



STATUTORY INSTRUMENTS

2020 NO. 680

SANCTIONS

The Global Human Rights Sanctions Regulations 2020

Made

5th July 2020

Laid before Parliament

at 11:00 a.m. on 6th July 2020

Coming into force

at 1:00 p.m. on 6th July 2020

The Secretary of State(1), in exercise of the powers conferred by sections 1(1)(c) and (3)(b), 3(1)(a) and (d) (i), 4, 9(2)(a), 10(2)(a) and (c), (3) and (4), 11(2) to (9), 15(2)(a) and (b), (3), (4)(b), (5) and (6), 16, 17(2) to (5) and (8), 21(1), 54(1) and (2), and 62(4) and (5) of the Sanctions and Anti-Money Laundering Act 2018(2), and having decided, upon consideration of the matters set out in sections 2(2) of that Act, that it is appropriate to do so, makes the following Regulations:

Human Rights at Sea Insight Briefing Note

Sanctions as a Tool to Protect Human Rights at Sea



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INTRODUCTION

In July 2020 the UK introduced¹ the Global Human Rights Sanctions Regulations 2020 (“the Regulations”).²

These measures follow similar steps taken by the US’s Global Magnitsky Sanctions Regime³ and are an important step, as they empower the UK Government to place sanctions on those who have violated an individual’s:

- Right to life,
- Right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, or
- Right to be free from slavery, not to be held in servitude or required to perform forced or compulsory labour

Those who are determined to have committed these human rights offences will have their assets in the UK frozen, they will be barred from entering the UK and UK persons will be unable to deal with their assets located outside the UK. This effectively excludes the sanctioned person from the UK’s financial system, which in the maritime space is a considerable penalty due to the UK’s key role in this sector.

As the offences which trigger designation can be committed by an individual (not just by state officials) anywhere in the world, the Regulations have the potential to be used to target persons committing human rights abuses against seafarers at sea.

Whether the Regulations will in fact be used in this way by the UK Government in the event that there is evidence of human rights abuses will in turn depend on the views of UK policy makers regarding human rights violations which take place at sea.

SANCTIONS

Sanctions⁴ are a tool of security and diplomacy. They are used by countries and international organisations to achieve foreign policy and security aims by imposing legal restrictions on certain activities.

For example, a large number of countries imposed sanctions restricting the trade in oil with Iran as part of a global effort to curtail Iran’s nuclear programme.

SANCTIONS AND HUMAN RIGHTS

Importantly, sanctions have also been used as a tool to condemn and discourage human rights violations. Historically, human rights sanctions regimes were tied to specific contexts or geographies, for example targeting persons responsible for human rights violations in Libya under the Gaddafi regime⁵, or atrocities perpetrated by the North Korean Government⁶. This made them an inflexible tool, that was difficult to apply in an agile manner in response to emergent issues.

More recently, there has been a trend for countries to adopt thematic sanctions regimes, that seek to address particular global issues, irrespective of political context and broader political objectives.

1 <https://www.gov.uk/government/news/uk-announces-first-sanctions-under-new-global-human-rights-regime>

2 <https://www.legislation.gov.uk/ukSI/2020/680/contents/made>

3 <https://www.treasury.gov/resource-center/sanctions/Programs/pages/glomag.aspx>

4 <https://www.un.org/securitycouncil/sanctions/information>

5 “Planning, directing, or committing, acts that violate applicable international human rights law or international humanitarian law, or acts that constitute human rights abuses, in Libya.” Paragraph 4 (a) of resolution 2174 (2014) and paragraph 11 (a) of resolution 2213 (2015). [https://www.undocs.org/S/RES/2174\(2014\)](https://www.undocs.org/S/RES/2174(2014)) / [https://www.undocs.org/S/RES/2213\(2015\)](https://www.undocs.org/S/RES/2213(2015))

6 <https://www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/CommissionInquiryonHRinDPRK.aspx>

Human Rights at Sea

INSIGHT BRIEFING NOTE

SANCTIONS AS A TOOL TO PROTECT HUMAN RIGHTS AT SEA



For example, the US and the EU both maintain sanctions regimes that target persons and groups identified to have been responsible for cyber-attacks⁷ wherever located. This approach demonstrates the seriousness with which countries are tackling the particular issues, seen as a harm in itself as opposed to only being of importance to achieve a specific political end.

THE US APPROACH

From a human rights perspective, the most important development until recently was the introduction of the US Global Magnitsky Sanctions regime. This sanctions regime was introduced in 2016 in response to the murder of Russian tax advisor Sergei Magnitsky⁸. It allows the US to block the assets of anyone identified to have been involved in a serious human rights abuse or corruption.

As of the time of writing, 203 persons and entities are subject to blocking measures effectively prohibiting any US person from dealing financially or commercially with such persons and entities. In effect this excludes such persons from the US financial system and from using the US Dollar to carry out transactions. While the prohibitions apply directly to US persons, they also apply to non-US persons insofar as non-US persons dealing with sanctioned persons may also themselves become subject to sanctions.

The impact of being designated as subject to Global Magnitsky sanctions is therefore significant and is likely to lead to actual and de facto exclusion from the majority of the world's financial system given the importance of the US and the US Dollar.

The majority of those designated by the US under the Global Magnitsky sanctions for serious human rights violations are or were public officials. Conversely the US has shown a much higher appetite to designate private persons and entities for corruption. For example, Israeli businessman Dan Gertler was designated due to the purportedly corrupt nature of various mining and oil deals in the Democratic Republic of Congo⁹. Dan Gertler's businesses were also designated in their own right.

There remains further scope for the US to use its sanctions to tackle human rights abuses perpetrated within the private sector, including those at sea.

DEVELOPMENTS IN THE UK

As indicated above, the UK has now joined the US in introducing its own human rights sanction regime via The Global Human Rights Sanctions Regulations 2020 (the 'Regulations').

This new legislation empowers the UK Government to freeze the assets of and exclude from the UK anyone identified to have seriously violated an individual's:

- Right to life,
- Right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, or
- Right to be free from slavery, not to be held in servitude or required to perform forced or compulsory labour

The UK human rights sanctions regime is narrower in focus than the US Global Magnitsky Sanctions, being focussed expressly on human rights violations and not corruption (the UK addresses corruption through separate legislation such as the Proceeds of Crime Act 2002 and the Bribery Act 2010).¹⁰

7 <https://www.consilium.europa.eu/en/press/press-releases/2020/07/30/eu-imposes-the-first-ever-sanctions-against-cyber-attacks/>

8 https://www.treasury.gov/resource-center/sanctions/Programs/Documents/12192017_glomag_faqs.pdf

9 <https://home.treasury.gov/news/press-releases/sm0417>

10 <https://www.legislation.gov.uk/ukpga/2002/29/contents>

Further, the UK Regulations respond to specific human rights violations rather than the more general concept of 'serious human rights violations' in the US legislation. This arguably makes it easier to identify individuals committing specific human rights violations.

To date the UK has designated 25 Russian nationals in relation to the murder of Sergei Magnitsky, 20 Saudi nationals involved in the murder of Jamal Khashoggi, two Myanmar generals involved in violence against the Rohingya, and two organisations linked to North Korean labour camps.

This initial round of designations indicates a predominant concern with state backed human rights violations, responding to some of the most egregious recent examples.

However, in his statement introducing the Regulations in the House of Commons, Foreign Secretary Dominic Raab highlighted an important aspect of the Regulations. They can be applied against any person, 'whether or not the activity is carried out by or on behalf of a State.'¹¹ Mr Raab stressed that the sanctions '[extend] beyond state officials to non-state actors as well so if [the perpetrator is] a kleptocrat, or an organised criminal, [they] won't be able to launder [their] money in [the UK].'¹² The Regulations are certainly flexible enough to respond to human rights abuses wherever and by whomever they are committed.

The Foreign and Commonwealth Office has issued guidance on the factors it will use when determining whether someone should be designated as subject to the human rights sanctions regime.

Specifically, the following will be considered:¹³

- 1 The UK's human rights priorities
- 2 The nature of the victim, including whether they were campaigning for human rights, and whether there are any links to the UK
- 3 The seriousness of the conduct
- 4 The international profile and whether other states or bodies are taking action
- 5 Whether non state actors have assumed control, authority and organisation over people or an area
- 6 The status and connection of the involved person, including potential links to the UK
- 7 The effectiveness of other measures including law enforcement

VIOLATIONS OF HUMAN RIGHTS AT SEA

Violations of human rights at sea have been well documented by organisations such as HRAS. These include transgressions against each of the three fundamental rights included in the Regulations as criteria for designation. For example, the lack of onboard safety and sanitation facilities, confined and restricted living spaces, abusive work conditions, excessive and often unremunerated overtime, illegal deductions of salary at source and violence towards crew are widespread practices in some sectors of the maritime industry.

¹¹ Regulation 4(2) The Global Human Rights Sanctions Regulations 2020

¹² <https://www.gov.uk/government/speeches/statement-on-the-global-human-rights-sanctions-regime>

¹³ <https://www.gov.uk/government/publications/global-human-rights-sanctions-factors-in-designating-people-involved-in-human-rights-violations/global-human-rights-sanctions-consideration-of-targets>

Human Rights at Sea

INSIGHT BRIEFING NOTE

SANCTIONS AS A TOOL TO PROTECT HUMAN RIGHTS AT SEA



HRAS and others have highlighted the levying of excessive recruitment and related costs on seafarers as a commonplace practice which can often lead to debt bondage, extortion and threats made to the physical safety of a seafarer's family by unscrupulous and unregulated money lenders.

Cases of human rights abuses seldom come before the Courts, for obvious reasons, but there are cases, such as *Medvedyev and others v. France*¹⁴ and *Rigopoulos v. Spain*¹⁵ where crew members on vessels which were arrested on the high seas have argued that their human rights have been violated because they were not brought promptly before a judge following their initial detention.

Given the focus of the UK regulations on particular rights, human rights abuses at sea could meet the legal threshold for the UK to take action against the perpetrators.

The imposition of sanctions does not, of course, undo the harm wrought by human rights abuses at sea. It would go some way, however, to holding those responsible accountable, encouraging respect for human rights across the industry, and emphasising the UK's condemnation of human rights whether committed on land or at sea.

The UK's human rights sanctions are far-reaching, requiring UK persons wherever located to freeze the assets of designated persons. This would have a significant effect on, for example a ship-owner. This would prevent the owner from dealing with the UK financial system, which is likely to be a serious disruption to their business and/or personal life. The UK remains a global financial and maritime centre – it is rare for a ship-owner to have no connection to the UK whether that be through banking, insurance or personal assets.

Shipping is often considered a 'silent industry'. Its work is unreported and unremarked upon. As a result, human rights abuses are potentially invisible at sea.

The UK's new human rights sanctions regime may act as a tool to bring such violations into the light and hold offenders to account. For this to be achieved it will be necessary to persuade policy makers of the desirability of using the new tools in the maritime context. As noted, human rights abuses at sea are often serious, and are often perpetrated by those who hold (or purport to hold) significant control and authority over the victims.

Each ship is a *de facto* island, often beyond the reach of conventional law enforcement, which is an approach rendered all the more difficult due to the complex ownership and employment structures sitting above crew members.

CONCLUSION

Going forward we anticipate that sanctions may be used as a tool by the UK, and the US, as a means of targeting human rights abuses committed not just by State officials but also by non-state individuals, with the scope to include individuals in the maritime sector.

The new UK Regulations empower the UK Government to impose sanctions on individuals committing violations of seafarers' fundamental human rights irrespective of their global location. The challenge remains convincing the UK Government and policy makers of the critical importance of using these tools in the maritime context, in the event that there is evidence of human rights abuses.

We remain hopeful that the direction of travel is positive from the perspective of holding maritime human rights abusers to account through sanctions.

14 no. 3394/03 Eur. Ct. H.R. (2008)

15 no. 37388/97 Eur. Ct. H. R. (1999)

Human Rights at Sea

INSIGHT BRIEFING NOTE

SANCTIONS AS A TOOL TO PROTECT HUMAN RIGHTS AT SEA



ABOUT THE AUTHORS AND HFW



Daniel Martin is a Partner and **Isabel Phillips** is an Associate at HFW, a leading global law firm with the world's largest shipping practice.

Daniel and Isabel were assisted by Trainee Solicitor **James Neale**.

Daniel is Head of Regulatory Shipping (London). He and Isabel are sought after regulatory specialists with a particular expertise advising a range of parties on international trade sanctions, export controls, customs and anti-corruption. With unprecedented change happening across the globe, Daniel and Isabel are in significant demand to offer advice on sanctions which impact on shipowners, operators, crew and insurers and Daniel is frequently contacted by journalists to provide insight on this fast-moving area, being quoted in Lloyds List and Tradewinds as well as the Financial Times, Bloomberg and The Times.

HFW is committed to the marine sector and has evolved its Shipping practice over 135 years to ensure it can meet the needs of the industry, which was recognised by the Excellence in Maritime Law award at the Lloyd's List Global Awards this year.

In addition to supporting Human Rights at Sea, for whom HFW Partner Alex Kemp recently became a Trustee, HFW also supports The Mission to Seafarers (MTS) a global charity, supporting its essential welfare work with seafarers around the globe. HFW also has an award winning piracy response team and is the undisputed leader in the field of piracy commended by the UN Security Council. Over a period of 12 years the piracy response team have helped to free nearly 1800 seafarers. www.hfw.com



Who We Are

BACKGROUND

Human Rights at Sea was established in April 2014. It was founded as an initiative to explore issues of maritime human rights development, review associated policies and legislation, and to undertake independent investigation of abuses at sea. It rapidly grew beyond all expectations and for reasons of governance it became a registered charity under the UK Charity Commission in 2015.

Today, the charity is an established, regulated and independent registered non-profit organisation based on the south coast of the United Kingdom. It undertakes **R**esearch, **A**dvocacy, **I**nvestigation and **L**obbying specifically for human rights issues in the maritime environment, including contributing to support for the human element that underpins the global maritime and fishing industries.

The charity works internationally with all individuals, commercial and maritime community organisations that have similar objectives as ourselves, including all the principal maritime welfare organisations.

OUR MISSION

To explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment, especially where they are currently absent, ignored or being abused.



STAY IN CONTACT



We welcome any questions, comments or suggestions. Please send your feedback to:
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Human Rights at Sea Insight Briefing Note

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Human Rights at Sea is a Registered Charity in England and Wales No. 1161673. The organisation has been independently developed for the benefit of the international community for matters and issues concerning human rights in the maritime environment. Its aim is to explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment, especially where they are currently absent, ignored or being abused.

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