

West a law unto itself: UN rapporteur

At the Shangri-La Dialogue in Singapore on 31 May-2 June, US Defence Secretary Lloyd Austin demanded China cease “supporting Russia’s defence industrial base”. If not, the USA will “take further steps”, State Department Deputy Secretary Kurt Campbell told Chinese Vice Foreign Minister Ma Zhaoxu during a concurrent visit to Washington. These warnings were backed up by Australian Defence Minister Richard Marles’s pitch at Shangri La, insisting that China make clear “that it does not support the invasion of a sovereign country in violation of the UN Charter”. Trust in China’s intentions is the “single most important ingredient to the maintenance of the global rules-based order”, he intoned.

The *ad hoc* “rules-based order” has been exposed as illegitimate Western overreach, however, by UN Special Rapporteur on unilateral coercive measures and human rights, Prof. Dr Alena Douhan.

Sanctions levied on China by the USA, European Union and Canada without UN Security Council approval “can be qualified as unilateral coercive



UN rapporteur Alena Douhan gives a press conference in Beijing. Photo: Screenshot

measures” that are illegal under international law and thus “constitute an attempt to supplement the legal standards with a so-called ‘rule-based order’”. Such was the conclusion of Prof. Douhan, from Belarus, in her report on the “negative impact of unilateral coercive measures on the enjoyment of human rights”.

Douhan issued her preliminary findings on 17 May, following her visit to China on 6-17 May. Douhan was investigating the impact of unilateral sanctions imposed on China since 2017, primarily by the USA. These sanctions include imposition of export controls, Magnitsky sanctions that target particular Chinese subjects or entities (particularly in the Xinjiang Uyghur Autonomous Region and Hong Kong SAR), nominated targets under the Specially Designated Nationals and Blocked Persons list (SDN), including a growing number accused of circumventing sanctions imposed by the USA on third countries, such as Russia, North Korea or Iran), and other “de-risking” policies. More than 600 individuals and entities are listed under these sanctions regimes.

Hurting the vulnerable, in China and overseas

Supposedly vulnerable populations, that were meant to be protected by the sanctions, were most impacted. Douhan reported: “I received information about significant drop in businesses’ turnovers due to either the direct sanctions-induced restrictions or due to foreign business counterparts’ over-compliance out of fear of secondary sanctions against them. Business representatives described the swift loss of the totality of overseas markets, mainly in the US and Canada, and a significant decrease of commercial transactions with European partners.”

Textiles, cotton, agriculture and the energy and technology sectors in the Xinjiang region were significantly affected. Douhan makes the point that even so-called “targeted” Magnitsky sanctions have a broader impact. Targeting “does not prevent negative spill-over effects and broader reputational damage”; in fact, it stigmatises and puts the spotlight on specific sectors, whereby not only foreign but local businesses “hesitate to participate in supply chains that involve entities in Xinjiang” out of fear of sanctions. This leads, Douhan wrote, to “severe disruptions with potential catastrophic real-life consequences”.

(Importantly, Douhan later notes that the Xinjiang poverty eradication program constituted “an inalienable element of suppression of international terrorism”.)

Because China took measures to mitigate the impact of sanctions, the economic consequences have not had a “devastating” humanitarian impact, but—emphasised Douhan—that does not legitimise the sanctions.

The lives and human rights of the general population are affected, with the adjustment to sanctions affecting employment. Douhan noted one case: “I received information about enterprises employing thousands of people, which were forced to undergo in a short period of time significant cuts in their workforce, in some cases of more than 50 per cent, or small and medium enterprises [going] bankrupt.” Exacerbating the impact, the most likely to be affected are the vulnerable, older, less skilled, and women employed in certain economic sectors.

With many Chinese academic institutions and research centres sanctioned for alleged work on “dual use” technology, sanctions affect the right to education and academic/scientific cooperation. Exchange programs, joint projects and foreign scholarships have been cancelled, “negatively affecting [Chinese students’ and academics’] employment opportunities and perspectives”. This has often resulted in visa cancellation, lengthy interrogations and invasive searches of personal devices. The process of appealing designation under sanctions is a lengthy and costly one.

Douhan briefly discusses the broader international humanitarian consequences of the sanctions on China, given the size of its economy and its international development and humanitarian projects. The sanctions therefore have a negative spillover effect on disadvantaged populations in other countries. Douhan reported: “I have received preliminary information about the discontinuation of new technology projects led by Chinese enterprises and implemented in countries in Africa, such as on agricultural irrigation systems and new energies, including due to payment disruptions, following the designation of these entities.”

Developing countries have been affected “after the withdrawal of Chinese companies and investments, or people dependent on humanitarian and development assistance from China including via the Belt and Road Initiative, Confucius Institutes and other initiatives.”

Legality

Unilateral sanctions are illegal under international law, as are secondary sanctions—“a means of enforcement of illegal unilateral coercive measures” on primary sanctioned nations. Further, “Secondary Sanctions also constitute violation of the prohibition of punishments for acts, which did not constitute crimes at the moment of their committing.” For instance, punishing a country for continuing to trade with a sanctioned nation.

Unilateral sanctions violate “obligations arising from universal and regional human rights instruments ... including procedural guarantees, the presumption of innocence, due process, access to justice and the right to remedy.”

Magnitsky sanctions constitute “an attempt of sanctioning states to expand their jurisdiction”, declares Douhan, which “deprives designated individuals of the right to a fair trial and undermines the presumption of innocence”. Such sanctions work on the “presumption of guilt”. They also put the burden of proof *of compliance*, she says, on the international actors that must uphold the sanctions. It follows that civil and criminal charges for violations of secondary sanctions are equally illegal. All of this violates “fundamental principles of international law, provisions of the UN General Assembly and UN Human Rights Council resolutions, and constitute an attempt to supplement the legal standards with a so-called ‘rule-based order’. I recall that under international law states bear the burden of proof of illegality of any activity taken within their jurisdiction as well as extraterritorially.”

Real or perceived national interests do not “create any legal ground” for imposition of sanctions, declares Douhan. “States shall not shift burden of proof of legality of their activity to the individuals/entities under sanction. The burden of proof of illegality of acts or omissions of the entities and individuals under sanctions lies with the states and only if the existence of state jurisdiction is properly grounded.”

Douhan concludes by calling on all parties to lift all unilateral sanctions applied to China, its people and entities.

By Elisa Barwick, Australian Alert Service, 6 June 2024