



Combatting overcompliance with unilateral coercive measures – Discussions from South Centre Consultation

By Yuefen Li and Danish

Unilateral coercive measures (UCMs) have been increasingly imposed by a small number of advanced economies as a tool to implement their foreign policies, compel policy changes or regime change and constrain economic development of the targeted states¹. UCMs violate international law and weaken the multilateral system underpinning the United Nations (UN) and its foundational principles, as enshrined in the UN Charter².

The significant negative impacts of UCMs are especially magnified in developing countries facing economic hardships, conflicts and climate change-related natural disasters, affecting the capacity of targeted countries to realize human rights, especially the [human right to food, health, and development](#), as well as [curtailing access to justice and effective remedies](#). The impacts of UCMs are exacerbated by overcompliance by multinational companies, financial institutions, and States taking excessively cautious approaches that even exceed the requirements imposed by the UCMs in the first place³.

In view of the severe negative impacts of UCMs on targeted countries and the international community, and at the request of South Centre Member States, the South Centre organized a meeting on 18 November 2024 with the participation of senior diplomats from a number of developing countries, several of whom have been targeted by UCMs. The meeting focused on the trends and main drivers of overcompliance with UCMs among multinational firms and financial institutions, and the strategies that can be employed to mitigate overcompliance, especially in relation to humanitarian exemptions.

¹ Nicholas Mulder, *The Economic Weapon: The Rise of Sanctions as a Tool of Modern War* (Yale University Press, 2022). Available from <https://doi.org/10.2307/j.ctv240df1m>.

² Unilateral economic measures as a means of political and economic coercion against developing countries : resolution adopted by the General Assembly, A/RES/78/135, 21 December 2023.

³ UN Special Rapporteur on unilateral coercive measures, Guidance Note on Overcompliance with Unilateral Sanctions and its Harmful Effects on Human Rights, June 2022. Available from <https://www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures/resources-unilateral-coercive-measures/guidance-note-overcompliance-unilateral-sanctions-and-its-harmful-effects-human-rights>.

Dr. Carlos Correa, Executive Director of the South Centre, opened the meeting by welcoming all participants. Dr. Correa highlighted that despite the increasing condemnation of UCMs including through United Nations resolutions, they have been employed more frequently and that these trends are expected to be further worsened. He emphasized the importance of exploring all options that can be taken to mitigate overcompliance which hits not only the sanctioned countries, but also many other people and institutions in other countries.

This was followed by a panel of experts who made presentations covering the issue of UCMs from different angles. The panel was composed of Prof. Alena Douhan, United Nations Special Rapporteur on the Negative Impacts of Unilateral Coercive Measures; Prof. Grégoire Mallard, Professor in the Department of Anthropology and Sociology, Graduate Institute, Geneva; and Prof. Yuefen Li, Senior Advisor on South-South Cooperation and Development Finance of the South Centre.

In her presentation, Prof. Alena Douhan delved into the complexities of overcompliance with UCMs, emphasizing its negative effects on human rights and the absence of clear accountability mechanisms. She pointed out that while UCMs typically have documented frameworks, over-compliance arises from vague and/or subjective interpretations and risk-averse behavior by businesses and institutions. Companies often prioritize minimizing the risk of violating sanctions, which can result in consequences such as denial of life-saving medicines and violations of fundamental rights. Overcompliance also creates a jurisdictional gap where States, enterprises, and international bodies do not take any responsibility for addressing the harms caused.

Describing the evolution of enforcement measures for UCMs, she highlighted how secondary sanctions, once infrequent, have become pervasive, often impacting countries that are not subject to primary sanctions. This has disrupted global economies and reshaped international supply chains, with multinational corporations facing increasing pressure to comply under fear of penalties. Recent legislative changes in some sanctioning countries have introduced harsh penalties, including lengthy prison terms for sanctions violations and criminalizing sanctions circumvention, which has further worsened the situation.

Highlighting some new trends in sanctions enforcement, such as the use of rebuttable presumptions of guilt, where individuals or entities must prove their innocence without access to evidence, Prof. Douhan said that this approach has led to reputational harm and financial exclusion, as those accused face significant barriers to defending themselves. The broad interpretation of sanctions frameworks, often outlined in documents like FAQs and guidelines by sanctioning countries, further compounds the problem, leaving businesses and individuals vulnerable to arbitrary penalties.

She also shared her efforts to address these challenges, including two reports presented under her mandate, which documented the adverse impacts of UCMs⁴ and overcompliance on human

⁴ Monitoring and assessment of the impact of unilateral sanctions and overcompliance on human rights - Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human

rights in targeted countries⁵. Recognizing the inadequacy of existing protections, Prof. Douhan has proposed guiding principles on sanctions, business, and human rights, outlining legal norms to resist overcompliance. The goal is to finalize these principles and foster broader adoption to protect human rights against the harmful effects of overcompliance.

In conclusion, Prof. Douhan urged stakeholders to prioritize the development of legal frameworks and international adjudication mechanisms to safeguard human rights in the face of UCMs. She highlighted the need for UN treaty bodies to accept cases related to overcompliance and bypass traditional jurisdictional limitations. The recently held international conference on sanctions, business, and human rights⁶ represents a pivotal moment to advocate for meaningful change, emphasizing that protecting human rights in the context of UCMs is both urgent and achievable.

Prof. Mallard then took the floor and highlighted the complex interplay between sanctions, their enforcement mechanisms, and peace mediation efforts. Explaining how UCMs indirectly affect populations in sanctioned territories and raise significant challenges for international diplomacy, humanitarian relief, and legal accountability, he emphasised the need for greater clarity and collaboration between experts on sanctions and peace mediation. He further mentioned the debate about the legality of the UCMs in view of the ineffectiveness and gaps of the multilateral system.

Distinguishing between sanctions mechanisms and their enforcement, Prof. Mallard explained that while UCMs are typically imposed through executive orders or specific regulatory bodies, enforcement often involves multiple entities, including the Office of Foreign Assets Control (OFAC), U.S. Treasury Department, state regulators, and international institutions. A key example is the enforcement of U.S. sanctions through the claim that any transaction in U.S. dollars falls under U.S. jurisdiction. This approach expands the scope of sanctions whereby targeted measures broaden into more generalized restrictions.

On the issue of legal remedies, Prof. Mallard stressed the need for a robust framework of legal remedies to ensure fairness. In the European Union, legal remedies are more transparent and available through the European Court of Justice, whereas in the U.S., the same agency, OFAC, often manages listing, enforcement, and delisting, creating potential conflicts of interest. He further noted that some sanctioned individuals have sought redress through these systems, with limited success. However, providing legal remedies for entire populations affected by

rights, Alena F. Douhan, A/HRC/57/55, 09 August 2024. Available from <https://www.ohchr.org/en/documents/thematic-reports/ahrc5755-monitoring-and-assessment-impact-unilateral-sanctions-and>.

⁵ Access to justice in the face of unilateral sanctions and overcompliance - Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, A/79/183, 18 July 2024. Available from <https://www.ohchr.org/en/documents/thematic-reports/a79183-access-justice-face-unilateral-sanctions-and-overcompliance>.

⁶ International Conference on Sanctions, Business and Human Rights, 21-22 November 2024. Available from <https://www.ohchr.org/en/events/events/2024/international-conference-sanctions-business-and-human-rights>.

overcompliance remains an elusive challenge, as private companies often justify their decisions on business grounds rather than direct obligations under sanctions.

Another point raised was on the lack of integration between sanctions regimes and peace mediation efforts, which leads to the absence of clear pathways for lifting sanctions as part of negotiated peace agreements. For instance, the Joint Comprehensive Plan of Action (JCPOA), which was one of the few examples of a structured sanctions-lifting agreement, ultimately unravelled due to political factors. The interconnectedness of modern sanctions regimes further complicates peace efforts. For example, without credible mechanisms for lifting sanctions, parties in armed conflict may lack the economic incentives to reach negotiated settlements. The use of frozen assets for reparations has also emerged as a contentious issue. While reparations are a common feature of peace agreements, the pre-emptive use of frozen assets raises legal and ethical concerns. Distinctions between using interest accrued to frozen assets versus seizing assets outright may further complicate negotiations.

Prof. Mallard concluded by advocating for greater dialogue between the sanctions and peace mediation communities. He emphasised the importance of designing sanctions-lifting mechanisms within peace agreements to align with both humanitarian goals and economic incentives. This requires improved understanding of the potential benefits of ending conflicts and complying with international norms. Without such collaboration, civilian populations will continue to bear the brunt of prolonged conflicts and the unintended consequences of UCMs, highlighting the urgent need for innovative solutions in this complex area.

Prof. Yuefen Li highlighted that in addition to the alarming increase in the frequency and number of UCMs, the sanctions have grown more complex and multi-layered. The pronounced objective of precision targeting at specific entities, individuals or economic sectors more often than not would fail, resulting in overcompliance which amplifies the economic and social pain and distress for the targeted countries, and especially their vulnerable and marginalized populations. She gave data and facts of the magnitude of the negative impact of UCMs on GDP growth, poverty reduction, international production chain, health and life expectancy.

Prof. Li then listed the major causes for overcompliance. Noting that the advanced countries imposing UCMs constitute important trade destinations and financial markets for the rest of the world, enterprises and banks would rather overcomply to maintain access to these markets and avoid potential risks of disruptions of their normal business exchanges. Uncertainties, unpredictability, and instability are the worst enemies for foreign investment, foreign trade and international cooperation. As sanctions keep evolving in coverage, degree of severity and format, they give rise to loss of confidence in the countries being sanctioned. Complexity and volatility of the UCMs make it difficult to have a clear and correct grasp of the UCMs. To keep abreast with the changes is a costly process for enterprises and other institutions. For instance, what is considered as a legal action today might be considered as illegal tomorrow. Moreover, to maintain compliance, due diligence, timely and effective monitoring and reporting processes would be required, which would require investment in capacity building and constantly updating the scope of compliance, costing enterprises millions and millions of dollars. As a

consequence, risk-averse strategies would be adopted by financial and economic institutions leading to more restrictive conditions than those mandated by the UCMs themselves. In addition, countries and enterprises, in consideration of the trend, would anticipate future expansion of sanctions and try to overcomply to reduce the expected future risks. For quite some years, multinational companies have taken pre-emptive actions to de-risk supply chains, moving some of their suppliers to sanction neutral jurisdictions that are politically close to the sanction imposing countries, resulting in supply chain disruption and reconfiguration. Financial sanctions include excessive restrictions to international financial transactions and restrictions or forbiddance to use financial settlement and clearance arrangements like SWIFT. These kinds of sanctions have a sweeping and negative impact, which can exclude countries from normal economic and financial transactions with third countries; they are extremely disruptive and have massive chilling effects on the target country's ability to accept foreign direct investment (FDI), technology, and also to conduct economic activities.

In conclusion, Prof. Li emphasized that it would be important for targeting countries to anticipate overcompliance and respond dynamically by providing more guidance and documents to clarify the scope of the UCMs. Countries could also introduce macroeconomic policies to mitigate the negative impact of overcompliance. Measures, including carrots and sticks, could also be formulated to deter overcompliance. In addition, clear identification of special channels for providing humanitarian assistance should prevent overcompliance. And lastly, capacity building is very important, as targeted countries must have the institutional capacity to address issues of economic sanctions and overcompliance.

During the interactive discussion, a number of participants shared the severe consequences of UCMs on their countries. These measures, often justified as "targeted" or "smart," were described as broad tools that affect entire populations, depriving them of essential goods and services. Specific examples included the disruption of contracts for life-saving medicines and raw materials. For instance, one participant shared how a Western company's refusal to fulfil a cancer treatment contract due to U.S. sanctions was a stark example of overcompliance by an enterprise with likely consequences for affected children and other vulnerable populations.

Participants also stressed the impacts of overcompliance, which can lead to the denial of basic services in targeted countries, and acts as a tool of intimidation that amplifies humanitarian crises. In addition, UCMs have played a role in perpetuating economic hegemony, with the dominance of the U.S. dollar and the Euro in global transactions, coupled with the authority of entities like OFAC, creating a structural dependency that enforces compliance even beyond legal mandates. In this respect, UCMs and secondary sanctions disproportionately impact global South countries, disrupting trade, finance, and sustainable development.

The Cuban representative reiterated the long-standing impact of UCMs on their country, with Cuba suffering under a U.S. embargo for over 60 years. Participants reiterated the need for the international community to increase solidarity and support for countries resisting these UCMs, emphasizing the moral and legal imperative to address their adverse effects. Participants also

highlighted the broader geopolitical implications of UCMs, as they often lack clear pathways for removal, undermining trust in diplomatic processes and prolonging conflicts.

Suggestions for moving forward included establishing a Standing Working Group on UCMs to document and systematically analyse their impacts. Other proposals included setting up a dedicated UN committee to prepare reports on the financial, technological, and trade-related consequences of UCMs, with findings presented to the United Nations General Assembly and Human Rights Council. Other participants advocated for increased collaboration among global South countries to counterbalance the economic hegemony of sanctioning states.

The discussion concluded with a shared commitment to raising awareness and pushing for collective action against the adverse impacts of UCMs. The importance of continuing dialogue, leveraging international forums, and supporting initiatives on measuring the impacts of UCMs was also emphasised. Participants agreed that combating UCMs requires persistent advocacy, stronger solidarity among targeted countries, and innovative strategies to address their direct and indirect impacts on the enjoyment of human rights and sustainable development.

Authors: Yuefen Li is Senior Advisor on South-South Cooperation and Development Finance, and Danish is Programme Officer of the Sustainable Development and Climate Change Programme (SDCC), of the South Centre.

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