6.10.2020, preamble [21] and 49/6 of 31.03.2022, preamble, paras. 1–3 [24]) and the General Assembly (from 69/180 of 18.12.2014, paras. 5–6 [56] to 75/181 of 16.12.2020, paras. 1–6 [57]) refer to the illegality of unilateral coercive measures. As a result, states prefer to present their unilateral activity as not constituting unilateral coercive measures, and to therefore use other terms, in particular, sanctions.

The current practice of unilateral sanctions demonstrates their variety: political, sectoral, diplomatic, cultural, economic, trade, financial, cyber, targeted and many others.

Reference is also sometimes made to international sanctions, sectoral sanctions, targeted sanctions, counter-sanctions, direct or indirect sanctions, primary or secondary sanctions, and intended or unintended sanctions [25].

Trade embargoes aim to prohibit nationals/residents of the sanctioning country, or any company willing to do business in a sanctioning country or has partners in the sanctioning country from trading with the country under sanctions, their nationals or companies.

Financial sanctions may include decisions to designate the central bank of the country under sanctions, or public or private banks to prevent any transfer of money to/from the country under sanctions. The freezing of state and private banks' assets

abroad is used to put pressure on states, too, thereby preventing them from guaranteeing their citizens' basic needs. For example, the Bank of England refused to unfreeze any of the \$1 billion in gold that it held for the Central Bank of Venezuela [25, paras. 9, 29].

Political influence in international institutions has started to be used as a part of sanctions tools. In April 2020, the USA opposed the efforts of Iran and Venezuela to obtain loans from the International Monetary Fund (IMF) in its fight against COVID-19. A similar situation has reportedly arisen in respect of requests by Cuba, Sudan and Zimbabwe for emergency loans from the World Bank [25, para. 30].

Trade sanctions often take the form of so-called sectoral sanctions, which apply non-selectively to individuals and organizations in a particular sphere of the economy without any identifiable reason or violation from their side that differs significantly from those that have prompted traditional targeted sanctions [25, para. 33].

A special form of sectoral sanctions can be seen in the closing of airspace for flights of air companies registered in targeted states – such as Qatar (2017–2020), Venezuela, Belarus and Russia – and prohibiting the targeted state's air companies to enter the airspace of the sanctioning country, thereby affecting the designated state's travel industry. A similar situation exists as concerns trade with Cuba, Iran, Syria and Venezuela [25, para. 32].

Economic sanctions also include measures of a targeted character, affecting designated individuals or companies. For example, the European Union's financial sanctions include several thousand individuals and companies [13], and far more are listed by the United States [45].

A number of unilateral measures are taken in or relevant to the cyber area in response to "malicious cyber activity" or via operations in and access to software on online platforms, databases and online conferences, access to the Internet, information, public announcements of designated individuals as criminals, etc. [49] (cyber and cyber-related sanctions).

The current moment is also characterized by the expansion of so-called "secondary sanctions" as a means to enforce unilateral sanctions against states or key economic sectors, or to target foreign companies, organizations or individuals. Secondary sanctions are also applied extraterritorially to entities or individuals for their presumed cooperation or association with sanctioned parties or for helping them to circumvent sanctions. Foreign companies subject to secondary sanctions can be blocked from doing business in the sanctioning state, be banned from using its financial markets or be prohibited from transactions involving its currency; while foreign individuals can be refused entry to the sanctioning country and have any assets there frozen [23]. They also face reputational risks and online pressure.

Serious concerns also arise due to the expanding use of civil and criminal penalties as a comprehensive means of unilateral sanctions enforcement, and the criminalisation of any activity involving sanctioned countries and their entities and nationals. In particular, the total amount of pecuniary penalties following settlement agreements with OFAC for alleged violations of US sanctions regimes, only for the

first semester of 2023, was more than US\$ 556 million [6]; in 2022 it was only over US\$ 42 million [1]. To reach a settlement for civil and criminal cases businesses often have to completely withdraw 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.

Therefore there is a growing tendency of businesses to resort to over-compliance due to increasing enforcement of secondary sanctions, 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. Moreover, 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, and in particular humanitarian operators.

2. Humanitarian impact of unilateral sanctions

Due to the multiplicity of unilateral sanctions regimes, and the expansion of unilateral sanctions, zero-risk policies and over-compliance with unilateral sanctions, it is not possible to identify the impact of unilateral sanctions imposed by a specific country or of specific unilateral sanctions. It is thus only reasonable to assess the cumulative impact of all unilateral sanctions and over-compliance with unilateral sanctions on all categories of a country's population, including the most vulnerable groups, humanitarian workers as well as the population in general.

Reports received as well as country visits demonstrate that usually the whole population of a country under unilateral sanctions becomes subjected to the negative impact of them and also of over-compliance. Sanctions against states, sectoral sanctions on trade involving specific sorts of goods critical for the national economy, especially fuel, mineral resources, gold, wood etc., and civil aviation undermine the economy of the state under sanctions as a whole, resulting in an overall economic crisis, growing levels of unemployment, poverty, food insecurity, and a reduction of available social support and assistance programs [48, paras. 10, 13–14] (Cuba, Venezuela [48, para. 11], Iran, Russia [48, para. 15]). Sanctions against individuals and companies affect human rights of designated individuals and their families, employees of companies and often the whole sector of the economy if sanctions are imposed on persons in charge of such sectors, like ministers [48, paras. 20–45].

Over-compliance with unilateral sanctions prevents, delays or makes more costly the purchase and shipment to sanctioned countries of goods, including humanitarian goods and services including essential food, 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 [38].

Due to the specifics of unilateral sanctions, growing over-compliance by banks, businesses, donors, and other actors, humanitarian carve-outs are rendered ineffective and inefficient due to administrative and operational obstacles, with adverse effects on the procurement and delivery of goods which are explicitly exempted from sanctions' regimes [3, pp. 15–16]. 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” [3, p. 16]. In post-earthquake Syria they refer to sanctions-induced 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” [44]. The detrimental effects of over-compliance prevents, therefore, even exempted goods, such as food, from reaching people in need [51, para. 45].

Impact on the right to food

It is necessary to keep in mind that all human rights are interdependent and right to food is depending on and influences a vast number of other human rights: freedom from poverty, economic rights, including right to work; right to health, clean water and sanitation, right to life etc. this working paper focuses on the right to food mostly.

Economic rights, however, establish the ground for the enjoyment of the right to food. Sectoral sanctions and sanctions against states, huge companies and high state officials, including those responsible for specific spheres of the economy, result in economic crises, reductions in working places and salaries, growing unemployment [28, paras. 20–21], and the migration of people facing a deterioration of income, which negatively affects these people and their family members (Report A/76/174, paras. 36–55) [48]. Countries under sanctions report a high involvement in the shadow economy (Venezuela [26, para. 32]), while around half of vital public sector positions – doctors, nurses, teachers, university professors, state officials, policemen, judges etc. (Venezuela [26, para. 37], Zimbabwe [28, paras. 41, 46–48], Syria [40]) – and positions in tourism, handicrafts and restaurants (Venezuela [26, para. 67], Zimbabwe, Iran [27, paras. 7–62]) are unfilled.

As a result, poverty rates are enormously increasing, reaching above 90 per cent in Venezuela [26, para. 30] and Syria [40]. As the level of poverty increases, the indicators of hunger and food insecurity increase. This is clearly demonstrated by FAO statistics, with 30.4 per cent of the population living in moderate hunger (people are reducing the quality and/or quantity of their food) [16] and 11.9 per cent being severe food insecure (people run out of food and, at the most extreme, go for days without eating [16]) [17, pp. Xi, 10].

According to the FAO reports, about 720-811 million people in 2020 were in a state of hunger and exhaustion [17, p. Xi], in 2021 there was an additional increase of 20-46 million people [17, p. 10]. At the same time, compared to 2019, the growth

was 15 %. The increase in the number of people in a state of hunger has shown steady growth since 2014, and it has almost returned to the indicators of 2005, when efforts began to be made at the global level to achieve the Sustainable Development Goals. The most dangerous in terms of food are the countries of Africa, Latin America and the Caribbean [17, p. 8]. According to the FAO, the proportion of persons facing a serious threat to food security has reached 11.9 % worldwide, and 30.4 % of the population face a serious and moderate threat to food security [17, p. 17]. Some growth continued in 2021, when 2.3 billion people lived in conditions of moderate and severe hunger [18, p. 10]. The FAO Food Security Report indicates the unattainability of the SDG 2 – the elimination of hunger and starvation by 2030, taking into account current trends [18, p. 39–42].

Countries under sanctions face even more challenging situation. Several reports, including by the former Special Rapporteur on the right to food acknowledge that “[t]he continued imposition of crippling economic sanctions on Syria, Venezuela, Iran, Cuba, and, to a lesser degree, Zimbabwe [...], severely undermines the ordinary citizens' fundamental right to sufficient and adequate food" [50] while others refer to challenges such as the interruption of bank correspondence relations and supply chains, SWIFT bans [42], fear of secondary sanctions, physical blockades of transport routes [35; 39], hindering delivery of medicine and food by humanitarian organisations [22, paras. 52–60]. Countries under sanctions report on high levels of food insecurity in their populations, varying from specific regions only (Iran [27, para. 42]) up to 24 – 50 per cent (Venezuela [26, paras. 32, 35]), 60 per cent (Zimbabwe [28, para. 42]) and 90 per cent (Syria [40]). Agricultural unsustainability is exacerbated by the abovementioned impediments in access to irrigation, diesel fuel, agricultural equipment, spare parts, seeds and fertilizers [26, paras. 56–66; 28, para. 24, 27; 27, para. 41; 14, pp. 72, 77].

As a result it has been reported that 90 per cent of children in Syria depend on humanitarian assistance for the survival and around 500 000 are severe food insecure [43]. In Venezuela, the number of such children in 2022, according to the UNICEF reports, is about 117,000 [43, p. 18], and about 50 % of children under the age of 5 are at risk of serious undernourishment [26, para. 33]. In North Korea the figure is about 140,000 children under 5 years old [43, p. 26] (200 000 as of 2018 [46]). Similar figures are also reported in other countries [43] and territories [39] under sanctions, with growing child mortality [19, p. 26; 60] and prevalence of chronic diseases [41].

It seems impossible to assert (state) that the increase in the number of people living in conditions of hunger and undernourishment is due exclusively to the influence of unilateral sanctions. Natural disasters and the COVID-19 pandemic have also had a significant impact. However, the trend of growth in indicators has been observed since the period of the imposition of sanctions against individual states. As for the steps necessary to ensure food security, the FAO data indicates the need to ensure the stable operation of energy, environmental, transport and financial systems, which are the first to be affected by the imposition of unilateral sanctions.

In this regard, the data on the results of the country visit to Venezuela are very illustrative. The number of meals has decreased from 3 to 1.5 times a day. The food basket after the imposition of sanctions contains practically no proteins. The survival of the population is ensured by the advantage of distributing food packages, which mainly include cereals, pasta and vegetable oil. The number of meals in schools has decreased, and the weight of newborns has reduced. As of 2021, the average cost of a food basket per month was about \$250, (with) the average salary being around \$2-10, covering therefore only around 2 per cent of the nutrition needs. Facts of involvement in criminal activity and prostitution (including girls aged 11-14 years) in exchange for food have also been reported.

In Venezuela and Zimbabwe, due to the sanctions imposed, including over-compliance by banks, delivery companies and manufacturers, it is impossible to ensure sustainable water supply, electricity, availability of diesel fuel, agricultural machinery and spare parts, food processing and storage.

Additional problems are expected by the FAO and the World Food Program (hereinafter – WFP) with regard to the restriction of access to fertilizers as a result of the imposition of sanctions on fertilizer producers and the possibility of their delivery. As a result, there has been an increase in the cost of fertilizers by 3-4 times since April 2020 and a decrease in their availability by 2 times during the same period [14, pp. 72, 77]. According to the FAO, access to fertilizer supplies is critical for Afghanistan, Myanmar, Yemen, Syria, Haiti and Colombia in terms of food security and sustainability [2].

On 1 February 2022, the Lithuanian Government stopped allowing potash from Belarus to transit through Lithuania, declared the contracts void and rejected initial applications by other companies to transport Belaruskali products through Lithuania, referring to the risks for Lithuanian Railways to be targeted by U.S. secondary sanctions if it continued to transport the Belarusian potash [31]. By impeding financing and transactions for, and transportation of 20% of the world's potash, these actions exacerbate the impact of unilateral sanctions on the current global shortage of fertilizers with consequent price raise and risks for food security in many parts of the world [32]. Measures taken by Lithuania that prevented transportation of potash from Belarus destined for third countries in Africa and Latin America led to a shortage of fertilizers and adversely affected food security in those countries, including Chad, Madagascar, Nigeria, Mali, Kenya, Myanmar, Venezuela, Colombia, Honduras [33; 34; 4].

The unavailability of electricity and fuel results in the collapse of water and sanitation systems with water to be available once per week for a few hours (Venezuela [26, paras. 62–63]) or not at all (Zimbabwe [28, paras. 28–29], Syria [40]), leading to insufficient water for irrigation (Iran [27, paras. 45–47], Syria [40]), that finally results in the use of sewage for this purpose and ends in cholera outbreaks around countries (Zimbabwe, Syria [58]).

I am also concerned that despite the announced humanitarian exemptions with regards to food in many sanctions' regimes, secondary sanctions and over-

compliance have a detrimental effect on the right to food including the right of everyone to be free from hunger, to ensure an equitable distribution of world food supplies in relation to need” [30, art. 11]. The Committee on Economic, Social and Cultural Rights (CESCR) in the General Comment 12(1999) insists 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” (paras. 6, 8) [5]. In practice however, delivery of food even within the existing license is often not possible due to sanctions imposed over payment, delivery and insurance companies among others [52, paras. 69–71].

A limited access to foreign currencies and international food market has significantly reduced the availability of food commodities, appliances for domestic agricultural sector in Cuba. Even implementation of the UN Agencies food technical assistance projects is reported to be hampered by an increase in transportation costs for imports, the cancellation of contracts for maritime transportation by transport companies, consequent delays in the arrival of merchandise, rejections and delays of banking transactions to and from suppliers who provide services for cooperation projects and to the FAO country office; rejection of financial transactions by Cuban enterprises in United States dollars and in other currencies, which hinders payment for certifications of Cuban products; the impossibility for suppliers to offer products to Cuba obtained from U.S. companies that multiplies the costs due to much longer alternative routes [47, p. 128].

In particular, powdered milk delivery by UNICEF took several months in 2022 [59]. The shipping companies have reduced their capacity and the volume of goods transported to Cuba. Similarly only 9 of 518 requests of Cuba’s agricultural sector in international market for tractors, engines, batteries, forklifts and spare parts for agricultural machinery were approved in 2022 due to the “fear to be punished” [8]. Food situation is still insecure despite positive assessment of national mitigation efforts [15].

Conclusions and recommendations

The world community is currently facing an expansion of various forms and types of unilateral sanctions applied to all sorts of governmental and non-governmental actors and economic sectors, as well as uncertainty and overlaps of sanctions regimes, threats of secondary sanctions, civil and criminal penalties for circumvention of sanctions regimes, and a growing level of zero-risk policies and over-compliance by banks, producers of goods, transportation and delivery companies as well as other types of private actors.

The humanitarian impact of unilateral sanctions and over-compliance with them can only be assessed cumulatively and usually affects the whole population of the country under sanctions, being especially harmful for the most vulnerable groups: poorest, migrants, people suffering from chronic and severe diseases, women, children and the elderly. As a result, nearly all categories of human rights are

affected: civil, economic, social, cultural, right to development, including in many cases even the right to life and right to adequate food.

Many recommendations have already been made in my thematic and country visit reports. Such recommendations address all stakeholders and request joint efforts of the United Nations, states, businesses, civil society. They include in particular the following:

- Monitoring of the impact of UCMs on the right to food by all stakeholders
- Include impact of UCMs to the right to food to the agenda of FAO, and other relevant IGOs
- Establishment Sanctions monitoring tool [36]
- Monitoring of impact via the UPR and assessment of the progress of the achievement of SDGs
- Preliminary assessment of the legality of any actions taken by states without authorization of the UN Security Council, listing measures which do not correspond IL that shall result in lifting of all unilateral coercive measures;
- Preliminary and ongoing humanitarian impact assessment, implementation of due diligence and precaution principles at the international area;
- Use of the UN human rights treaty bodies for protection of the right to food and related rights;
- Use of means of peaceful settlement of international disputes in the case of any discrepancies between states;
- Minimization of over-compliance via implementation of due diligence obligations by states and businesses;
- 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 efficacy of implementation of unilateral sanctions is misleading and contrary to international law
- Development of the Guiding principles on sanctions, business and human rights [37]
- Ensure proper implementation of the UN Security Council humanitarian resolutions/ provisions of humanitarian resolutions, currently severely affected by over-compliance;
- Expansion and proper implementation of humanitarian exemptions, guarantees for humanitarian actors;
- Prohibition to target all types of critical infrastructure including food, health, water, electricity, energy supply systems etc.

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