



Joint Submission to the Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights from the Center for Economic and Policy Research, the Charity & Security Network, and the American Friends Service Committee

June 15, 2020

Introduction

These comments focus on unilateral sanctions imposed by the United States and the negative impact on human rights, humanitarian assistance and effective response to the Covid-19 pandemic. U.S. sanctions programs have grown exponentially since the 1990s and continue to expand despite evidence of limited effectiveness and increased human cost. In many cases these programs exceed U.S. obligations under Chapter 7 of the UN Charter and are inconsistent with US commitments under international human rights, humanitarian and refugee law. This is particularly evident in the realm of counterterrorism sanctions and is inconsistent with the requirements of UNSC 2462.

These comments are submitted jointly by the Center for Economic and Policy Research (CEPR), the Charity & Security Network and the American Friends Service Committee (AFSC). CEPR was established in 1999 to promote democratic debate on the most important economic and social issues that affect people's lives. The Charity & Security Network is a resource center for nonprofit organizations to support and protect their ability to carry out effective programs that promote peace and human rights, aid civilians in areas of disaster and armed conflict and build democratic governance. The AFSC, founded in 1917, is a Quaker organization that promotes lasting peace with justice, as a practical expression of faith in action.

In considering this submission all three organizations urge the Special Rapporteur to consider an important over-arching factor: that unilateral coercive measures implemented by the U.S. have an unparalleled power due to the disproportionate influence of the U.S. over the global financial system and its various actors. A key reason for this is the importance of the U.S. in international trade, transactions, and accounting.

A Defense Priorities report ¹ identifies three pillars of U.S. financial strength: the dominance of the US Dollar (USD) and its role as the world’s foremost reserve currency; U.S. banks’ role as a clearinghouse for most global financial transactions; and the reach of the U.S. regulatory apparatus.² Business entities and governments that require access to USD must interact with the U.S. banking and Federal Reserve giving the U.S. government “substantial power to dictate who can participate in the global system simply by managing access to foreigners’ ability to clear and settle dollar transactions” (Defense Priorities, 2019). This access is mediated by a global system of correspondent banks that passes through the Federal Reserve Bank of New York, which allows the United States to maintain regulatory jurisdiction over transactions that do not necessarily involve U.S. firms or persons.

This degree of financial hegemony is precisely what makes U.S. sanctions so far-reaching. Rather than governing bilateral trade between the U.S. and another country, US sanctions that include secondary penalties become ‘global sanctions’ by threatening all financial institutions, business entities, and governments that wish to maintain access to the world economy. This is particularly important when considering the role of financial institutions and banks in transactions involving humanitarian assistance. Humanitarian organizations risk severe penalties, reputational harm, and jeopardizing their ability to operate altogether if they wish to transact in countries and locations subject to U.S. secondary sanctions.

CEPR and C&SN’s responses to the Special Rapporteur’s questions are below. They are organized into three categories:

- Negative impact of unilateral sanctions on human rights and response to emergencies (including conflict and the Covid-19 pandemic);
- Obstacles created by sanctions, and
- Inadequacy of steps taken to address problems created by sanctions.

At the end of this submission we make specific recommendations on how coercive measures such as sanctions can be made more compatible with international human rights, humanitarian and refugee law and UN standards.

Responses to Questionnaire

I. Unilateral sanctions introduced by individual states or regional organizations negatively impact both human rights and response to emergencies such as Covid-19 and conflict.

¹ Gjoza, Enea (2019) “Counting the Cost of Financial Warfare: Recalibrating Sanctions Policy to Preserve U.S. Financial Hegemony,” *Defense Priorities*.

² Over 60 percent of the world’s central bank reserves are denominated in dollars; half of loans and 40 percent of international payments are processed using the dollar; and the dollar represents over 87 percent of global market turnover in foreign exchange markets. (Defense Priorities, 2019)

In addressing the impact sanctions have, it is essential that the analysis include not only impacts on citizens of targeted states but also on civilians in areas of armed conflict where non-state armed groups are present or control territory. Much of the harm caused by sanctions occurs in this context and affects some the world's most vulnerable populations.

a. Human rights

i. Rights affected

The rights affected by unilateral sanctions during the pandemic are the same rights that were already affected prior to the spread of Covid-19. However, the pandemic has exacerbated the negative effects of unilateral sanctions. For civil society, the primary impacts fall into two categories: international humanitarian law (IHL) and international human rights law (IHRL). This includes the right of humanitarian organizations to offer humanitarian assistance and the right of civilians to receive assistance and protection in armed conflict. For individuals it also includes economic development rights and the right to health. Although states can only derogate from fundamental rights for specific purposes and then only to the extent necessary and in a proportionate and temporary manner, U.S. sanctions and associated counterterrorism measures impose blanket restrictions on humanitarian assistance and certain speech and associational rights that are difficult or impossible for civil society organizations to overcome.

- *U.S. Sanctions Do Not Incorporate Key Elements of International Humanitarian Law*

The U.S. counterterrorism framework, including use of sanctions, prohibits humanitarian actors from engaging in a wide range of activities that involve listed terrorist organizations or sanctioned countries, regardless of the purpose or intent behind such engagement. Similarly, the definition of material support of terrorism is both broad and vague, and violations can result in criminal prosecution, extensive jail time, and significant fines.³

Most sanctions are imposed under the authority of the International Emergency Economic Powers Act (IEEPA)⁴. There are multiple additional sanctions created by acts of Congress. Since Executive Order 13224 was issued in the wake of 9/11, counterterrorism sanctions include a prohibition on providing material support to terrorism, without defining it. The broad definition used in criminal provisions is generally used, thus making the material support prohibition a key factor in sanctions programs. As noted in Section 3 of these comments, safeguards and exemptions for humanitarian assistance are narrow and inadequate.

³ The definition of material support is in the Anti-Terrorism and Effective Death Penalty Act, 18 U.S.C. §2339A(b)

⁴ 50 USC 1702

In contrast, Common Article One of the Geneva Conventions requires states to “undertake to respect and to ensure respect for the present Convention in all circumstances.”⁵ This requires States that are not parties to a conflict to refrain from obstructing or impeding the ability of a party to address the basic needs of the civilian population. Counterterrorism restrictions based on U.S. sanctions, however, impede humanitarian organizations and states from working together to facilitate humanitarian assistance to the civilian population in need.

- *U.S. Sanctions Limit Rights Protected by International Human Rights Law*

The U.S. adopted the *Universal Declaration of Human Rights (UDHR)* in 1948. The UDHR protects “all rights and freedoms without discrimination of any kind...” (Article 2), “freedom of opinion and expression...” (Article 19) and the “right to freedom of peaceful assembly and association” (Article 20). The U.S. ratified the *International Covenant for Civil and Political Rights (ICCPR)* in 1992.

In 2006 Martin Shenin, then Special Rapporteur on the promotion and protection of human rights while countering terrorism, submitted a report to the General Assembly which noted that limits on protected rights must be exceptional and temporary measures. When such limits are imposed “[T]he principles of proportionality and of necessity must be respected concerning the duration and geographical and material scope of the state of emergency as well as all the measures of derogation resorted to because of the state of emergency. Furthermore, a State party to ICCPR must fully respect its other international obligations whenever it derogates from the Covenant.... Before resorting to derogations, States must make a careful analysis of the situation, examine if and which derogating measures are necessary, and choose from among the different options the one that will be the least restrictive for the protection of the rights in question.”⁶

In his 2013 report to the General Assembly the Special Rapportuer on the rights to freedom of peaceful assembly and of association, Maina Kiai, notes that on limitations on association and assembly must “not only pursue a legitimate interest but also be “necessary in a democratic society.”⁷ Kiai explains further that “In order to meet the proportionality and necessity test, restrictive measures must be the *least intrusive means* to achieve the desired objective and be limited to the associations falling within the clearly identified aspects characterizing terrorism only. They must not target all civil society associations...”⁸ (emphasis added)

However, the criminal prohibition on material support of terrorism, which has been incorporated into the sanctions context by Executive Orders, has been applied to speech and communication with designated foreign terrorist organizations even for the purpose of preventing or alleviating

⁵ Geneva Conventions, article 1.

⁶ Ibid, Paragraph 12 and 13

⁷ UN General Assembly, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai April 2013 A/HRC/23/39 para 23

⁸ Kiai report, Paragraph 23

the suffering of a civilian population, including speech or communications to reduce or eliminate the frequency and severity of violent conflict and reducing its impact on the civilian population. Such speech is considered prohibited “technical advice and assistance” under the law. This has erected a significant barrier to the ability of peacebuilding organizations to engage armed actors in peace processes.⁹

- *U.S. Sanctions Do Not Respect Economic Development Rights and Right to Health*

Several international treaties, declarations, and charters expand upon definitions of human rights to include the spheres of economic development, living standards, and health relevant to the discussion on unilateral coercive measures.

- The [International Covenant Economic, Social, and Cultural Rights](#) (ICESR), of which the US is a signatory, outlines fundamental rights as related to economic development, living standards, and health. It “obliges states to respect, protect, and fulfill the right to ‘the enjoyment of the highest attainable standard of physical and mental health,’ as well as the right to an adequate ‘standard of living’ that includes ‘adequate food.’ Parties to the convention are obliged to work toward the progressive realization of these rights over time ‘by all appropriate means’ and ‘to the maximum of its available resources.’”¹⁰

Additionally, it protects the rights of self-determinations and the right to “freely pursue their economic, social and cultural development,” which includes the ability to “freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.”

- The [Vienna Declaration and Programme of Action](#) adopted by the World Conference on Human Rights in 1993 calls upon States to “refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States and impede the full realization of the human rights set forth in the Universal Declaration of Human Rights and in international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing and the necessary social services”.
- The [Universal Declaration of Human Rights](#) declares that everyone “has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

⁹ *Holder v. Humanitarian Law Project* 561 U.S. 1 (2010)

¹⁰ Human Rights Watch (2019) “‘Maximum Pressure’: US Economic Sanctions Harm Iranians’ Right to Health”

- Article 32 of the [Charter of Economic Rights and Duties of States](#) affirms that “[n]o State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights.”

Several UN Human Rights bodies have concluded that unilateral coercive measures, such as those that the US employs, violate basic rights protected by the aforementioned documents, including but not limited to:

- UN Committee on Economic, Social and Cultural Rights (CESCR)’s [General Comment No. 8](#): The relationship between economic sanctions and respect for economic, social and cultural rights
- UN Committee on Economic, Social and Cultural Rights (CESCR)’s [General Comment No 14](#): Substantive Issues Arising in the Implementation of the International Convention on Economic Social and Cultural Rights
- UN Human Rights Council [Resolution 27/21](#)

ii. Examples

Example 1: Due Process Rights

NGOs often gain access to civilians in need of aid most effectively and efficiently by partnering with local charitable organizations. But selecting local partners creates difficulties because generally accepted best practices, due diligence procedures, and good faith provide no legal protection from facing criminal or sanctions penalties. Under International Emergency Economic Powers Act (IEEPA) authorities, the Treasury Department can shut down a charity and freeze its assets if it decides the local partner is a sanctioned entity or controlled by one. There are very limited appeal rights in these cases, including lack of notice of the reasons for being listed and lack of meaningful opportunity to respond. Two federal courts have found Treasury's process for listing and freezing assets to be unconstitutional as applied to two U.S. charities. In each case, the court found that the charity was not given sufficient notice of the accusations against it or an adequate opportunity to defend itself. A detailed explanation of these IEEPA authorities are in Annex I.

The breadth of this restriction is illustrated by the United States Agency for International Development (USAID), which bars grantees in Gaza from having any contact with private Palestinians or public officials unless “they are not affiliated with a designated terrorist organization (DTO).” “Contact” is defined as “any meeting, telephone conversation, or other communication, whether oral or written.”¹¹ In the Gaza strip, where Hamas is the governmental authority, this bars organizations operating USAID-funded programs from making any logistical

¹¹ USAID Mission Order 21

arrangements with government officials, or using government facilities, such as public schools or clinics, to access civilians in need.

Example 2: Freedoms of Expression, Association and Assembly

In the June 2010 case *Holder v. Humanitarian Law Project*¹² (HLP) the Supreme Court upheld the power of Congress to apply the material support prohibition to speech and communications aimed at conflict resolution training. HLP had sought to train the Kurdistan Workers Party (PKK) and Liberation Tigers of Tamil Eelam (LTTE), both designated FTOs, how to use UN procedures and international law to resolve disputes peacefully. The court said HLP can speak and write about the PKK and LTTE so long as it did not do so in coordination with them or under their direction or control. The Court did not define "coordinated speech."

The effect of the decision is to impose a permanent, blanket ban on engaging sanctioned groups for peacebuilding purposes, limiting the speech and associational rights of organizations that wish to conduct such programs.

Example 3: Sanctions undermine civil society, women's rights activists in Iran

A common claim by the Trump Administration is that the sanctions regime against Iran is aimed at promoting democracy, in support of the 'people of Iran.' This, however, is contested by scholarship on sanctions in general, and testimony by civil society activists of Iran in particular.

In one important study¹³, the authors found that sanctions actually worsened the level of democracies in targeted locations, as "economic hardship caused by sanctions can be used as a strategic tool by the targeted regime to consolidate authoritarian rule and weaken the opposition" and "create new incentives for the political leadership to restrict political liberties to undermine the challenge of sanctions as an external threat to their authority."

Many times, this has significant gendered impacts. The International Civil Society Action Network [argues](#), in the cases of Iran and Iraq, that "the externally imposed sanctions [allows] conservatives to further their regressive social agenda by relegating women back to the domestic sphere, limiting their access to education and the job market and couching it as an attempt to increase male employment."

12 *Holder et. al. v. Humanitarian Law Project et. al.*, 130 S.Ct. 270, 177 L. Ed. 2d 355 (2010).

13 Peksen and Drury (2010) "Coercive or Corrosive: The Negative Impact of Economic Sanctions on Democracy" *International Interactions*, Vol. 36 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1630664

In a 2019 a group of 170+ Iranian women activists penned a [letter](#) strongly opposing US sanctions, writing that they “have resulted in increased closure of social and civic space domestically” and that “civil society is one of the main victims.”

Note re Examples 4 -9: Broad sanctions harm health and livelihoods of Venezuelan and Iranian civilians

The Trump Administration’s heavy-handed use of a variety of sanctions against Iran and Venezuela are particularly instructive examples of how UCMs violate the economic and health rights of targeted populations discussed above. During the COVID-19 pandemic and global recession, these violations are exacerbated. Despite claims from the Department of Treasury’s Office of Foreign Asset Control (OFAC) and the US State Department, the current ‘humanitarian’ provisions in these sanction regimes are inadequate for addressing their overwhelmingly negative effects.

Example 4: Maximum Pressure Against Iran

Since the beginning of the United States’ “maximum pressure” campaign began in May 2018, the Trump Administration has implemented a [series of unilateral coercive measures](#) against key industries in both the public and private sector of Iran, including far-reaching secondary sanctions that seek to deter non-U.S. companies from engaging in financial transactions and goods and services trade with Iranian entities. This includes transactions with Iran’s Central Bank, most major private banks and all entities and persons connected to Iran’s petroleum, metals, manufacturing and shipping industries.

The imposition of these sectoral and financial sanctions, and especially their extraterritorial components, have significantly stifled economic development in Iran, impeding ordinary Iranian citizens’ ability to “freely pursue their economic, social and cultural development” and rights to adequate standards of living.

A major, explicit goal of the Trump Administration is to “[bring Iran’s oil exports to zero.](#)” So far, they have been successful in [severely hampering Iran’s oil production and exportation.](#) Earlier this month, it was [reported](#) that from 2019-2020, Iran had earned only \$8.9 billion from the sale of oil and related products, down from a peak of \$119 billion less than a decade ago. As Iran’s economy and state budget is highly dependent on their petroleum industry, this has had widespread [negative repercussions](#) for the Iranian economy and its the civilian population. While before sanctions were announced, Iran was expected to experience 4 percent growth in 2019, according to the IMF; from April to December of 2019 alone the country experienced a [7.6% decline](#) in GDP. Prices of basic goods such as vegetables and meat have [soared](#), housing costs have [spiked](#), and Iran’s currency has [lost half its value.](#)

Example 6: Health and Humanitarian Effects in Iran

US financial, banking, and sectoral sanctions against Iran have limited Iran's ability to access lifesaving medicines and medical devices and to maintain previous levels healthcare spending. The severe macroeconomic impacts and the [restricted access](#) to foreign dollar reserves, which the Iranian government and private sector needs in order to import most goods, are compounded by the reluctance of foreign companies to engage in any kind of transactions with Iran due to real or perceived threats of retribution by the U.S. Department of Treasury's Office of Foreign Asset Control (OFAC).

In a [study](#) conducted by Human Rights Watch (HRW), published in November 2019, the authors conclude that sanctions have posed a serious threat to Iranians' right to health, documenting severe shortages in lifesaving medicines "ranging from a lack of critical drugs for epilepsy patients to limited chemotherapy medications for Iranians with cancer."

HRW also documented the effects of on civil society and international humanitarian organizations working in Iran. The Norwegian Refugee Council (NRC), an international NGO that works with Afghan refugees within Iran, has noted that they have been unable to transfer money from donors to support their work for a full year despite falling under the sanctions-exempt humanitarian categories provided by OFAC. Their problem, one that many other organizations and companies face, is the lack of banks outside Iran that have direct or intermediary relationships with banks in Iran in order to engage in the transfer of funds. The organization claims that it has had to spend hundreds of thousands of Euros on extra legal analyses and advice in order to assuage the fears that banks may have about US sanctions.

Example 7: Effects on COVID-19 Response in Iran

These obstacles to humanitarian trade and transactions have been further exacerbated by the COVID-19 pandemic, which – in order to be adequately addressed – requires significant amounts of resources, access to foreign reserves, and the ability to rapidly import specific medical items.

A [report](#) this year shows that European exports of Personal Protective Equipment (PPE) to Iran has coincided with the threat and implementation of US unilateral sanctions, with "[t]otal exports to Iran [falling] from EUR 39 million to just EUR 13 million last year," leaving Iran unprepared for pandemic response.

[Medical workers](#) have complained difficulties in obtaining medical equipment needed to fight the pandemic, and employees of pharmaceutical companies have claimed that medical suppliers have refused to work in Iran, even during the pandemic, due to US sanctions risks.

While the Department of Treasury [issued](#) General License No. 8 on February 27, 2020, which exempts some humanitarian trade transactions with the Central Bank of Iran that were previously prohibited due to counterterrorism-related sanctions, it does not exempt some crucial devices and equipment for COVID-19 prevention, diagnostics, and treatment that [require special licenses](#) including. These special licenses can take up to an average of [77 business days](#) for approval by OFAC. While the Office has issued a [statement](#) that they will work on prioritizing and expediting these licenses, here has been no proof of that to date.

Example 8: Venezuela

Similar to Iran, the United States has imposed a [series of broad unilateral coercive measures](#) against the Government of Venezuela, starting with financial sanctions August of 2017, oil sector sanctions in January 2019, and sanctions on the Central Bank of Venezuela in April 2019.¹⁴

In a report¹⁵ titled *Economic Sanctions as Collective Punishment: The Case of Venezuela* by economists Jeffrey Sachs and Mark Weisbrot, found that – from 2017 and 2018 – these sanctions have contributed to the death of more than 40,000 Venezuelans due to shortages in lifesaving medicines. Furthermore, financial sanctions have prevented the government of Venezuela from restructuring its debt and stabilizing its currency, leading to massive hyperinflation.

In a separate report by Venezuelan economist Francisco Rodríguez titled *Sanctions and the Venezuelan Economy: What the Data Say* (June 2019), the author “estimate[s] that financial sanctions were associated with a decline in production of 797tbd, which at today’s oil prices would represent USD 16.9bn a year in foregone oil revenues” while the sanctions imposed directly on the oil sector caused an additional decline of \$7.5bn USD a year. By itself, this drop in foreign exchange revenue has significant repercussions for the importation of humanitarian, exemplified by the fact that from 2017 to 2018, total pharmaceutical imports collapsed by more than a half.¹⁶

Example 9: COVID-19, Famine, and Fuel

¹⁵ Sachs and Weisbrot (2019) “Economic Sanctions as Collective Punishment: The Case of Venezuela” *Center for Economic and Policy Research*. <https://cepr.net/images/stories/reports/venezuela-sanctions-2019-04.pdf>

¹⁶ https://en.oilforvenezuela.org/pdf/Humanitarian_Oil_Agreement-October2019.pdf

As COVID-19 cases are rapidly rising throughout Latin America, a May 2020 [report](#)¹⁷ by Human Rights Watch report warns that the United States must take decisive action to curb the negative effects that sanctions have on the country’s population, especially during the pandemic.

The report also emphasizes that “fuel shortages are increasing the difficulty for both health professionals and patients to get to hospitals and clinics, and for food to reach people in need, which could further undermine health care.” Bloomberg [reported](#) on June 11, that fuel shortages threatened agricultural production and transportation. Coupled with a drop in imports, this puts the country at risk of famine.

United States’ UCMs have significantly hampered the country’s ability to obtain gasoline. While Venezuela is oil rich, they have [relied significantly](#) on importing gasoline from U.S. Gulf refiners, whose fuel exports to Venezuela dropped after the implementation of sanctions. Sanctions have also [affected](#) domestic refining capacity in Venezuela, due to lack of investment and maintenance resulting from the severe difficulty in obtaining financing for the importation of spare parts.

In the face of this crisis, the Trump Administration has ramped up coercive measures, or threats of coercive measures, targeting foreign companies and their subsidiaries seeking to ship fuel to Venezuela, including [threats against third party tankers](#).

b. Emergency response and vulnerable populations

i. Rights impacted

Civil society and the people it serves are particularly impacted by counterterrorism sanctions. This is because often the work of humanitarian, peacebuilding, development, human rights defense and more occurs in areas where non-state armed groups that are on U.S. terrorist lists control territory or are otherwise present.

- *Humanitarian negotiations and access to civilians in need*

IHL provides for a “right of initiative” that allows impartial humanitarian organizations to offer their services to a party to the conflict.¹⁸ Common Article III of the Geneva Conventions, Additional Protocol II (a multilateral treaty that applies to non-international conflicts) and customary International Humanitarian Law are designed to balance humanitarian necessity and security considerations. However, unilateral sanctions in the U.S. do not incorporate these requirements.

¹⁷ Human Rights Watch (2020) “Venezuela: Urgent Aid Needed to Combat Covid-19”

¹⁸ See, e.g., Fourth Geneva Convention, article 3(2).

Article 18 of Additional Protocol II allows humanitarian and impartial organizations to offer their services to civilian populations in need, provided that relief be provided on the basis of need alone. Arbitrary or capricious blocking humanitarian access could violate IHL's prohibition on the starvation of the civilian population as a method of warfare.

U.S. counterterrorism laws, including sanctions, do not accommodate these standards for alleviating the suffering of the civilian population. Instead, they prohibit virtually all transactions involving a sanctioned entity. It ignores the fact that limited engagement with such groups may be necessary to undertake humanitarian operations for civilians in some conflict areas.

- *Medical assistance*

IHL deals specifically with the treatment of wounded or sick individuals. Common Article Three states “the wounded and sick shall be collected and cared for”¹⁹ without stating who can or must provide the medical assistance. A state may not erect barriers that make such activity by humanitarian organizations unnecessarily difficult or illegal. The counterterrorism measures of the U.S. however, particularly the material support statute, prohibit the provision of medical assistance to any member of a sanctioned entity who is sick or wounded.²⁰ This contrary to the language found in Common Article Three and also contravenes Additional Protocol II that states: “[a]ll the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected . . . There shall be no distinction among them founded on any grounds other than medical ones.”²¹

In addition IHL protects every individual's right to receive medical assistance by prohibiting punishment of anyone for “carry[ing] out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.”²² By incorporating the material support prohibition in sanctions, U.S. law effectively prohibits the provision of any medical assistance to a sanctioned person or member of a sanctioned entity. One court drew a clear line between the provision of medicine that is exempted from the material support statute and the provision of medical assistance, which is not.²³ Such a strict reading has resulted in an incredible incongruity where “it is legal to give someone a pill, but illegal to provide clean water for swallowing it.”²⁴

ii. Examples

¹⁹ Geneva Conventions, article 3.

²⁰ 18 U.S.C. 2339(B).

²¹ Additional Protocol II, article 7.

²² Additional Protocol II, article 10.

²³ *See, e.g., United States v. Sabir*, No. 07-1968-cr (2d Cir. February 4, 2011).

²⁴ “Material Support and the Need for a Sensible Humanitarian Exemption,” *Charity and Security Network*, July 7, 2010, http://www.charityandsecurity.org/analysis/material_support_law

The negative impact sanctions have on civil society's ability to provide essential services and serve as a vehicle for people to protect and defend fundamental human rights is well documented. We refer you to the following resources:

- A February 2020 working paper from the Inter-Agency Standing Committee (IASC) of the United Nations (UN) General Assembly, *Desk review of relevant literature on the impact of counter-terrorism legislation and measures on principled humanitarian assistance*,²⁵ summarizes previously published recommendations to protect principled humanitarian action impacted by counterterrorism legislation. Such legislation and regulation (and UN Security Council Resolutions) often take the form of sanctions. It recommends:
 - Inclusion of safeguards for humanitarian action in international and national legislation;
 - Improved wording and language of UNSC Resolutions related to CT (especially suppression of financing of CT) or resolutions establishing/renewing sanctions regimes;
 - Increased systematic monitoring of and reporting on the impact of sanctions regimes/CT restrictions on humanitarian access and space;
 - Greater transparency and accountability of UN counterterrorism bodies on the implications of the international counterterrorism framework on human rights and principled humanitarian assistance.
 - Development of risk-sharing measures among donors, humanitarian organizations and financial institutions.

- *Making Sanction Smarter: Safeguarding Humanitarian Action*²⁶ from the International Peace Institute, published in December 5 2019, argues that although sanctions regimes are used with the assumption that they minimize harm, they actually can devastate civilian populations, particularly those that rely on humanitarian aid, including refugees and internally displaced persons. Sanctions regimes also affect humanitarian organizations' ability to deliver aid on the basis of need alone rather than the political objectives of sanctions programs. The policy paper provides recommendations for addressing the challenges sanctions pose for effective humanitarian access. The report recommends:
 - Safeguards for humanitarian actions in sanctions regimes via exemptions (which she defines as “provision[s] allowing humanitarian actors to apply for permission to conduct their activities”) and exceptions (which she defines as “provision[s] that carves out legal space for humanitarian actors, activities, or goods within sanctions measures without any prior approval needed.”) Each country has its own way of establishing exemptions or exceptions. This creates a need to

²⁵ https://interagencystandingcommittee.org/system/files/2020-02/IASC_RG3_COTER_Recommendations%20from%2f0desk%20review_for%20publication.pdf

²⁶ https://charityandsecurity.org/wp-content/uploads/2019/07/1912_Making-Sanctions-Smarter.pdf

streamline the process in places where humanitarian aid organizations are operating in conjunction with multiple sanctions regimes

- Improved and increased guidance at both the national and regional levels. Financial institutions should also demand this so they can stop over-complying with sanctions regimes and derisking humanitarian aid organizations.
 - More systemic monitoring and reporting, which is currently done on an ad hoc basis.
 - Better risk management support and risk sharing through exemptions and exceptions. Financial institutions “need stronger, more explicit, or more formal guarantees from member states that sanctions will not be enforced if they are providing services to humanitarian actors with proper risk management procedures in place” to decrease derisking
 - Increased dialogue and awareness raising: the report cites the success of the Global NPO Coalition on FATF (the Charity & Security Network is co-Chair)” It concludes by saying derisking, like every other sanctions-related problem plaguing humanitarian aid organizations, is an issue whose relief necessitates enthusiastic government assistance
- In August 2017, Chatham House’s International Security Department and International Law Programme issued a report — *Recommendations for Reducing Tensions in the Interplay Between Sanctions, Counterterrorism Measures and Humanitarian Action*²⁷ — that identifies concrete ways for all stakeholders to address the issue. It explains that often, sanctioned/terrorist-designated groups control areas of humanitarian need. The legal prohibitions regarding these groups can include incidental payments that humanitarian actors may need to make in order to operate.

It asserts that systematically adopted exemptions in UN and EU sanctions regimes are the most effective way to ensure that restrictions do not apply to humanitarian action. Currently, only one conflict-related UN Security Council sanctions regime includes this type of exemption. Ideally, these tensions would be addressed at the international level which would, in turn, encourage global replication at the national level.

Noting that “the Security Council is an extremely cautious body and will not adopt an exemption of its own accord,” the report states that change is more likely to occur if states adopt legislation that implements international obligations in domestic law. Additionally, states should conduct regular, critical reviews of counterterrorism measures.

- The Norwegian Refugee Council report **PRINCIPLES UNDER PRESSURE: THE IMPACT OF COUNTERTERRORISM MEASURES AND**

²⁷ <https://charityandsecurity.org/sites/files/chathamhouse/publications/research/2017-08-23-sanctions-counterterrorism-humanitarian-action-gillard-final.pdf>

PREVENTING/COUNTERING VIOLENT EXTREMISM ON PRINCIPLED HUMANITARIAN ACTION,²⁸ published in 2018, provides in-depth analysis of how “the ‘war on terror’ with all its legislation aimed at countering terrorism, has had the unintended consequence of making it more difficult and dangerous to aid and protect victims of terror.” It explains the inter-relationship between criminalization of support for terrorism with counterterrorism financing measures. As noted above, in the U.S. and elsewhere sanctions are often the vehicle for implementing such measures.

II. Main obstacles created by sanctions

The obstacles U.S. sanctions create for exercise of human rights and provision of humanitarian assistance result from highly restrictive laws that are both broad and vague. The harsh penalties, combined with a lack of clarity about what is and is not permissible, has a chilling effect on all stakeholders, including civil society organizations and financial institutions. This means that civil society organizations must cope with a growing problem of financial exclusion (often referred to as bank “derisking”) as well as restrictive sanctions measures.

Example 1: A foreign aid organization with a U.S. office has experienced numerous bank derisking problems in attempting to send money to Venezuela, stemming from U.S. sanctions. The most recent problem happened in February of this year when there was a delay on transfers from their bank in Panama (BANITSMO) after doing a control check for all transactions linked to Venezuelan citizens. The reasons are unclear, although the bank in Panama said the wires were rejected due to their internal audit process. There were 16 transfers for around \$111,000 USD – a relatively small amount but badly needed by the intended recipients. The delays were very disruptive. Some of the transfers were done later via Europe and others were re-submitted once the blockage ended. The blockages lasted one to four weeks. (The organization providing this example requested to remain anonymous.)

Example 2: A U.S.-based aid organization working in North Korea has to move funds in via cash carry, due to the lack of a financial channel into the country (the UN also has to do this). Due to travel restrictions and border closures from the Covid-19 pandemic, cash carry is no longer an option, so the organization has no way to move program funds into the country for a well-drilling project related to support two pediatric hospitals. That work is done under an Office of Foreign Assets Control license. The lack of clean running water puts the patients at increased risk for infections, including Covid-19. (The organization providing this example requested to remain anonymous.)

²⁸ https://reliefweb.int/sites/reliefweb.int/files/resources/nrc-principles_under_pressure-report-screen.pdf

Example 3: Norwegian Refugee Council (NRC)

Over the last year the NRC had 736 cases where payments were questioned because of banks derisking due to fear of sanctions-related penalties if the funds end up in wrong hands. Some major banks are not willing to take the risk working with NGOs because the profit margin is low.

91% of these cases were in payments in USD, with about 5-10% of USD transfers being questioned and held up. Responding to extensive information requests requires more work for the NRC, which estimates ½ hours to 1 hours in average to find the required information and to respond, which adds up to half a staff position-year. There are delays and frustration on the employee or supplier side when funds are not received on time. Even USD transfers to the Geneva office were questioned several times, despite the fact that no sanctioned countries or locations where sanctioned entities operate were involved.

NRC's experience makes it clear that no amount of liaising with bank special client service representatives and compliance departments is going to make any fundamental difference in the reality described above. NRC believes this problem reflects extreme derisking throughout the finance sector due to the zero tolerance messages related to financial sanctions.

NRC notes that financial flows for projects to combat COVID-19 have barely started, so real time examples of delays are not available yet. Without specific changes, the financial sector will continue with business as usual regardless of the presumed urgency in the face of COVID.

Example 4: AFSC Programs in North Korea

- April 2017 - present Issue: Wells Fargo froze \$35,651.05 of AFSC funds Resolution: Unresolved – funds have not been released back to AFSC Description: In April 2017, Wells Fargo froze AFSC funds during a routine transaction for undisclosed reasons. The transaction was necessary for a shipment of humanitarian goods to our program in the DPRK. The incident was referred to the Treasury Department's Office of Foreign Assets Control (OFAC), which issued a subpoena on May 25, 2018 that required AFSC to disclose all relevant information regarding the transaction. OFAC issued a cautionary letter on May 1, 2019 and closed the case. AFSC's lawyer continues to work with OFAC to obtain a separate license to release the funds from Wells Fargo, which have not yet been returned to AFSC.
- January 2019 Issue: Wells Fargo froze \$22,805 of AFSC funds Resolution: Funds returned to AFSC on February 12 Description: In 2019, Wells Fargo froze AFSC funds during a routine transaction for undisclosed reasons. The transaction was for the payment of staff salaries and regular office expenses for AFSC's office in Dalian, China. The memo line of the transaction included the acronym "DPRK," which likely triggered the incident. AFSC communicated to Wells Fargo that the funds were for staff salaries and that "DPRK" was in reference to the name of AFSC's program. Wells Fargo eventually released the funds to the China Construction Bank, which promptly returned the transfer back to Wells Fargo – likely for the same reason that Wells Fargo held the funds initially.

Example 5: AFSC Somalia Program

- 2019 Issue: Standard Chartered (SC) Bank closed AFSC's account Resolution: Account to be closed within 30 days Description: AFSC has had a longstanding relationship with the Standard Charter Bank in Africa. In 2019, however, AFSC received a notice from SC that it was closing AFSC's account within two weeks. The bank has refused to provide a reason, despite the unorthodox nature of closing an account in good standing. AFSC was able to secure a 30-day extension for the termination period in order to find a new banking partner. After an examination of the incident, AFSC has determined that the reason is likely due to our ongoing youth program in Somalia

Example 6: A U.S.-based organization working in Ethiopia, Somalia, Kenya, Sudan, South Sudan and Djibouti has consistently had problems getting money to programs in Sudan for more than six years, despite having OFAC licenses for this work. Every single wire transfer has been turned back despite answering additional questions and attaching the relevant OFAC license. When the Sudan sanctions were lifted in 2017, the group thought the financial access situation would improve, but it did not.

It finally began using money transfer businesses, which charge a 3% - 5% transaction fee – money that could be going to programming. In addition to one-time projects, the group runs two high schools in a Sudanese refugee camp, so teachers and staff must be paid salaries each month. Since the start of the Covid-19 pandemic, the money transfer business has stopped accepting the group's wires. This has significantly affected the group's ongoing programs in Sudan as well as its response to Covid-19.

III. Steps taken to address the problem created by unilateral sanctions have been insufficient

Given the narrow humanitarian exemptions in U.S., the dysfunction of the licensing process and the failure to address bank derisking, more needs to be done to address the problematic impact of U.S. sanctions described in these comments. Failure to do so exacerbates human suffering, including areas of conflict and the Covid-19 pandemic

- *Humanitarian exemptions/safeguards inadequate, not IHL compliant*

The humanitarian exemption in IEEPA bars the president from blocking "donations of food, clothing and medicine, intended to be used to relieve human suffering," unless the president determines that such donations would "seriously impair his ability to deal with any national emergency."²⁹ However, this national emergency exception was invoked as the basis for the

²⁹ 50 U.S.C. §1702(b)(2)

executive powers asserted in EO 13224, signed by President George W. Bush on Sept. 24, 2001.³⁰ It has since become routine for these powers to be invoked in Executive Orders relating to counterterrorism sanctions. This has effectively repealed the exemption.

The material support statute has a very narrow humanitarian exemption, allowing only medicine and religious materials to be provided to FTOs.³¹ The exemption does not include medical services, food, water, blankets, shelter, clothing, or other materials necessary to adequately respond to situations that endanger the lives of victims of armed conflict or natural disasters. The only exceptions possible are for non-tangible support. The law allows the Secretary of State and Attorney General to approve exceptions for humanitarian aid in the form of “training,” “personnel,” and “expert advice or assistance,” where the secretary determines that the aid may not be used to carry out terrorist activity.³² To our knowledge, this power has not been invoked, although there have been numerous requests from civil society that it be used to allow peacebuilding programs to move forward.

- *The licensing process is dysfunctional, overwhelmed*

C&SN report *Safeguarding Humanitarianism*³³ said “...although there is a licensing process that allows the Treasury Department to make exceptions under one set of regulations for limited humanitarian action, this process is often described as excruciatingly slow and ineffective. It lacks any consideration of international law in its decision-making procedures. The licensing regime contains no explicit exceptions for critical humanitarian assistance. If a license is granted, the conditions of it may compromise the core operating principles of humanitarian organizations, particularly neutrality. The result of such a process is to make addressing urgent humanitarian need the exception, rather than the rule.”

Example 1: A global aid organization with a U.S. branch typically sends U.S. grants funds to the five European offices that manage projects, for them to distribute to program countries. The French office prefers to use non-U.S. sources of funding for its programming in Iran because they find the OFAC requirements (on funds transferred under the auspices of the General License) too onerous.

- *Financial Mechanisms for Humanitarian Trade with Iran do not work*

As noted earlier in this report, a key impediment to humanitarian trade with financially sanctioned countries such as Iran is the lack of sufficient primary and intermediary banks willing

³⁰ 50 U.S.C. §1702(b)(2)

³¹ 18 U.S.C. §2339A(b)(1)

³² 18 U.S.C. §2339B(j)

³³ Charity & Security Network [Safeguarding Humanitarianism in Armed Conflict](#) July 2012

and able to take on the risks of engaging in financial transactions with Iranian counterparts, even when such trade is technically considered legal under OFAC guidelines.

In January 2019, Germany, France, and Britain (the E3), [announced](#) the creation of a ‘special purpose vehicle’ to facilitate trade of humanitarian goods with Iran named the Instrument in Support of Trade Exchanges (INSTEX). While not a bank, INSTEX is a novel ‘netting mechanism’ that coordinates payment without the need for cross-border financial transactions.³⁴

Since the announcement, the United States government has made a series of [threatening comments](#) regarding INSTEX. While the mechanism ostensibly is designed to engage in trade that is already greenlighted by OFAC, the US Treasury has not attempted to assist in its creation. Recently, a large number of President Trump’s supporters in Congress have released a [policy proposal](#) which includes instituting sanctions on all entities involved in INSTEX transactions. To date, INSTEX has only managed to clear [one transaction](#) of blood treatment equipment valued at €500,000.

In February 27, 2020, the United States and Swiss Governments [finalized](#) the Swiss Humanitarian Trade Arrangement (SHTA) after an initial pilot shipment of \$2.55 million in cancer and organ transplant drugs from a Swiss pharmaceutical company. Since then, while COVID-19 cases began rapidly spreading throughout Iran, SHTA has failed to execute further transactions, despite [reported interest](#) among dozens of Swiss companies.

Sanctions experts and European officials have criticized SHTA’s implementation based on their extensive reporting requirements, which demand stringent documentation of Swiss banks, exporters, and the financial holdings of their Iranian counterparts. European officials have [expressed](#) fear that these requirements amount to a “fishing expedition” for information that could be later used to pursue sanctions penalties against European companies operating in Iran.³⁵

An additional hurdle is the lack of liquidity available to Iranian importers. *Bourse & Bazaar* [reports](#) that Iranian public and private holdings in Switzerland is CHF 150 million while “Switzerland’s total exports of pharmaceutical products to Iran in 2019 was just over CHF 150 million.” Due to US sanctions blocking Iranian foreign reserves held in Europe, Iranian companies and government are reluctant to draw down on their limited Swiss reserves. Iran has requested a \$5 billion loan from the International Monetary Fund (IMF) to provide liquidity to Iran companies transacting through SHTA, however the Trump Administration has yet to respond, and has opposed the IMF loan request.

³⁴ See more at <https://www.bourseandbazaar.com/research-1/category/Special+Report>

³⁵ In the months following SHTA’s implementation, OFAC concluded at [\\$7.8 million settlement](#) with a Swiss company that engaged in a lawful transaction with Iranian airlines, but was penalized simply because some of their software communications routed through a server based in Atlanta, US. Actions such as these work to dissuade banks from engaging with Iranian companies at all.

Two dozen American and European national security leaders have issued a joint statement urging the US government to support humanitarian trade through INSTEX, provide more transparent updates on SHTA's status, and relax its stringent reporting requirements.³⁶

IV. Conclusion and Recommendations – What Can be Done

CEPR, AFSC and C&SN are among 72 organizations that addressed a letter³⁷ to President Trump and U.S. Secretaries of the Treasury and State calling for sanctions relief during the Covid-19 pandemic. It calls attention to the “critical state of the health infrastructures and economies of these sanctioned locations, and how, without immediate intervention, millions of people face severe economic hardship, infection, and death.” In addition to calling for emergency universal exemptions for humanitarian goods, the letter calls for “reporting protocols that monitor the impact and human cost of sanctions” and suspension of “broad-based and sectoral sanctions that cause significant economic damage and leave populations more exposed to sickness and disease, food insecurity, and other humanitarian emergencies.”

The letter states that sanctions relief should not be limited to specific countries or specific types of sanctions programs. Relief measures should include countries like Iran and Venezuela, areas that are controlled by non-state armed groups on the U.S. terrorist list and places like Gaza and Yemen where U.S. security partners have imposed restrictions. The letter notes that “The swift spread of COVID-19 to every corner of the globe clearly shows that an out-of-control epidemic in just one country is a public health threat for all of us.”

In addition, the letter points out that U.S. government action should address the “reluctance of financial institutions, as well as other entities within supply chains, to carry out transactions required for the delivery of this aid.” This should include issuing ‘letters of comfort’ to financial institutions and pro-actively creating and identifying financial channels and trade mechanisms that can rapidly process humanitarian trade transactions. Additionally, the U.S. should ensure sufficient liquidity for countries to purchase humanitarian goods and services by unfreezing foreign currency assets held in multinational banks.

Six minimum criteria for effective humanitarian safeguards requested are:

- 1) Aid necessary for the treatment and prevention of COVID-19;
- 2) Equipment used in the recovery from the disease;

³⁶ https://www.europeanleadershipnetwork.org/group-statement/elntip_iran_april2020/

³⁷ Full text of the letter is available online at <https://www.liftsanctionssavelives.org/>

3) Goods required to address simultaneous needs and issues exacerbated by the pandemic such as food security, water supply, civilian energy infrastructure, and other health-related needs such as medical kits and equipment;

4) Necessary training required for the use of medical and humanitarian equipment; and,

5) Communication and partnerships with non-sanctioned organizations and individuals in sanctioned countries and locations (These exemptions would be necessary for contexts such as North Korea where a specific license is required for partnerships with non-sanctioned organizations and individuals).

6) Transactions and communications that are necessary for accessing and supporting civilian populations in need of assistance.

ANNEX I: The President's Broad Authority to Impose Economic Sanctions

Excerpt from [Safeguarding Humanitarianism in Armed Conflict](#)

Charity & Security Network July 2012

Passed in 1977, the International Emergency Economic Powers Act (IEEPA) amended the World War I-era Trading With the Enemy Act to grant the president authority to declare a state of emergency relating to “any unusual and extraordinary threat, which has its source in whole or in part outside the United States, to the national security, foreign policy or economy of the United States.”³⁸

These emergency powers authorize the president to name specific countries, organizations, or persons as constituting such a threat. Once named, the law prohibits U.S. persons and charities from having any financial transactions with the listed organization, and permits the freezing of any assets that the entity has in the U.S. While IEEPA allows the president to choose among a variety of sanctions, including investigations, regulations, and control over transactions,³⁹ since 9/11 the Department of the Treasury has only invoked the harshest sanctions against charities. Nine U.S. charities have been shut down with their assets frozen, and 39 foreign charities have been listed as supporters of terrorists.⁴⁰

The IEEPA sanctions regime was originally designed to target foreign nations. In 1995, however, President Bill Clinton expanded the use of IEEPA sanctions to non-state entities, in this case, to a list of “specially designated terrorists” that threatened to undermine the Middle East peace process, by issuing Executive Order (EO) 12947.⁴¹ After September 11, 2001, President George W. Bush expanded the use of IEEPA sanctions once again, this time to target not only foreign but also U.S. non-state entities, including public charities.

Shortly after 9/11 President George W. Bush signed EO 13224, which declared a national emergency pursuant to IEEPA and authorized Treasury, in consultation with the attorney general and the secretary of state, to designate foreign *and domestic* individuals and organizations, including U.S. charities, who:

1. have themselves “committed, or pose a significant threat of committing, acts of terrorism”;
or

³⁸ “Unusual and Extraordinary Threat; Declaration of National Emergency; Exercise of Presidential Authority,” 50 U.S.C. §1701-06

³⁹ “Presidential Authorities,” 50 U.S.C. §1702(a)(1)(B)

⁴⁰ “Specially Designated Nationals List,” Treasury Department of the United States, last modified March 20, 2011, <http://www.treasury.gov/offices/enforcement/ofac/sdn/>.

⁴¹ William Jefferson Clinton, “Executive Order 12497- Prohibiting Transactions with Terrorists who Threaten to Disrupt the Middle East Peace Process,” *Federal Register* 60, no. 16, (January 25, 1995). <http://www.ustreas.gov/offices/enforcement/ofac/legal/eo/12947.pdf>.

2. who “assist in, sponsor, or provide financial, material, or technological support,” either for acts of terrorism or for persons who have committed (or pose a significant threat of committing) acts of terrorism; or
3. who provide “financial or other services to or in support,” either of acts of terrorism or of persons who have committed (or pose a significant threat of committing) acts of terrorism; or
4. who are owned or controlled by any of the above persons; or
5. who are “otherwise associated with” persons who have committed (or pose a significant threat of committing) acts of terrorism.⁴²

Treasury regulations define what it means to be “otherwise associated with” a terrorist organization:

- (a) To own or control; or (b) To attempt, or to conspire with one or more persons, to act for or on behalf of or to provide financial, material, or technological support, or financial or other services.⁴³

The combination of these alternative criteria radically expands the sphere of entities that may be listed by Treasury.

Historically, one of the primary goals of the policies and regulations that implement the IEEPA sanctions regime against Designated Terrorist Organizations (DTOs)—known as the anti-terrorist financing regulations—has been to choke off financial support and funding to terrorists. But because of the over-breadth of EO13224, not only may entities “otherwise associated” with terrorists be listed, but the law also now prohibits much more than financial transactions. EO 13224 prohibits a wide range of engagements with DTOs, including humanitarian action and peace-making by explicitly prohibiting “the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed...”

In October 2001, the USA Patriot Act expanded IEEPA sanctions even further to block the assets of a non-state entity “during the pendency of an investigation” into whether it should be listed as a DTO.⁴⁴ In other words, the government can freeze a U.S. organization's assets indefinitely, prohibit engagement with it, and criminalize all transactions with it *before formally listing the organization as a DTO*. The law does not limit the length of time the government may spend investigating the organization. Any organization that is subjected to this sanction is effectively shut down and, as will be explained later in this chapter, has little recourse to regain its assets or clear its name.

⁴² George Walker Bush, “Executive Order 13224- Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,” *Federal Register* 66, no. 186, (September 25, 2001).

⁴³ “Terrorism Lists Governments Sanctions Regulations,” 31 C.F.R. 594.316

⁴⁴ 50 U.S.C. §1702(a)(1)B