



## Sanctions, international humanitarian law and the humanitarian space in the Canadian perspective: An interview with Elissa Golberg

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*Ms Golberg's areas of expertise include crisis management coordination, human rights, humanitarian action and sustainable development cooperation, geopolitics, and peace and security policy. She has extensive experience working with multilateral institutions, civil society organizations and the private sector, and in encouraging institutional innovation and effectively managing change.*

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***By way of introduction, could you briefly explain your role as the Assistant Deputy Minister of Strategic Policy at Global Affairs Canada? What is the role of the Sanctions Policy and Operations Coordination Division [Sanctions Division], and the various other divisions within Global Affairs Canada working on humanitarian action and sanctions?***

The Strategic Policy Branch is responsible for advancing Canada's existing and emerging foreign, economic and international assistance policy and programme priorities through the development, coordination and implementation of high-quality strategic analysis and policy-making. The Branch is also responsible for evaluation, data and results delivery functions. In essence, it is the home for "insight, hindsight and foresight" at Global Affairs Canada. As Assistant Deputy Minister, I oversee the work of Canada's Permanent Mission to the Organization for Economic Cooperation and Development, and four Bureaus in Ottawa: the Strategic Foreign Policy Bureau, the International Assistance Policy Bureau, the International Economic Policy Bureau and the Evaluation and Results Bureau. The sanctions-related responsibilities fall within the International Economic Policy Bureau.

In that context, the Sanctions Division serves as the government of Canada's centre of excellence for the development and coordination of sanctions policy and operations. This involves extensive engagement with other federal government departments and agencies to foster broader coherence and consistency in how Canada's sanctions are developed, implemented and enforced. This includes coordinating with the Department of Justice, Department of Finance, Privy Council Office, Royal Canadian Mounted Police and Canadian Border Services Agency, with the latter two being responsible for investigating and enforcing possible violations of sanctions. Internal to Global Affairs Canada, the Sanctions Division engages regularly with officials responsible for overseeing bilateral, regional and multilateral relations. It works closely with those responsible for Canada's humanitarian assistance and human rights policies and programmes, and with members of the Trade Commissioner Service, who are responsible for engaging with Canadian businesses to promote Canada's economic interests in the global marketplace.

The Sanctions Division also works to enhance compliance by developing and disseminating information and resources to internal and external partners in order to facilitate a better understanding of sanctions measures. It regularly engages with Canadian stakeholders, including financial institutions, civil society, legal practitioners and key commercial sectors. The team also collaborates extensively with other countries and international organizations to discuss and advance key sanctions policy and implementation questions.

Finally, I would note that the Sanctions Division plays a vital role in the government of Canada's ability to stay at the forefront of sanctions policy. The team has a research and analysis function to map and understand existing and emerging sanctions policy themes and questions. Work undertaken in-house by the team is complemented by engagement and supporting research by civil society, academics, think tanks and others. In the same vein, and to further contribute to international peace and security, Global Affairs Canada also manages dedicated annual funding to support projects and programming that aims to enhance the effectiveness of sanctions and assist in better understanding their impact.

***Could you outline the different types of sanctions that Canada imposes?***

As many of your readers may already know, Canada has three different sanctions laws that are calibrated to deal with current international realities. First, Canada supports broad-based international action through the implementation of UN Security Council decisions to impose sanctions under the United Nations Act. We have an international legal obligation to implement these sanctions as a UN member State.

Beyond this, Canada also has two laws that enable us to impose sanctions autonomously:

- The Special Economic Measures Act [SEMA] authorizes Canada to impose autonomous sanctions that target foreign States directly, along with individuals and entities in those States, or nationals of those States not ordinarily resident in Canada. When it was first enacted in 1992, Canada could impose autonomous sanctions in two situations: when there had been a grave breach of international peace and security that had resulted, or was likely to result, in a serious international crisis; or when an international organization or association of States to which Canada belonged called on its members to impose sanctions. SEMA was updated in 2017 to also enable Canada to respond to situations where gross and systematic human rights violations or acts of significant corruption are carried out in a foreign State.
- The Justice for Victims of Corrupt Foreign Officials Act was enacted in November 2017, and enables Canada to respond to cases of gross violations of human rights and acts of significant corruption anywhere in the world by focusing on individuals who are responsible for or complicit in such acts without first sanctioning a foreign State. Since the Act entered into force, Canada has announced targeted sanctions against seventy foreign nationals from Myanmar, Russia, Saudi Arabia, South Sudan and Venezuela.

It should be noted that the decision to impose sanctions is not one taken lightly, and is done in concert with other diplomatic efforts. It is informed by a range of foreign policy, economic and humanitarian considerations and consultations taken in the context of relevant legal authorities. Canada applies sanctions as part of its wider suite of foreign policy and national security tools, which includes diplomatic engagement and dialogue, capacity-building, and other programmes. The goal is to reinforce the rule of law, support human rights and end impunity, and counter threats to international peace and security.

***Which divisions within Global Affairs Canada are involved in the drafting, adoption, implementation and enforcement of Canada's sanctions policy and legislation? Could you briefly describe the decision-making process, both with respect to Canada's autonomous sanctions, as well as in terms of the implementation of decisions of the UN Security Council to impose sanctions into Canadian domestic law? Have there been any major shifts in Canada's approach recently?***

When Canada imposes sanctions measures, the implementation of new measures and changes to existing sanctions require the adoption of regulations following a rigorous regulatory development and approval process. To do this, the Sanctions Division works closely internally with departmental officials responsible for a range of policy and legal issues, including notably those responsible for overseeing the relevant geographic regions, our missions abroad, and those teams focused on human rights and humanitarian action. It also coordinates closely with the Department of Justice, the Privy Council Office and the Treasury Board Secretariat, as well as with other government departments, to enable whole-of-government coherence and coordination on issues related to sanctions administration and enforcement.

While the regulatory process used to implement sanctions measures is the same for all three Acts, there are important differences in how we determine what specific measures should apply. First, as a UN member State, Canada has an international legal obligation to implement decisions of the UN Security Council to impose sanctions taken under Chapter VII of the Charter of the United Nations. These decisions are integrated into Canadian law through regulations made under the United Nations Act. Under this Act, Canada does not have the discretion to impose any additional prohibitions or exceptions beyond what is included in the Security Council resolutions, to the extent that our domestic legislative framework allows. Additionally, with the exception of the sanctions imposed by UN Security Council Resolution 1373 (2001), which requires that member States autonomously identify persons associated with terrorism, Canada integrates the names of individuals and entities sanctioned by the Security Council into our regulations by referencing the lists maintained by the relevant Security Council Sanctions Committee.

With regard to Canada's two autonomous sanctions regimes, which are imposed under either SEMA or the Justice for Victims of Corrupt Foreign

Officials Act, the process for implementing and revoking measures is pursued through Canada's cabinet (the body of ministers that sets the federal government's policies and priorities) and via the Governor in Council (to bring the measures into effect). Canada has established a rigorous due diligence process for considering and evaluating possible situations that may warrant the use of sanctions, such as cases of human rights violations or corruption. It also considers the broader political and international contexts when deciding whether sanctions or one of the other tools in Canada's foreign policy toolkit may be an appropriate response.

Once sanctions measures are in place, the Sanctions Division at Global Affairs Canada oversees the broader administration and operations of the regime. First, the team is responsible for developing and managing resources and guidance to assist Canadians in recognizing and understanding their compliance obligations. This includes ongoing communication and engagement with members of the public, whether in response to inquiries received or through our active participation in or organization of outreach events, panel discussions, round tables and conferences. The team has built excellent relationships with a broad network of key stakeholders, whose ongoing feedback and engagement has been extremely valuable to us in fulfilling our mandate.

The team also manages a number of regulatory application processes. This can include applications from persons in Canada or Canadians outside Canada seeking authorization for activities that would otherwise be prohibited by sanctions. It can also involve applications from listed individuals and entities who are seeking to have their name removed from Canada's sanctions lists, or from individuals and entities seeking a certificate stating that they are not a listed person. When such applications are received, the Sanctions Division works diligently to conduct the necessary analysis of the information provided. The goal is to be both thorough and respectful of the need to operate efficiently and effectively in order to meet the needs of those applying. Where these applications relate to United Nations Act regulations, extensive engagement is often also needed with the relevant UN Security Council Sanctions Committee, whose approval may be needed before a decision can be reached.

Finally, from a broader compliance and enforcement perspective, the Sanctions Division works closely with other government departments to ensure that their activities and policies are consistent with Canada's sanctions. This involves providing advice and guidance on the application of sanctions regulations, including in the assessment of any potential risk of contraventions of sanctions measures.

In terms of recent shifts, it should be noted that Canada is continuously assessing its approach in order to be responsive to lessons and changes in global best practice. For instance, in light of the COVID-19 pandemic, Canada has worked hard to make certain that its sanctions measures do not present an unintended barrier that would hinder a humanitarian response to the crisis. Furthermore, and in an effort to respond to the needs of organizations operating in countries targeted by Canada's sanctions regime during the COVID-19

pandemic, the Sanctions Division has also taken steps to enhance and accelerate the review of any application for permits and certificates where applicants have identified a link to the global health crisis.

More broadly, through the use of targeted sanctions measures, Canada strives to minimize adverse consequences for civilian populations and for legitimate humanitarian, business or other activities. Canada has also mitigated the unintended humanitarian consequences of sanctions through legislated exceptions for certain activities, and through the permit and certificate processes, which enable the minister of foreign affairs to authorize activities which would otherwise be prohibited by Canada's sanctions. When imposing new measures, Canada has implemented humanitarian exceptions for activities such as delivery of food, medicine and medical supplies, to limit the negative impact and potentially adverse effects on vulnerable groups such as women and girls.

***The United Nations Act enables Canada to “give effect to decisions passed by the United Nations Security Council”.<sup>1</sup> In particular, Section 2 states: “When, in pursuance of Article 41 of the Charter of the United Nations, set out in the schedule, the Security Council of the United Nations decides on a measure to be employed to give effect to any of its decisions and calls on Canada to apply the measure, the Governor in Council may make such orders and regulations as appear to him to be necessary or expedient for enabling the measure to be effectively applied.”<sup>2</sup> Could you discuss Canada’s general approach to implementing relevant UN Security Council resolutions?***

When the UN Security Council determines that an act of aggression or a threat to or breach of the peace has occurred, it may adopt a resolution deciding that certain sanctions measures must be taken by its member States to restore or maintain international peace and security. As a UN member State, Canada has an international legal obligation to implement these decisions into Canadian law, and does so by making regulations under the United Nations Act. These regulations remain in force until such time as they are repealed.

Canada integrates the sanctions measures imposed by the UN Security Council into its domestic regulations following important engagement with the Security Council, the relevant Sanctions Committees and other UN member States so that its actions appropriately reflect the intent of the resolutions, and so that its approach is consistent with that taken by other member States. Canada also regularly assesses its regulations in light of newly adopted Security Council resolutions, and/or reporting or guidance produced by Security Council Sanctions Committees or the associated Panels of Experts.

With respect to the individuals or entities designated by each UN Security Council Sanctions Committee, Canada's standard approach is to refer to Security

1 Government of Canada, “Canadian Sanctions Legislation”, available at: [www.international.gc.ca/world-monde/international\\_relations-relations\\_internationales/sanctions/legislation-lois.aspx?lang=eng](http://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/legislation-lois.aspx?lang=eng) (all internet references were accessed in July 2021).

2 United Nations Act, 1985, available at: <https://laws-lois.justice.gc.ca/eng/acts/U-2/page-1.html>.

Council listings by reference to the list that each Committee maintains. This applies to all United Nations Act regulations, with the exception of the measures Canada implemented to comply with UN Security Council Resolution 1373, which requires that member States autonomously identify persons associated with terrorism as noted above. In alignment with this approach, individuals or entities who wish to have their listing reversed must apply directly to either the UN Security Council Focal Point for Delisting or the Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee, as required.

***SEMA lists circumstances in which Canada may impose sanctions autonomously or in coordination with other like-minded countries. These are in addition to sanctions that the UN Security Council has decided to impose, which Canada implements into Canadian domestic law under the United Nations Act. Could you explain the rationale for adopting sanctions beyond those imposed under the United Nations Act? What is the rationale behind pursuing sanctions under both regimes at once with respect to a single country situation?***

Autonomous sanctions are an important complement to Canada's wider suite of foreign policy and national security tools, which includes diplomatic engagement and dialogue, capacity-building, and other programmes. The toolkit reflects a principled and pragmatic approach to foreign policy which emphasizes the importance of the rule of law and respect for human rights, and the maintenance or restoration of international peace and security.

The decision to impose sanctions is not one that Canada takes lightly. They are typically a measure of last resort, a tool to be applied judiciously and only when the relevant legal thresholds have been met. Canada considers the broader political and international contexts when deciding whether sanctions or one of the other tools in its foreign policy toolkit may be an appropriate response.

Autonomous sanctions are generally undertaken in concert with other diplomatic efforts in order to influence a change in behaviour or policy, and to promote accountability and deterrence of potential criminality or impunity. When Canada chooses to impose autonomous sanctions, it does so to send a strong and clear message that it is concerned about gross human rights violations, acts of significant corruption, or behaviour that flouts the rule of law and threatens global peace and security, and will hold those who commit such actions to account. Its autonomous sanctions prevent listed persons from profiting from their activities in Canada, or using the Canadian financial system to do so, and in certain circumstances from entering Canada. Similar to the measures that Canada imposes under the United Nations Act, the autonomous measures apply to the actions of persons in Canada and Canadians outside of Canada.

With respect to imposing sanctions in relation to a country under both SEMA and the United Nations Act, Canada has only done so in four contexts: Iran, Libya, North Korea and South Sudan. In these four situations, Canada either imposed autonomous measures before the UN Security Council made the

decision to implement sanctions, or wanted to build on the Security Council measures. These additional measures sought to increase pressure and send a clear message that Canada would not accept egregious behaviour that threatened international peace and security.

***Regarding a recent adoption of sanctions, Canada stated: “These measures are being taken in coordination with the United States and the United Kingdom, and in solidarity with the European Union.”<sup>3</sup> Similarly, in response to recent sanctions by the United States and European Union [EU], Canada stated that these sanctions “are part of an important and incisive diplomatic effort to end impunity for those responsible for gross human rights violations”.<sup>4</sup> How does Canada coordinate with other countries on its sanctions policy? Could you describe how Canada’s approach might differ from that of others?***

Canada has always maintained that sanctions are more effective when applied in a coordinated manner. Collaboration with partners can be an important way in which the impact of such measures can be augmented. It also offers a key means of sending a strong collective signal that gross violations of internationally recognized human rights, acts of significant corruption, or other breaches of international norms are of profound concern. To that end, Canada seeks opportunities, where appropriate, to discuss and collaborate with other countries when considering the application of sanctions under its two autonomous sanctions regimes. We also coordinate closely to advocate for enhanced compliance with sanctions measures, including in relation to measures imposed by the UN Security Council.

The legislative framework through which countries impose sanctions can differ significantly from one country to the next, including with respect to some of the thresholds that must be met in order to impose sanctions measures. There are differences in the legislative basis due to different countries’ legal structures, and differences in the processes for imposing sanctions can be stark as well. For example, the United States can impose sanctions by executive order, while the EU requires full member State consensus. For its part, Canada has established a rigorous method of considering and imposing sanctions using the Governor in Council regulatory process.

We have developed excellent relationships with governments who have similar sanctions tools as Canada. More broadly, through bilateral discussions and multilateral exchanges, we are able to pursue pressing policy questions around sanctions and to share best practices and lessons learned on policy issues and our respective sanctions processes.

3 Global Affairs Canada, “Canada Joins International Partners in Imposing New Sanctions in Response to Human Rights Violations in Xinjiang”, 22 March 2021, available at: [www.canada.ca/en/global-affairs/news/2021/03/canada-joins-international-partners-in-imposing-new-sanctions-in-response-to-human-rights-violations-in-xinjiang.html](http://www.canada.ca/en/global-affairs/news/2021/03/canada-joins-international-partners-in-imposing-new-sanctions-in-response-to-human-rights-violations-in-xinjiang.html).

4 Global Affairs Canada, “Canada Welcomes U.S and EU Sanctions against Russian Officials Responsible for Serious Human Rights Violations”, 2 March 2021, available at: [www.canada.ca/en/global-affairs/news/2021/03/canada-welcomes-us-and-eu-sanctions-against-russian-officials-responsible-for-serious-human-rights-violations.html](http://www.canada.ca/en/global-affairs/news/2021/03/canada-welcomes-us-and-eu-sanctions-against-russian-officials-responsible-for-serious-human-rights-violations.html).



***The government of Canada has made repeated reference to its use of “targeted sanctions”, and this concept has also featured in previous statements by Canada’s minister of foreign affairs, as well as discussions with his counterparts from like-minded countries.<sup>5</sup> Could you elaborate on what the government of Canada means by “targeted sanctions”? How are these similar or different from the broader country sanctions regimes? How does Canada assess different country situations and determine what type of sanctions to use in a given context?***

The decision to impose autonomous sanctions is not one that Canada takes lightly, and this process includes careful consideration of the circumstances at issue. The goal is to secure a change of behaviour, to constrain actions of significant concern that violate international law, and to stigmatize behaviour such as gross and systematic violations of human rights in order to deter similar actions in future. Canada carries out considerable due diligence in considering and evaluating the broader political and international context when deciding whether imposing sanctions is appropriate.

Canada is mindful of lessons from the past imposition of sanctions by the international community that were too broad-based in their application and caused harm. Canada was a thought leader in the late 1990s and early 2000s, along with Switzerland and a few other countries, in supporting extensive lessons-learned efforts to develop more strategic sanctions regimes that would more specifically target decision-makers or perpetrators of human rights violations, acts of significant corruption or breaches of peace and security, and limit the impact on civilian populations more broadly. Therefore, in designing and implementing sanctions, Canada applies a targeted approach and rigorous analysis to minimize the possibility of adverse consequences for civilian populations, including vulnerable groups, as well as for legitimate business, humanitarian or other activities.

***How does Canada protect and preserve the humanitarian space when imposing sanctions (i.e., by minimizing the impact sanctions may have on humanitarian action)? Could you elaborate on the different approaches Canada takes to humanitarian exceptions under the United Nations Act and Canadian autonomous sanctions?***

Canada firmly believes in the necessity of upholding humanitarian law and principles, and is a leading humanitarian donor in response to global crises. Its efforts are grounded in a gender-responsive approach to humanitarian action as outlined in the Feminist International Assistance Policy, which addresses the specific needs and priorities of people in vulnerable situations, particularly women and girls, and its related Action Area Policy.<sup>6</sup>

5 Global Affairs Canada, “Minister of Foreign Affairs Speaks with U.K. Foreign Secretary Dominic Raab”, 4 March 2021, available at: [www.canada.ca/en/global-affairs/news/2021/03/minister-of-foreign-affairs-speaks-with-uk-foreign-secretary-dominic-raab.html](http://www.canada.ca/en/global-affairs/news/2021/03/minister-of-foreign-affairs-speaks-with-uk-foreign-secretary-dominic-raab.html).

6 Government of Canada, “Action Area Policy: Human Dignity (Health and Nutrition, Education, Gender-Responsive Humanitarian Action)”, available at: [www.international.gc.ca/world-monde/issues\\_](http://www.international.gc.ca/world-monde/issues_)

In this context, Canada is invested in ensuring that its sanctions measures do not present an undue barrier that would hinder humanitarian access. It seeks to avoid unintended humanitarian consequences of sanctions through a targeted approach and legislated exceptions for certain activities where possible. With respect to sanctions imposed under the United Nations Act, Canada implements the exceptions that are included in the relevant UN Security Council resolutions into Canadian domestic law. As we cannot unilaterally implement exceptions that the Security Council has not included in its resolutions, international institutions and civil society may need to apply for an exemption certificate in order to proceed with humanitarian assistance. In such circumstances, Canada proactively engages with the relevant Security Council Sanctions Committee, which often needs to either be consulted or approve any decision to grant certificates, in order to accelerate the application process. A number of Security Council Sanctions Committees have made dedicated efforts to promote humanitarian access, which Canada has strongly supported.

With respect to Canada's autonomous sanctions, regulations under SEMA include humanitarian exceptions for activities such as the delivery of food, medicine and medical supplies. These exceptions allow for the delivery of aid into sanctioned countries, to ensure that humanitarian assistance can reach vulnerable groups. It is important to note that these exceptions are not the same for all countries sanctioned under SEMA, as Canada may assess that a narrower exception is warranted in light of a particular country situation, including if we consider that the risk of diversion of such aid is high. Where these exceptions do not apply, persons in Canada and Canadians outside Canada may request a permit or certificate from the minister of foreign affairs to authorize specified activities or transactions that would otherwise be prohibited by Canada's sanctions. These permits and certificates are issued on an exceptional, case-by-case basis. Canada maintains a regular dialogue with civil society organizations and international organizations in order to understand any concerns and mitigate any unintended humanitarian consequences of its sanctions measures.

In addition to permits, certificates and exceptions, as part of our commitment to protecting and preserving the humanitarian space, Canada is also investing in research and analysis and programming support. Specifically, Global Affairs Canada pursues research and activities that seek to improve our understanding of the impacts and effectiveness of sanctions regimes, and to contribute to the global evidence base on the potential humanitarian, political and social impacts of imposing sanctions (autonomously or multilaterally). Similarly, we have dedicated resources to supporting projects by civil society organizations, seeking to enhance the effectiveness of sanctions and mitigate any of their potential unintended consequences. For example, Canada sponsored a virtual round table organized by the International Peace Institute [IPI] in February 2021 to facilitate engagement between humanitarian actors and UN

sanctions authorities, as well as other relevant stakeholders including donors, financial institutions and the private sector. The purpose of this round table was to develop a shared understanding of the challenges faced by humanitarian actors delivering assistance in areas where the UN Security Council sanctions regime relating to the so-called Islamic State in Iraq and the Levant and Al-Qaeda applies, and to identify concrete solutions to address these problems. The result of these discussions will be incorporated into an issue brief that the IPI intends to publish and disseminate widely. This year, through our dedicated programming, we are bringing key sanctions policy questions together with Canada's commitment to advancing the global Women, Peace and Security Agenda. To that end, our project support will seek to further examine the impacts of sanctions on women, children and other vulnerable groups, while also considering how sanctions can contribute to addressing gender-based sexual violence.