

Permanent Mission
of the
Syrian Arab Republic
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The Permanent Mission of the Syrian Arab Republic to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights, Special Procedures Branch, and with reference to the call for inputs by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights on the draft Guiding Principles on Sanctions, Compliance (Over-Compliance) and Human Rights, would like to attach herewith, comments by the Syrian Arab Republic on this draft.

The Permanent Mission of the Syrian Arab Republic to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the UN High Commissioner for Human Rights, Special Procedures Branch, the assurances of its highest consideration.

Geneva, 1/05/2024



Office of the UN High Commissioner for Human Rights
Special Procedures Branch, mandate of the Special Rapporteur on the negative impact of unilateral coercive measures
on the enjoyment of human rights

Comments on the draft "Guiding Principles on Sanctions, Compliance and Human Rights" Prepared by the SR on UCMs

1. What shall be the title of the document in a view of the main idea would be to crystalize the rules of behavior of States, businesses and other actors to minimize the humanitarian and human rights impact of sanctions of the UN Security Council, and to avoid negative humanitarian impact of all forms of unilateral sanctions, of measures aimed to enforce compliance with unilateral sanctions, as well as of over-compliance?

We would like to reiterate at this stage the need to distinguish between unilateral coercive measures, the main subject and purpose of the mandate, and sanctions imposed by the Security Council. Both have negative impacts on human rights and humanitarian sphere in the targeted countries. However, it is necessary to keep this fundamental distinction present in studying and analyzing the impacts of each of them, as it affects addressing each of the two groups, including issues related to responsibility, accountability, and means of redress or remedy. On the other hand; we would like to stress that considering means to mitigate or limit the negative impacts of UCMs should not affect the illegality of these measures.

2. What shall be the status of the Guiding Principles?

The Guiding Principles should not intended to create new legal obligations, or to restrict or undermine any existing legal obligations, but rather it is a means of clarifying existing obligations of States to respect, protect, and fulfill human rights and fundamental freedoms. As well as to identify the scope of businesses' obligations and their role in achieving compliance with the rules and principles of law related to respect for human rights. In addition to the scope of responsibility of international organizations. These guidelines could be a means of linking existing rights with obligations and the ways to address the violations of these rights. At a later stage, the guidelines could be developed to expand the scope of legal obligations or create new obligations through a more developed legal instrument.

3. In a view of the vague, complicated and confusing terminology of sanctions/ unilateral coercive measures, is the glossary provided in the draft comprehensive and clear enough? What other notions and definitions may be added and which from those already included in the document could/should be amended?

We would like to propose the following amendments to the presented definitions:

- Sanctions of the UN Security Council – enforcement measures taken upon decision of the UN Security Council under Chapter VII of the UN Charter, **to maintain or restore international peace and security.**

- Due diligence – principle of international law, providing for the obligations of States to take all measures necessary to ensure that their activity as well as activity under their jurisdiction and control does not violate international obligations ~~and~~**including those related to** fundamental human rights.

(This definition could be also expanded to include not only states but also other actors that the document seeks to regulate their conduct or behavior (organizations, businesses), since the provisions of the draft refer to that).

- Humanitarian carve-outs:They are often characterized by complex and vague wordings, as well as costly, ~~or~~ lengthy **or inaccessible** approval procedures that deter their use, undermine their effectiveness, while at the same time may exacerbate over-compliance and de-risking.

4. The draft Guiding Principles seek to crystalize general, foundational and operational principles of behavior of states, international organizations, businesses and other actors in the face of the expanding use of sanctions, unilateral coercive measures, development of sanctions-enforcement strategies and over-compliance. What other principles should be added to the draft to ensure solidarity and human rights-based approach?

We would like to propose the following points:

- Further stress on the role of the principles contained in the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation among States of 1970, as well as the Charter of Economic Rights and Duties of States (General Assembly Resolution 3281).

- It is possible to strengthen the language of the paragraphs related to the rule of law, based on the content of the principles relating to the responsibility of States for internationally wrongful acts (General Assembly Resolution 56/83). In particular, the principles on the responsibility of a State on acts of another State, or the responsibility of third countries for their involvement in violations related to internationally wrongful acts, which is in this case the implementation, or ensuring the implementation, of unilateral coercive measures through

their legislation, which can be described as assistance in the commission of an internationally wrongful act.

- Strengthen the reference to the principle of the inadmissibility of invoking domestic law to justify a State's non-compliance with its international obligations, and the duty of this State to fulfill the obligation by ceasing to violate, non-repetition, and redress the harm related to the internationally wrongful act (which in this case is the imposition and implementation of unilateral coercive measures).

- Strengthen the reference to the obligations of businesses related to respecting human rights, based on what is stipulated in the Guiding Principles on Business and Human Rights, in terms of avoiding human rights violations and addressing the harmful effects that occur on these rights, and seeking to prevent the harmful effects that may result from a business managing its operations, activities and relationships.

- Some elements could also be added based on the draft articles on the responsibility of international organizations for internationally wrongful acts (prepared by the International Law Commission) to reflect the international responsibility of an international organization that provide any kind of assistance to state or another international organization in committing an internationally wrongful act, or through the adoption of decisions that lead to committing an internationally wrongful act by member states or other international organizations (the wrongful act here is the imposition or implementation of unilateral coercive measures).

5. What format of discussion of the draft and commentary is preferable: diplomatic conference/ academic conference/ consultations and banks and businesses any other option?

Diplomatic conference.

6. Whether the provisions on delivery of humanitarian assistance and protection of humanitarian actors seeking to deliver humanitarian assistance in accordance with resolutions of the UN Security Council as well as those working in the face of unilateral sanctions are sufficient? If not, what measures shall be added?

- We propose to add the following to para. 14.1

Humanitarian access and humanitarian relief shall be granted in any circumstances for all those in need without any discrimination or distinction in accordance with principles of

humanitarian assistance: humanity, neutrality, impartiality, and independence, **with full respect to the sovereignty, territorial integrity, and national unity of the concerned state.**

- It can also be emphasized here to strengthen the central role of the United Nations and its relevant agencies, including the Inter-Agency Standing Committee (IASC), in coordinating humanitarian efforts and thus in dialogue and exchange of experiences on current and emerging challenges related to the negative impacts of these measures.

8. What regional context may be important with regards to the draft? What examples of regional institutions practice, regional case-law are advisable for analysis and, probably, inclusion into the commentary?

It is important to study the regional perspective, as we are witnessing an imposition and implementation of legislation of a regional nature or issued by bodies that have a regional character.

9. To what extent shall the Guiding Principles address the issue of accountability, remedies, responsibility and redress? What methodology for identifying and assessing damage may be used in order to provide remediation in cases of sanctions-related impact?

- Since these guidelines aim to identify the obligations of States, organizations, and businesses, they should be matched by considering the appropriate and effective remedies, identifying responsibility, to realize the rights of victims of unilateral coercive measures, and to give practical effects to the process of monitoring and evaluating the impacts of such measures.

- Concerning the methodology for identifying and evaluating damages, it should be based on quantitative and qualitative methodologies, with a focus on the most vulnerable persons, and on identifying the direct causation link between the wrongful act, which is the imposition and implementation of UCMs, and the impact which is the human rights violations, which amounts, in some cases, to a crime against humanity. The efforts should be continued to establish an effective, impartial, and responsive international mechanism to assess the negative impact of UCMs, document, follow up, and report on their impact, and enhance accountability in follow-up to the efforts of the Special Rapporteur and relevant Human Rights Council resolutions.

- Remedies may include different aspects, applied individually or collectively, including apology, restoration of rights, rehabilitation, financial or non-financial compensation, and most importantly, preventing future repetition by eradicating the practice of imposing UCMs from international relations.

10. Responsible anti-over-compliance business conduct (RAoBC) shall become one of the business policy objectives. What benchmarks for RAoBC may be introduced?

We would like to propose the following points with taking into consideration that this doesn't mean any recognition of the legality of the initial, secondary, or second layer of UCMs:

- Through a preventive aspect, by avoiding behaviour that may result in or contribute to the violation of human rights. In addition to the remedial aspect, by addressing the occurred damage, whether it is a result of the business's activities or its commercial relationships.

- The human rights impact of business compliance and over-compliance to UCMs should be regularly monitored. The conduct of the practice should be modified to eliminate any negative impact, especially when this has an impact on the flow of goods necessary to meet basic needs in the targeted countries, such as medicines, medical equipment, and necessary spare parts and raw materials for medical stuff, food, seeds, fertilizers, electricity, water, housing, transportation systems, delivery of humanitarian aid, implementation of humanitarian and development projects, or on payments related to these operations.

- Any measure implemented by the business should not exceed, in time or substance, the original unilateral coercive measures, since in such a case would constitute excessive compliance.

- Business are encouraged to discuss with the governments of countries imposing these measures the reasons for over-compliance resulting from a lack of clarity or complexity of legislation to amend it to ensure companies can act in line with their human rights responsibilities.
