ASIA JUSTICE COALITION

MAKING SANCTIONS WORK

CONSIDERATIONS FOR VICTIM-CENTRED OUTCOMES FROM A REGULARLY-USED TOOL

Although not a victim-focussed tool, sanctions could, and should, be wielded in a way that is more victim-centred. Recognising significant State political will to impose sanctions, this whitepaper explores three opportunities to 'make sanctions work' for victims of human rights and humanitarian law abuses including atrocity crimes. These include: (1) ensuring accountability for sanctions violations; (2) developing victims' funds, financed by the interest of frozen assets or the fines imposed for violations; and (3) confiscating and distributing frozen assets absent a criminal conviction.

This examination is by no means exhaustive and is neither in favour nor against the further imposition of sanctions. Instead, it argues that where sanctions are imposed their 'effectiveness' could be improved by prioritising the value it could bring to victims.

Please note that nothing in this paper constitutes legal advice or an endorsement of particular legal services.

This whitepaper has been produced by the Asia Justice Coalition secretariat. It should not be taken to reflect the views or positions of all members.

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INTRODUCTION

A Tool And Its Impact

Despite being a prevalent tool in international relations for millennia, there is no single authoritative definition of 'sanctions' under international law.[1] For the purposes of this paper, the term will refer to actions taken or prohibitions made by States against other States, foreign actors, or foreign nationals that do not amount to a use of force.

States regularly impose sanctions as a first or early response to international crises.[2] In general, these sanctions are imposed to:

(1) Change or prevent objectionable or unlawful policies or behaviour;[3]
(2) Send a message (or 'signal') regarding such policies or behaviour;[4] and/or
(3) 'Punish' such behaviour on deterrent or retributive grounds.[5]

These sanctions' impact depends on the purpose for which they were adopted.

Perhaps the most achievable impact is to signal a State's condemnation of the sanctioned entity's conduct[6]—this is a sanction regime's 'expressive' value[7] in reinforcing an international legal principle[8] or expressing solidarity with those affected by the conduct of targeted actors.[9]

However, States make clear that the intended impact of sanctions is greater than solely signalling their condemnation. For example, just prior to publication of this paper, the United States (US) announced further sanctions on the military junta ruling Myanmar.

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[1] The first recorded use of 'sanctions' that relates to present practice occurred in 432 BC where the Athenian Empire banned traders from Megara from its marketplaces. Jeremy Matam Farrall, United Nations Sanctions and the Rule of Law (Cambridge University Press 2007) 6; Tom Ruys 'Sanctions, Retorsions, and Countermeasures: Concepts and International Legal Framework' in Larissa van den Herik (ed), Research Handbook on UN Sanctions and International Law (Edward Elgar Publishing 2016) 19-51; Devika Hovell, 'Unfinished Business of International Law: The Questionable Legality of Autonomous Sanctions' (2019) 113 AJIL Unbound, 140; UNGA 'Unilateral coercive measures: notion, types and qualification, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan' UN HRC 48th Session UN Doc A/HRC/48/59 (2021) [19] ('Unilateral coercive measures: notion, types and qualification').

[2] For example, see the following regarding State and non-State actors in conflicts regarding Russia (as well as here), Israel-Palestine, and Yemen.

[3] David A Baldwin and Robert A Pape, 'Evaluating Economic Sanctions' (1998) 23 International Security 189, 190; Alexandra Hofer 'The Proportionality of Unilateral "Targeted" Sanctions: Whose Interests Should Count?' (2020) 89 Nordic Journal of International Law 399, 400; 'Unilateral coercive measures: notion, types and qualification' (n 1) [19]; Gabriel Felbermary, Aleksandra Kirlakha, Constantinos Syropoulos, Erdal Yalcin, and Yoyo V Yotov, 'The Global Sanctions Database' (2020) 129 European Economic Review 1-2.

[4] Julia Grauvogel, Amanda A Licht, and , Christian von Soest, 'Sanctions and Signals: How International Sanction Threats Trigger Domestic Protest in Targeted Regimes' (2017) 61 International Studies Quarterly 86, 87; Farrall (n 1) 6; 'Unilateral coercive measures: notion, types and qualification' (n 1) [19].

[5] Although this 'punishment' is unlikely to be related to any judicial decision-making. Kim Richards Nossal, 'International Sanctions as International Punishment' (1989) 43 International Organization 301, 303; Hofer (n 3) 400; Farrall (n 1) 6; 'Unilateral coercive measures: notion, types and qualification' (n 1) [19]; Felbermary et al (n 3) 1-2.

[6] However, it should still be noted that the use of sanctions in such a manner has been subject to ethical debates.

[7] See William H Kaempfer and Anton D Lowenberg, 'The Theory of International Economic Sanctions: A Public Choice Approach' (1988) 78(4) The American Economic Review, 786-793.

[8] Sanctions have been resorted to in response to a wide variety of events including human rights violations, the undermining of democracy, and weapons proliferation.

[9] Julia Grauvogel, Amanda A Licht, and Christian von Soest, 'Sanctions and Signals: How International Sanction Threats Trigger Domestic Protest in Targeted Regimes' (2017) 61 International Studies Quarterly 86.

These sanctions recognised the third anniversary of the junta's 2021 coup. In so doing, Under Secretary of the Treasury for Terrorism and Financial Intelligence Brian E Nelson described the action as:

> [E]mphasi[sing the US] commitment to deprive Burma's military regime of the resources it needs to conduct its attacks against its own people…

and as part of the US' work

> [T]o hold accountable those who seek to profit from, and provide support for, the violent oppression of the people of Burma.

Similar language was previously used to justify sanctions on the junta on the second anniversary of the coup, the first anniversary of the coup, and just following the coup itself.

Seeking to 'deprive the regime of the resources it needs to conduct its attacks' suggests an intent by the US to seek behaviour change and/or prevention of attacks; seeking to 'hold accountable those who seek to profit from, and provide support for' violent oppression appears to relate more to potential 'punishment' on deterrent or retributive grounds. Both suggest that the US seeks something more than just 'signalling' condemnation.

Limited Success In Deterring, Changing Behaviour

Research indicates that neither unilateral nor multilateral sanctions alone are sufficient to prevent or deter serious violations of international humanitarian law (IHL) or gross violations of international human rights law (IHRL).

This may be due to:

1. **A failure to adequately tailor 'smart' or 'targeted' sanctions to the context and interests or motivations of the sanctioned actor;** [10]

2. **Inadequate or inconsistent implementation,** where restrictions or bans are rolled out on a limited or incomplete basis or there is a failure to coordinate with other international actors; [11]

3. **Limited coverage that does not include crucial networks and means,** enabling the target regime to find other ways of prolonging the condemned conduct; [12]

[10] For example, one theory is that sanctions work when the target realises that its honour and significance are challenged or injured. Considering this, Kishore Mahbubani, a former Singapore diplomat, suggests that not issuing visas to some individuals associated with the Burmese military is not persuasive to the junta as it has little bearing on Burma's honour.

[11] Thihan Myo Nyun, 'Feeling Good or Doing Good: Inefficacy of the U.S. Unilateral Sanctions Against the Military Government of Burma/Myanmar' (2008) 7(3) Washington University Global Studies Law Review 455, 482.

[12] Even more specifically, it is likely that economic sanctions cannot act as a catalyst for major policy changes in the targeted country unless a monopoly is established over trading relations with the targeted nation. See Gary Clyde Hufbauer, Jeffrey J. Schott, and Kimberly Ann Elliott, Economic Sanctions Reconsidered: History and Current Policy (Peterson Institute for International Economics 1990).

4. **Unaligned political and economic motivations of States**[13] **or conflicting remits of international actors** 'filling the gap' left by sanctions and thereby negating their effect;[14] and/or

5. **The failure to monitor and enforce existing sanctions,** allowing the targeted regime to blatantly violate sanctions without consequences or bypass sanctions by finding other routes to access the resources necessary to maintain the status quo. This includes using proxy companies to procure arms or simply entering trade engagements with other countries.[15]

More than failing to change behaviour, studies indicate that sanctions have—directly or indirectly—encouraged:

- The consolidation of a sanctioned State's domestic power;
- The further infringement of human rights within the sanctioned State;[16] and
- The curtailment of press freedom within the sanctioned State.[17]

Moreover, trade sanctions have been found to be more likely to harm those who are already disadvantaged by the regime,[18] as well as negatively affecting international trade and causing disruption to States not directly involved with a targeted State.

Nevertheless, powerful States and State blocs particularly in the Global North regularly resort to sanctions as a quick response to complex problems.[19]

Revisiting 'Impact' Related to Victims

The above indicates that there is considerable political will to enact sanctions related to IHL and IHRL abuses; this does not always translate into the same momentum to seek justice and accountability through judicial processes. This raises the question: is it possible to harness this political will to reach some of the goals of justice and accountability?

Compared to accountability for atrocities crimes including war crimes, crimes against humanity, and genocide, the imposition of sanctions is not based on adjudicated facts. Instead, sanctions are imposed through administrative or legislative decision-making that does not that does not take into account individual victims' experiences—unlike forms of accountability like criminal prosecution.

[13] For example, it is argued that US sanctions against Myanmar cannot be effective unless these efforts are supported by some Asian nations, including China, India, Thailand, Singapore, and others. Nyun (n 11) 487.

[14] A noteworthy non-state actor example is international financial institutions like the World Bank and Asian Development Bank that have been subject to criticism due to their financing of projects in sanctioned countries.

[15] See Appendix III.

[16] Dursun Pekson, 'Better or Worse? The Effect of Economic Sanctions on Human Rights' (2009) 46(1) Journal of Peace Research.

[17] Dursun Pekson, 'Coercive Diplomacy and Press Freedom: An Empirical Assessment of the Impact of Economic Sanctions on Media Openness' (2010) 31(4) International Political Science Review.

[18] Recent examples include the negative impact of even 'targeted' sanctions in Myanmar, Russia, and Syria.

[19] Notably, the resort to sanctions has also been described as 'non-rational' punishment of sanctioned States. Nossal (n 5).

Sanctions are also meant to be temporary and reversible[20]—rather than final and ideally reparatory—so as not to impugn State sovereignty under international law.[21] Finally, the impact of sanctions is measured by the effect on the alleged perpetrator—not the support provided to the victims of such violations. In short, the imposition of sanctions is not traditionally linked to providing justice to victims of the crimes for which perpetrators are sanctioned.

That said, the speediness with which States enact sanctions regimes—in contrast to the sluggishness of international justice—presents an important opportunity to use the ample political will for victims' benefit.

This is because, even if sanction imposition does not result in behaviour change, effective enforcement of sanctions can be a step towards supporting victims' rights to 'adequate, effective and prompt' reparation.[22] Amongst other efforts, this includes rights to compensation for harm suffered and/or access to rehabilitative services, as well as forms of reparative satisfaction—albeit limited—such as public disclosure of the harms committed, verification of facts related to the support provided to the perpetrator, and/or judicial and administrative penalties against entities providing such support.

Reparations Owed By Perpetrators Of Harm

It is stated that such efforts could be a 'step towards supporting victims' rights to' reparation because reparation is owed by the State or entity that causes harm. Therefore, instead of being the obligation of the sanctioning State (ie the State imposing sanctions), this would be the obligation of the sanctioned State.

This whitepaper considers three ways in which existing legal frameworks can be harnessed to 'make sanctions work' for victims of the conduct for which sanctions are imposed. It draws mainly on the European Union (EU), Canada, the United Kingdom (UK), and the US as examples of Global North States or State blocs that impose sanctions regularly and have—of relevance to the Asia Justice Coalition's work—imposed several sanction regimes in relation to Myanmar. Rather than recommending a specific course of action, it argues that—particularly in situations where international attention is waning—advocates and sanctioning States should take a second look at how such a ready and regular tool of international relations could be made more effective to benefit victims.

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[20] See Draft Articles on the Responsibility of States for International Wrongful Acts, art 49.

[21] Note that this is in relation to multilateral sanctions for State conduct. There is considerable debate regarding whether unilateral sanctions—in particular unilateral secondary sanctions—is contrary to international law.

[22] As defined by the UN Office of the High Commissioner for Human Rights, reparations are 'measures to redress violations of human rights by providing a range of material and symbolic benefits to victims or their families as well as affected communities'.

ENFORCING SANCTIONS & ENSURING ACCOUNTABILITY FOR SANCTION VIOLATIONS

TAKEAWAYS:

- 'Accountability' is **holding a sanctions violator responsible** for the violation—administratively or judicially. Ensuring accountability for sanctions violations is **important for victims** because doing so may: (1) **create a public record of violators and violations,** 'telling the truth' about the relationship between the sanctions violator, entity, and all others who enable such violations; (2) **result in penalties that can be used to monetarily compensate or support survivors,** as discussed in the next section; and (3) depending on the circumstance, **be the only form of accountability available,** particularly in the short-to-medium term.
- To ensure accountability, States must have **robust monitoring** for violations, which requires **adequate allocation of resources** and **proactive coordination.**
- States must also have **sufficient consequences for violating/evading sanctions.** Steep fines and threats of imprisonment are important, but so is public reporting of both violations and alleged violations that are not prosecuted but resolve in settlement.

Within its implementing legal framework, every sanctioning State provides consequences for violating (also referred to as 'evading') the sanctions it has imposed, as well as a process for adjudging those violations. Ensuring accountability for sanction violations means **holding those responsible for violating sanctions** through the application of administrative fines or other penalties and/or legal action under the State's civil or criminal law.

Trouble Keeping Up?

In the last five years, the rate at which sanctions are being imposed has raised concerns for adequate enforcement.

The Importance Of Accountability For Violations

Accountability—through administrative or judicial means—is important for both 'making sanctions work' for victims and 'making sanctions work' more generally.

For victims, this is because accountability for violations may:

- Create a public record of violations, reiterating the harm done by the sanctioned entity and 'telling the truth' about the relationship between the sanctions violator and the sanctioned entity;
- Result in penalties which can be used to support or monetarily compensate survivors, as discussed in the next section; and
- Depending on the circumstance, be the only form of accountability available particularly in the short-to-medium term.

More generally, pursuing sanctions violations can strengthen the condemnation signalled by the sanctioning State—it prevents such sanctions from being seen as 'paper tigers'. Likewise, pursuing violations can also make business with the sanctioned individuals and entities unprofitable—ideally incentivising behaviour change.

Monitoring And Penalties Needed

The legal framework to pursue accountability for sanctions violations will already exist in any sanctioning State by virtue of its implementing legislation. However, as noted above, the impact will only be seen if the sanctioning State also has **robust monitoring** to identify violations and perpetrators, as well as the ability to deliver **sufficient consequences** to punish such violations.

Robust Monitoring

Robust monitoring is necessary to identify sanctions violations. Without identification of violations, States cannot hold violators to account.

Reporting Potential EU Violations Anonymously

The European Union provides an EU Sanctions Whistle-blower Tool through which possible sanctions violations can be reported anonymously. This can be accessed at https://EUsanctions.integrityline.com.

Robust monitoring **requires adequate resources**, the availability of which vastly varies amongst States. The most aggressive enforcer of sanctions violations–the US—indicated that in 2023 its Department of Justice was hiring an additional 25 prosecutors to 'investigate and prosecute sanctions evasion, export control violations and similar economic crimes'. These additional prosecutors are separate from the staff in the Department of Treasury Office of Foreign Assets Control (OFAC)—US' primary sanctions enforcer which can issue its own civil fines for evasion. In contrast, as of mid-2023, Spain[23] only had approximately 'seven to eight full-time [staff] members' working on sanctions implementation and enforcement.

Self-Reporting Is Not Enough

Although many jurisdictions encourage self-reporting of suspected violations to supplement centralised monitoring,[24] self-reporting does not replace governmental oversight. For example, when the UK Office of Financial Sanctions Implementation (OFSI) increased its enforcement efforts, it received nearly a third more self-reported breaches in 2019-2020 —140 voluntary reports, up from 99 in 2018-2019.[25]

However, fewer resources does not always mean insufficient implementation—if there is **proactive cooperation.** Despite staff shortages and the need for further domestic legislation, a report for the European Parliament found that:

> Spain's track record is satisfactory when it comes not only to the implementation of financial sanctions, especially those enforced against Iran since 2010, but also the absence of major scandals or fines for breaching sanctions among Spanish financial institutions.

The report notes that Spain is able to achieve this, in part, because of 'constant inter-departmental contact, with the [Ministry of Foreign Affairs] assuming a coordinating function…[including chairing] an Inter-Ministerial group for the Implementation of International Sanctions' as well as 'a good understanding of sanctions by the private sector' with whom public authorities engage to supplement monitoring.

Thus, significant coordination is also necessary for robust monitoring. This includes coordination both internally between responsible governmental departments as well as externally with corporate actors, foreign law enforcement, and foreign governments.

[23] As noted above, Spain is discussed because it is implementing European Union (EU) restrictive measures.
[24] See, for example, in the United Kingdom (UK) and the United States (US).
[25] In 2022-2023, OFSI recorded 473 suspected breaches of financial sanctions, which included voluntary self-reporting, third-party reporting, and OSFI-initiated investigations. In the same year, OFSI increased resourcing in its 'enforcement team by 175%'. Of this more-than threefold increase of reporting over 2021-2022, OFSI noted, '[t]his increase was expected given the scale of increased Russia sanctions and OFSI's increased enforcement capabilities'.

States have shown willingness to maximise resources and externally coordinate for monitoring in the context of sanctions on Russia and Russian entities by **establishing multilateral working groups.** These include:

- The **Russian Elites, Proxies and Oligarchs Task Force**—consisting of the G7 countries, Australia, and the European Commission and formed, amongst other purposes, to share information for effective monitoring and issue joint advisory notes to aid compliance; and
- The **Russia-Related Illicit Finance and Sanctions Financial Intelligence Units (FIUs) Working Group**—consisting specifically of the FIUs of G7 countries, Australia, the Netherlands, and New Zealand, to coordinate analysis and 'expedite… sharing of financial intelligence'.

Beyond the Russian context, the foundations for similar cross-jurisdictional engagement are likely already available through existing mutual legal assistance treaties related to organized crime, corruption, and money laundering and related police-to-police cooperation.

Efforts Improving Coordination And Uniformity Of Enforcement

European Union sanctions, or 'restrictive measures', are established through regulations that are adopted by the Council of the European Union. However, implementation of the sanction regulations depends on Member States[26] and there is no single monitoring body to oversee the implementation or effectiveness of EU sanction rounds. Because of this, Member States interpret and enforce EU sanction regimes differently, making them easier to evade. Moreover, in adjudicating sanctions violations, EU Member States differ not only in whether a violation constitutes a civil or criminal offence but also in the potential penalties for such offences. These differences could lead to 'forum-shopping' by would-be sanctions evaders.

In December 2023, the Council of the European Union and the European Parliament provisionally agreed to issue a new EU Directive[27] in order to address this variation. This was approved by the European Parliament in March 2024 but, at time of writing, still needs approval from the Council. Importantly, the proposed Directive would:

[26] Richard Gordon, Michael Smyth and Tom Cornell, Sanctions Law (Hart Publishing 2019) 36.
[27] A 'Directive' is a European Union legislative act that articulates a standard to which Member States must adhere.

- **Under Article 3,** establish that, amongst others, 'violations of the prohibitions and restrictions contained in Union restrictive measures [and] conduct intended to circumvent Union restrictive measures' must be criminalised within Member State domestic law;
- **Under Article 4,** establish that inciting, aiding and abetting, or attempting to commit the above criminalised acts must also be criminalised;
- **Under Article 5,** establish that the penalties for particular violations by natural persons must be at least 5 years imprisonment and may include substantial fines; and
- **Under Article 7,** establish that the penalties for particular violations by legal persons (ie corporations) must be 'subject to effective, proportionate and dissuasive penalties', and especially those who benefit from violations must be subject to fines 'the maximum limit of which should be not less than 5 per cent of the total worldwide turnover of the legal person in the business year preceding the fining decision'; and
- **Under Article 13,** require Member States to 'ensure coordination and cooperation… among all their competent authorities'—including for the benefit of monitoring and prosecuting violations.[28]

Sufficient Consequences

In addition to robust monitoring, accountability depends on sufficient consequences for violating sanctions. This is to both **adequately punish violators and deter future violations.** Such consequences can include steep **civil and criminal fines or imprisonment,** but also—and in particular to corporations—**public reporting of violations or any settlement for potential violations.**[29] This is important because disclosing the name of the sanctions violator, the circumstances of the violation, any relationship between the sanctions violator and the State or entity sanctioned, and the sanctioned State or entity's alleged crimes can provide a modicum of reparative satisfaction.

[28] At time of writing, the Directive has yet to come into force.
[29] See, for example, OFAC's Civil Penalties and Enforcement List and OFSI's Enforcement of Financial Sanctions, though reading such disclosures still requires an understanding of the sanctions regime.

It is important to note that **fines and imprisonment should not be relied on alone as measures of accountability.** This is because the threat of sufficient consequences may lead to settlement—rather than an acceptance of fault. For example, US statutory guidelines permit OFAC to issue civil fines for sanctions violations. Under s 1705(b)(2) of the International Emergency and Economic Powers Act (IEEPA)—the primary legislation for imposing US sanctions—these fines may be up to 'an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed'. The threat of these fines and a potential finding of liability meant that, in April 2023, British American Tobacco settled with OFAC to resolve civil liability for sanctions violations for a payout totalling approximately $509 million.

When Sufficient Consequences Aren't 'Sufficient' For Deterring Multinationals

Sometimes steep civil and criminal penalties are not enough to ensure compliance particularly of large multinational corporations. For example, Standard Chartered Bank's violations of US sanctions on Libya in 2012 resulted in a settlement of $132 million. In 2019, Standard Chartered Bank settled again for violations of several US sanction regimes—this time for $639 million.

Nevertheless, if high settlement amounts or assessed fines do not serve to completely deter violations, such monies could be usefully earmarked to benefit victims directly (see below).

Nevertheless, **settlements resolving criminal liability may still include guilty pleas.** Under IEEPA s 1705(c), criminal prosecution is possible for an alleged sanctions violator who 'wilfully' commits, attempts to commit, conspires to commit, or aids or abets the commission of a violation. The Department of Justice leads any relevant prosecution, with the potential penalty being a fine of 'more than $1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both'. On the same day as the announced OFAC settlement above, the Department of Justice announced British American Tobacco and its subsidiary reached a plea agreement and settlement, with its subsidiary pleading guilty to conspiracy to commit bank fraud and violate the IEEPA. The settlement included a payment of $629 million for penalties and fines.

DEVELOPING VICTIMS' FUNDS

TAKEAWAYS:

- Victims' funds can be financed by **forfeited or confiscated frozen assets, tax revenue on interest** of frozen assets, or **fines** payable because of, or **settlement amounts** reached for, sanction violations.
- The **USVSST Fund provides one example** of such a fund, financed initially by a large settlement between the US and BNP Paribas for the global bank's high-value transactions with US-sanctioned States.

For the purposes of this whitepaper, victims' funds are a way of earmarking money related to sanctions specifically for compensation claims, rehabilitative services, or other reparation-related efforts for affected victims.

There are three related models relevant to this discussion: (1) funds financed by forfeited or confiscated assets (to be discussed in the next section); (2) funds financed by tax revenue on interest of frozen assets; and (3) funds financed by fines payable because of, or settlement amounts reached for, sanction violations. This section will focus on funds financed by fines or settlement amounts.

Using Tax Revenue From Frozen Assets

In October 2023, Belgium reiterated its intention to utilise an estimated €1.7 billion collected as tax revenue from the interest of frozen Russian Central Bank assets in its territory. In doing so, a spokesperson for the Belgian Prime Minister said the money would be used 'for buying military equipment… [as well as] for humanitarian support' for Ukraine.

The collection of tax revenue from the interest of frozen assets would likely not otherwise breach the requirement that 'countermeasures' be reversible (see below)—this is because such a tax would be assessed based on the presence of the funds—whether frozen or not.

However, it is questioned whether 'buying military equipment', albeit in consultation with Ukraine, could constitute a 'benefit' to victims of the Russian invasion. It would not constitute a form of reparation.

The Importance Of Earmarking

Earmarking money for victims of the harm in question is important because monetary penalties paid for civil or criminal sanctions violations are most often paid to a general treasury fund—without earmarking, the funds received are not guaranteed to provide support or compensation to survivors of crimes for which the targeted entity is sanctioned.

Examples of General Funds

For example, under the s 146(12) of the UK's Policing and Crime Act 2017 which governs penalties for the UK sanctions regime, monies collected 'must be paid into the [UK] Consolidated Fund'. The Consolidated Fund is the UK's 'general bank account at the Bank of England', the use of which must be requested by the Government through Parliament.

Likewise under s 90 of the German Act on Regulatory Offences 1987, monetary penalties are paid into the Federal Treasury 'unless otherwise provided by law'.[30]

One Model: US Victims of State Sponsored Terrorism Fund

One possible model for a victims' fund is the establishment of the **US Victims of State Sponsored Terrorism Fund** (the USVSST Fund or the Fund).

In 2015, BNP Paribas reached a $8.9 billion settlement and agreed to plead guilty to claims that the global bank:

> [Conspired] to violate the International Emergency Economic Powers Act (IEEPA) and the Trading with the Enemy Act (TWEA) by processing billions of dollars of transactions through the US financial system on behalf of Sudanese, Iranian, and Cuban entities subject to US economic sanctions.

[30] As above, Germany is examined here rather than the EU because the EU relies on Member States to implement—including monitor and prosecute—sanctions violations. Germany has successfully prosecuted sanctions violations related to illegal timber trade with Myanmar.

It was reported that $3.8 billion was given to the Department of Treasury Forfeiture Fund. The US Congress subsequently passed the Justice for United States Victims of State Sponsored Terrorism Act (USVSST Act) establishing the USVSST Fund in December 2015 and allocating it $1.025 billion.

The Fund's **purpose is to provide compensation** to persons who were injured in acts of international State sponsored terrorism.[31]

To benefit victims beyond the BNP Paribas settlement, the USVSST Act **stipulates that fines and forfeitures imposed as a criminal or civil penalty related to State sponsors of terrorism must be paid into the Fund.**[32] This includes fines pursuant to breaches of sanctions or other restrictions on financial transactions.[33] It also specifically provides for the transfer of proceeds from the sale of forfeited assets of Iran.[34] Any interest accrued is also credited to the Fund.[35]

Designated 'State Sponsors'

The USVSST Act defines a 'State sponsor of terrorism' as a State that the US Secretary of State has determined as repeatedly providing support for acts of international terrorism.[36] The US Department of State lists these on its website—at time of writing, this is limited to Cuba, the Democratic People's Republic of Korea (North Korea), Iran, and Syria.[37] At the time of enactment, Sudan was included on this list; therefore, the Fund was established to benefit those who had experienced harm by the very regimes that benefited from BNP Paribas' violations.

Notably, the Fund is limited to only designated 'State sponsors of terrorism' and several sanctioned regimes—including Myanmar—are not designated as such. Therefore, presently monetary penalties from violations of sanctions against Myanmar entities are not directed to the Fund and victims of the Myanmar junta's abuses cannot be compensated.

[31] 34 U.S.C. § 20144.
[32] 34 U.S.C. § 20144 (4); 26 U.S. Code § 9602 (e)(2)(A).
[33] 34 U.S.C. § 20144 (4); 26 U.S. Code § 9602 (e)(2)(A).
[34] 34 U.S.C. § 20144 (4); 26 U.S. Code § 9602 (e)(2)(B).
[35] 34 U.S.C. § 20144 (4); 26 U.S. Code § 9602 (b)(3).
[36] 34 U.S.C. § 20144 (7).
[37] See US Department of State, 'State Sponsors of Terrorism' (as of 25 March 2023). Notably, these States are not subject to foreign sovereign immunity under the FSIA. 28 U.S.C. § 1605(A)(a)(1); 28 U.S.C. § l330, l332(a), l39l(f) and l60l-l6.

In general, eligible claimants include persons: (1) holding final judgments against a State sponsor of terrorism, or (2) who were hostages held in the United States Embassy in Iran from 1979 to 1981, their spouses and children, or the personal representative of such persons who are deceased.[38] That said, the USVSST Act has been amended twice to permit compensation to victims of terrorism beyond that of the listed States.

US and non-US citizens may qualify.[39] A 'final judgment' is defined as an enforceable final judgment, decree or order on liability and damages entered by a US district court, which is not subject to further appellate review.[40] Notably, a 'final judgment' is therefore not limited to a criminal conviction.

The USVSST Fund continues to accept applications[41] and compensation is calculated on a pro rata basis on the amount of available funds, based on the outstanding and unpaid amounts on the compensatory damages awarded in the relevant judgment and subject to a statutory cap of US $20 million.[42] Eligible claims are then to be paid annually out of available funds until all eligible amounts have been paid in full or the Fund terminates in 2039.[43]

Limitations of the USVSST Fund

There are several limitations of the USVSST Fund. The model provided by the USVSST Fund requires significant political will to create and maintain. It also requires that victims have a court judgment against a State perpetrator to be able to claim compensation. The Fund only provides compensation and does not more broadly fund rehabilitative services. Because it is financed by fines and forfeitures related to sanction violations, maintenance of the Fund requires the US to actively pursue accountability for such violations (as discussed above). Finally, because the Fund relies on financing from imposed penalties rather than agreed upon amounts,[44] it may not receive the significant windfall a State obtains when it reaches a settlement with a large corporation like BNP Paribas.

Nevertheless, the USVSST Fund provides one example of how monetary penalties collected by sanctioning States may be specifically used to benefit the victims of sanctioned entities. Because it is financed by penalties, the Fund is also a reminder that its continued ability to benefit victims relies on effective enforcement of existing sanctions.

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[38] 34 U.S.C. § 20144 (2).
[39] US Department of Justice, 'United States Victims of State Sponsored Terrorism Fund Frequently Asked Questions' (28 December 2023) 2.6.
[40] 34 U.S.C. § 20144 (2)(A).
[41] United States Victims of State Sponsored Terrorism Fund Application Form. In general, claimants must submit applications not later than 90 days after the date of obtaining their final judgment, except for claimants subject to special statutory deadlines or granted a reasonable extension.
[42] 34 U.S.C. § 20144 (2)(A).
[43] 'United States Victims of State Sponsored Terrorism Fund Frequently Asked Questions' (n 39) 4.
[44] 34 U.S.C. § 20144 (4); 26 U.S. Code § 9602 (e)(2)(A)(i) and (ii).

CONFISCATION AND DISBURSAL

TAKEAWAYS:

- There has been **increased interest by sanctioning States to permit non-conviction based confiscation** of frozen assets and disburse proceeds from those assets to those aggrieved by the sanctioned conduct.
- **Canada** has led the way with legislative amendments that permit non-conviction confiscation and **disbursal, including disbursal for the purposes of victim compensation.** However, there are concerns such legislation may be contrary to international law.
- Confiscation and disbursal is **only preferrable if** it is done in a way that **upholds international law** and is **directed towards support for victims**—rather than to fund military aid.

With increased unilateral sanctions on Russians and Russian-State interests, **non-conviction based confiscation of assets frozen through sanction regimes** has generated significant interest in European and North American States.[45] Whereas frozen assets will remain the property of a sanctioned entity until a sanctions regime ends, confiscation—or, in some jurisdictions, forfeiture—means **enabling the property rights for the assets to move from the sanctioned entity to the sanctioning State.** As with victims' funds, victim support services or compensation could then be funded through liquidating the assets and disbursing them to the victims of the conduct for which the entity was sanctioned. However, unlike the USVSST Fund discussed, no finding of fault is necessary.

This is not without criticism. For example, if confiscation is of State-owned assets, it **may violate customary international law regarding State immunity.** If confiscation is of an individual's assets on the basis of an administrative decision, it **may raise due process concerns.** Either may be an afront to the need for sanctions to be temporary and reversible. It may also lead to a claim of expropriation under international investment law.

That said, confiscation of frozen assets and redistribution may provide the most direct benefit to victims of the conduct for which an entity is sanctioned. Canada has provided one model.

[45] See, amongst others, calls in Estonia, Poland, and the US.

Canada's Approach

In June 2022, Canada amended its sanctions regime to permit the Canadian Government's seizure and forfeiture of both sanctioned foreign State and sanctioned entities' property. These amendments were to the Special Economic Measures Act (the SEMA) and the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) (the JVCFOA)—Canada's primary financial sanctions legislation.[46]

After imposing a seizure of property, SEMA s 5.4(1) and JVCFOA s 4(1)(b) permit the responsible Minister[47] to apply for an order from a judge, of the superior court of the province where the property is situated, for forfeiture of that property. The criteria by which the judge is to decide depends solely whether the property to be forfeited:

- Is the property is 'described' in the seizure order; and
- Is owned, held, or controlled by the entity named in the seizure order.

Under SEMA s 5.4(2) and JVCFOA s 4.2(2), the Court is required to give notice to anyone with an interest in the property and provide an opportunity to 'hear any such person' before making an order. If a forfeiture order is made, anyone not subject to the order but with an interest in the property may apply to the Court for compensation from the Crown in the form of a payment 'equal to the value of their interest or right' under SEMA s 5.4(4) and JVCFOA s 4.2(4).

The statutes differ in how the proceeds may be used following forfeiture. Under SEMA s 5.6, proceeds of the forfeiture may then be used for:

- Reconstruction of a foreign State that has been 'adversely affected by a grave breach of international peace and security';
- The 'restoration of international peace and security' which could include use of funds for military support of an aggrieved foreign State; or
- Compensating victims of the sanctioned conduct.

Under JVCFOA s 4.4, proceeds may only be used to 'compensate victims of the circumstances described in' the initial seizure order.

[46] Please see Appendix II for further details on relevant Acts and regimes.

[47] Under both s 6(1) of the SEMA and s 2.1(1) of the JVCFOA, the Minister of Foreign Affairs is responsible for the administration and enforcement of measures under the Acts. However, s 6(2) of the SEMA and s 2(2) of the JVCFOA provide that the Governor in Council may designate other Ministers of the Crown to discharge such responsibilities with respect to the provisions of the Acts or any order or regulations made under the Acts.

These amendments are untested in court, but apart from the international legal question of State immunity, the amendments may be challenged for infringement of rights under Canadian domestic law.[48] However, unlike other jurisdictions considered below, an explicit right to property was removed from the Canadian Bill of Rights when it was enshrined as the Canadian Constitution's Charter of Rights and Freedoms (the Charter). Likewise, and in relation to due process concerns mentioned above, the express right to 'a fair and public hearing by an independent and impartial tribunal' is only provided in Charter art 11 in relation to a criminal offence.

Ensuring Rights By Protecting The Ability To Challenge One's 'Listing'

These amendments direct the court to consider *only* whether particular property and the effected entity are those named in the *forfeiture* request. In order to protect the due process rights of sanctioned individuals, this places a greater importance on the individual's ability to challenge their initial designation as a sanctioned entity.

In Gomez v Canada (Attorney General), the Federal Court held that the designation of individuals under SEMA is subject to a reasonableness standard of review, while 'delisting' (removing the designation) was subject to a correctness standard of review.[49] The Court observed that, in the context of applications for delisting, the applicant is entitled to 'basic or minimal procedural protections' including having 'sufficient information about what will be relied on to make the [delisting] decision' and receiving this information 'before the decision is made and in time for [the designated individual] to respond'.[50]

The Canadian Government has issued seizure orders, most notably in December 2022 related to $26 million USD of assets held by Granite Capital Holdings Ltd, a company owned by a sanctioned Russian oligarch, as well in June 2023 related to aircraft owned by Volga-Dnepr Airlines.

At time of writing, neither court order for forfeiture appeared to be public or finalised.

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[48] For example, under the Canadian Constitution's Charter of Rights and Freedoms: s 8 provides the right against 'unreasonable… seizure' generally recognised in the context of criminal investigations; s 15(1) guarantees equality under the law including for non-nationals; and s 26 indicates that the rights described in the Charter are not exclusive, permitting recognition of property rights elsewhere under domestic law.
[49] Francisco Jose Rangel Gomez v The Attorney General of Canada 2021 FC 1300 at [47]-[50] (Gomez).
[50] Gomez [117].

Efforts Towards Confiscation And Feasibility In Other Contexts

EUROPEAN UNION

In December 2023, the European Parliament and Council of the European Union reached an agreement for a new EU Directive that would permit confiscation of assets of individuals or entities found to be violating 'restrictive measures' (the EU term for sanctions). In March 2024, the European Parliament approved a proposed Directive on criminalisation of, and harmonising penalties for, violations of restrictive measures. Without these Directives, the EU sanction scheme regarding individuals or entities would not entail any expropriation or confiscation of forfeited assets belonging to listed individuals.[51] Once passed, it will be left to EU Member States to create or amend their domestic legislation to adhere to the new Directives.

Not A Live Discussion

Notably, in January 2024, European leaders indicated that efforts to freeze and confiscate State assets were not presently on the table.

Unlike the Canadian legislation, the proposed EU Directives still appear to require a judicial determination that restrictive measures have been breached in order to enable compensation. This may be because Article 1, Protocol 1[52] to the European Convention on Human Rights (ECHR)[53] explicitly protects the 'peaceful enjoyment of [one's] possessions'.

However, the right can be limited if:

- It is 'in the public interest'— and notably it is up to the ECHR contracting party to decide what constitutes 'public interest''[54]—and
- The limitations are 'subject to the conditions provided for by law and by the general principles of international law'—raising the need for a form of due process and judicial review.

Article 1, Protocol 1 does not preclude individual Member States from 'enforc[ing] such laws as [they deem] necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties'. This suggests that, in implementing the Directives, it could also be possible for Member States themselves to follow Canada's lead. However, if they do so, confiscation of property under ECHR case law would need to meet a balancing test according to Sporrong and Lönnroth v Sweden,[55] ensuring that the measure employed is proportionate to the aim pursued.

[51] Email from the European External Action Service, Sanction Division to researcher (21 December 2022).
[52] To which 44 States within the Council of Europe are Party.
[53] To which 46 States—19 more than within the EU—are Party
[54] James and others v UK App no 8793/79 (ECtHR, 21 February 1986) [46].
[55] Sporrong and Lönnroth v Sweden App nos 7151/75 and 7152/75 (ECtHR, 18 December 1984) [69].

Rights Related To One's 'Home'

Specifically in relation to confiscation of residential properties, ECHR art 8(1) protects the 'right to respect for [one's]…home'. Notably under European Court of Human Rights (ECtHR) case law, holiday residences may be considered a 'home' within the meaning of art 8(1),[56] except where they remain uninhabited for a long period of time.[57]

However, art 8(2) states that interference with one's home is permitted where it is 'in accordance with the law' and 'is necessary in a democratic society in the interests of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others'. The exception for interferences 'necessary in a democratic society', in particular, provides several opportunities to justify confiscation and distribution to victims.

Finally, and perhaps the reason the EU has not turned to non-conviction confiscation, art 6(1) protects the fundamental right to a 'fair and public hearing by an independent and impartial tribunal established by law'—not solely in relation to criminal charges, but also 'in the determination of [one's] civil rights'. This requires two points at which the relevant owner of the property must have the opportunity to challenge the confiscation: first, at the point at which an individual or entity is listed under EU restrictive measures;[58] and second, at the point at which the Member State makes an order for confiscation. Importantly, the ECtHR reiterated in Al-Dulimi[59] that listed persons have the right to review their listing for arbitrariness per ECHR art 6(1).[60]

[56] Demades v Turkey App no 16219/90 (ECtHR, 31 October 2010) [32].
[57] Papi v Turkey App no 16094/90 (ECtHR, 1 March 2010) [54].
[58] This has been recognised in the Court of Justice of the European Union (CJEU). According to People's Mojahedin Organization of Iran v Council, listed individuals are entitled to the right of defence and right to be heard, allowing the listed person to rebut the evidence on which the sanction was imposed in the first place. Case T-228/02 People's Mojahedin Organization of Iran v Council [2006] ECR II-04665 [93].
[59] Al-Dulimi and Montana Management Inc v Switzerland App no 5809/08 (ECtHR, 21 June 2016).
[60] A similar review process may be seen by the CJEU in Joined Cases C-402/05 P and C-415/05 P Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities [2008] ECLI:EU:C:2008:461 (Kadi II).

Challenging Listing By The EU

It is important to note that the European Court of Human Rights is not the court to which an individual or entity would challenge their listing as a sanctioned entity.[61]

Instead, this can be done by:

- **Directly petitioning the responsible European institution, the European Council**[62]

A listed individual may request delisting from the General Secretariat of the Council of the European Union, for example for mistaken identity or incorrect information. The General Secretariat must within reasonable time communicate to the listed person whether their application is successful or not.[63] According to the Court of Justice of the European Union (CJEU) caselaw in Kadi II, the Council is under an obligation to provide reasons and evidence for the listing.[64]

- **(If unsuccessful with a direct petition) Filing an action for annulment under art 263(1) Treaty on the Functioning of the European Union (TFEU) before the General Court and Court of Justice of the European Union**[65]

Under TFEU art 263(4), any person affected, either directly or indirectly, may challenge an 'act' of one of the three EU bodies. Under art 263(6), the challenge must be made within a two-month period of the 'act'. The applicant seeking review of designation starts by filing an action in the General Court and if unsuccessful may appeal to the CJEU, but only on a point of law.[66] Notably the European Court of Justice (as the CJEU was formally known) case Kadi (II)[67] confirmed that if there is no substantive evidence to prove the reasons for being listed on the sanctions list, individuals will be delisted.

- **Challenging the act in the national court system of a Member State complying with the sanction**

Under TFEU art 267, the national court may request a ruling of the CJEU if it is in doubt and cannot rule on a legal issue related to EU law.[68]

[61] Gordon, Smyth, and Cornell (n 26) 159.
[62] Ibid 152
[63] Ibid 152-153.
[64] Kadi II [348]-[349].
[65] See Rafał Mańko, 'Action for Annulment of an EU Act' (European Parliamentary Research Service 2019).
[66] Ibid [6.13].
[67] Kadi II [368]-[375].
[68] Mańko (n 66) [6.10].

UNITED KINGDOM

At time of writing, the fact that certain assets are frozen under the primary financial sanctions legislation—Sanctions and Anti-Money Laundering Act 2018 (SAMLA)—does not subsequently lead to a change in ownership. In other words, such assets are neither confiscated nor transferred to the Office of Financial Sanctions Implementation (OFSI) or any other government agency. However, if assets of a designated person or entity have been frozen, and it can be established that those assets are the result of criminal activity, those funds could potentially be confiscated using orders introduced by the Proceeds of Crime Act 2002. However, the grounds of the confiscation as a 'proceed of crime' are based on the criminal nature of the assets' source, not the designation of the person as a sanctioned entity (and thus a subsequent assets freeze).

In February 2023, a Private Members' Bill was introduced in the UK House of Commons that proposed requiring the Secretary of State to 'lay before Parliament proposals for a Bill to provide for the seizure of Russian state assets for the purpose of offering support to Ukraine and the Ukrainian people'. The Bill expired with the proroguing of Parliament in March 2023. Then, in July 2023, the UK government introduced a statutory instrument to sustain sanctions on Russia and Russian entities until compensation is paid by Russia to Ukraine. Under the regulations, sanctioned individuals could apply for the unfreezing of funds if they make voluntary contributions to Ukraine's reconstruction. The likelihood of sanctioned entities voluntarily agreeing to contribute, however, was questioned by Members of Parliament.

Regarding the potential infringement of a sanctioned individual's rights, the Human Rights Act 1998, which gives effect to the ECHR rights and protocols set out in Schedule 1, remains in force in the UK. Therefore, the protections discussed above under ECHR art 8(1), art 6(1), and Protocol 1, art 1 would apply to any move towards confiscation.

UNITED STATES

Asset confiscation by the Executive in the context of sanctions is permitted under IEEPA s1702(a)(1)(C), but only in extremely limited circumstances. This includes when the US is 'engaged in armed hostilities or has been attacked by a foreign country or foreign nationals' and requires that the confiscated property is subject to US jurisdiction and belongs to an individual, entity, or State that 'planned, authorized, aided, or engaged' in the hostilities or attacks.

Only Use Of Executive Power To Confiscate Under IEEPA

The first and only use of this power was in 2003 through Executive Order 13290 by then President George W Bush. The Order confiscated blocked Iraqi assets and redirected them 'to assist the Iraqi people and to assist in the reconstruction of Iraq', excluding Iraq's diplomatic and consular property.[69] A subsequent order transferred Iraqi assets to the Development Fund for Iraq, established by UN Security Resolution 1483.[70]

US presidents have instead generally utilised frozen assets under the IEEPA as leverage to eventually cover compensation claims and to transfer to preferred regimes. This 'freezing and redirecting' funds of includes:

- In 1979, President Jimmy Carter invoked IEEPA authority to freeze Iranian assets in the US in response to the hostage crisis. On 19 January 1981, the US and Iran entered into a series of executive agreements brokered by Algeria under which hostages were freed and frozen assets were distributed to various entities. Of the blocked assets, the agreements directed $1 billion transferred into a security account in The Hague to pay other US claims against Iran as arbitrated by the Iran-US Claims Tribunal (IUSCT) and $2 billion remained blocked pending further agreement with Iran or decision of the Tribunal.
- In 2015, President Barack Obama froze Venezuelan government assets under the IEEPA and the Venezuela Defense of Human Rights and Civil Society Act of 2014.In January 2019, the Trump Administration officially recognized Venezuelan opposition leader Juan Guaidó as Venezuela's interim president and permitted Guaidó access to the Venezuelan frozen government assets.

Looking (Cautiously) Forward

In the Myanmar context, there have been calls for the military junta's frozen assets to be released to the National Unity Government (NUG) for use, if the US recognises the NUG as the de jure Myanmar government.

However, prior to, during, and after the 2021 military coup, the Rohingya and other ethnic and religious minorities faced significant institutional persecution.

In order to use frozen assets to act as adequate compensation or reparation, these circumstances will require careful, victim-centred negotiation prior to fund release.

[69] Executive Order 13290.

[70] UN Security Resolution 1483. Resolution 1483 required Member States to freeze all assets of the former Iraqi government, Saddam Hussein, and senior officials of his regime and their family members and to transfer such assets to the Development Fund for Iraq 'to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq, for the cost of Iraqi civilian administration, and for other purposes benefitting of the Iraqi people'.

Moreover, the US has enacted situation-specific legislation to confiscate and distribute Iranian State-owned assets, but only in relation to a court order. The Iran Threat Reduction and Syria Human Rights Act of 2012 provided that frozen assets from Iran's Central Bank (held in New York) should go toward satisfying a $2.65 billion judgment won by the families of victims of State sponsored terrorism against Iran in US Federal Court.[71] This legislation was challenged on separation of powers grounds, but the US Supreme Court upheld the law's validity.[72] Under the US Foreign Sovereign Immunities Act (FSIA), an exception to State immunity applied.[73]

Finally, in relation to frozen assets other than those owned by the Russian State, the Consolidated Appropriations Act of 2023 (CAA) provides the US Attorney General with authority to 'transfer to the Secretary of State the proceeds of any relevant forfeited property for use…to provide assistance to Ukraine to remediate the harms of Russian aggression'.[74] However, the provisions only apply to property that was owned by sanctioned Russian nationals or entities and was:

- '[F]orfeited under civil and criminal asset forfeiture procedures or the Racketeer Influenced and Corrupt Organizations [RICO] Act,' or
- '[I]nvolved in an act in violation of' Executive Orders against Russia.[75]

Thus, it appears that the provisions' use will only be in relation to property forfeited after an adjudication of fact. Notably, the CAA does not define 'assistance to Ukraine' to include compensation or reparation to victims of the conflict.

Caveats Of Confiscation And Disbursal

As noted above, non-conviction based confiscation of frozen assets and disbursal of their monetary value may be found to be contrary to a sanctioned individual's right to property and right to fair hearing. Confiscation and disbursal of State-owned assets may violate customary international law regarding State immunity. Furthermore, confiscation and disbursal especially of property other than money is likely not temporary or reversible—this may, over time, change the nature and purpose of imposing asset freezes as one form of sanctions.

[71] 22 U.S.C. § 8772: '[T]he financial assets that are identified in and the subject of proceedings in the United States District for the Southern District of New York in Peterson et al. v. Islamic Republic of Iran et al., shall be subject to execution…in order to satisfy any judgment to the extent of any compensatory damages awarded against Iran for damages for personal injury or death caused by an act of [terrorism]'.

[72] Bank Markazi v Peterson, 578 US 212 (2016). This matter was further challenged by Iran for the US' breach of its obligations under the bilateral 1955 Treaty of Amity, Economic Relations, and Consular Rights in the International Court of Justice (ICJ). The ICJ subsequently found in 2023 that the US breached its treaty obligations. Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Merits) [2023] ICJ Rep https://www.icj-cij.org/sites/default/files/case-related/164/164-20230330-JUD-01-00-EN.pdf, accessed 8 March 2024.

[73] 28 U.S.C. § 1605(A)(a)(1); 28 U.S.C. § 1330, 1332(a), 1391(f) and 1601-16. NB at time of writing, the interaction between FSIA and criminal immunity is currently under review at the US Supreme Court.

[74] 28 U.S.C. § 1605(A)(a)(1); 28 U.S.C. § 1330, 1332(a), 1391(f) and 1601-16. NB at time of writing, the interaction between FSIA and criminal immunity is currently under review at the US Supreme Court.

[75] Pub L 117 – 328, § 1708(c)(2).

Further, Canada's SEMA s 5.6(b) states that proceeds from forfeiture may be used for the 'restoration of international peace and security' which could include military aid. At time of writing, this appears to be a focus of similar calls in the EU. If funding military aid becomes the primary purpose of non-conviction based confiscation and disbursal, wielding sanctions in this way could be contrary to the reparative impact for which this whitepaper argues—and against international peace itself.

However, Canada's legislation also permits proceeds to be directed towards victim compensation (SEMA s 5.6(c) and JVCFOA s 4.4) and towards reconstruction of a foreign State that has been 'adversely affected by a grave breach of international peace and security' (SEMA s 5.6(a)). Such confiscation and use of frozen assets may provide the greatest direct benefit to victims of the sanctioned conduct—if such actions are compliant with international law.

CONCLUSION

Sanctions are not designed to account for the harms suffered by victims of international crimes. Yet, because States readily impose sanctions against entities or individuals for engaging in serious violations of IHL or gross violations of IHRL, it is important for civil society to consider ways such ample political will could be used for victims' benefit. In short, although not victim-focussed, the implementation of sanctions could be wielded in a way that is more victim-*centred*.

Of the three opportunities canvassed here, the most straightforward—and most likely effective—is ensuring accountability for sanctions violations. This is because, not only will the relevant domestic legal and/or administrative framework already exist, but using these pre-existing frameworks may provide an opportunity for reparatory acts. Such acts may include public disclosure of the violator's connection to the perpetrator(s) or monetary penalties or settlements that can fund other opportunities, including victims' funds and other compensatory or rehabilitative efforts.

More generally, ensuring accountability for sanctions violations—that is, enforcing existing regimes—will also serve to strengthen any signalling, deterrent, and punitive effects intended by the sanctioning State.

Nevertheless, pursuing accountability is not the only way sanctions can be 'made to work' for victims. Instead, and beginning with prioritising enforcement, sanctioning States should recognise that sanctions regimes' 'effectiveness' could be improved by prioritising the provision of a positive benefit to victims.

APPENDIX I: UNDERSTANDING FORMS OF SANCTIONS

Sanctions can take multiple forms, each with their own set of specific intentions and repercussions.

Theory Underpinning The Imposition Of Sanctions

Theoretical justifications for imposing sanctions can be found in enforcement,[76] just war,[77] and utilitarian theories,[78] as well as out of a desire of States to preserve 'clean hands' (or avoid complicity in the relevant sanctioned behaviour).[79]

Amongst these include:

Economic Sanctions, which are the most common type of sanction—the category covering several sub-types—and are used often as a first measure. They work to disrupt the economic affairs of a targeted regime—wholly or sectoral—to diminish the regime's capabilities or act as a precursor to other measures.[80]

Economic sanctions can be divided again into:

Trade sanctions, which are partial restrictions or full bans on certain or all trade activities with the sanctioned State, often specifically on items that could be used for military purposes. For example, the US has imposed such sanctions against Iran with a focus on the petroleum and aviation spare parts industries. The EU has also implemented export and import controls on Myanmar.

Financial sanctions, which block access to the financial means of a target, mainly those located in the sanctioning State's jurisdiction. Asset freezing is the most well-known form of sanctions against a targeted regime and/or entity associated with the regime. In addition to Myanmar, such sanctions have recently been used by the EU against Russia in response to the ongoing conflict in Ukraine; and[81]

Investment sanctions, which are prohibitions on individual or corporate to investment in certain sectors or at all in the target State. Such sanctions were used by the US government as one of the US' earliest implemented forms of sanctions against Myanmar in 1997.

[76] Lori Fisher Damrosch, 'The Collective Enforcement of International Norms Through Economic Sanctions' (1994) 8 Ethics and International Affairs 59, 64-72; Iryna Bogdanova, Unilateral Sanctions in International Law and the Enforcement of Human Rights (Brill Nijhoff 2022) 269.
[77] Albert C Pierce, 'Just War Principles and Economic Sanctions' (1996) 10 Ethics and International Affairs 99, 100-108; Adam Winkler, 'Just Sanctions' (1999) 21 Human Rights Quarterly 133, 140-150; Joy Gordon, 'Reconsidering Economic Sanctions' in Michael L. Gross and Tamar Meisels (eds), Soft War: The Ethics of Unarmed Conflict (Cambridge University Press 2017) 49, 53, and 61.
[78] Dursun Peksen, 'Political Effectiveness, Negative Externalities, and the Ethics of Economic Sanctions' (2019) 33 Ethics and International Affairs 279, 284-287; Joy Gordon, 'A Peaceful, Silent, Deadly Remedy: The Ethics of Economic Sanctions' (1999) 13 Ethics and International Affairs 123, 133-137.
[79] Noam J Zohar 'Boycott, Crime and Sin: Ethical and Talmudic Responses to Injustice Abroad' (1993) 7 Ethics and International Affairs 40, 46; James Pattison, 'The Morality of Sanctions' (2015) 32 Social Philosophy and Policy 192, 203.
[80] Sectoral sanctions are the targeting of specific sectors of an economy, like energy, mining, or financial services, to disrupt critical sources of revenue. This has been done, for example, by the US and European governments against the Russian energy sector.
[81] See Ruys (n 1) 21.

Arms Embargoes

Essentially a trade sanction, arms embargoes are the prohibition of the sale, supply, or transfer of arms and arms-related materials to a targeted regime and any non-governmental actors that engage, or are in support of the acts of, the regime. Notably, EU Member States have had arms embargoes against Myanmar since the 1990s.

Diplomatic and Political Sanctions, which are used to restrict the targeted regime and its supporters from engaging effectively in international relations or moving freely. These further include:

At a State level, sanctions such as expulsions **or the non-welcoming of diplomatic personnel.** DPR Korea has been subject to numerous diplomatic sanctions by the UN and the EU. Likewise, in response to the Taliban's takeover, the US forced the closure of the Afghan embassy in Washington DC in 2022.

At an individual level, sanctions such as **travel bans.** These sanctions restrict the movement of certain listed individuals by preventing them from entering or transiting through the sanctioning State(s). Such bans were imposed by New Zealand, the UK, and the EU on generals of the Tatmadaw who led the 2021 coup in Myanmar.

Tailoring Of Sanctions Is Necessary

During the 1990s, comprehensive sanctions—sanctions aimed at completely subduing a sanctioned State—resulted in dire humanitarian consequences. This caused a shift to the use of **targeted sanctions**, or sanctions designed to affect specific natural and legal persons in a position to influence a State's conduct.

Sanctioning can also be done in collaboration with multiple States through the United Nations or unilaterally (or 'autonomously')[82] by a State or States acting outside of the UN framework.

[82] See Julia Schmidt 'The Legality of Unilateral Extra-territorial Sanctions under International Law' (2022) 27 Journal of Conflict and Security Law 53, 60; Mirko Sossai, 'Legality of Extraterritorial Sanctions' in Masahiko Asada (ed), Economic Sanctions in International Law and Practice (Routledge 2019) 63.

Multilateral sanctions are measures taken by the United Nations Security Council (UNSC) under Chapter VII of the UN Charter. Such sanctions are binding on UN Member States and may be both economic [83] (such as arms embargoes or trade sanctions) and non-economic (such as travel bans).[84]

If a State does not comply with UNSC sanctions, or if it actively undermines the achievement of the sanctions' objectives, it may become the focus of complementary UN Security Council sanctions intended to help enforce the former.[85]

As a function of the Security Council, UNSC sanctions are said to reflect collective will of the international community to maintain peace and security.[86] Therefore once adopted, UNSC sanctions regimes are relatively less controversial than adoption of unilateral sanctions. Instead, most controversies surrounding multilateral sanctions are related to the UNSC's failure to adopt measures because of the use of Permanent Members' veto powers.[87]

Using Sanctions In Line With The Responsibility To Protect

The Responsibility to Protect (R2P) is a political commitment based on the principle that States must act to prevent, and protect all populations from, mass atrocities.[88] The UN Secretary-General's 2009 report, Implementing the Responsibility to Protect, introduced a three-pillar strategy, the third Pillar of which requires that the international community, 'if a State is manifestly failing to protect its populations, […]be prepared to take appropriate collective action in a timely and decisive manner, in accordance with the UN Charter'.[89] Multilateral sanctions fall under this third Pillar, as part of coercive measures which may be authorised by the UNSC.[90] In fact, in his 2012 report on R2P, the Secretary-General recognised the importance of sanctions as part of a 'timely and decisive response' to mass atrocities, including examples of freezing financial assets of both a targeted Government and individual members of a regime.[91]

[83] Ruys (n 1) 21.
[84] Farrall (n 1) 123-128.
[85] Schmidt (n 82) 59.
[86] Schmidt (n 82) 58; 'Unilateral coercive measures: notion, types and qualification' (n 1) [2]-[3].
[87] See, for example, Russia's use of its veto regarding sanctions against Mali, China and Russia's vetoes of sanctions against North Korea, as well as the United States' veto use in the UNSC generally regarding Israel.
[88] UNGA Res 60/1 (16 September 2005) UN Doc A/RES/60/1 [138].
[89] UNGA 'Report of the Secretary-General on Implementing the Responsibility to Protect' 63rd Session UN Doc A/63/677 (12 January 2009) [11].
[90] Ibid [56]-[58]; UNGA 'Report of the Secretary-General on the Responsibility to Protect: Timely and Decisive Response' 66th Session UN Doc A/66874 (25 July 2012) [31].
[91] Ibid.

In contrast, ***unilateral sanctions***[92] are not based on, but may supplement, sanctions made under a UN Security Council resolution.[93] Like multilateral sanctions, unilateral sanctions take a wide-variety of forms—including political, diplomatic, cultural, economic, trade, financial, cyber and others—and multiple types of unilateral sanctions are often applied together against the same target.[94] Unlike multilateral sanctions adopted by the collective will of the UN, unilateral sanctions are adopted based on foreign policy choices of individual States or State blocs,[95] including actors like the European Union.[96]

Rights-Based Impact Of Secondary Sanctions

Within **'unilateral sanctions'** there is an additional distinction between **primary** and **secondary** sanctions. While primary unilateral sanctions may restrict, for example, economic relations directly between the sanctioning State and those who have contact with or are under that State's jurisdiction,[97] secondary sanctions target or effect a third-party State, its nationals, and its companies. In the example of economic sanctions, these secondary, extraterritorial sanctions have the effect of prohibiting non-nationals and entities without a link to the sanctioning State from trading with or investing in the sanctioned, or targeted, State.[98]

It has been emphasised by the UN Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights that:

> [T]he extraterritorial application of secondary sanctions **infringes upon the sovereignty of other States by violating the legal principles of jurisdiction and non-intervention in the internal affairs of States,** and bilateral and multilateral treaty obligations (international trade, friendship and commerce treaties, international investment agreements and international human rights treaties). (Emphasis added, footnote omitted)[99]

[92] Individual countries, especially those with great economic and diplomatic leverage, use such sanctions this frequently. Taking Myanmar as an example, Australia, Canada, the United States, and the United Kingdom have all imposed numerous types of sanctions on the regimes from as early as the 1990s.
[93] Schmidt (n 82) 58; 'Unilateral coercive measures: notion, types and qualification' (n 1) [6].
[94] 'Unilateral coercive measures: notion, types and qualification' (n 1) [25].
[95] A consistent argument against unilateral sanctions has been that they do not constitute international public policy and thus do not bind other jurisdictions to comply or take part in their enforcement.
[96] Schmidt (n 82) 60. For example, see the EU's sanctions against Myanmar.
[97] Sossai (n 82) 63.
[98] Sossai (n 82) 63; 'Unilateral coercive measures: notion, types and qualification' (n 1) [27]; Schmidt (n 82) 57.
[99] Schmidt (n 82), as cited in 'Unilateral coercive measures: notion, types and qualification' (n 1); and Sascha Lohmann, 'Extraterritorial US sanctions: only domestic courts could effectively curb the enforcement of US law abroad', Stiftung Wissenschaft und Politik, Comment No 5 (February 2019).

APPENDIX II: LAWS & ENFORCEMENT BODIES OF CANVASSED JURISDICTIONS[100]

EUROPEAN UNION

European Union sanctions, or 'restrictive measures', are established through regulations that are adopted by the Council of the European Union (the Council) in line with art 215(1) of the Treaty on the Functioning of the European Union (TFEU).

These regulations are directly and uniformly applicable across the entire EU;[101] a regulation applies automatically in all Member States when it enters into force.[102] There is no central monitoring body.

CANADA

The Canadian United Nations Act incorporates UNSC sanctions into Canadian law.

Under the Special Economic Measures Act, the Governor in Council—the Canadian Governor General acting on advice of the Canadian Cabinet—may make issue regulations or orders regarding foreign States, entities, or nationals in circumstances listed in s 4(1.1). These include where, in the Governor in Council's 'opinion':

> **(a)** An international organization (of which Canada is a member) has made a decision/recommendation or adopted a resolution calling on its members to take economic measures against the foreign state;
> **(b)** A grave breach of international peace and security has occurred;
> **(c)** Gross and systematic human rights violations has occurred; and/or
> **(d)** Corruption on behalf of a foreign public official has occurred.

Under the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), the Governor in Council may issue sanctions regulations or orders regarding foreign nationals in circumstances listed in s 4(2). These include where, in the Governor in Council's 'opinion', the individual:

> **(a)** Is 'responsible for, or complicit in, extrajudicial killings, torture or other gross violations of' human rights against foreign national human rights defenders or anticorruption actors;
> **(b)** Acts as an agent of a foreign State in the conduct described above in (a);
> **(c)** Is a public official or public official's associate and engages in 'acts of significant corruption'; or
> **(d)** [H]as materially assisted, sponsored, or provided financial, material or technological support for, or goods or services in support of' conduct described above in (c).

[100] Please note this is not exhaustive. Other laws—including anti-money laundering, anti-terrorism, and import/export—may be relevant.
[101] Gordon, Smyth, and Cornell (n 26) 35-40.
[102] Ibid.

Although Global Affairs Canada has oversight of sanctions implementation, in practice Regulations are enforced by the federal Canadian law enforcement agency, the Royal Canadian Mounted Police.

UNITED KINGDOM

The UK implements UNSC sanctions as well as much of its own unilateral sanctions under the Sanctions and Anti-Money Laundering Act 2018 (SAMLA).

Under s 1, 'an appropriate Minister' may make regulations—which impose the sanctions—to fulfill UN or other international obligations, as well as for any of the purposes provided in s 2. Section 2 indicates that these purposes include where the Minister considers the sanctions would:

> (a) '[F]urther the prevention of terrorism, in the United Kingdom or elsewhere,
> (b) be in the interests of national security,
> (c) be in the interests of international peace and security,
> (d) further a foreign policy objective of the government of the United Kingdom,
> (e) promote the resolution of armed conflicts or the protection of civilians in conflict zones,
> (f) provide accountability for or be a deterrent to gross violations of human rights, or otherwise promote—
> (i) compliance with international human rights law, or
> (ii) respect for human rights,
> (g) promote compliance with international humanitarian law,
> (h) contribute to multilateral efforts to prevent the spread and use of weapons and materials of mass destruction, or
> (i) promote respect for democracy, the rule of law and good governance'.

Specific sanctions packages are given in Regulations made under the SAMLA.

The Office of Financial Sanctions Implementation (OFSI), a division of the HM Treasury, is responsible for managing and enforcing UK financial sanctions, including imposing monetary fines for sanctions violations.

UNITED STATES

As in Canada, multiple legal authorities provide the US legal framework for enacting and implementing sanctions.

For UNSC sanctions, s 5 of the United Nations Participation Act of 1945 grants the President the power to designate how UNSC sanctions are implemented.

Unilaterally, the most direct avenue for implementing sanctions is under the International Emergency and Economic Powers Act (IEEPA). Section 1702 of the IEEPA provides a range of sanctions that the President may enact by Executive Order. Under s 1701, these sanctions must be in order[103]'to deal with any unusual and extraordinary threat to the national security, foreign policy, or economy of the United States if the President declares a national emergency with respect to such threat'.[104]

The Global Magnitsky Human Rights Accountability Act (the Magnitsky Act) gives the President the authority to designate 'based on credible evidence' foreign nationals for sanctions under s 10102(a) including those who:

1. Are responsible for 'extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against' particularly human rights defenders and anti-corruption activists outside the United States;
2. Have acted as an agent or on behalf of a foreign national in the conduct described above;
3. Are government officials or senior associates of government officials involved in corruption; or
4. Have assisted any of several listed ways the corruption described above.

Specific sanctions packages are articulated in Executive Orders.

The Office of Foreign Assets Control (OFAC), a division of the US Department of the Treasury, is responsible for managing and enforcing US financial and trade sanctions—the majority of sanctions enacted—in accordance with the objectives of US foreign policy and national security. This includes imposing monetary fines for sanctions violations.

[103] However, export bans of dual use technologies or arms will be made under legislation such as the Arms Export Control Act.

[104] Note, however, that before exercising any of the powers granted under IEEPA the President must consult Congress 'in every possible instance'. 50 U.S.C. § 1703(a). Human rights abuses, significant corruption, terrorism and transnational crime have been considered national emergencies for the purpose of the IEEPA. Congressional Research Service, 'The International Emergency Economic Powers Act: Origins, Evolution, and Use' (14 July 2020) 26.

APPENDIX III: SANCTION FRAMEWORKS OF REGIONAL ACTORS

Of relevance to this paper, it has been reported that Myanmar has been continuously engaging in arms dealings with China, Russia, Singapore, Thailand, and India in spite of existing sanctions thanks to the use of front companies and lax enforcement of existing bans.

The following provides an overview of the Chinese and Indian sanction frameworks, with Singapore and Thailand's sanction frameworks provided in the Coalition 'Jurisdictional Briefs For International Justice In Asia'.[105]

CHINA

As a UN Member State, China is obliged to implement UNSC sanctions and does so through 'administrative notices'. The legal circumstances which trigger unilateral sanctions generally relate to: national security as governed by the National Security Law of the People's Republic of China; or national development interests and the protection of Chinese citizens and organizations the rights and interests as governed by art 1 of the Anti-Foreign Sanctions Law.

Under art 3(2) of the Anti-Foreign Sanctions Law, the legal circumstances to impose sanctions include where a foreign country: '[1] violates international law and basic norms of international relations, [2] contains or suppresses China under various pretexts or pursuant to its own laws, [3] adopts discriminatory restrictive measures against any Chinese citizen or organization, [4] meddles in China's internal affairs'. It is not clear from the wording whether all of these circumstances must be in place for sanctions to be enacted, but it is unlikely to be cumulative as the Law was enacted as a counter to the sanctions of other States on China or Chinese interests.[106]

Article 6 of the Anti-Foreign Sanctions Law indicates there are three types of sanctions that can be enacted:

> 1) The denial of issuances of visas, denial of entry, cancellation of visas or deportation;
> 2) Asset freezing; and
> 3) Prohibiting or restricting organizations and individuals' transactions, cooperation, and other activities within China.

[105] Russia is omitted from this overview as it is more-often covered in sanctions discussions related to Europe.
[106] See also the 2021 Ministry of Commerce's Order describing the key factors in evaluating these circumstances.

Finally, under art 7 of the Anti-Foreign Sanctions Law, the Central Government has the final authority to decide who to sanction and by what means.

In practice, sanctions for human rights violations—unless those violations are against Chinese interests—are unlikely. At time of writing, the latest sanctions imposed by China were regarding US Speaker of the House Nancy Pelosi's trip to Taiwan. Furthermore, the Chinese government has not participated in sanctions related to the ongoing Ukraine-Russia crisis. Most of the sanctions imposed by the Chinese government occurred during the period of the Sino-American trade war.

It is important to note, however, that sanctions against non-Chinese entities that nevertheless effect Chinese interests may place those actors at risk of countermeasures, which may deter actors enacting sanctions to address human rights violations in the region.

The existing Chinese legal framework for sanctions, based on the non-interference imperative, is unlikely to change. This is for two reasons: first, because the existing framework is underpinned by China's National Security Law—a law that enjoys a special status in the Chinese legal system; and second, as the imperative of non-interference, the primacy of sovereignty, and the Five Principles of Peaceful Coexistence are deeply embedded not only in Chinese diplomatic practice but also in contemporary Chinese society.

Sanctions As A Violation Of International Law? The Principle Of Non-Intervention

One important consideration in the imposition of sanctions is the principle of non-intervention, namely that States should not intervene in each other's affairs.[107] Under the UN Charter, the principle relates to art 2(7) (prohibiting the intervention 'in matters which are essentially within the domestic jurisdiction of any State') and is supported by arts 1(2) and 55 (the principle of friendly relations among States), as well as art 2(4) (the prohibition of the use of force).[108] The principle was affirmed by the International Court of Justice as reflective of international customary law in Nicaragua.[109] There, the Court defined a 'prohibited intervention' as an intervention where, using 'methods of coercion', one State interferes in another State's choices related to 'matters in which each State is permitted [] by the principle of State sovereignty[] to decide freely'.[110] These matters are not exhaustively defined but relate to the core rights of a State under international law—its domaine réservé (reserved domain).[111]

[107] Rebecca Barber, 'An Exploration of the General Assembly's Troubled Relationship with Unilateral Sanctions' (2021) 70 International and Comparative Law Quarterly 343, 350.
[108] Bogdanova (n 76) 74–75.
[109] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v USA) [1986] ICJ Rep 14 [276].
[110] Ibid [205].
[111] Bogdanova (n 76) 76.

Violations of international law including international human rights law[112] and jus cogens norms[113] cannot be said to be within the core rights of a State. Therefore, where sanctions are imposed in relation to these international law violations, most scholars agree such imposition is not a breach of the principle of non-intervention,[114] even though sanctions are predominantly imposed to induce behavioural change in the targeted State.[115]

Where, however, one State is unilaterally imposing sanctions—without the collective decision of the international community that sanctions are warranted—the issue is less clear.

INDIA

Reluctance To Impose Sanctions

India has been clear that it is against imposing punitive sanctions on Myanmar. Instead, it has adopted a 'twin-track' approach: on one hand, India continues to stress that the democratic transition process in Myanmar is of paramount importance; on the other, the Government of India also acknowledges that it must engage with the military junta in Myanmar to counter militant groups operating in the Indian State of Manipur.

India's perspective is premised on efforts to counter China's influence in the region. When Western nations have imposed severe sanctions on Myanmar's military and military government in the past, China extended its support to the generals. Therefore, India cannot afford to embrace a hostile attitude towards the military regime, as doing so would mean permitting China to occupy 'more space in Myanmar'.

As with all UN Member States, India is obligated to enact UNSC sanctions. It domesticates this obligation through the United Nations (Security Council) Act, 1947. India recognises UNSC list of designated entities and individuals.

[112] Barber (n 107) 351.
[113] Barber (n 107) 352.
[114] Barber (n 107) 354. A notable exception to this is extreme forms of economic coercion. Bogdanova (n 76) 77. Further, the growing body of literature notwithstanding, it has also been argued that 'the precise extent to which the non-intervention principle [...] limits the permissible scope of sanctions remains unclear'. Ruys (n 1) 50.
[115] Niccolò Ridi and Veronika Fikfak, 'Sanctioning to Change State Behaviour' (2022) 13 Journal of International Dispute Settlement 210, 4.

The following chart lists the implementing legislation, the measures possible, and the competent authority for enacting measures giving effect to UNSC sanctions:[116]

IMPLEMENTING LEGISLATION	RELEVANT SANCTIONS	COMPETENT AUTHORITY
Unlawful Activities (Prevention) Act, 1967	1. Sanctions on persons and organisations suspected of being involved in terrorism-related activities. 2. Sanctions on organisations designated as 'Terrorist Organisations' listed in the First Schedule of the Act; and 3. Sanctions on entities listed on the List of Unlawful Associations under s 3 of the Act. Under s 51A, such sanctions can include the power to freeze funds and other financial assets or economic resources held by, on behalf of, or at the direction of the individuals or entities listed in the Schedule to the Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order 2007, or any other person engaged in terrorist activity.	Ministry of Home Affairs
Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005	1. Prohibiting trade in weapons and similar items. 2. No transfer of material, equipment, or technology to a terrorist under s 9.	Ministry of External Affairs
Foreign Trade (Development and Regulation) Act, 1992	Prohibitions and restrictions on the trade of specified goods that have dual-use applications.	Director General of Foreign Trade, Ministry of Commerce and Industry

[116] See more in Devinder Bagia, Jaynat Raghu Ram & Aayush Rastogi, 'Sanction-India-Q&A Guide' (2022) LexisNexis.

In contrast to the implementation of UNSC sanctions, India has vehemently opposed unilateral sanctions: the State is of the view that unilateral sanctions are starkly incongruous with the principles of international law and that they undermine the 'effectiveness and legitimacy of the [UNSC] sanctions regime'. Further, India's opposition is based on the fact that such unilateral measures: 1) can affect the world economy, including India's economic interests; 2) fail to produce the desired outcome; and 3) disturb the international order.

ASIA JUSTICE COALITION

Founded in 2018, the Asia Justice Coalition's purpose is to improve the legal landscape in Asia to ensure justice and accountability for gross violations of international human rights law and serious violations of international humanitarian law. The Coalition operates through collaboration, resource sharing, and coordinating efforts between local and international civil society organizations working in the region. Its work is accomplished by undertaking joint activities relating to justice and accountability and engaging in collective advocacy.

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