



Human Rights Council**Forty-eighth session**

13 September–1 October 2021

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Unilateral coercive measures: notion, types and qualification****Report of the Special Rapporteur on the negative impact of unilateral
coercive measures on the enjoyment of human rights, Alena Douhan***Summary*

In the report, the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, provides an overview and assessment of the notion, characteristics and legal status of unilateral sanctions. She addresses the issue of terminology pertinent to the mandate and the legality of various forms of sanctions imposed by States and international organizations without or beyond the authorization of the Security Council, as concerns, inter alia, general international law, international economic law, human rights law and international humanitarian law. The report further covers the legal grounds, the particularities and the legality of sanctions imposed on individuals and non-State entities. The report also contains a discussion of the extraterritorial effects of unilateral sanctions, which raise particular concerns for the Special Rapporteur owing to the increasing number of reported cases of human rights violations.



I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolutions 27/21 (and corrigendum) and 45/5 and General Assembly resolution 74/154, in which the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights is requested, *inter alia*: to gather all relevant information relating to the negative impact of unilateral coercive measures on the enjoyment of human rights; to study relevant trends, developments and challenges; to make guidelines and recommendations on ways and means to prevent, minimize and redress the adverse impact of unilateral coercive measures on human rights; and to draw the attention of the Human Rights Council, the United Nations High Commissioner for Human Rights and the General Assembly to relevant situations and cases.
2. The Special Rapporteur has noted the accelerating expansion of new forms and types of unilateral means of pressure and the terms used to identify them, and of the need to identify the actors involved. She has recognized the current uncertainty and ambiguity in the terminology as an impediment to identifying a legal framework and applicable standards, thereby undermining the rule of law, the world order and the authority of the United Nations.
3. The present report contains an overview and assessment of the notion, characteristics and legal status of unilateral sanctions. It addresses the pertinent terminology and the legality of various forms of sanctions imposed by States and international organizations without or beyond authorization of the Security Council, as concerns, *inter alia*, general international law, international economic law, human rights law and international humanitarian law, to identify which of them could be qualified as unilateral coercive measures. The report further covers the legal grounds, the particularities and the legality of sanctions imposed on individuals and non-State entities.
4. Moreover, the report contains a discussion of the extraterritorial effects of unilateral sanctions, which raise particular concerns for the Special Rapporteur owing to the increasing number of reported cases of human rights violations. This discussion includes many aspects, starting from the general notion of extraterritoriality as regards unilateral action, the legal qualification of extraterritorial activity, the impact of extraterritorial application on third States, their nationals and legal entities, and overcompliance with sanctions.
5. For the purposes of the present report, on 24 November 2020, the Special Rapporteur issued a call for submissions from States, United Nations agencies, regional organizations, human rights institutions, civil society, scholars, research institutions and others about the notion, characteristics, legal status and targets of unilateral sanctions.¹ Responses were received from the Governments of Australia, Belarus, China, Cuba, Denmark, Guyana, Ireland, Mauritius, the Russian Federation, the Syrian Arab Republic, Venezuela (Bolivarian Republic of) and Zimbabwe. Responses were also received from the European Union and the European Parliament. A number of non-governmental organizations (NGOs) and civil society organizations also responded, as did academics and other concerned individuals.² The Special Rapporteur expresses her gratitude to all respondents.
6. The preparation of the present report was further facilitated by the results of an expert consultation involving academics and international law practitioners that was convened by the Special Rapporteur on 26 April 2021.³ She expresses her gratitude to all participants.

II. Activities of the Special Rapporteur

7. To raise awareness about the specifics of the mandate, the humanitarian impact of unilateral sanctions on the enjoyment of human rights, situations in countries under sanctions

¹ See www.ohchr.org/EN/Issues/UCM/Pages/Call-for-submissions-UCM-Study.aspx.

² The submissions received in response to the Special Rapporteur's call for submissions will be made available at www.ohchr.org/EN/Issues/UCM/Pages/HRC48-report.aspx.

³ Special Rapporteur, "Expert consultation on 'The notion, characteristics, legal status and targets of unilateral sanctions', convened on 26 April 2021", 14 May 2021. Available at www.ohchr.org/Documents/Issues/UCM/expert-consultation-26April2021.pdf.

regimes, preliminary observations from country visits to Qatar and the Bolivarian Republic of Venezuela, and problems in the application of humanitarian exemptions, the Special Rapporteur repeatedly agreed to be interviewed by media companies and for blogs from around the world.⁴

8. She also participated in 15 webinars and virtual meetings in the past year to discuss aspects of her work, including the Social Forum (8 October 2020);⁵ a virtual seminar on unilateral coercive measures and their impacts in the context of the coronavirus disease (COVID-19) pandemic (30 November 2020); a virtual seminar on the global human rights sanctions regimes of the United Kingdom of Great Britain and Northern Ireland and the European Union (25 March 2021);⁶ a webinar by the Canadian Latin American Alliance on the role of Canada in sanctions on the Bolivarian Republic of Venezuela (6 April 2021); a session of the Saint Petersburg International Economic Forum on the risks posed by sanctions to the international financial system and international business (3 June 2021); a webinar on the impact of unilateral coercive measures on the national health systems of targeted developing countries (3 June 2021); and an international academic conference entitled “Unilateral coercive measures: disrespect for international law and generation of serious negative human consequences” (9 June 2021).⁷

9. The Special Rapporteur actively cooperated with international organizations and institutions. She attended the following: an online meeting with permanent representatives and permanent observers of members of the Movement of Non-Aligned Countries to the United Nations Office and other international organizations in Geneva (18 September 2020); a meeting with the representatives of 16 States of the Like-Minded Group organized and chaired by the Permanent Representative of China to the United Nations Office and other international organizations in Geneva (22 October 2020); a seminar of the Expert Mechanism on the Right to Development on the global human rights sanctions regime of the European Union (25 March 2021); and a virtual meeting with George Lopez, an expert on the impact of sanctions on human rights (16 April 2021).

10. On 19–23 October 2020 and 26–30 April 2021, the Special Rapporteur visited Geneva and held a series of meetings with permanent missions.

11. The Special Rapporteur, besides her permanent involvement with NGOs, organized a number of expert consultations with them on the subject of unilateral sanctions as a serious obstacle to delivery of humanitarian aid (21–22 October 2020), and on the functioning of her mandate, challenges in delivering humanitarian aid and possibilities for future collaboration (25 January 2021).

12. On 10 December 2020, the Special Rapporteur issued a series of guidelines on humanitarian aid and humanitarian responses in the course of the pandemic.⁸

13. On 23 June 2020, the Special Rapporteur sent a joint letter of allegation to the United States of America concerning its efforts to influence the independence of the International Criminal Court. On 26 August 2020, she sent a letter of allegation to the United States regarding the negative impact on human rights of targeted sanctions authorized under the Sergei Magnitsky Rule of Law Accountability Act of 2012 and subsequent legislation. On 4 September 2020, she sent a letter of allegation to the United States with respect to the negative impact of targeted sanctions on the rights of an Iranian oil-tanker captain. On 21 December 2020, she sent a joint letter of allegation to the United States with respect to human rights violations arising from sanctions authorized under the Caesar Syria Civilian Protection Act of 2019 and Executive Order 13894. On 29 January 2021, she sent a joint letter to the United States detailing the negative impact on human rights of sanctions imposed as a result of the declaration of what appear to be permanent states of national emergency. On 2 February 2021, the Special Rapporteur sent a joint urgent appeal to the United States regarding the

⁴ For further details, see www.ohchr.org/EN/Issues/UCM/Pages/SRCoerciveMeasures.aspx.

⁵ See <http://webtv.un.org/watch/2nd-meeting-social-forum-2020-/6199054565001/?lan=russian>.

⁶ See www.volterrafiatta.com/upcoming-virtual-seminar-the-uk-and-eu-global-human-rights-sanctions-regimes.

⁷ For further details, see www.ohchr.org/EN/Issues/UCM/Pages/Activities.aspx.

⁸ See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26589&LangID=E.

situation of the above-mentioned Iranian oil-tanker captain following an announcement by the Government of the United States of a reward for his capture that further violated his human rights. In conjunction with these letters, the Special Rapporteur issued press releases.

14. Following her country visit to Qatar on 1–12 November 2020 to assess the negative impact on human rights of unilateral sanctions imposed against it by Bahrain, Egypt, Saudi Arabia and the United Arab Emirates, the Special Rapporteur sent letters to all five countries with her preliminary report of that visit. On 19 May 2021, following her country visit to the Bolivarian Republic of Venezuela on 1–12 February 2021 to assess the negative impact on human rights of sanctions imposed against it by various countries, primarily the United States, the Special Rapporteur sent a letter to the United States with her preliminary report of that visit.

III. Notion and types of unilateral sanctions

A. Notion of sanctions in international law

15. The Special Rapporteur regrets that the situation noted in her previous report to the Human Rights Council regarding the expansion of the number, scope and grounds of unilateral sanctions has not improved.⁹ In fact, the number and scope of sanctions has expanded further, while the extraterritoriality of unilateral sanctions, the application of secondary sanctions and the development of national civil and criminal penalties for violations of sanctions regimes result in overcompliance. More and more States have started to apply counter-sanctions or develop mechanisms to resist the extraterritorial consequences of sanctions.¹⁰

16. The Special Rapporteur notes that the specific forms of pressure applied by individual States or groups of States have changed and are still changing. States apply various forms of unilateral sanctions in pursuit of common goods, thereby transforming exceptions in international relations into ordinary practice.

17. The Special Rapporteur underscores that, given the focus of the present report on the terminological and qualification aspects of the application of sanctions, the term “unilateral sanctions” is used here irrespective of their legality or illegality and refers to any means of pressure applied by States or international organizations without or beyond the authorization of the Security Council.

18. The Special Rapporteur recalls that, given the absence of a universally recognized definition of unilateral coercive measures and their illegal character as referred to in a number of resolutions of the Human Rights Council and the General Assembly,¹¹ States prefer to present their unilateral activities as not constituting unilateral coercive measures and therefore to use other terms, including “sanctions”, “restrictive measures”,¹² and many others. Compliance companies classify sanctions as unilateral, multilateral and global.¹³ Reference is also made to international sanctions, sectoral sanctions, targeted sanctions, counter-sanctions, direct or indirect sanctions, primary or secondary sanctions,¹⁴ and intended or

⁹ See A/HRC/45/7.

¹⁰ Financial Tribune, “EU sells medical goods via INSTEX”, 3 April 2020; and AFP, “China’s anti-sanctions law: what we know”, 11 June 2021.

¹¹ Human Rights Council resolutions 15/24, paras. 1–3; 19/32, paras. 1–3; 24/14, paras. 1–3; 30/2, paras. 1–4; 34/13, paras. 1–4; and 45/5, preamble; and General Assembly resolutions 69/180, paras. 5–6; 70/151, paras. 5–6; and 71/193, paras. 5–6.

¹² Council of the European Union, “Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy”, 4 May 2018, doc. No. 5664/18; and VOICE, “Survey report: adding to the evidence – the impacts of sanctions and restrictive measures on humanitarian action”, March 2021, p. 6.

¹³ Peter Piatetsky and Julian Vasilkoski, *When Sanctions Violate Human Rights* (Washington, D.C., Atlantic Council, 2021).

¹⁴ Giuseppe Puma, “The principle of non-intervention in the face of the Venezuelan crisis”, *Questions of International Law*, 31 March 2021, p. 12.

unintended sanctions. Other institutions refer to counter-terrorism cases as sanctions cases.¹⁵ States involved are also identified in various ways, including as sanctioning/sanctioned, targeting/targeted or sender/source States.¹⁶

19. It is notable that today there is no clear definition even of the general notion of “sanctions” in international law. In the international legal doctrine, sanctions have been viewed as, *inter alia*, a power (possibility) to ensure the law, a punishment,¹⁷ a complex of enforcement measures applied to a delinquent State,¹⁸ a method to make someone comply,¹⁹ the negative consequence of a violation,²⁰ measures to protect the international legal order,²¹ measures not involving the use of armed force to maintain or restore international peace and security,²² means of implementation of international responsibility,²³ and countermeasures or retorsions.²⁴

20. The Special Rapporteur notes that many sanctions are introduced today to pursue the enhancement of democracy, human rights protection and other similar purposes,²⁵ rather than

¹⁵ Piatetsky and Vasilkoski, *When Sanctions Violate Human Rights*.

¹⁶ See A/HRC/36/44.

¹⁷ Ademola Abass, *Regional Organisations and the Development of Collective Security: Beyond Chapter VIII of the UN Charter* (Oxford, Hart Publishing, 2004), p. 49; and Ramesh Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect*, 2nd ed. (Cambridge, Cambridge University Press, 2016), p. 135. This approach is, however, disputed by the Secretary-General (A/50/60-S/1995/1, para. 66), and the punitive nature of sanctions has been rejected by most States. See S/PV.4128; and Johan Galtung, “On the effects of international economic sanctions”, in *Dilemmas of Economic Coercion: Sanctions in World Politics*, Miroslav Nincic and Peter Wallensteen, eds. (New York, Praeger Publishers, 1983), p. 19.

¹⁸ G.V. Ignatenko and O.I. Tiunov, eds., *Mezhdunarodnoe pravo* (International Law), 6th ed. (Moscow, Norma, 2013), p. 202; R.A. Kalamkaryan and Y.I. Migachev, *Mezhdunarodnoe pravo* (Moscow, Mezhdunarodnye otnosheniya (International Relations), 2004), p. 182; E.A. Shibaeva, “Mezhdunarodnye organizatsii v sisteme mezhdunarodno-pravovogo regulirovaniya” (International organizations in the system of international legal regulation), in *Soviet Yearbook of International Law, 1978* (Moscow, Nauka, 1980), pp. 214–224; and Fred Grünfeld, “The effectiveness of United Nations economic sanctions”, in *United Nations Sanctions: Effectiveness and Effects, Especially in the Field of Human Rights – A Multi-disciplinary Approach*, Willem J.M. van Genugten and Gerard A. de Groot, eds. (Antwerp, Intersentia, 1999), p. 115.

¹⁹ Galtung, “On the effects of international economic sanctions”, p. 19; Natalino Ronzitti “The report of the High-Level Panel on Threats, Challenges and Change, the use of force and the reform of the United Nations”, in *Italian Yearbook of International Law*, vol. XIV (2004), Benedetto Conforti and others, eds. (Leiden and Boston, Martinus Nijhoff Publishers, 2005), p. 11; and the submission by the International Alliance for Peace and Development, received in response to the Special Rapporteur’s call for submissions.

²⁰ Igor Lukashuk, *Pravo mezhdunarodnoy bezopasnosti* (Law of International Security) (Moscow, Walters Kluwer, 2004), p. 309; and T.N. Neshataeva, “Mezhdunarodno-pravovye sanktsii spetsializirovannykh uchrezhdeniy OON” (International legal sanctions of the UN specialized agencies), abstract of dissertation for degree of Candidate of Jurisprudence (Moscow, Moscow State University, 1985), pp. 9, 12 and 14.

²¹ Neshataeva, “Mezhdunarodno-pravovye sanktsii”, p. 17; and David Barnhizer, ed., *Effective Strategies for Protecting Human Rights: Economic Sanctions, Use of National Courts and International Fora and Coercive Power* (Oxford and New York, Routledge, 2001), p. 13.

²² See A/50/60-S/1995/1. The same approach was taken by States that participated in the discussion of the problem in the Security Council (see S/PV.4128).

²³ Lukashuk, *Pravo mezhdunarodnoy bezopasnosti*, pp. 306 and 308. The same approach is supported by G.I. Tunkin N.A. Ushakov and P. Kuris, cited by T.N. Neshataeva, “Ponyatie sanktsiy mezhdunarodnykh organizatsiy” (The notion of sanctions of international organizations), *Izv. vuzov. Pravovedenie*, No. 6 (1984), p. 94; and Abass, *Regional Organisations and the Development of Collective Security*, pp. 49 and 51.

²⁴ Tom Ruys, “Sanctions, retorsions and countermeasures: concepts and international legal framework”. in *Research Handbook on UN Sanctions and International Law*, Larissa van den Herrik, ed. (Cheltenham, Edward Elgar Publishing, 2017).

²⁵ Gabriel Felbermayr and others, “*The Global Sanctions Data Base*”, School of Economics Working Paper Series, WP 2020-20, 30 May 2020. Available at <https://drive.google.com/file/d/11djjwEIr96SFt6YpMzo9gaB6ZJrOer8AX/view>.

to address threats to peace, breaches of peace or acts of aggression, or in response to violations of *erga omnes* obligations.

21. The proliferation of so-called “Magnitsky sanctions” illustrates this change. The Sergei Magnitsky Rule of Law Accountability Act of 2012 adopted by the United States imposed financial sanctions and entry bans against people and entities “determined, among other things, to be responsible for or complicit in, or to have directly or indirectly engaged in, certain human rights abuses or corrupt acts anywhere in the world”.²⁶

22. The European Union has announced the possibility of applying restrictive measures (sanctions) to achieve common goods purposes; to promote the objectives of its Common Foreign and Security Policy, including peace, democracy and respect for the rule of law, human rights and international law;²⁷ and to further advance universal values for all.²⁸ The United States also views sanctions as a tool to achieve foreign policy goals.²⁹ The purpose of the Global Human Rights Sanctions Regulations of the United Kingdom is “to deter, and provide accountability for, ... an activity which, if carried out by or on behalf of a State within the territory of that State, would amount to a serious violation by that State” of an individual’s human rights.³⁰ The European Union adopted its global human rights act to “address serious human rights violations and abuses worldwide”.³¹

23. The Special Rapporteur is mindful that the diversity of objectives of unilateral sanctions today is very different from the initial behavioural change paradigm. The academic approach identifies five types of purposes of sanctions – compliance, subversion, deterrence, international symbolism and domestic symbolism – or differentiates between denial instruments (to deny goods or benefits to targets), symbolic instruments, and punitive measures,³² to constrain, coerce, signal or stigmatize.³³ The main purpose has also been identified as ensuring compliance with a command,³⁴ or changing a behaviour of the target of the sanctions by causing pain that makes the status quo too uncomfortable.³⁵

24. The Special Rapporteur notes that the traditional approach of the 1970s, that a legitimate (proper) purpose or motive can justify the use of coercion,³⁶ was repeatedly used when seeking to justify the concept of humanitarian intervention in the 1990s. However, no grounds for this approach can be found in international law.

²⁶ See https://home.treasury.gov/system/files/126/12212017_glomag_faqs.pdf.

²⁷ Submissions by Denmark, Ireland and the European Union received in response to the Special Rapporteur’s call for submissions.

²⁸ Council of the European Union, “Council conclusions on the EU Action Plan on Human Rights and Democracy 2020–2024”, 19 November 2020.

²⁹ Thihan Myo Nyun, “Feeling good or doing good: inefficacy of the US unilateral sanctions against the military Government of Burma/Myanmar”, *Washington University Global Studies Law Review*, vol. 7, No. 3 (2008), p. 463.

³⁰ United Kingdom, Global Human Rights Sanctions Regulations 2020, 2020 No. 680, 6 July 2020, regulation 4.

³¹ Council Regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses.

³² Francesco Giumelli, “The purposes of targeted sanctions”, in *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action*, Thomas J. Biersteker, Sue. E. Eckert and Marcos Tourinho, eds. (Cambridge, Cambridge University Press, 2016), p. 40; and Richard Nephew, *The Art of Sanctions: A View from the Field* (New York, Columbia University Press, 2017), p. 9.

³³ Thomas J. Biersteker, Marcos Tourinho and Sue. E. Eckert, “Thinking about United Nations targeted sanctions”, in *Targeted Sanctions*, Biersteker, Eckert and Tourinho, eds., p. 22.

³⁴ Antonios Tzanakopoulos, “We who are not as others: sanctions and (global) security governance”, in *The Oxford Handbook of the International Law of Global Security*, Robin Geiß and Nils Melzer, eds. (Oxford, Oxford University Press, 2021).

³⁵ Nephew, *The Art of Sanctions*, pp. 10–12.

³⁶ Richard B. Lillich, “Economic coercion and the international legal order”, *International Affairs*, vol. 51, No. 3 (July 1975), p. 366; and Derek Bowett, “Reprisals involving recourse to armed force”, *American Journal of International Law*, vol. 66, No. 1 (January 1972), pp. 3–7.

IV. Types of unilateral sanctions

A. Overview of types of unilateral sanctions

25. The Special Rapporteur underscores the variability of forms of unilateral sanctions today: political, diplomatic, cultural, economic, trade, financial, cyber and many others. It is notable that multiple types of unilateral sanctions are often applied together against the same target: for example, economic sanctions, targeted sanctions and arms embargoes.

26. Lists of targeted countries are often lengthy. The United Kingdom imposes “unilateral measures”, “sanctions” or “financial sanctions” against Afghanistan, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Burundi, the Central African Republic, China (and Hong Kong, China), the Democratic People’s Republic of Korea, the Democratic Republic of the Congo, Guinea, Guinea-Bissau, Iran (Islamic Republic of), Iraq, Lebanon, Libya, Mali, Myanmar, Nicaragua, the Russian Federation, Somalia, South Sudan, the Sudan, the Syrian Arab Republic, Venezuela (Bolivarian Republic of), Yemen and Zimbabwe.³⁷ Switzerland applies “targeted” or “smart sanctions”, “economic measures”, “targeted financial sanctions” or “coercive measures” to an equally long list of countries;³⁸ as does the European Union, with “restrictive measures”, “sanctions”, “economic and financial sanctions” or “sectoral sanctions”, while also having “horizontal” sanctions regimes (not country-specific);³⁹ and the United States, with “economic”, “targeted”, “financial”, “trade” and “sectoral” sanctions, visa bans and arms embargoes.⁴⁰

27. Sanctioning documents also provide for secondary sanctions towards third-country nationals, and for civil and criminal penalties against nationals of sanctioning States to prevent them from interacting with designated individuals and companies.⁴¹

B. Economic, trade, financial and sectoral sanctions

28. While in the 1990s economic sanctions constituted the most frequent instrument of the Security Council, the Special Rapporteur underscores that today they are mostly used unilaterally by States or regional organizations.

29. The freezing of State and private banks’ assets abroad is used to put pressure on States too, thereby preventing them from guaranteeing their citizens’ basic needs. For example, the Bank of England refused to unfreeze any of the \$1 billion in gold that it held for the Central Bank of Venezuela.⁴² The Government of the United Kingdom has reportedly referred to the private character of the Bank, rejecting any responsibility for this action.⁴³ The Special Rapporteur observes that shifting responsibility in this way is an expanding tendency.

³⁷ See www.gov.uk/government/collections/uk-sanctions-regimes-under-the-sanctions-act and www.gov.uk/guidance/uk-sanctions (accessed on 4 May 2021).

³⁸ See www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos.html (accessed on 4 May 2021).

³⁹ See https://eeas.europa.eu/topics/common-foreign-security-policy-cfsp/423/european-union-sanctions_en (accessed on 17 April 2021).

⁴⁰ See <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information> (accessed on 4 May 2021).

⁴¹ Council Regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses, preamble and art. 16. The United States has imposed such sanctions against Belarus, Burundi, China, Cuba, Democratic People’s Republic of Korea, Democratic Republic of the Congo, Iran (Islamic Republic of), Iraq, Lebanon, Mali, Russian Federation, Sudan, South Sudan, Syrian Arab Republic, Venezuela (Bolivarian Republic of), Yemen and Zimbabwe.

⁴² Corina Pons and Mayela Armas, “Exclusive: Venezuela asks Bank of England to sell its gold to UN for coronavirus relief – sources”, Reuters, 29 April 2020.

⁴³ Report of the Special Rapporteur on her visit to the Bolivarian Republic of Venezuela (forthcoming).

30. Political influence in international institutions has started to be used as a part of sanctions tools. In April 2020, the United States opposed the efforts of the Islamic Republic of Iran and the Bolivarian Republic of Venezuela to obtain loans from the International Monetary Fund (IMF) in its fight against COVID-19.⁴⁴ A similar situation has reportedly arisen in respect of requests by Cuba, the Sudan and Zimbabwe for emergency loans from the World Bank.⁴⁵

31. Trade sanctions often take the form of so-called sectoral sanctions, which apply non-selectively to individuals and organizations acting in a particular sphere of the economy without any identifiable reason or violation from their side that differs significantly from those that have prompted traditional targeted sanctions.⁴⁶

32. A special form of sectoral sanctions can be seen in the closing of airspace for flights of air companies registered in targeted States – such as Qatar (2017–2020), Venezuela (Bolivarian Republic of) and Belarus – and prohibiting the targeted State’s air companies to enter the airspace of the sanctioning country, thereby affecting the designated State’s travel industry. A similar situation exists as concerns trade with Cuba, Iran (Islamic Republic of), the Syrian Arab Republic and Venezuela (Bolivarian Republic of).

33. The Special Rapporteur notes that trade sanctions have also changed to include not only specific goods but all sorts of goods, even software. While the European Union’s restrictions do not extend to software in the public domain,⁴⁷ the United States restricts trade in “goods, technology, and software relating to materials processing, electronics, telecommunications, information security, sensors and lasers, and propulsion”, including traditional encryption software and geospatial software.⁴⁸

34. The situation is aggravated by the fact that the majority of mechanisms enabling trade are either within the United States or the European Union, which means that the Society for Worldwide Interbank Financial Telecommunication (SWIFT) financial messaging services and software can be cut off as part of sanctions, and provides the United States with the possibility of controlling and blocking payments in United States dollars.⁴⁹

35. Economic sanctions also include measures of a targeted character, affecting designated individuals or companies,⁵⁰ and the use of targeted sanctions is expanding. For example, the European Union’s financial sanctions include several thousand individuals and companies,⁵¹ and far more are listed by the United States.⁵²

36. The effect of economic and financial sanctions is exacerbated by the application of secondary sanctions to foreign individuals and companies, and of criminal and civil penalties.

37. Other mechanisms used in sanctioning practice include the designation of States as sponsors of terrorism, denial of trade privileges, denial of participation in international

⁴⁴ Abubakr al-Shamahi, “Can the IMF overcome US roadblocks to give aid to Iran?”, *Al-Jazeera*, 17 April 2020; Ian Talley and Benoit Faucon, “US to block Iran’s request to IMF for \$5 billion loan to fight coronavirus”, *The Wall Street Journal*, 7 April 2020; and letter dated 29 May 2020 from the Bolivarian Republic of Venezuela addressed to the Special Rapporteur.

⁴⁵ Submission by Zimbabwe and Joy Gordon, received in response to the Special Rapporteur’s call for submission.

⁴⁶ Kimberly Strosnider and David Addis, “New sanctions targeting Russian financial and energy sectors”, *Global Policy Watch*, 18 July 2014; and United States, Executive Order 13662, 20 March 2014.

⁴⁷ Council Regulation (EC) No. 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, annex I; and Council Regulation (EU) No. 401/2013 of 2 May 2013 concerning restrictive measures in respect of Myanmar/Burma and repealing Regulation (EC) No. 194/2008, art. 3 and annex I.

⁴⁸ Gibson Dunn, “2020 Mid-year sanctions and export controls update”, 4 August 2020.

⁴⁹ Renata Ávila Pinto, “Digital sovereignty or digital colonialism?”, *Sur International Journal on Human Rights*, vol. 27, No. 27 (2018), p. 20.

⁵⁰ Council of the European Union, “Guidelines on implementation and evaluation of restrictive measures (sanctions)”, paras. 13–24.

⁵¹ See <https://webgate.ec.europa.eu/europeaid/fsd/fsf/public/files/pdfFullSanctionsList/content?token=dG9rZW4tMjAxNw> (accessed on 4 January 2021).

⁵² See www.treasury.gov/ofac/downloads/sdnlist.pdf (accessed on 4 January 2021).

institutions, removal from office, shaming campaigns, denial of diplomatic status and denial of travel permission.⁵³

38. The Special Rapporteur underscores that the relevant resolutions of the Human Rights Council and the General Assembly focus on the negative consequences of unilateral coercive measures in the form of economic sanctions, which are viewed as affecting the general population as well as the most vulnerable groups.⁵⁴ The impact of economic and financial sanctions also generates a high potential for corruption,⁵⁵ and reportedly prevents Governments from fulfilling their responsibility to protect.

39. The Special Rapporteur recalls the special danger of so-called “maximum pressure campaigns” when imposing sanctions, in particular on Cuba or Venezuela (Bolivarian Republic of). In its resolutions, the Human Rights Council has condemned the use of unilateral coercive measures as tools of political or economic pressure against any country, with a view to preventing these countries from exercising their right to decide, of their own free will, their own political, economic and social systems.⁵⁶

C. Travel bans

40. The Special Rapporteur notes with concern repeated attempts to list enterprises, entities, individuals and ships involved in the delivery of essential goods. A total of 35 Venezuelan vessels have been reportedly listed for delivering oil to Cuba.⁵⁷

41. It has been repeatedly reported that trade and travel bans prevent the delivery of essential goods to the population of targeted countries, undermining the ability of these countries to guarantee basic social needs.⁵⁸

D. Cybersanctions

42. Cyber means have had a substantial impact on sanctions regimes, as malicious cyber activity has been increasingly referred to as grounds for implementing unilateral sanctions.

43. Blocking online commerce has become a frequently used method of implementing unilateral economic and financial sanctions. It prolongs the time necessary to complete transactions, increases bank costs and entrepreneurial risks, shuts down investments and makes it impossible to order even essential goods.⁵⁹

44. Some sanctions limit trade in software used for regular public and private administration, commercial Internet services or connectivity,⁶⁰ and non-commercial activity. In particular, the terms of service for Zoom preclude its use by those living in Cuba, the Democratic People’s Republic of Korea, Iran (Islamic Republic of) and the Syrian Arab Republic, and in Crimea, or through legislation of the United States as part of the United States sanctions.⁶¹ Consequently, it was impossible for all States to use Zoom for official communications within the United Nations system, as had initially been planned early in the COVID-19 pandemic.

⁵³ Barnhizer, ed., *Effective Strategies for Protecting Human Rights*, p. 22.

⁵⁴ See, for example, Human Rights Council resolution 34/13.

⁵⁵ See www.un.org/press/en/2000/20001115.sgsm7625.doc.html.

⁵⁶ For example, Human Rights Council resolution 34/13, para. 4.

⁵⁷ Oxfam International, *Right to Live without a Blockade: The Impact of US Sanctions on the Cuban Population and Women’s Lives* (Oxford, 2021), p. 27.

⁵⁸ Executive Committee of the High Commissioner’s Programme, Office of the United Nations High Commissioner for Refugees, “Report of the eightieth meeting of the Standing Committee (23–25 March 2021)”, para. 40.

⁵⁹ See <https://viennaun.mfa.ir/en/newsview/619102/Joint-Communiqu%C3%A9-on-UCMs-and-their-Impacts>.

⁶⁰ United States, Executive Order 13685, 19 December 2014 (available at https://home.treasury.gov/system/files/126/ukraine_eo4.pdf).

⁶¹ Zoom terms of service effective 20 August 2020, para. 12. See <https://zoom.us/terms>.

45. Iranian citizens do not have access to information on COVID-19 and its symptoms, even from the Government, owing to Google’s censoring of AC19, an application developed by the Islamic Republic of Iran, and Iranian doctors no longer have access to PubMed, a medical database, since its server was transferred to Google.⁶²

46. The Bolivarian Republic of Venezuela is reported to be unable to conclude agreements on the rental of satellites, and its shrinking Internet coverage harms rights of access to information and freedom of expression.

47. The Special Rapporteur is mindful that software has also become a type of goods falling under trade restrictions. In particular, in the context of the COVID-19 pandemic, the Syrian Arab Republic appears to have been unable to buy software for CT scanners and ventilators that are produced only by companies in the United States.⁶³

48. Numerous other aspects of international law are affected by sanctions in the digital age. One is the expanding practice of blocking social media accounts to comply with sanctions, particularly by companies registered in the United States as part of the Magnitsky sanctions regime.⁶⁴ Announcing listed individuals and companies online increases reputational risks affecting, inter alia, the right to reputation.

E. Targeted sanctions

49. Targeted sanctions applied to individuals and companies were introduced in order to minimize the negative humanitarian impact of comprehensive or economic sanctions. International law does not regulate them specifically. They traditionally include travel and visa bans, freezing of assets, prohibitions to satisfy claims related to the introduction of sanctions, prohibition of the export of and of assistance in setting up hardware and software, prohibition of the purchase of hardware, limitations on dual-use goods and equipment, and restrictions on the purchase of goods originating from a particular State.⁶⁵

50. The Special Rapporteur notes that the purpose of listing individuals or companies may be to implement resolutions of the Security Council acting under Chapter VII of the Charter of the United Nations, often going beyond the authorization of the Council or acting autonomously to maintain international peace and security; to suppress international, transnational or national crimes; to promote and protect human rights, democracy, the rule of law or good governance;⁶⁶ or to protect national security or other interests, often through the declaration of a state of emergency.⁶⁷

51. The Special Rapporteur also notes the expanding use of the policy of designating individuals *ex officio*, often without accusing them of having committed any wrongful act, as in the context of the non-recognition of a Government or of election results.⁶⁸

⁶² Submission by the Islamic Republic of Iran received in response to the Special Rapporteur’s call for submissions (available at www.ohchr.org/Documents/Issues/UCM/submissions/states/Iran.docx).

⁶³ Note verbale dated 15 June 2020, from the Permanent Mission of the Syrian Arab Republic to the United Nations Office and other organizations in Geneva. See also *A/75/209*.

⁶⁴ Donie O’Sullivan and Artemis Moshtagian, “Instagram says it’s removing posts supporting Soleimani to comply with US sanctions”, *CNN Business*, 13 January 2020; and Jonny Tickle, “Chechen leader Kadyrov banned from Instagram again, loses account with 1.4 million followers”, *RT*, 13 May 2020.

⁶⁵ See www.sanctionsmap.eu/#/main.

⁶⁶ See http://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions_en.

⁶⁷ See

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25879>.

⁶⁸ United States, Executive Order 13928 on blocking property of certain persons associated with the International Criminal Court, 15 June 2020. See also <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25379>; <https://2017-2021.state.gov/secretary-michael-r-pompeo-at-a-press-availability-with-secretary-of-defense-mark-esper-attorney-general-william-barr-and-national-security-advisor-robert-obrien/>; www.icc-cpi.int/Pages/item.aspx?name=pr1527; and International Criminal Court, Appeals Chamber,

52. The Special Rapporteur is concerned about secondary sanctions, or targeted sanctions used for implementing the above-mentioned sanctions regimes, although to date there is no general understanding of this notion.

53. Traditionally, secondary sanctions are viewed as measures taken extraterritorially against third States, third State nationals or entities for their trade, cooperation or association with those affected by primary sanctions or with those helping to circumvent the effects of primary sanctions.⁶⁹ Another aspect of secondary sanctions consists of civil and criminal penalties imposed by countries against their own nationals.⁷⁰

54. The Special Rapporteur joins the position expressed by numerous States in their replies that the legality of secondary sanctions and the development of punitive enforcement legislation is all the more doubtful as the legality of primary sanctions is often questioned.⁷¹

F. Counter-sanctions

55. Recent practice demonstrates the expanding application of counter-sanctions.⁷² Counter-sanctions are usually qualified in practice⁷³ and in legal doctrine as countermeasures or retorsions.⁷⁴

G. Extraterritoriality

56. The Special Rapporteur notes that while extraterritoriality used to be a recognized characteristic of economic and other types of sanctions, criticism of the extraterritorial application of unilateral measures had already been expressed by the United Nations in 1948 when the League of Arab States had sought to implement a secondary boycott of Israel and conditioned trade with third-State companies upon their refusal to do business with Israel.⁷⁵

57. The Caesar Syria Civilian Protection Act of the United States can be cited as a clear example of extraterritorial application, as it threatens to sanction third countries, companies or individuals dealing with the Government of the Syrian Arab Republic, its central bank or listed persons, thus preventing, inter alia, reconstruction projects in a country that has already been severely affected by military conflict.⁷⁶

58. The expansion of jurisdiction by the United States on the ground of payment in United States dollars has been repeatedly cited by sanctioned countries and NGOs.

59. The Special Rapporteur recalls the existence of general consensus on the illegality of the application of extraterritorial sanctions from the side of legal doctrine,⁷⁷ among directly

“Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan”, No. ICC-02/17 OA4, 5 March 2020.

⁶⁹ Submission by the Bolivarian Republic of Venezuela received in response to the Special Rapporteur’s call for submissions; Council Regulation (EU) 2020/1998, arts. 10–11 and 15; and Tom Ruys and Cedric Ryngaert, “Secondary sanctions: a weapon out of control? The international legality of, and European responses to, US secondary sanctions”, *The British Yearbook of International Law* (2020), pp. 4 and 7–8.

⁷⁰ Submission by Ivan Timofeev, Russian International Affairs Council, received in response to the Special Rapporteur’s call for submissions.

⁷¹ Submissions by Belarus and the Syrian Arab Republic received in response to the Special Rapporteur’s call for submissions.

⁷² Federal Law of the Russian Federation No. 281-FZ of 30 December 2006 on special economic measures and coercive measures; and AFP, “China’s anti-sanctions law”.

⁷³ Submissions by Belarus and China received in response to the Special Rapporteur’s call for submissions.

⁷⁴ Submissions by Mr. Timofeev and Sergey Glandin received in response to the Special Rapporteur’s call for submissions.

⁷⁵ Ruys, “Sanctions, retorsions and countermeasures”.

⁷⁶ Submission by the International Alliance for Peace and Development.

⁷⁷ Submissions by Maria Keshner (Kazan Federal University) and the Organization for Defending Victims of Violence received in response to the Special Rapporteur’s call for submissions.

targeted States⁷⁸ and also among countries traditionally viewed as imposing sanctions.⁷⁹ The European Union, for example, refers to the incompatibility of extraterritorial sanctions with international law.⁸⁰ It has been generally agreed that measures may be taken by States with sufficient jurisdictional ties only.⁸¹

60. Extraterritorial application is reported to result in overcompliance and to affect all foreign partners in trade, health, education, culture and so on.⁸² It also results in an increase in direct and indirect targets of sanctions.⁸³

61. The extraterritorial effect of unilateral coercive measures has been noted in relevant resolutions of the Human Rights Council and the General Assembly as impeding the full realization of the rights set forth in the Universal Declaration of Human Rights and other international human rights instruments.⁸⁴

62. As a result, States have developed blocking mechanisms to protect their economic interests and those of their companies.

H. Overcompliance

63. The Special Rapporteur notes with concern the increase in overcompliance with sanctions, the effects of which can hardly be overcome even after the adoption of laws prohibiting compliance with other States' unilateral sanctions.⁸⁵

64. The Special Rapporteur also notes that in the case of unilateral sanctions by the United States, companies in the financial sector are the first to be penalized.⁸⁶ As the international banking system is interrelated, non-United States banks prefer either to refrain from any bank transfers or make them a lengthy and costly process. Such de-risking policies impede transactions and result in the freezing of funds.⁸⁷

65. Private businesses in targeted countries report the unwillingness of suppliers to interact with them directly. They must use multiple intermediaries, adding time and costs.

66. The Special Rapporteur notes with special concern that similar problems are faced by humanitarian organizations, which report the complexity and inconsistency of humanitarian exemptions. The use of intermediaries by NGOs can halve the amount of money that they

⁷⁸ Submission by Guyana received in response for the Special Rapporteur's call for submissions.

⁷⁹ European Commission, "The European economic and financial system: fostering openness, strength and resilience", communication, 19 January 2021, pp. 13–14.

⁸⁰ Tobias Stoll and others, *Extraterritorial Sanctions on Trade and Investments and European Responses* (Brussels, European Union, 2020), pp. 18–19, 26–27 and 51.

⁸¹ Submission by China received in response for the Special Rapporteur's call for submissions.

⁸² Submissions by the Bolivarian Republic of Venezuela and the Organization for Defending Victims of Violence; and Oxfam International, *Right to Live without a Blockade*, pp. 19–20.

⁸³ See the Special Rapporteur's human rights guidance note entitled "COVID-19 pandemic: humanitarian concerns and negative impact of unilateral sanctions and their exemptions", 20 December 2020. Available at www.ohchr.org/Documents/Issues/UCM/UCMCOVID19GuidanceNote.docx.

⁸⁴ For example, General Assembly resolution 51/103, para. 1.

⁸⁵ European Commission, "Commission guidance note on the provision of humanitarian aid to fight the COVID-19 pandemic in certain environments subject to EU restrictive measures", 16 November 2020 (available at

https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/201116-humanitarian-aid-guidance-note_en.pdf); Grégoire Mallard, Farzan Sabet and Jin Sun, "The humanitarian gap in the global sanctions regime", *Global Governance: A Review of Multilateralism and International Organizations*, vol. 26, No. 1 (2020); submission by Mr. Timofeev; and Moscow Arbitration Court, *Siemens v. "Technopromexport" on invalidating the contract for the supply of turbines in Crimea*, case No. A40-171207, Decision, 17 January 2018.

⁸⁶ Ivan Timofeev, "'Sanctions for sanctions violation': US Department of Treasury enforcement actions against the financial sector", *Polis. Political Studies*, 2020, No. 6, p. 81.

⁸⁷ InterAction: American Council for Voluntary International Action, "Detrimental impacts: how counter-terrorism measures impede humanitarian action – a review of available evidence", April 2021.

allocate initially for humanitarian purposes. Furthermore, de-risking by banks increasingly drives humanitarian actors to use informal payment channels or cash, creating security risks, making the money harder to trace and increasing the risk of extortion and misuse or diversion of funds to finance terrorism, undermining one of the central aims of sanctions.⁸⁸

67. Humanitarian organizations also report the growing reluctance of donors to provide humanitarian aid or money to deliver aid to countries targeted by sanctions imposed by their own State, because the donors fear being listed. Moreover, the organizations must do extensive reporting about the purposes and the final targets or beneficiaries of the money or aid. A number of humanitarian organizations have complained that their bank accounts and those of their employees have been frozen owing to overcompliance, and some even have problems in transferring salaries to their employees in the field.⁸⁹

V. Legal status of unilateral sanctions

A. Legal status of economic or sectoral sanctions

68. The Special Rapporteur emphasizes that there are very few academic works providing a legal assessment of unilateral sanctions, and the positions of sanctioning and sanctioned States differ considerably. The Bolivarian Republic of Venezuela and the Syrian Arab Republic view unilateral sanctions as crimes against humanity.⁹⁰ Cuba qualifies them as acts of aggression or the use of force in international law. The Islamic Republic of Iran considers them to be “collective punishment”, “economic terrorism”, economic “war” and genocide.⁹¹ The European Union and the United States, by contrast, view sanctions as a means of foreign policy and a way to reinforce Security Council measures.⁹² Other States insist that Security Council authorization can be the only grounds for unilateral sanctions.

69. The criteria for legality of unilateral sanctions are not defined either. Some publicists insist on the possibility of implementing temporary, adequate and targeted restrictive measures to guarantee security on the basis of transparent legal acts, justified by solid evidence.⁹³ Some base the legality of unilateral action in the existence of resolutions of the Security Council, the content of international treaty norms, rules of customary norms of international responsibility, and the humanitarian consequences of unilateral measures.⁹⁴

70. The Special Rapporteur stresses that not every unfriendly act or means of applying pressure by a State can be qualified as an illegal unilateral coercive measure.

71. Articles 24 and 25 and Chapter VII of the Charter of the United Nations provide for unique powers of the Security Council to impose enforcement measures for the maintenance of international peace and security. It is also generally agreed that international organizations may impose sanctions on member States in accordance with their constituent documents.⁹⁵

72. States are free to choose their partners in trade, economic or other types of international relations. Customary international law provides for the possibility of

⁸⁸ Alice Debarre, *Making Sanctions Smarter: Safeguarding Humanitarian Action* (New York, International Peace Institute, 2019), p. 3.

⁸⁹ VOICE, “Survey report: adding to the evidence”, pp. 7–8 and 15.

⁹⁰ International Criminal Court, “Statement of the Prosecutor of the International Criminal Court, Mrs Fatou Bensouda, on the referral by Venezuela regarding the situation in its own territory”, 17 February 2020.

⁹¹ See www.aa.com.tr/en/americas/zarif-to-trump-sanctions-dont-avoid-war-they-are-war/1518206.

⁹² Submission by Denmark.

⁹³ Submission by Mr. Timofeev.

⁹⁴ Submission by Mr. Glandin.

⁹⁵ Ruys, “Sanctions, retorsions and countermeasures”.

“unfriendly acts” that are consistent with the international obligations of the State engaging in it (retorsion),⁹⁶ and for proportionate countermeasures.⁹⁷

73. The extent of measures that may be qualified as retorsions depends on the scope of States’ legal obligations.⁹⁸ The Special Rapporteur recalls that assessment of their legality must concern the full range of States’ international obligations.

74. The Special Rapporteur recalls that in accordance with the draft articles on responsibility of States for internationally wrongful acts, countermeasures may only be taken by the directly affected States in response to a violation of an international obligation in order to restore fulfilment of that obligation; the measures must be temporary and proportionate to the violation, and must not violate human rights, peremptory norms of international law or humanitarian law.⁹⁹

75. In accordance with article 51 of the draft articles on responsibility of States and article 54 of the draft articles on the responsibility of international organizations, countermeasures “must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question”.¹⁰⁰

76. The Special Rapporteur calls upon all States to engage in bona fide behaviour and interpretation when it comes to observance of international obligations. This includes refraining from interpreting the “security exception” allowed under article XXI (b) (iii) of the General Agreement on Tariffs and Trade as a justification for applying economic sanctions that would otherwise be illegal under that Agreement.

77. The Special Rapporteur also emphasizes that the repeated declaration of states of emergency by the United States to justify the introduction of unilateral sanctions does not legalize their use, especially as they do not correspond to the criteria of article 4 of the International Covenant on Civil and Political Rights.¹⁰¹

78. The Special Rapporteur emphasizes the obligation of States to observe human rights treaties while deciding on retorsion measures, and the prohibition of the violation of fundamental human rights while taking countermeasures.

79. Unfortunately, amid the expanding practice of unilateral sanctions, there are no mechanisms for humanitarian assessment, while humanitarian exemptions and redress are generally insufficient, complicated, confusing, lengthy, costly and ineffective.¹⁰²

80. The negative humanitarian effects of unilateral sanctions have worsened during the COVID-19 pandemic. The European Commission admitted that sanctions “may alter a country’s ability to fight COVID-19 by affecting the procurement of certain goods and technologies”, lead to overcompliance and increase “hardship for the non-targeted civilian population”.¹⁰³

81. Unfortunately, few studies have been conducted on the humanitarian impact of unilateral sanctions, as opposed to United Nations sanctions, despite the obvious and dramatic negative impact.

⁹⁶ Draft articles on responsibility of States for internationally wrongful acts, with commentaries, *Yearbook of the International Law Commission, 2001*, vol. II (Part Two) and corrigendum, p. 128.

⁹⁷ *Yearbook of the International Law Commission, 2001*, vol. II (Part Two) and corrigendum, Chap. IV; Tzanakopoulos, “We who are not as others”; and submission by Ms. Keshner.

⁹⁸ Ruys, “Sanctions, retorsions and countermeasures”; draft articles on responsibility of States for internationally wrongful acts; and submission by Belarus.

⁹⁹ Statements by the European Union and Denmark on the sufficiency of proportionality to the “objective they seek to achieve” do not correspond to the draft articles on responsibility of States.

¹⁰⁰ Draft articles on the responsibility of international organizations, with commentaries, *Yearbook of the International Law Commission*, vol. II (Part Two), pp. 94–95; draft articles on responsibility of States, p. 134.

¹⁰¹ See

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25879>.

¹⁰² See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26589&LangID=E.

¹⁰³ European Commission, “Commission guidance note on the provision of humanitarian aid”, p. 1.

82. The above facts result in the violation of all categories of economic, social and cultural rights, including the right to life and health, the right to food, the right to an adequate standard of living, the right to education, the right to development and the right to a healthy environment. Civil and political rights are violated too.¹⁰⁴

83. The Special Rapporteur underscores the obligation of States to observe the fundamental principles of international law reflected in numerous resolutions of the General Assembly. In its resolution 39/210 of 18 December 1984, for example, the Assembly reaffirmed that developed countries should refrain from threatening or applying trade restrictions, blockades, embargoes and other economic sanctions, incompatible with the provisions of the Charter of the United Nations; against developing countries as a form of political and economic coercion which affects their economic, political and social development.

84. The Special Rapporteur also notes the need to observe other norms of international law when taking unilateral action. In particular, customary norms on the immunity of State property provide for the immunity of central bank assets and property used for public functions as belonging to the corresponding State rather than to its Government or any individual.

B. Legal status of targeted sanctions

85. The Special Rapporteur points to the need to take into account the variety of targets and grounds for their listing, as well as a number of other aspects, when assessing the legality of application of targeted sanctions. As noted above, people are listed for alleged wrongdoings, for their activity in an official capacity, or for their association with the initial wrongdoer. Targeted sanctions listing individuals and companies cannot be justified as countermeasures, which, in accordance with art. 49 (1) of the draft articles on responsibility of States for internationally wrongful acts, may only be taken against those immediately responsible for the policy or activity of a State in breach of its international obligation in order to induce a change in that policy or activity.¹⁰⁵

86. The Special Rapporteur underlines that listing State officials *ex officio* contradicts the prohibition of punishment for activity that does not constitute a criminal offence.

87. The unilateral sanctions imposed by the United States against judges and officials of the International Criminal Court¹⁰⁶ constitute a clear violation of their privileges and immunities,¹⁰⁷ undermines the Court's efforts to investigate, prosecute and sanction international crimes and thwarts victims' access to justice. The Special Rapporteur welcomes the fact that the United States has annulled these sanctions.

88. A number of sanctions are imposed on individuals and companies for alleged involvement in international crimes. In accordance with international law, such cases could be brought to the International Criminal Court or they could be started domestically on the basis of universal jurisdiction.¹⁰⁸ The use of a judicial mechanism guarantees due process, preventing violations of human rights.

89. The Special Rapporteur notes with regret that States have shown a preference in recent times for imposing sanctions instead of starting criminal cases, as such action is easier and faster, and standards of proof are nearly non-existent. As a result, perpetrators of international crimes face no criminal charge, while a group of people suffer economic and travel

¹⁰⁴ Submission by the Organization for Defending Victims of Violence.

¹⁰⁵ See also Institute of International Law, "The protection of human rights and the principle of non-intervention in internal affairs of States", resolution adopted 13 September 1989; and Dorothee Geyrhalter, *Friedenssicherung durch Regionalorganisationen ohne Beschluß des Sicherheitsrates* (Münster, LIT Verlag, 2002).

¹⁰⁶ United States, Executive Order 13928.

¹⁰⁷ See

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25379>.

¹⁰⁸ Barnhizer, ed., *Effective Strategies for Protecting Human Rights*, pp. 114–123.

limitations and are publicly branded international criminals, in violation of the right to the presumption of innocence.

90. Some targeted people are designated for an act that does not constitute a crime under any State's national legislation,¹⁰⁹ violating the right not to be held guilty for any criminal offence on account of any act or omission that did not constitute an offence at the time when it was committed.¹¹⁰

91. The Special Rapporteur agrees with the doctrinal approach that long-term asset freezes without due process may be qualified as expropriation or confiscation,¹¹¹ while a criminal process provides for the possibility of applying for the release of property and compensation for losses.

92. The Special Rapporteur emphasizes that the violation of rights associated with procedural guarantees is qualified, even in time of war, as a serious breach of international humanitarian law.¹¹²

93. While mindful that article 275 of the Treaty on the Functioning of the European Union authorizes the European Court of Justice to review the legality of decisions providing for restrictive measures against natural or legal persons and that the court has made more than 360 judgments in sanctions cases,¹¹³ the Special Rapporteur still notes that this approach guarantees only limited access to justice, and could not be qualified as providing full procedural and due process guarantees. No possibility for due process or judicial review is provided by the United States legislation.

VI. Qualification of unilateral coercive measures

94. The Special Rapporteur notes that unilateral measures that violate the international obligations of States and therefore cannot be qualified as retorsion, countermeasures or implementation of resolutions of the Security Council constitute unilateral coercive measures. The illegal nature of unilateral coercive measures has been repeatedly affirmed by the Human Rights Council and the General Assembly.¹¹⁴

95. In accordance with the Human Rights Council resolution 34/13, unilateral coercive measures are viewed as any type of measure, including but not limited to economic or political measures, to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. However, the Special Rapporteur notes the absence of general agreement on the elements of unilateral coercive measures.

96. Definitions proposed by States, NGOs and academics vary, identifying a number of elements of unilateral coercive measures. Such measures:

- (a) Involve activity or the threat of activity;¹¹⁵

¹⁰⁹ Council Decision 2010/639/CFSP of 25 October 2010 concerning restrictive measures against certain officials of Belarus, 26 October 2010, art. 2; Council Decision (CFSP) 2017/496 of 21 March 2017 amending Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt, art. 1 (1); Council Decision 2012/36/CFSP of 23 January 2012 amending Decision 2010/639/CFSP concerning restrictive measures against Belarus, art. 1 (2); and Council Decision 2011/173/CFSP of 21 March 2011 concerning restrictive measures in view of the situation in Bosnia and Herzegovina, art. 1 (1) (c).

¹¹⁰ International Covenant on Civil and Political Rights, art. 15 (1).

¹¹¹ Tom, "Sanctions, retorsions and countermeasures".

¹¹² Geneva Convention relative to the Protection of Civilian Persons in Time of War, art. 147; and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 85 (4) (e).

¹¹³ See www.europeansanctions.com, and submission by Denmark.

¹¹⁴ See Human Rights Council resolutions 15/24, 19/32, 24/14, 30/2 and 34/13 and General Assembly resolutions 69/180, 70/151 and 71/193.

¹¹⁵ Submission by the International Alliance for Peace and Development.

- (b) Are taken by a single State,¹¹⁶ a group of States or an international organization (excluding the United Nations);¹¹⁷
- (c) Are taken by major States;¹¹⁸
- (d) Are taken without the authorization of the Security Council;¹¹⁹
- (e) Are aimed at changing the behaviour of the targets (whether an individual, legal entity, State, group of States or international organization),¹²⁰ or promoting a change of regime¹²¹ or governmental structure;¹²²
- (f) Are aimed at preventing threats to international peace and security or punishing certain Governments for human rights violations that they try to minimize,¹²³ or in the alleged pursuit of common goods;¹²⁴
- (g) Exert pressure or coercion on targets (economic,¹²⁵ political,¹²⁶ financial,¹²⁷ or legal measures¹²⁸) or freeze the assets of central banks,¹²⁹ or are targeted measures against people of political importance;¹³⁰
- (h) Make use of the financial, trade, technological and other advantages of the sanctioning party;¹³¹
- (i) Satisfy the interests of the sanctioning party;¹³²
- (j) Fail to respect the right to self-determination of the target country, while limiting its economic capacity and violating the human rights of its inhabitants;¹³³
- (k) Violate the sanctioning party's international obligations towards other States and international organizations;¹³⁴
- (l) Fall outside the realm of permissible "unfriendly" acts under customary international law and countermeasures as part of State responsibility;¹³⁵
- (m) Interfere in other States' internal and external affairs, and infringe their inalienable rights to choose and develop political, economic and cultural systems of their own will, thus violating the principles of sovereign equality and non-interference;¹³⁶
- (n) Violate the principles of international law;¹³⁷
- (o) Are aimed at obtaining the subordination of the exercise of a State's sovereign rights.¹³⁸

¹¹⁶ Letter from the Bolivarian Republic of Venezuela.

¹¹⁷ Submission by the Syrian Arab Republic.

¹¹⁸ Submission by Partners for Transparency.

¹¹⁹ Submissions by Belarus and Guyana.

¹²⁰ Submissions by China, Cuba, Mauritius and the Russian International Affairs Council.

¹²¹ Letter from the Bolivarian Republic of Venezuela.

¹²² Submission by the International Alliance for Peace and Development.

¹²³ Submission by Partners for Transparency.

¹²⁴ Submission by the Russian Federation.

¹²⁵ Submission by Mauritius.

¹²⁶ Submission by the Syrian Arab Republic.

¹²⁷ Letter from the Bolivarian Republic of Venezuela.

¹²⁸ Submission by the Russian International Affairs Council.

¹²⁹ Submission by China.

¹³⁰ Submission by Mauritius.

¹³¹ Submission by China.

¹³² Letter from the Bolivarian Republic of Venezuela.

¹³³ *Ibid.*, and submissions by the Syrian Arab Republic and the Charitable Institute for Protecting Social Victims (A/HRC/46/NGO/37).

¹³⁴ Submissions by Belarus, Guyana and the Russian Federation.

¹³⁵ Submission by Guyana.

¹³⁶ Submission by China.

¹³⁷ Submission by the Syrian Arab Republic.

¹³⁸ Submission by Cuba.

VII. Conclusions and recommendations

A. Conclusions

97. The types, means, grounds, purposes and targets of unilateral sanctions have expanded to such an extent that they are often viewed as a traditional means of international intercourse aimed at protecting “common goods”, including international peace and security, national security, the promotion of democracy and the protection of human rights, and as a softer and publicly acceptable alternative to the use of force,¹³⁹ in the absence of authorization of the Security Council. Contemporary developments are characterized by complicated and confusing legislation, insufficient transparency, the expansion of secondary sanctions and overcompliance.

98. Unilateral measures may be taken by States or regional organizations in compliance with international legal standards only: that is, they are taken with the authorization of the Security Council acting under Chapter VII of the Charter of the United Nations in response to a breach of peace, a threat to peace or an act of aggression, and they do not violate any international treaty or customary norm, or their wrongfulness is excluded in accordance with international law in the course of countermeasures in full compliance with the rules of law of international responsibility.

99. Unilateral sanctions that do not satisfy the above criteria constitute unilateral coercive measures and are illegal under international law.

100. Unilateral coercive measures are any type of measures or activity applied by States, groups of States or regional organizations without or beyond authorization of the Security Council, not in conformity with international obligations of the sanctioning actor or the illegality of which is not excluded on grounds of the law of international responsibility, regardless of the announced purpose or objective. Such measures or activity include but are not limited to economic, financial, political or any other sort of State-oriented or targeted measures applied to another State or an individual, company or other non-governmental entity, in order to induce a change in policy or behaviour, to obtain from a State the subordination of the exercise of its sovereign rights, to secure advantages of any kind, or to signal, coerce or punish.

101. Economic sanctions encompass an extremely broad scope of unilateral measures, and include freezing the assets of central banks or Government-owned companies, introducing trade or economic embargoes, impeding bank transfers, and freezing the bank accounts and transactions of private individuals and companies.

102. The legality of unilateral measures must be assessed in the context of various aspects of international law: the law of international security, international criminal law, international humanitarian law, international trade law, international human rights law, the law of international responsibility, treaty law, and specialized spheres of international law when relevant.

103. Secondary sanctions today include measures imposed on third States and their nationals and legal entities for having violated primary sanctions or circumvented sanctions regimes. States are not free to impose civil and criminal penalties on their nationals and resident companies in the implementation of unilateral sanctions, as measures to implement unilateral coercive measures are not legal in international law.

104. Countermeasures are to be considered as an important mechanism to guarantee international responsibility. All countermeasures must comply with international law, with due account for proportionality (to the breaches of international law by a delinquent State), necessity (no other means are available), their goal (to restore the observance of international law) and limitations on them (prohibition of violation of peremptory norms of international

¹³⁹ Chidiebere C. Ogbonna, “Targeted or restrictive: impact of US and EU sanctions on education and healthcare of Zimbabweans”, *African Research Review*, vol. 11, No. 3 (2017), p. 36; and W. Michael Reisman and Douglas L. Stevick, “The applicability of international law standards to United Nations economic sanctions programmes”, *European Journal of International Law*, vol. 9, No. 1 (1998).

law, including the obligation to refrain from the threat or use of force; obligations for the protection of fundamental human rights; and obligations of a humanitarian character, prohibiting reprisals).

B. Recommendations

105. Unilateral sanctions should not and cannot be positioned and justified as a “better alternative” to armed force.

106. The burden of proof of the legality of unilateral sanctions rests on the States and regional organizations that impose them.

107. The declaration of states of national emergency should be in full conformity with article 4 of the International Covenant on Civil and Political Rights only, and does not constitute grounds for imposing unilateral sanctions or invoking security clauses to circumvent international obligations arising from the General Agreement on Tariffs and Trade or any other international treaty or customary norms.

108. Sanctions should not be used as a substitute for criminal or other legal processes simply because they are easier to implement. Criminal procedures should always take precedence, with full observance of the burden of proof and standards of evidence.

109. The rule of law must always be applied without discrimination. Everyone, including listed individuals, must enjoy all guarantees of a fair trial and access to justice, including all procedural guarantees. No sanctions should be imposed without the possibility of appealing them before an independent and impartial body.

110. The humanitarian impact of any unilateral sanctions must be assessed. States should become subject to reporting obligations when imposing sanctions, with appropriate monitoring by the United Nations of their humanitarian impact.

111. States should use mechanisms of peaceful settlement of international disputes to settle their differences. International adjudication, as well as competent international quasi-judicial and human rights protection bodies, should be used for the consideration of sanctions cases. A sufficient body of legal cases in disputes will help to reinforce the rule of law with regard to sanctions.

112. Humanitarian concerns should always be taken into account by States when deciding on the application or implementation of any unilateral measures, including countermeasures (humanitarian precaution), as well as in the course of their implementation. Such measures should be an integral part of the process of applying the principles of proportionality and non-discrimination.

113. An academic and humanitarian database pertaining to sanctions, including publications, court decisions and quantitative data on the humanitarian impact, will be established on the mandate’s web page.

114. Preliminary and continuous assessments of the humanitarian impact must be conducted, under the precautionary approach, even if measures are taken legally. No good intentions can justify human suffering and the violation of fundamental human rights as “collateral damage”.

115. Given that unilateral coercive measures affect the ability of States to react to contemporary threats and challenges and affect all categories of human rights, the Special Rapporteur calls for the inclusion of an assessment of the legality and humanitarian impact of unilateral sanctions in the international agenda beyond that of the Office of the United Nations High Commissioner for Human Rights (OHCHR), including the agendas of all United Nations organs and specialized agencies, such as the World Health Organization, the United Nations Children’s Fund, the United Nations Population Fund, the Office of the United Nations High Commissioner for Refugees, the International Labour Organization and the International Civil Aviation Organization.

116. States should not shift responsibility to private companies by pushing them to commit overcompliance while limiting themselves to targeted sanctions only.