

Chapter 4

EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATION AND THE COVID-19 PANDEMIC: ROLE OF THE WHO

4.1. Introduction

The 2019-2020 novel coronavirus (2019-nCoV) outbreak first identified in Wuhan, China currently stands at the centre of the focus of the international community. The World Health Organization (WHO), which is the primary international body established under the UN responsible for the control and management of health issues around the globe, in addition to declaring the 2019-nCoV a global pandemic has issued temporary regulations to help the States control the spread of the virus and manage the treatment of those affected. The virus at stake is from the same “family” as the Severe Acute Respiratory Syndrome (SARS), which also engendered a crisis throughout multiple parts of the world in 2002-2003. WHO’s obligations are broadly speaking, as we will see in this chapter, a balance between national interests and those of the international community. In an ideal setting, they are both aligned. However, practice has shown and continues to demonstrate reluctance by many States to be fully cooperative with the WHO and general UN mandates - thus, putting the whole international community at risk.

Beginning March this year, UN rights experts assessing the severity of the crisis imposed by the 2019-nCoV on the world, and gauging the immense harm that the existing sanctions may cause to the health sectors of sanctioned States in dealing with this pandemic, have issued several public statements urging States to lift all unilateral sanctions that obstruct the humanitarian responses of sanctioned States, in order to enable their health care

systems to fight the pandemic and save lives.¹ It is important to note, however, that unilateral sanctions, by way of limited embargoes on a bilateral basis, are not prohibited *per se* under international law; they may only be reviewed and regulated under certain circumstances. The WHO, which is the primary UN agency to guide State actions in dealing with pandemics provides no suggestions on the topic of unilateral sanctions, leaving it to be treated essentially by other bodies and from other sources. However, as seen in previous chapters, sanctions do, in certain circumstances, violate international law and trigger international responsibility of States. Sanctions were once considered to be peaceful and effective means to enforce international law – a notion that many now question.

The legal basis for such sanctions is often cited as Chapter VII of the UN Charter. Articles 39 and 41 are key provisions governing the sanctions by the UNSC.² However, even though the UN remains to be the only international organisation with the authority, legitimacy and ability to resort sanctions, in exceptional cases, on behalf of the

¹ ‘Bachelet calls for easing of sanctions to enable medical systems to fight Covid-19 and limit global contagion’, 24 March 2020, accessed on 10 September 2021:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25744&LangID=E>; also, on 26 March 2020 UN Secretary-General, Antonio Guterres at the G 20 Virtual Summit on the COVID 19 Pandemic asserted that ‘This War Needs a War-Time Plan to Fight it’. Appealing for a global ceasefire, he stated that suppressing the transmission of COVID 19 required a coordinated G 20 response, and with the developing world, including countries in conflict, with expert guidance by WHO; accessed on 10 September 2021: <https://www.un.org/en/coronavirus/war-needs-war-time-plan-fight-it>. On 3 April 2020, too, the Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights, Ms. Alena Douhan, in the face of unfolding 2019-nCoV pandemic emergency issued a public statement urging to lift all unilateral sanctions that obstruct the humanitarian responses of sanctioned States, in order to enable their health care systems to fight the pandemic and save lives, accessed on 10 September 2021:

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25769&LangID=E>.

² Charter of the United Nations, Articles 39 and 41.