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Unilateral Coercive Measures (Sanctions) and the African Continental Free Trade Area (ACFTA)

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I. INTRODUCTION AND CONTEXT

The US policy of imposing economic and political sanctions on dozens of countries around the world has caused huge civilian suffering. Presented as an alternative to war, this policy is actually just another form of deadly aggression.[1]

This paper will examine the sanctions issue in the context of the African Continental Free Trade Area (AfCFTA), the legality of sanctions and some means of fighting the illegal sanctions policy of the United States and its allies. The illegal sanctions denounced are also frequently referred to as unilateral coercive measures (UCMs); we will use both terms in this paper.

In March 2020, the Human Rights Council named Alena Douhan as the Special Rapporteur on unilateral coercive measures (UCMs)[2]. On October 28, 2021, she called for the lifting of UCMs on Zimbabwe.[3] The issue of such measures is a major issue in 2023, both in Africa and around the world.

UCMs are imperialist measures imposed by the USA and Europe which are contrary to the new multilateral world which is emerging. These sanctions imposed by the West have caused severe damages to countries in the Global South, including in Africa.

By undermining African states' right to equality and sovereignty, UCMs exacerbate the imbalance of power between countries of the South and Western powers, and thus become an instrument of neo-colonialism.

The US defends its widespread sanctions policy claiming there are "humanitarian exceptions" to prevent innocent deaths. On the contrary, UCMs dramatically violate human rights and disproportionately affect the most vulnerable groups. Studies have repeatedly shown that the

[1] This summary is largely drawn on the executive summary of the Sanctions Kill Report entitled USSanctions Deadly, Destructive and in Violation of International Law https://sanctionskill.org/ of which John Philpot was a co-author.

[2] https://www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures/professor-alena-douhan-special-rapporteur-negative-impact-unilateral-coercive-measures

[3] https://www.ohchr.org/en/press-releases/2021/10/zimbabwe-expert-calls-lifting-unilateral-sanctions-urges-talks

"exceptions" do not work. In Venezuela alone, it is estimated that extreme economic sanctions over the past decade have resulted in over 100,000 deaths.[4]

As occasionally admitted by US officials, sanctions are intended to hurt the economy of the target country and spur the population to revolt.

Since February 2022, the US and the "West" have imposed harsh sanctions on Russia - preventing or severely limiting imports and exports. According to several western leaders, the goal was to weaken and undermine Russia to the point that the Putin government might be replaced.

However, the sanctions on Russia have boomeranged and are causing economic damage throughout the West and especially Europe. Energy costs have risen dramatically, and this has sparked inflation and rising costs throughout the economy. The middle- and working-class majority is experiencing a major decline in living standards. In western Europe, the economic fallout is much worse and the opposition growing proportionally. Recently, there have been massive protests in Prague[5], Paris[6], and London[7].

US-driven sanctions are also backfiring by expediting the decline of US dollar dominance. They have forced countries to develop alternatives to US dominated systems. With the expulsion of Russia from the SWIFT system for international bank transactions, alternative systems are increasingly being used. The petrodollar, whereby oil was bought and sold only with US dollars, is also being eclipsed. Saudi Arabia is set to accept the yuan for their huge oil sales to China.

More than two-thirds of world nations condemn and consider US sanctions (UCMs) a violation of international law and the UN charter. This is largely unknown in the West because of effective censorship by western media.

US sanctions policy has come to a climax. The victims of this policy are all around – Cuba, Venezuela, Ethiopia, Zimbabwe, Afghanistan, and 35 other countries. With the extreme sanctions on Russia, there are also victims in London, New York, Berlin, and throughout the West.

Who is benefiting from this? The principal winners seem to be the US foreign-policy elite who ignore the UN charter and UN General Assembly, believe in US hegemony/exceptionalism, and are inter-connected with the military industrial establishment.

Instead of seeking diplomatic resolution of the conflict in Ukraine and an end to anti-Russia sanctions, which are hurting many millions including in the West, the US foreign-policy establishment is escalating tensions and sanctions. It appears that European leaders are not independent and cannot act in the best interests of their citizens. The recent explosions on the Nordstream gas pipelines indicate the criminal extremes to which powerful forces are prepared to go.[8] These policies need to be challenged and changed.

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[4] https://www.blackagendareport.com/former-un-rapporteur-human-rights-us-sanctions-have-killed-more-100-thousand-venezuelans

[5] https://balkaninsight.com/2022/09/05/tens-of-thousands-rally-in-prague-to-protest-cost-of-living-crisis/

[6] https://www.theguardian.com/commentisfree/2022/aug/23/cost-of-living-french-popular-resistance-living-standards-uk

[7] https://www.youtube.com/watch?v=QOlDQRkL9t4

[8] https://consortiumnews.com/2022/09/28/diana-johnstone-omerta-in-the-gangster-war/

The US policy of waging economic war through sanctions and other forms of aggression may lead to legitimate claims to reparations from victim countries and criminal and civil liability for US authorities.

II. ILLEGALITY

UCMs are illegal and contravene general international law, not to mention the many violations of other components of international economic law, human rights and humanitarian law.

The illegality of such measures has been repeatedly enshrined in the resolutions of various United Nations bodies and denounced by the African Union in particular. [9] As long ago as 1984, the United Nations General Assembly adopted a resolution stating that developed countries should refrain from threatening to apply, or to apply to developing countries, economic sanctions as a means of political or economic coercion, incompatible with the *Charter of the United Nations* and in violation of bilateral or multilateral commitments.[10] More recently, a resolution of the Human Rights Council was adopted on March 23, 2021, emphasizing that unilateral coercive measures are contrary to international law, international humanitarian law, the UN Charter and the norms and principles governing peaceful relations between States.[11]

States are bound to respect the fundamental principles of international law laid down in numerous United Nations General Assembly resolutions.[12] Yet the proliferation of UCMs continues to increase with impunity.

i. Definition of UCMs

To date, there is no legally recognized definition of what constitutes a UCM, nor any consensus on the subject. To properly situate the legal framework, it is therefore important first of all to define what is meant by UCMs. Indeed, the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, has stressed that the absence of a universally recognized definition accentuates the threat to the rule of law in the international order, and exacerbates the damaging humanitarian effects on civilian populations.[13]

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[9] Assembly of the African Union, Thirty-Sixth ordinary session, 18-19 February 2023, Addis Ababa, Ethiopia, Resolution on the impact of sanctions and unilateral coercive measures, 42725-Assembly_AU_Dec_839_-_865_XXXVI_E.pdf

[10] A/RES/39/210, United Nations General Assembly Resolution, December 18th, 1984, *Economic measures as a means of political and economic coercion against developing countries*.

[11] A/HRC/46/L.4, Human Rights Council Resolution, 46th session, March 23rd, 2021, *The negative impact of unilateral coercive measures on the enjoyment of human rights*.

[12] A/HRC/48/59, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, *Unilateral coercive measures: notion, types and qualification*, par. 83.

[13] Idem.

Given the widespread international disapproval of UCMs, some Western powers are trying to take advantage of this shortcoming and adopt these measures under the guise of other, less pejorative terms, such as special or restrictive measures. In this sense, the absence of a legally-recognized definition should not be used to support impunity and condemnation of the application of UCMs should not depend on the unilateral, subjective and arbitrary characterization of certain countries.

Based on the definition suggested by Ms Douhan, we propose to define UCM as follows:

"*any type of measures or activity by States, group of States or regional organization without or beyond the authorization of the Security Council, taken against another state not in conformity with international obligations of the sanctioning actor* [...]".[14]

ii. Criteria of illegality

We agree with Ms. Douhan that sanctions must be taken with the authorization of the Security Council acting in accordance with Chapter VII of the *Charter of the United Nations* (hereinafter the Charter), in the event of a threat to peace, breach of peace or other act of aggression. It is the Security Council which has the jurisdiction to impose measures not involving the use of armed force, such as the complete or partial interruption of economic relations and rail, sea, air, postal and other means of communication, and the severance of diplomatic relations. Thus, States which unilaterally use sanctions outside the UN framework are illegally adopting a practice which empties the provisions of Chapter VII of the Charter of their essence and jeopardizes multilateralism.

We believe that there should be a presumption of illegality for any sanction measure imposed without the authorization of the Security Council, or outside the limits of its authorization. We propose as an approach the identification of elements constituting a presumption of illegality that can be set aside when such measures constitute retaliatory acts or countermeasures fully respecting the rules of the law of international responsibility.

What's more, given the highly devastating effects of UCMs on civilian populations, there are many contraventions of the rights protected by other international instruments, and we do not claim to be able to list them all here. We do, however, propose to denounce a few of them, which will also serve to identify possible appropriate remedies and as a basis for demands for reparations.

Notably, the purpose of UCMs is, in almost all cases, to bring about a change in the policy or behavior of the state targeted by the measures, and thus to force subjugation and renunciation of the exercise of sovereign rights by states. As such, UCMs also undermine self-determination, the principle of non-interference, territorial integrity and state sovereignty. In this respect, the illegality of the extraterritorial scope of secondary sanctions imposed on third-party states for non-

[14] Idem. (par. 100)

compliance with primary sanctions is all the more flagrant. What's more, the use of UCMs for neo-colonial purposes by countries such as the United States against the countries of the South, is also a contravention of the right to equality. These principles are recognized both in the Charter and in customary law.[15]

In their article 1, the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* expressly affirm that all peoples have the right to self-determination and to freely pursue their political, economic and cultural development.[16]

Furthermore, UCMs are often presented by Western powers as a milder alternative to war, and less harmful to civilian populations. However, this rhetoric is false, and UCMs can cause as many civilian casualties as war. As a result, not only is the right to be protected against the use or threat of force by a foreign state being called into question, but so is humanitarian law.

Highlighting violations of the protections conferred by instruments (such as the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *International Convention on the Elimination of All Forms of Racial Discrimination*, the *Rome Statute*, the *Geneva Conventions*) is also crucial to deconstructing the illegitimate rhetoric of the United States to the effect that UCMs are useful for safeguarding fundamental human rights in the targeted countries, whereas the effects on the populations are rather catastrophic.

iii. Victims' right to reparation and State responsibility

On December 16, 2005, the United Nations General Assembly adopted the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law". The Principles and Guidelines set out a series of obligations for States, as follows:

- Obligation to prevent violations;
- Obligation to investigate, prosecute and punish perpetrators;
- Obligation to provide genuine access to justice for all individuals who are victims of violations (procedures and appeals before impartial courts);
- Obligation to provide full reparation to victims; [17]

[15] United Nations, *Charter of the United Nations*, October 24th, 1945, Art. 1 par. 2: « To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace »; Art. 2 par. 1: « The Organization is based on the principle of the sovereign equality of all its Members ».

[16] General Assembly resolution 2200A (XXI), December 16th 1966, *International Covenant on Economic, Social and Cultural Rights;* General Assembly resolution 2200A (XXI), December 16th 1966, *International Covenant on Civil and Political Rights;*

[17] General Assembly Resolution 60/147, December 15th 2005, *Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of Human Rights law*; Also see Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power | OHCHR

The Principles and Guidelines also identify the various forms that reparation can take: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. However, it seems that not all states have a clear and accessible remedy for victims of UCMs, even though the vast majority have a system of extra-contractual liability based on the generally recognized principles of wrongful act, injury and causal link between the act and the injury.

Recourse to national courts is still largely under-utilized and, for the time being, can often prove illusory and theoretical, insofar as the target state is itself responsible for infringements of fundamental rights; just think of the case of recourse to a domestic court in the USA. It is to counter this risk of impunity that compensation funds have been set up through United Nations bodies. [18]

In addition, under Article 75 of the *Rome Statute*, it is possible to compensate victims of war crimes, crimes against humanity and genocide in conjunction with the Trust Fund for Victims (TFV), which was set up under Article 79.1.[19]It is interesting to note that the FPV is not directly dependent on a judgment recognized by the ICC, and that it is technically possible to avail oneself of the assistance program on a preliminary basis during the examination phase of a submitted situation; this raises the question of whether victims in Venezuela could attempt to submit claims, considering the filing of the complaint.

In any case, it is necessary to continue to invoke and put forward these Principles and Guidelines, whether in judicial proceedings or through demands for the introduction of other quasi-judicial or administrative mechanisms, or for the creation of a specific compensation fund for UCMs victims.

Moreover, any internationally wrongful act committed by a State engages its international responsibility. [20] The obligation to make reparation is a customary rule first defined in the Chorzow Factory case (1928).*[21]*

Moreover, it is generally recognized that the jurisdiction of a court on the merits also underpins the power to grant reparation. (*Nicaragua vs. US*, ICJ, June 27, 1986). The right to reparation for damage suffered is the corollary of the violation of obligations resulting from a commitment between States or from any other international obligation. In this case, it was recognized by the International Court of Justice that Nicaragua was entitled to reparation for personal and material damage caused to ships and ports, notably by the explosion of mines, as well as for economic losses resulting from the hindrance to trade caused by the embargo. Interestingly, the United States did

[18] The United Nations Voluntary Fund for Victims of Torture | OHCHR https://www.ohchr.org/en/about-us/funding-and-budget/trust-funds/united-nations-voluntary-fund-victims-torture
The United Nations Voluntary Trust Fund on Contemporary Forms of Slavery | OHCHR https://www.icc-cpi.int/tfv#:~:text=Though%20the%20Trust%20Fund%20for,humanity%2C%20war%20crimes%20and%20aggression.

[19] The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, July 17th, 1998, Treaty Series, vol. 2187, No. 38544, *Rome Statute of the International Criminal Court*

[20] Article 1 *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, 2001,

[21] Publications of the permanent court of international justice, September 13th 1928, Collection of judgments, No. 13 Case concerning the Factory at Chorzow (Claim for indemnity)(Merits) 54_Usine_de_Chorzow_Fond_Arret.pdf (icj-cij.org)

not at that time question or challenge the validity of these principles relating to the right to reparation, and it was agreed by the Court that the parties would submit briefs at a later stage to establish the precise quantum of damages to be awarded to Nicaragua.[22] On March 29th 1988, Nicaragua then followed on this judgment by submitting a memorial quantifying its damages at around 12 billion.[23]

But to this day, 37 years after the ICJ ruling, the United States has refused to respect the judgment of the highest international authority and failed to compensate Nicaragua accordingly. This undermines dangerously the efficacy of the ICJ and raise very preoccupying issues regarding compliance and enforcement. It is paramount to stress that on June 26th, 2023, Nicaragua's President Daniel Ortega send a letter to the UN Secretary General demanding that the US finally pay the reparations owed in accordance with the ruling.[24] This is a file that needs to be closely monitored, as the future value of ICJ rulings and the struggle against impunity depend on it.

iv. Extraterritoriality or legal imperialism

We observe that the United States is increasingly instrumentalizing the law for imperialist ends, by adopting extraterritorial laws that outrageously violate the sovereignty of States and aim to perpetuate neo-colonialism. Indeed, the United States is increasingly adopting with impunity extraterritorial laws imposing secondary sanctions on third parties (states, companies, banks, NGOs, individuals) that maintain links with states targeted by primary sanctions; this affects foreign partners in fields as wide-ranging as education, health, access to humanitarian aid, trade, development and culture.[25]

The imposition of secondary sanctions creates real instability in the legal order, and also a climate of fear of reprisals for other entities such as banks and NGOs, given the severity of the penalties incurred. This very often leads to excessive compliance with UCMs, exponentially increasing the damaging effects of primary sanctions by increasing the number of victims. Special Rapporteur Alena Douhan has stressed that the damaging humanitarian effects of sanctions are greatly exacerbated by their extraterritorial application. For example, the "Caesar" law on the protection of civilians in Syria threatens to sanction third-party states, companies or individuals who deal with

[22] International Court of Justice, Reports of Judgments, advisory opinions and orders, *Case concerning military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America),* Judgment of June 27, 1986

[23] https://www.icj-cij.org/sites/default/files/case-related/70/9621.pdf

[24] https://www.el19digital.com/articulos/ver/titulo:141855-presidente-comandante-daniel-ortega-envia-carta-al-secretario-general-de-naciones-unidas; https://docs.google.com/viewerng/viewer?url=https://www.nodal.am/wp-content/uploads/2023/06/nota-a-onu-obligacion-de-indemnizar-a-nicaragua-1.pdf&hl=es

[25] A/HRC/48/59 Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, *Unilateral coercive measures: notion, types and qualification.*

the Syrian government or its central bank, or with certain individuals identified on a list, thus preventing reconstruction projects and humanitarian aid.[26]

The connection with American law invoked by the United States for outside its borders is highly questionable, when they frequently rely on: either the use of US dollars for targeted transactions, the transit of financial or other data on American platforms or systems or located on their territory.[27]

These extraterritorial laws have been repeatedly decried within the community, and there is a consensus on the illegality of these measures even among states that use primary sanctions such as in the European Union. In the resolution of March 23, 2021, adopted by the Human Rights Committee 46th session), the Human Rights Council reiterated its strong disapproval of the extraterritoriality of measures that threaten the sovereignty of States, called on all States not to recognize or apply such measures, and encouraged States to adopt effective laws to counter the extraterritorial application or extraterritorial effects of UCMs.[28]

At the 36th session of the Assembly of the African Union on February 18 and 19, 2023, member states strongly contested the extraterritoriality of measures that contravene state sovereignty and urged states not to recognize or apply such measures, while taking appropriate action to counter their extraterritorial application or effects. [29] It is therefore important to consider the means available to African states to intervene appropriately in the face of the increasing extraterritoriality of US laws.

III. INCOMPATIBILITY WITH AfCFTA

UCMs applied by the USA are in direct contradiction with the African Continental Free Trade Area (AfCFTA) agreement. For example, the situations with Zimbabwe and Ethiopia show that UCMs are incompatible with the AfCFTA. Similarly, the United States legislation *Countering Malign Russian Activities in Africa Act (*H.R. 7311), cannot be reconciled with the AfCFTA. The Free Trade Area cannot envision a third-party country such as the USA single out a country and prohibit economic relations with that country applicable to all African countries and the rest of the world. All the mechanisms and structure of the AfCFTA cannot be reconciled with UCMs (USA and European Sanctions Policies)

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[26] A/HRC/51/33, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, *Secondary sanctions, civil and criminal penalties for circumvention of sanctions regimes and overcompliance with sanctions.*

[27] *Au-delà de l'extraterritorialité européenne, pour une intelligence du droit et de la « compliance » au service de la souveraineté – Une réponse à l'extraterritorialité de droits étrangers pour sauvegarder les valeurs fondamentales européennes,* Amélie Giuliani, Fondation Robert Schuman, 30 janvier 2023.

[28] A/HRC/RES/46/5, 46th session Human Rights Council, Resolution adopted by the Human Rights Council on March 23rd, 2021, *The negative impact of unilateral coercive measures on the enjoyment of human rights.*

[29] Assembly of the African Union, Thirty-Sixth ordinary session, 18-19 February 2023, Addis Ababa, Ethiopia, Resolution on the impact of sanctions and unilateral coercive measures, 42725-Assembly AU Dec 839 - 865 XXXVI E.pdf

i. Ethiopia

The United States has adopted draconian polices concerning Ethiopia and has maintained the policies although the war with the secessionist Tigray People's liberation front has ended.[30] On the first day of January 2022, the US canceled Ethiopia's eligibility for AGOA, the African Growth and Opportunity Act, which allowed businesses manufacturing in Ethiopia to export goods to the U.S. tariff free.[31] It has not been reinstated after the end of the war.

Sanctions legislations on Ethiopia have been introduced. The House Bill is H.R. 6600, the *Ethiopia Stabilization, Peace, and Democracy Act*[32]. The Senate Bill S. 3199 is called the *Ethiopia Peace and Stabilization Act of 2022*[33]. H.R. 6600 and S. 3199 would also impose sanctions on other nations and corporations investing Ethiopia. These have the potential to do serious damage because Ethiopia needs as much foreign investment as they can get to develop its resources. The bills can punish banks and other institutions who do business in Ethiopia based on decisions made by the US State Department and its evaluation of 'human rights" in Ethiopia.

On 17 December 2021, the UNHRC adopted a Resolution Resolution A/HRC/RES/S-33/ to investigate the Human Rights situation in Ethiopia while US inspired secessionist war by the TPLF was raging. Not one African Country voted for this resolution.

The sole purpose of the investigators is intervention in the internal affairs of Ethiopia. It would bypass the pre-existing joint investigation and start all over again, possibly to change the outcome, blame the Ethiopian government, and designate the atrocities as "genocide." Such designation and possible prosecution are perhaps tools to twist the hands of the Ethiopian government to prioritize Western policy interests against Ethiopian sovereign interests.

This should be viewed as part and parcel of the application of US House Resolution 6600 whereby the United States wants to impose a human rights investigation requiring accountability, unfettered access for humanitarian operations with a report to the State Department every six months with many other sanctions related provisions.

The UNHRC would have been used to support United States Sanctions.

Happily, the Ethiopian Government has not allowed the UNHCR to operate inside Ethiopia and will not cooperate with this imperial inquisition chaired by former ICTR prosecutor Mohamed Othman.[34]

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[30] https://korybko.substack.com/p/the-us-meddling-in-ethiopias-transitional
[31] US Treasury Department: U.S. Terminates AGOA Trade Preference Program for Ethiopia, Mali and Guinea, January 1, 2022, US Treasury Department
https://www.congress.gov/bill/117th-congress/senate-bill/3199
[32] H.R. 6600, the Ethiopia Stabilization, Peace, and Democracy Act, introduced in the House 02/04/2022
https://www.congress.gov/bill/117th-congress/house-bill/6600
[33] S. 3199, Ethiopia Peace and Stabilization Act of 2022, introduced in the Senate 11/04/2021
https://www.congress.gov/bill/117th-congress/senate-bill/3199
[34] https://www.ohchr.org/en/statements-and-speeches/2023/04/statement-chairperson-and-members-un-international-commission-human

On May 3, 2023, the USAID suspended all food aid to Ethiopia.[35]

Ethiopia cannot exercise its sovereign economic rights under the AfCFTA. The USA lies outside the realm of all recourse in the framework of the AfCFTA.

ii. Zimbabwe[36]

The sanctions against Zimbabwe target the government and many companies and individuals. They target the financial system and the right to import or export technology.[37]

Zimbabwe has been sanctioned severely by the UK and the US since 2002. Australia, Canada, and New Zealand have also maintained targeted sanctions against Zimbabwe. The sanctions were in response to Zimbabwe land reform distributing land held by white British colonists. The land reform was a major issue in the independence campaign of Zimbabwe which triumphed in 1979.

In 2002–2003, the US and the EU introduced several UCMs including blocking Zimbabwe's access to international loans inflicting direct damage on the population. At least 140 Zimbabwean entities and individuals are on the US-targeted sanctions list which were prolonged by both Donald Trump and Joe Biden. Zimbabwe policies allegedly posed "an unusual and extraordinary threat" to US foreign policy.

Regarding healthcare, Zimbabwe was denied access to international financial relief and vaccines to fight the Covid pandemic because of sanctions. Ultimately, the Chinese government provided vaccines to Zimbabwe.[38]

Major hydroelectric dam construction and repair have been delayed due to the inability to acquire international funding and balance of payment restrictions. Water purification projects as well as construction projects have been delayed by the same financial hardships. Access to water decontamination chemicals and parts and materials is limited. Agricultural fertilizers and pest control chemicals have been limited, preventing relief from drought conditions. Road construction and repair, upgrading and purchasing of public transportation vehicles have been delayed due to financial limitations. Zimbabwe's development has certainly been curtailed by western sanctions.

Africa and the South African Development Community (SADC) have stood by Zimbabwe and stated the principles about development and self-determination. October 25 is now the SADC Anti-Sanctions Day. The SADC includes all African countries south from the Democratic Republic of the Congo to South Africa. In 2020, the US and the EU rejected outright the October 25 anti-sanctions campaign.

On August 12, 2022, Special Rapporteur Alena Douhan issued her report following an official visit to Zimbabwe in October 2021. She examined the impact of unilateral sanctions and concluded that

[35] https://www.usaid.gov/news-information/press-releases/may-03-2023-pause-us-food-aid-tigray-ethiopia
[36] Much of this material comes from the Report of Sanction Kill of which John Philpot was co-author
[37] https://www.ecfr.gov/current/title-31/subtitle-B/chapter-V/part-541
[38] http://www.news.cn/english/africa/2021-12/21/c_1310384569.htm

sanctions and overcompliance by foreign banks and companies have had a significant negative impact on the population, exacerbating pre-existing economic and humanitarian challenges. She recommended lifting unilateral sanctions in line with the principles of international law. (A/HRC/51/33/Add.2)[39]

These and other interventions are in direct conflict with the principles and requirements of the AfCFTA agreement.

The AfCFTA will serve to unify Africa with a customs union and integrated banking facilities. It is partly an attempt for Africa to enter the multipolar world as a block. It is an exercise of vesting national sovereignty with global African interests. The system of governance of the AfCFTA agreement has many protections for African countries among themselves but not with respect to powerful external actors like the United States which acts unilaterally.

iii. Governance of the AfCFTA and Sanctions

We will examine briefly the structure of the AfCFTA agreement and point out the contradictions with any Western policy of unilateral coercive measures or Sanctions[40].

Article 5
Principles

The AfCFTA shall be governed by the following principles:

(a) driven by Member States of the African Union; […]

The United States and the members of the European Union are not Member States. They are foreign states.

The Assembly as defined by article 10 as the supreme authority will have no power over unilateral sanctions.

Article 10
The Assembly

1. The Assembly, as the highest decision-making organ of the AU, shall provide oversight and strategic guidance on the AfCFTA, including the Action Plan for Boosting Intra-African Trade (BIAT).

[39] https://reliefweb.int/report/zimbabwe/report-special-rapporteur-negative-impact-unilateral-coercive-measures-enjoyment-human-rights-alena-douhan-her-visit-zimbabwe-ahrc5133add2
[40] AfCFTA-Agreement-Legally-scrubbed-signed-16-May-2018.pdf (au-afcfta.org)

2. *The Assembly shall have the exclusive authority to adopt interpretations of this Agreement on the recommendation of the Council of Ministers. The decision to adopt an interpretation shall be taken by consensus.*

Article 11
The Composition and Functions of the Council of Ministers

1. *The Council of Ministers is hereby established and shall consist of the Ministers responsible for Trade or such other ministers, authorities, or officials duly designated by the State Parties.*

2. *The Council of Ministers shall report to the Assembly through the Executive Council.*

3. *The Council of Ministers shall within its mandate:*
   a) take decisions in accordance with this Agreement; […]

Article 12
Committee of Senior Trade Officials

1. *The Committee of Senior Trade Officials shall consist of Permanent or Principal Secretaries or other officials designated by each State Party.*

2. *The Committee of Senior Trade Officials shall:*

(a) implement the decisions of the Council of Ministers as may be directed;

(b) be responsible for the development of programmes and action plans for the implementation of the Agreement;

(c) monitor and keep under constant review and ensure proper functioning and development of the AfCFTA in accordance with the provisions of this Agreement;

(d) establish committees or other working groups as may be required;

(e) oversee the implementation of the provisions of this Agreement and for that purpose, may request a Technical Committee to investigate any particular matter;

(f) direct the Secretariat to undertake specific assignments; and

(g) perform any other function consistent with this Agreement or as may be requested by the Council of Ministers.

The provides for countries the right to decides its policy objectives. The west cannot intervene in the internal affairs protected by the AfCFTA. The United States and the members of the European Union have no role to play in the Governance of the AfCTFA.

Dispute Settlement

The AfCFTA has methods of resolving disputes within Africa. The dispute mechanism does not involve third parties such as the USA and the European Community which impose sanctions.

PART VI
DISPUTE SETTLEMENT
Article 20
Dispute Settlement

1. *A Dispute Settlement Mechanism is hereby established and shall apply to the settlement of disputes arising between State Parties.*
2. *The Dispute Settlement Mechanism shall be administered in accordance with the Protocol on Rules and Procedures on the Settlement of Disputes.*
3. *The Protocol on Rules and Procedures on the Settlement of Disputes shall establish, inter alia, a Dispute Settlement Body.*

The *Protocol on Trade in Goods*[41] deals with tariff barriers and non-tariff barriers to intercontinental trade.

The Preamble states
[…]
CONSCIOUS *of the need to create an expanded and secure market for the goods and services of State Parties through adequate infrastructure and the reduction or progressive elimination of tariffs and elimination of non-tariff barriers to trade and investment;*

[41] AfCFTA-Agreement-Legally-scrubbed-signed-16-May-2018.pdf (au-afcfta.org)

Article 2
Objectives

1. *The principal objective of this Protocol is to create a liberalised market for trade in goods in accordance with Article 3 of the Agreement.*

2. *The specific objective of this Protocol is to boost intra-African trade in goods through:*
   (a) progressive elimination of tariffs;
   (b) progressive elimination of non-tariff barriers;

Unilateral coercive measures create tariff barriers to trade incompatible with the AfCFTA.
The United States and countries of the European community are not parties to the AfCFTA and cannot be forced to enter Dispute Settlements.

It will be up to many actors including the African Union and even possibly the African Bar Association to take the appropriate measures to put an end to unilateral coercive measures.

IV. RECOMMANDATIONS – MEANS OF OPPOSITION

i. Legal and political

Opposing sanctions and Unilateral Coercive Measures is a major legal and political challenge and a question of survival for many countries.

There is some progress in fighting sanctions for some countries since dedollarisation and trade in national currencies is becoming quite common. However, the fight is far from over. Zimbabwe is still suffering from terrible sanctions as are countries like Ethiopia, Cuba, Venezuela, and Syria to mention a few. We will look at this in a pan African context hoping that our comments are somewhat useful.

ii. African Court on Human and Peoples' Rights

The *Protocol to The African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights* provide for Advisory opinions at Article 4.

1. *At the request of a Member State of the OAU, the OAU, any of its organs, or <u>any African organization recognized by the OAU</u>, the Court may provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the Commission. (our underlining)*

The relevant articles 20-24 of the Charter provides for the national rights such as the right to self determination, the right to dispose of its natural resources, the right to social and economic development, and the right to international peace and security. The African Charter has been ratified by 54 of the 55 Member States of the African Union (AU).[42]

The African Bar Association could play a role in obtaining an advisory opinion if recognised by the African Union. It is our understanding that the African Bar Association would like to obtain such recognition.

iii. International Criminal Court

On February 13, 2020, the Bolivarian Republic of Venezuela introduced proceedings requesting the International Criminal Court (ICC) to investigate its territory regarding crimes against humanity resulting from UCMs imposed by the United States, since at least 2014[43]. The ICC should seize the opportunity to assess whether UCMs can constitute crimes against humanity under Article 7 of the Rome Statute, particularly when these UCMs have caused several thousands of deaths by preventing access to food, drinking water, medicines and healthcare.

However, there has been no progress despite the obvious validity of the complaint.[44] Yet British Prosecutor Khan is proceeding with the prosecutor's own complaint against Venezuela for alleged crimes committed by Venezuelan authorities and has refused deferral to national authorities.[45]

The ICC prosecutor has found there was a basis for the investigation of Nigeria subject to judicial authorisation.[46] Nowhere is there reference to the financial masters of the extremist terrorism in Nigeria. The African Bar Association has raised the issue of charging those who finance jihadism in Africa. We do not have the evidence that the terrorism was financed by the West but we know as a fact that the terrorism in Syria was in part financed by the West combined with some pro-Western Arab countries.[47] If there was some political will, there would be an investigation. The ICC has refused to investigate British crimes in Iraq and has decided not to investigate American crimes committed in Afghanistan. We are all aware of the ICC's indictment of President Putin as a tool of the hybrid war of NATO on Russia.

As a result, from the above, we do not think that the ICC is useful. Its record shows its obvious Eurocentric bias. It is a tribunal of Empire. The ICC has so far lost its credibility by showing itself

[42] https://www.african-court.org/wpafc/basic-information/#:~:text=the%20African%20Commission.-,Ratification%20%26%20Declaration,the%20principles%20set%20out%20therein
[43] Venezuela II | International Criminal Court (icc-cpi.int)
[44] https://www.icc-cpi.int/venezuela-ii, see also https://peoplesdispatch.org/2020/02/14/venezuela-filed-complaint-in-international-criminal-court-against-us-sanctions/
[45] https://www.icc-cpi.int/venezuela-i
[46] https://www.icc-cpi.int/nigeria
[47] With the reconciliation between Syria and Saudi Arabia the terrorist war on Syria is seriously weakened. Peace with Turkey may have been finalized by the time this paper is presented.

incapable of applying international criminal law impartially and rigorously, without political interference or the influence of Western powers. There will be no respite from sanctions from the ICC.

iv. Malabo Protocol

The Malabo protocol adopted in 2014 by the AU in Malabo, Equatorial Guinea would have created an African Criminal Court. Such a court could have jurisdiction on issues of illegal sanctions as a crime against humanity.[48] This protocol had apparently been signed by 15 African Countries out of 55 members of the AU. No country has ratified it. [49]

v. Sanctions Tribunal

An International Peoples Tribunal on US sanctions has been holding hearings since January 2023.[50] After the online hearings, a final hearing occurs in Caracas in July 2023. The final judgement will be rendered by eminent international judges in September 2023. A report on this hearing will be heard at the 2023 African Bar Conference in August 2023 by Professor Navid Farnia. We have attended several of the hearings on Zimbabwe and Eritrea and can attest to the high quality of the investigations.

vi. Victims' right to reparation and State responsibility

Above we have described the right of states and possibly individuals to have remedies (restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) This is an important area of work for the coming years.

vii. Non-judicial means - Blocking laws

The adoption of blocking laws is a non-judicial means to be considered to counter and sterilize the effects of the extraterritorial reach of UCMs. The best-known example of this type of law to date is the *Council Regulation of November 22, 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom* (hereinafter the European Union Blocking Statute).[51] This law was introduced in the wake of the adoption by the United States of The Cuban Liberty and Democratic

[48] https://guides.ll.georgetown.edu/c.php?g=273364&p=6025371
[49] https://www.africancourtcoalition.org/african-court-coalition-updates/
[50] https://sanctionstribunal.org/
[51] Council Regulation (EC) No. 2271/96, November 22, 1996, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01996R2271-20180807

Solidarity Act, (Helms-Burton Act) and in the context of the embargo imposed on Cuba. At that time, other countries followed the European Union's lead, including Canada, the United Kingdom and Mexico. [52] The EU's blocking legislation was then also aimed at defeating measures related to Iran and Libya, and was therefore amended in 2018, following the US withdrawal from the Joint Comprehensive Plan and the reinstatement of the Iran sanctions program.

Interesting to note that China has recently followed suit, adopting this type of blocking legislation.[53] This could inspire a similar initiative on the African continent.

Essentially, the blocking laws provides for the non-recognition on EU and Chinese territory of any decision rendered in application of identified US laws, a prohibition on complying with these laws, an obligation to notify the authorities for any person or entity who believes they are subjected to the applications of sanctions and the possibility of claiming compensation for damage suffered because of the application of these laws.

It should also be noted that the European Union's blocking statute is limited to countering the extraterritoriality of specific laws, namely those identified in the appendices. Comparatively, China's blocking statute is not preliminarily limited to particular legislations.[54]

One of the main critics of blocking statutes is that they place companies and individuals in the unfortunate position of having to comply with the provisions of the Act while assuming the risk of being subject to the exorbitant penalties of US sanctions programs. However, to overcome this difficulty, both EU and China's blocking statutes incorporate a procedure for persons and legal entities to apply to authorities for an exemption of enforcement.

There may be practical challenges of application, but these blocking laws also have a very important politic value for States wishing to denounce any attempt to violate their sovereign rights and can provide negotiating leverage. Furthermore, blocking statutes would also provide additional arguments in proceedings to challenge the application of sanctions, such as the Zimbabwe anti-sanctions Movement (ZASM) legal challenge. What's more, they can be combined with other means of intervention, such as filing a complaint with the WTO and/or the ICC. In 1996, the EU also argued that the measures taken under the Helms-Burton Act were inconsistent with Articles

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[52] Tom Ruys and Cedric Ryngaert, *« Secondary Sanctions: A Weapon out of Control? The International Legality of, and European Responses to, US secondary sanctions », British Yearbook of International Law*, 2020; https://doi.org/10.1093/bybil/braa007

Foreign Extraterritorial Measures Act, RCS 1985, c F-29

The Extraterritorial US Legislation (Sanctions against Cuba)

[53] Ministry of Commerce of the People's Republic of China (MOFCOM) Order No. 1 of 2021 on Rules on Counteracting unjustified extra-territorial application of foreign legislation and other measures, approved by the State Council on January 9th, 2021;

[54] EUR-Lex - 01996R2271-20180807 - EN - EUR-Lex (europa.eu) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01996R2271-20180807

Ministry of Commerce of the People's Republic of China (MOFCOM) Order No. 1 of 2021 on Rules on Counteracting unjustified extra-territorial application of foreign legislation and other measures, approved by the State Council on January 9th, 2021.

V, XI and XIII of the GAT, Articles II, III, VI, XI, XVI and XVII of the GATS and paragraphs 3 and 4 of the GATS Annex on the Movement of Natural Persons and filed a complaint. This led to an agreement that the United States would not apply the Act.[55]

The use of a mandatory notification mechanism for any person or other entity who believes they are subject to the application of sanctions could also serve to create a database to better assess the extent of these measures and be better equipped to challenge their legality.

viii. Countermeasures and examples of the Anti-Coercion Act

On June 6th, 2023, the European Parliament and the Council have reached a final political agreement on an Anti-coercion instrument to respond to the maneuvers of third-party states attempting through commercial and economic coercive measures to provoke a change in European Union policies. [56] A list of countermeasures has been identified, which can be implemented as a last resort in the face of coercive attempts by third countries. While the blocking law is primarily designed to counter the extraterritorial application of secondary sanctions, the anti-coercion law provides for countermeasures to bring pressure to bear.

In the same vein, Russia has adopted an anti-coercion law imposing countermeasures on «unfriendly states», which is interpreted to include the United States and other foreign states that have imposed sanctions against Russia, its citizen or legal entities. [57]

This is another example of a non-judicial means to which African States could have recourse to oppose UCMs.

ix. Zimbabwe anti-sanctions movement

In March 2022, the Zimbabwe Anti-sanctions Movement (ZASM) brought an action in South Africa before the Johannesburg High Court seeking to have the US sanctions (based on two laws with extraterritorial scope, the *Zimbabwe Democracy and Economic Recovery Act* (2001) and the Zimbabwe Sanctions Program) declared illegal, unconstitutional and invalid on South African territory. [58] In particular, the proceedings target the US authorities and major US and South African banks, domiciled in South Africa, which have implemented the US sanctions against Zimbabweans

[55] Tom Ruys and Cedric Ryngaert, *« Secondary Sanctions: A Weapon out of Control? The International Legality of, and European Responses to, US secondary sanctions », British Yearbook of International Law*, 2020; https://doi.org/10.1093/bybil/braa007 (p. 30)
[56] Political agreement on new Anti-Coercion Instrument to better defend EU interests on global stage.pdf
[57] Federal Law No. 127-FZ « On Measures (Countermeasures) in Response to the Unfriendly Actions of the USA and/or Other Foreign States » (Counter-Sanctions Law), June 4th 2018. Презентация PowerPoint (alrud.com)
[58] *US claims immunity from SA courts in Zimbabwe sanctions case,* 26th March 2023, Zimbabwe, Ciaran Ryan, Money Web

by freezing their assets and denying them access to a number of services and operations in the international system, thereby contravening both domestic and international law.

It is relevant to underline that not only is the US violating South Africa's legislative sovereignty, but it also claims that the South African Court of Justice lacks jurisdiction to sanction the illegality of these US extraterritorial laws. The Advocate Simba Chitando whom represents ZASM, says: "The United States claims that the South African Hight Court does not have the jurisdiction to determine the legality of the enforcement of United States law within South Africa, which is a colonial argument". "ZASM believes that South African Courts have jurisdiction to decide on the legality of all laws applied within South Africa", he adds. [59]

This is a case without precedent that has the potential to open a breach on the possibility to contest UCMs before non-US courts and reverse any presumption or principle that US authorities benefit immunity jurisdiction when interfering in other countries' jurisdiction.[60]

x. Dedollarisation and Sanctions

We are not economists and will not delve into this area except to underline the importance of multilateralism and de-dollarisation. Trade outside the dollar weakens the power of United States Banks. De-dollarisation is increasing and will continue. The sanctions imposed in the context of the Russian Special Military operation have reduced faith in the dollar. A billion dollars can be stolen without recourse.[61] United States Banks will be out of the loop. Economists the world over are following these events closely. Recently, Kenyan president and former accused person at the International Criminal Court, William Ruto called for using local currencies for intra-Africa Trade.[62] There are still some steps to be taken since the Pan African Payment and Settlement System (PAPSS) allows for screening payments for violating United States sanctions.[63]

[59] *US claims immunity from SA courts in Zim sanctions case,* 26th March 2023, Zimbabwe, Ciaran Ryan, Money Web

[60] Tom Ruys and Cedric Ryngaert, *« Secondary Sanctions: A Weapon out of Control? The International Legality of, and European Responses to, US secondary sanctions », British Yearbook of International Law*, 2020; https://doi.org/10.1093/bybil/braa007 (p.97)

[61] https://sputnikglobe.com/20230609/michael-hudson-de-dollarization-is-remedy-against-us-militarism-1111033558.html

[62] https://www.thecable.ng/why-us-dollars-kenyan-president-urges-adoption-of-local-currencies-for-intra-african-trade#:~:text=Kenyan%20President%20William%20Ruto%20has,trade%20transactions%20between%20African%20nations

[63] https://papss.com/how-it-works/

V. CONCLUSIONS

We offer a few conclusions which may help overcome the issue of unilateral coercive measures (Sanctions) in the context of the African Continental Free Trade Area and in the context of sovereign African development.

1. Unilateral coercive measures are incompatible with the implementation of the African Continental Free Trade Area which is so important for Africa to take its place in the new multilateral political and economic model which will define international relations and economic relations.

2. Unilateral coercive measures imposed on African countries violate the principle of sovereign equality of African nations whence their illegality in international law.

3. Unilateral coercive measures cause terrible suffering for all victim countries and hurt all of Africa since Africa is deprived of the benefit of relations with victim countries.

4. Unilateral coercive measures are imperialist measures imposed by the USA and Europe which are contrary to the new multilateral world which is emerging.

5. Countries and individuals of unilateral coercive measures have a right to reparations. The right to reparations should be part and parcel of the anti-sanctions campaign.

6. There should be an end to impunity for those countries and individuals who impose unilateral coercive measures.

7. We invite the African Union to endorse these recommendations as deemed appropriate.

8. The African Bar Association should work on the Sanctions issue actively.

9. The African Bar Association should formally reject all unilateral coercive measures on African countries including Zimbabwe, Libya, Eritrea, Ethiopia and Somalia and others who are sanctioned now or in the future.

10. The African Bar Association whose excellent work we commend should obtain recognition as an organization recognized by the African Union.

11. The African Bar Association should help the Sanctions Tribunal in the future with its anti-sanctions work.

12. The African Bar Association should consider joining as *Amicus* in national proceedings such and the proceedings in South Africa against Sanctions on Zimbabwe.