**Maat’s commentary on the draft Guiding Principles on sanctions, compliance, and human rights**

**Submitted to:** Special Rapporteur on the unilateral coercive measures

**Submitted by:** Maat for Peace, Development and Human Rights (holds consultative status with the United Nations Economic and Social Council)

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**Introduction**

The excessive use of unilateral coercive measures leads to widespread human rights harm, and governments' increasing use of unilateral coercive sanctions to achieve their foreign policy goals constitutes a critical and complex problem and raises significant concerns worldwide. Recently, many governments and states have expanded the imposition of unilateral sanctions, whether primary or secondary, outside the framework of the United Nations Security Council to achieve political goals. This has severely and detrimentally affected human rights and humanitarian conditions in targeted countries. Moreover, the excessive adherence to these sanctions by international corporations, banks, and financial institutions has worsened the humanitarian situation in these nations, due to difficulties in delivering vital supplies, medications, food, and life-saving aid. Consequently, this has imposed grave consequences on civilian populations, disproportionately impacting the most vulnerable groups such as children, women, the elderly, and the sick.

The increasing use of unilateral sanctions comes without a license or explicit approval by the UN Security Council, and without a clear mandate in the United Nations Charter for the countries using these sanctions raises clear doubts about the extent of their legality and the legitimacy of their use. This action fundamentally violates state sovereignty and the principles of non-interference in the internal affairs of states, constituting a clear violation. Maat commends the efforts undertaken by the Special Rapporteur on unilateral coercive measures for developing guidelines on sanctions, excessive compliance, and human rights; which we are currently reviewing its draft in our contribution to decrease the adverse impact of complying with these measures on human rights. In light of the above, Maat submits its comments on the draft guidelines to the attention of the Special Rapporteur on unilateral coercive measures, by addressing specific questions provided with the invitation.

**Key questions**

**What should the document be titled to reflect its goal of formulating rules of conduct for states, companies and other actors to reduce the humanitarian and human rights impact of sanctions imposed by the UN Security Council? The document also aims to address the negative humanitarian effects of unilateral sanctions and ensure proper compliance without overdoing it? (First question)**

Maat believes that the appropriate title for the guiding principles document that aims to crystallize rules of conduct for states, companies and other actors to limit negative humanitarian repercussions and prevent human rights violations caused by sanctions imposed by the UN Security Council, or as a result of unilateral sanctions, and excessive compliance with these sanctions, is: “Guiding Principles on Sanctions, Compliance, and Human Rights: Minimizing Impact and Avoiding Harm”

**What legal status should the guidelines be? (Second question)**

Maat believes the Guiding Principles on Sanctions, Compliance, and Human Rights should be considered non-binding recommendations or frameworks, similar to other guiding principles adopted in related contexts such as the Guiding Principles on Business and Human Rights. These guidelines are intended to offer general recommendations or guidance, rather than being strict legal norms, to aid their adoption by the Human Rights Council. Maat emphasizes that although these principles are not legally binding for states, companies, and other entities upon adoption, they can still hold significant ethical weight. It can act as a standard for best practices, influence policy-making, offer appropriate guidance, and promote responsible conduct among states, companies, and other entities to mitigate the adverse impact of sanctions on human rights.

In light of the ambiguous and complex terminology of unilateral sanctions/coercive measures, is the glossary provided in the draft comprehensive and clear enough? What are the other concepts and definitions that can be added and that can/should be modified among those already included in the document?

The glossary of terms provided in the draft guidelines covers a wide range of terms related to unilateral sanctions and coercive measures. However, Maat has some amendments and additions that can be worked on to improve the clarity and comprehensiveness of the proposed draft guidelines. The most important of these amendments and additions are as follows:

Adding the term targeted sanctions: Maat believes that the term or concept of targeted sanctions should be added to the glossary of terms included in the draft guidelines, which refer to penalties imposed on specific individuals, companies, or organizations within the country, not the entire state. These sanctions may include asset freezing, travel bans, restrictions on dealing with the targeted entity, arms embargoes. Therefore, it can be said that targeted sanctions focus on specific goals such as individuals, companies, or entities rather than imposing comprehensive restrictions on an entire country. They aim to influence specific actors within the system, shape behavior, or achieve particular political objectives without causing widespread harm or negatively impacting the general population. Maat stresses that including and distinguishing the term "targeted sanctions" from other related terms in the glossary would enhance a more comprehensive understanding of the document[[1]](#footnote-1).

Clarification of the terms “response” and “countermeasures”: Using the terms “response” and “countermeasures” in defining the term unilateral sanctions in the document, without being defined in the glossary or their intended meaning clarified, it can lead to various interpretations, causing confusion and ambiguity. Stating that response measures and countermeasures adhere to international law, particularly when applied against a state accountable for internationally unlawful action, may pave the way for nations and governmental bodies worldwide to enforce unilateral coercive actions and measures without seeking approval from the UN Security Council. This increases the risks resulting from the adoption of unilateral coercive measures on human rights. Accordingly, Maat proposes adding a specific and clear definition to the terms “response” and “countermeasures” that takes into account the primary objective of adopting the guidelines document, and deleting the sentence indicating that countermeasures comply with international law “if they are implemented against a state accountable for an internationally wrongful act in complete accordance with the principles of international legal responsibility.”

Providing explanations or extra examples for better understanding: While definitions are usually clear, some terms might need additional explanations or examples to ensure comprehension, particularly for non-experts. For instance, giving examples of certain types of "unilateral sanctions" and clarifying what "due diligence" involves can improve the clarity of these terms, especially for non-specialist readers.

**The draft guidelines seek to crystallize general, foundational and operational principles of conduct for States, international organizations, companies and other actors in the face of the increasing use of sanctions and unilateral coercive measures and to develop strategies for enforcement of sanctions and over-compliance. What other principles should be added to the draft to ensure solidarity and a human rights-based approach? (Fourth question)**

Maat has carefully reviewed the general, foundational, and operational principles contained in the draft guidelines, and confirms that they indeed cover a comprehensive range of sanctions, compliance and human rights aspects. However, Maat emphasizes the importance of adding the following principles to ensure stronger solidarity and a human rights-based approach:

* Peaceful Resolution Priority Principle: Before turning to sanctions, it's crucial to prioritize diplomatic solutions and peaceful conflict resolution strategies.
* Humanitarian Impact Assessment Principle: Conducting comprehensive humanitarian impact assessments before, during, and after imposing sanctions to minimize negative effects on the population.
* The principle of non-regression: There should be a commitment to ensure that the application of sanctions does not lead to a decline or deterioration in the enjoyment of human rights.
* Gender Equality Principle: Integrating a gender perspective into sanctions design and execution is essential to address disproportionate impacts on women and girls.
* Inclusivity Principle: Involving all relevant stakeholders in sanction decisions and compliance policies ensures fairness, equity, and consideration of all affected perspectives.
* Recovery principle: Provisions should be included to support recovery efforts after sanctions, including economic rebuilding and human rights protection, are essential.

**What is the best format to discuss and comment on the draft: diplomatic conference / academic conference / consultations with banks and companies / any other option? (Fifth question)**

Maat believes the best way to discuss and comment on the draft guidelines would be to organize forums that include all relevant stakeholders, including representatives of governments, civil society organizations, academia, experts, and private sector actors, including companies and banks. These forums, which include all relevant stakeholders, would provide a comprehensive approach to collecting comments and addressing concerns related to the imposition of human rights sanctions. Maat takes this opportunity to express its full welcome to participate in any efforts to discuss and comment on the draft guidelines.

**Whether the provisions relating to the delivery of humanitarian assistance and the protection of humanitarian actors seeking to provide humanitarian assistance in accordance with UN Security Council resolutions, as well as those acting in the face of unilateral sanctions, are adequate? If not, what additional measures should be taken? (Sixth Question)**

Maat carefully reviewed the provisions contained in the draft guidelines related to the delivery of humanitarian assistance and the protection of humanitarian actors seeking to provide humanitarian assistance in accordance with United Nations Security Council resolutions. **These provisions included the following main points:**

- **Humanitarian Assistance (Principle 14):** This principle stipulates that humanitarian access and relief should be granted in all circumstances to all those in need without any discrimination, and prohibits any retaliatory actions due to humanitarian work or assistance.

- **Precautionary Principle (Principle 16):** It requires all stakeholders to take necessary precautionary measures and continuously monitor the humanitarian impact while implementing any measures and procedures within the frameworks of sanctions by the United Nations Security Council, or unilateral actions, to avoid any damages that may be inflicted on the infrastructure and vital services in their broader context, including, but not limited to, water, energy, sanitation, food, health, transportation, and agriculture.

**Exemptions from Licensing (Principle 25):** This principle states that the delivery of humanitarian goods, equipment, and humanitarian supplies such as food, medicine, medical equipment, seeds, and fertilizers, as well as those necessary for maintaining vital infrastructure including water, electricity, sanitation, and transportation supplies, shall not be subject to any requirements, restrictions, or licenses. States and regional organizations are committed to ensuring that humanitarian delivery operations are not hindered by other imposed restrictions, including, but not limited to, financial transaction bans, receipt of payments from sanctioned countries, and transportation or insurance sanctions.

Maat emphasizes that the previous principles and provisions are comprehensive and sufficient to a large extent, but their effectiveness depends on the extent of their implementation, application and acceptance by all parties concerned. Therefore, the failure to implement these provisions and principles by the relevant parties necessitates the adoption of additional measures that should be referenced in the document, and these measures are:

**- Accountability measures:** The document should include specific procedures and measures to monitor and report on the implementation of the principles and provisions related to the delivery of humanitarian assistance and the protection of humanitarian actors, in addition to other measures to hold accountable the entities that violate these provisions and principles.

**- Measures to strengthen legal protection for humanitarian actors:** The document should include measures to protect humanitarian actors from prosecution or other legal consequences resulting from their failure to comply with sanctions or adhere to their work in providing humanitarian assistance to civilian populations.

**- Measures to improve access to resources:** The document should include measures to ensure that humanitarian actors have the resources needed to carry out their work in catastrophic humanitarian settings, including funding and other forms of support.

**Should the status and role of focal points be addressed in the draft? What can be added to the draft to enhance the proposal on focal points as practical and implementable as possible? (Seventh question)**

The document addresses the role of focal points in Principle 19, which states that “all actors imposing sanctions must create enabling environments and maintain open channels of communication on human rights and humanitarian aspects relevant to sanctions and their implementation, including establishing resourced focal points with sufficient financial and human resources.

Maat emphasizes that addressing the status of contact points in the draft is crucial for effectively implementing the proposed guidelines, as contact points can play a significant role in facilitating communication and cooperation among relevant stakeholders involved in sanctions enforcement and humanitarian efforts. However, the foundation believes that the document should offer more precise and clear guidance on the role and responsibilities of contact points. Here are some suggestions for enhancing the draft to ensure a practical and feasible proposal regarding contact points:

**- Definition of roles and responsibilities:** The document should provide a more detailed description of the specific roles and responsibilities to be undertaken by the focal points, including coordinating efforts among various actors, communicating with and facilitating communication between relevant stakeholders, monitoring the implementation of sanctions, and addressing humanitarian concerns, Providing information and guidance, and disseminating information on sanctions and humanitarian exceptions.

**- Establish standard operating procedures:** The document should address standard operating procedures that define how contact points operate, including procedures for responding to inquiries and receiving complaints.

**- Capacity building:** The document should include provisions for capacity building and training programs to enhance the skills and knowledge of focal points in areas such as sanctions compliance, human rights, and humanitarian law. This can help ensure that staff have the necessary skills and knowledge to carry out their roles effectively.

Maat confirms that the previous additions can enhance the practical application of the communication channels proposal, and can help make the role of communication channels more realistic and implementable.

1. What are ‘targeted human rights sanctions,’ and why are they used for Iran?, Atlantic Council, August 18, 2023, link: <https://tinyl.io/AW2g> [↑](#footnote-ref-1)