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political, economic, social and cultural rights,
including the right to development**

Negative impact of unilateral coercive measures: priorities and road map

Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights*

Summary

The present report is the first thematic report submitted to the Human Rights Council by the newly appointed Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan.

In the report, the Special Rapporteur discusses current developments and challenges in the application of unilateral sanctions, identifies the priorities of her thematic research and cooperation and presents a road map for her activities as mandate holder.

* The present report was submitted after the deadline in order to reflect the most recent developments.



I. Introduction

1. The present report is the first thematic report submitted to the Human Rights Council by the newly appointed Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, pursuant to the mandate set out in Council resolutions 27/21 and 36/10.
2. The analysis of the Special Rapporteur reaffirms the large array of challenges that unilateral coercive measures pose to international relations, the legal order, the rule of law and the whole system of human rights. It also reveals discrepancies in the terminology and notions used to identify sanctions introduced without or beyond the authorization of the Security Council; the insufficiency of cooperation between international entities and organizations dealing with such sanctions; and the absence of consensus and solidarity among States in their assessments. It also notes the expanding scope of grounds, purposes, direct and indirect targets, means and mechanisms and the increasing number of unilateral coercive measures, as well as their expanding extraterritorial character.
3. As the legal status of specific unilateral sanctions is not always clear from the standpoint of international law, it is necessary to address and seek to minimize the humanitarian consequences of their application and engage in a contextual way in the establishment of a comprehensive legal framework, taking due account of the Charter of the United Nations, the fundamental principles of international law, including the observance of human rights and humanitarian standards, and the rule of law.
4. The main purpose of the present report is to provide an overview of current developments and challenges in domestic sanctions legislation and policy and to identify intersections with the standards and practice of the United Nations and other international bodies. In this context, the report presents the Special Rapporteur's vision of the contemporary issues relating to the impact of unilateral coercive measures on the enjoyment of human rights and offers the Human Rights Council information on her strategy and a road map for the implementation of the mandate.
5. Due to the complexity, sensitivity and multidimensional character of the matter, the Special Rapporteur welcomes any comments, suggestions and information that Governments, international organizations, non-governmental organizations, academics, civil society representatives and other relevant actors may have regarding the various aspects of the impact of unilateral coercive measures on human rights.

II. Activities of the Special Rapporteur

6. Shortly after assuming her mandate on 25 March 2020, and faced with the unfolding coronavirus disease (COVID-19) pandemic emergency, the Special Rapporteur issued her first public statement¹ on 3 April, in which she urged Governments to lift all unilateral sanctions obstructing the humanitarian responses of sanctioned States, in order to enable their health-care systems to fight the COVID-19 pandemic and save lives. This was aligned with and echoed the 23 March statement of the United Nations High Commissioner for Human Rights² to ease or suspend sanctions and the 26 March appeal of the Secretary-General³ to waive sanctions that undermined countries' capacity to respond to the pandemic.
7. On 14 April, the Special Rapporteur was interviewed by the Belarusian Telegraph Agency (BelTA), which underscored her role in the promotion and protection of human rights in general and, in particular, during the COVID-19 pandemic.

¹ See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25769&LangID=E.

² See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25744&LangID=E.

³ See www.un.org/en/coronavirus/war-needs-war-time-plan-fight-it.

8. On 17 April, the Special Rapporteur endorsed a joint statement by a number of special procedure mandate holders calling upon Governments to avoid the use of excessive force in implementing COVID-19 security measures.

9. Also on 17 April, the Special Rapporteur responded to the letter of welcome from the United Nations High Commissioner for Human Rights by sharing her plans and offering her expertise and technical or practical assistance in support of the High Commissioner's efforts to further prevent the adverse consequences of unilateral coercive measures for multilateralism, international law, the international rule of law, the Charter of the United Nations and human rights.

10. On 21 April, the Special Rapporteur, together with a group of other special rapporteurs and independent experts, transmitted an urgent appeal to the Government of the United States of America concerning the alleged ongoing severe impact of its unilateral economic coercive measures on Cuba and the citizens of Cuba in the context of the unprecedented global health crisis caused by the COVID-19 pandemic.

11. The Special Rapporteur held online meetings with the Permanent Representatives of the Syrian Arab Republic, on 22 April, and the Islamic Republic of Iran, on 24 April and 22 May.

12. On 22 April, the Special Rapporteur participated in an online meeting of the United Nations special procedures and participated in the preparation of a COVID-19 survey.

13. On 30 April, the Government of the Bolivarian Republic of Venezuela confirmed its previous invitation to the Special Rapporteur to undertake an official visit to the country. The visit was planned to take place from 3 to 14 August 2020 but has been postponed until such time as travel restrictions have been lifted.

14. On 30 April, the Special Rapporteur issued a joint public statement⁴ calling upon the United States to lift its economic and financial embargo on Cuba, as it was obstructing the humanitarian response to help the country's health-care system fight the COVID-19 pandemic. She urged the Government of the United States to withdraw measures aimed at establishing trade barriers and to ban tariffs, quotas and non-tariff measures, including those that prevent the purchase of medicines, medical equipment, food and other essential goods.

15. On 1 May, the Special Rapporteur issued a human rights guidance note on COVID-19,⁵ in which she called, inter alia, to lift or at least suspend any sanctions impeding trade in or delivery of essential humanitarian goods and commodities such as medicines, antiviral medication, medical equipment, its component parts and relevant software, and food. She added that the whole scope of unilateral sanctions should be reviewed and minimized in order to enable sanctioned States to ensure the effective protection of their population from COVID-19, to repair their economy and to guarantee the well-being of their people in the aftermath of the pandemic.

16. On 4 May, the Special Rapporteur sent a questionnaire to all Permanent Missions to the United Nations Office and other international organizations in Geneva and, on 6 May, she made a call for submissions for her study on the impact of unilateral sanctions on human rights during the state of emergency in the context of COVID-19 pandemic.⁶ The study will feed into the Special Rapporteur's first thematic report to the General Assembly in October 2020.

17. On 22 May, the Special Rapporteur sent a letter to the United Nations High Commissioner for Refugees inviting him to collaborate in exploring the links between the negative impact on the enjoyment of human rights caused by unilateral coercive measures on the one hand and the flight of refugees and their subsequent experience on the other hand.

⁴ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25848&LangID=E.

⁵ See www.ohchr.org/Documents/Issues/UCM/UCMCOVID19GuidanceNote.pdf.

⁶ See www.ohchr.org/Documents/Issues/UCM/Call_for_submission_UCM_COVID_19_emergency_study.pdf.

18. On 28 May, the Special Rapporteur sent a letter to the President of the Human Rights Council expressing her deep concern about the fact that there was no reference in the current text of the President's statement on the human rights implications of the COVID-19 pandemic to the need to lift or at least suspend any sanctions impeding trade in or delivery of essential humanitarian goods and commodities, such as medicines, antiviral medication, medical equipment, its component parts and relevant software, personal protective equipment and food. Such an omission undermined, inter alia, the ability of sanctioned States to accomplish their responsibility to protect rights of their people.

19. On 2 June, the Special Rapporteur participated, as panellist, in a webinar on the impact of unilateral coercive measures on the global fight against COVID-19 while upholding the Charter of the United Nations, promoting international cooperation and ensuring that no one is left behind in times of pandemics.

20. On 4 June, the Special Rapporteur wrote a letter to the Under-Secretary-General for Counter-Terrorism to propose cooperation with the Office of Counter-Terrorism. She noted that sanctions implemented to combat terrorism in support of the United Nations Global Counter-Terrorism Strategy might undermine certain goals of the Strategy by contributing to conditions that were conducive to the spread of terrorism and had a negative impact on human rights.

21. On 17 June, the Special Rapporteur sent a letter to the Chair of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, who is also the Chair of the Special Committee's Working Group of the Whole, to propose cooperation in areas of mutual interest. These include the impact of sanctions regimes on third countries and the overall transparency of sanctions regimes.

22. On 18 June, the Government of Qatar confirmed its invitation to the Special Rapporteur to undertake an official country visit. The visit is planned to take place from 1 to 12 November 2020.

23. On 23 June, the Special Rapporteur attended an online supplementary human dimension meeting organized by the Organization for Security and Cooperation in Europe on freedom of expression, the media and information. She gave a presentation on unilateral sanctions and access to information in the global fight against the COVID-19 pandemic.

24. On 25 June, the Special Rapporteur held an online meeting with the Under-Secretary-General for Counter-Terrorism. They discussed cooperation and the Special Rapporteur's role in implementing the United Nations Global Counter-Terrorism Strategy.

III. Contemporary problems and developments in the use of unilateral sanctions

25. The Special Rapporteur pays tribute to the work of her predecessor, Idriss Jazairy. She will build upon his commitment to protect and promote the human rights of those affected by unilateral coercive measures.

26. The illegal nature of unilateral coercive measures has been repeatedly affirmed in numerous resolutions of the Human Rights Council (resolutions 15/24, paras. 1–3; 19/32, paras. 1–3; 24/14, paras. 1–3; 27/21, paras. 1–3; 30/2, paras. 1–2 and 4; and 34/13, paras. 1–2 and 4) and the General Assembly (resolutions 69/180, paras. 5–6; 70/151 paras. 5–6 and 71/193, paras. 5–6). The Council and the Assembly have also affirmed that people should not be deprived of their own means of subsistence, especially as concerns food and medicine and that the extraterritorial application of law, affecting international humanitarian and human rights law, is inadmissible. Moreover, it has been acknowledged that unilateral coercive measures have prevented humanitarian organizations from making financial transfers to States.

27. The Special Rapporteur stresses that not every unfriendly act or means of applying pressure by a State can be qualified as a unilateral coercive measure. At the same time, States are free to choose their partners in trade, economic or other types of international relations. Customary international law provides for the possibility of unfriendly acts that do

not violate international law and of proportionate countermeasures in response to the violation of international obligations, as long as they abide by the limitations set out in the draft articles on responsibility of States for internationally wrongful acts.⁷

28. As a result, in carrying out the mandate, the Special Rapporteur must be mindful of: the enormous discrepancies between sanctioning and sanctioned States, even in relation to defining what is a legal or illegal activity, what unilateral activity (sanction) without or beyond the authorization of the Security Council could or should qualify as a unilateral coercive measure; the legality of unilateral action from the standpoint of the Charter of the United Nations, international humanitarian law, international human rights law and other areas of law; and the humanitarian impact on the enjoyment of human rights, the adequacy of the humanitarian exemptions and the insufficiency of mechanisms of delisting, control, reparation and compensation. The Special Rapporteur underscores that any progress on these matters can only be achieved through consensus and the development of an appropriate legal framework that reflects the legitimate concerns of those affected and that fills the gaps in the promotion of human rights and the protection from mass gross violations of human rights. The term “unilateral sanctions” is used in the present report without any prejudice as to the legality or illegality of such sanctions and to refer to any means of pressure applied by States or international organizations without or beyond the authorization of the Security Council.

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

30. The Special Rapporteur also notes that, given the absence of a definition of unilateral coercive measures and their presumably illegal character, States prefer to present their unilateral activities as not constituting unilateral coercive measures and to use therefore other terms, like “sanctions”, “restrictive measures”⁸ and “unilateral measures not in accordance with international law”.⁹ States involved are also identified in various ways, including as sanctioning/sanctioned, targeting/targeted or sender/source States.¹⁰

31. The Special Rapporteur takes note of the proliferation of new types of sanctions. The United Nations has traditionally viewed sanctions as a means of compliance but, even when applied following a decision of the Security Council, they have led to enormous humanitarian costs. The Special Rapporteur here aligns herself with the position expressed by the Secretary-General in 2000 that “the existence of a sanctions regime almost inevitably transforms an entire society for the worse”.¹¹ Targeted or smart sanctions imposed by the Security Council have been intended to minimize the negative humanitarian effect of sanctions introduced against States, with the aim being to “punish the guilty”¹² for committing international crimes, or have been a reaction to threats to and breaches of international peace and security. International practice, however, has included an expanded application of targeted sanctions to individuals and legal entities by States and international organizations, quite often without or beyond the authorization of the Security Council. The legality of such targeted sanctions is rather disputable.

32. Another development relates to the emergence 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. In particular, the

⁷ *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 and corrigendum (A/56/10 and Corr.1), Chap. IV.*

⁸ Council of the European Union, “Guidelines on the 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.

⁹ General Assembly resolutions 70/151, para. 1, and 71/193, para. 2.

¹⁰ See, e.g., A/HRC/36/44.

¹¹ See www.un.org/press/en/2000/20001115.sgsm7625.doc.html.

¹² *Ibid.*

United States applies non-selective sanctions in the financial, energy, defence, railway, metals and mining sectors of the Russian Federation¹³ “to impose costs ... for its aggression in Ukraine”.¹⁴ Sectoral sanctions are also imposed by the United States in the gold,¹⁵ oil and financial sectors of the Venezuelan economy.¹⁶ The same approach has been taken by the European Union in relation to the Russian energy, defence, financial and dual-use goods sectors in general. Moreover, the European Union has introduced an import ban on goods from and a ban on tourism services in Crimea and Sevastopol.¹⁷

33. The Special Rapporteur views this tendency as being rather ominous. The situation reportedly develops in such a way as to lead to consequences, in respect of “sectoral” sanctions, that are analogous to the consequences of comprehensive economic sanctions. The latter, however, as stated by the Secretary-General in 2000, have proved to be ineffective or inefficient while demonstrating a high potential for corruption¹⁸ and reportedly preventing Governments from exercising the responsibility to protect.

34. The Special Rapporteur underscores that the expansion of unilateral sanctions entails the expansion of direct and indirect targets of sanctions. She is increasingly concerned about indirectly targeted targets. Current developments clearly demonstrate that refugees and migrants must leave States in search of safe haven as soon as unilateral economic sanctions start to be applied against those States. In particular, the International Organization for Migration (IOM) has repeatedly reported on the return of more than 1 million Afghans from the Islamic Republic of Iran since 2018 because of the worsening economic situation in the country,¹⁹ with nearly 300,000 of them returning to Afghanistan during January–May 2020.²⁰ United States sanctions are repeatedly cited as the main reason for the deteriorating economic situation in the Islamic Republic of Iran and the return of Afghans.²¹

35. The Special Rapporteur also notes the increasing impact of sanctions on the populations of sanctioning States due to the introduction of prohibitions and punishments of their own nationals aimed at the implementation of sanctions. In particular, any transactions, including online transactions, made by United States persons or made in or involving the United States relating to the property or interests in property of sanctioned individuals are prohibited unless authorized or exempted.²² Another concern has been the application of sanctions against international civil servants for exercising their duties, including in the administration of criminal justice, as has been done by the United States in respect of officials of the International Criminal Court.²³

¹³ Kimberly Strosnider and David Addis, “New sanctions targeting Russian financial and energy sectors”, *Global Policy Watch*, 18 July 2014. See also United States, Executive Order 13663.

¹⁴ United States, Executive Order 13662.

¹⁵ United States, Executive Order 13850.

¹⁶ United States, Office of Foreign Assets Control, “Venezuela Sanctions Regulations 31 C.F.R. Part 591: General License No. 36A Authorizing Certain Activities Necessary to the Wind Down of Transactions Involving Rosneft Trading S.A. or TNK Trading International S.A.”

¹⁷ See www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis.

¹⁸ See www.un.org/press/en/2000/20001115.sgsm7625.doc.html.

¹⁹ Frud Bezhani, “Afghanistan, the ‘unintended casualty’ of U.S. sanctions on Iran”, *RadioFreeEurope-RadioLiberty*, 14 August 2018; IOM, “Return of undocumented Afghans: weekly situation report”, 29 December 2019–4 January 2020; IOM, “Return of undocumented Afghans: weekly situation report” 3–9 May 2020.

²⁰ IOM, “Return of undocumented Afghans: weekly situation report”, 17–23 May 2020.

²¹ Stefanie Gliniski, “US-Iran tensions fuel Afghan returns”, *The New Humanitarian*, 6 February 2020; Nabila Ashrafi, “Numbers spike of Afghan migrants returning from Iran: IOM”, *ToloNews*, 24 November 2019.

²² United States, Cyber-Related Sanctions Program. See www.treasury.gov/resource-center/sanctions/Programs/Documents/cyber.pdf.

²³ See www.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; International Criminal Court Appeals Chamber, “Judgment on the appeal against the decision on the authorization of an investigation into the situation in the Islamic Republic of Afghanistan”, No. ICC-02/17 OA4, 5 March 2020.

36. Appendix A to Part 501 of the Economic Sanctions Enforcement Guidelines of the United States provides for civil monetary penalties of up to US\$ 289,239 or criminal penalties of up to US\$ 1,000,000, imprisonment for up to 20 years or both upon conviction. As a result, even in situations when humanitarian exemptions are applicable, natural and legal entities like banks, ships etc. are reluctant to be involved in transactions for fear of responsibility²⁴ that results in overcompliance with already massive sanctions regimes. It has been reported, in particular, that in March 2020 a Chinese businessman announced the donation to Cuba of 100,000 masks, 10,000 kits for the rapid detection of the virus responsible for COVID-19, ventilators, gloves and medical protective suits. The shipment could not reach its final destination, however, as the hired carrier, a United States company, declined at the last minute to deliver the goods, citing United States regulations.²⁵

37. The Special Rapporteur recalls that sanctions that were supposed to be exceptional even when introduced by the Security Council tend to become entrenched in time and scope and turn into the norm rather than being the legally grounded exception. As a result, some unilateral sanctions regimes, unlike sanctions introduced by the Security Council, are not limited in time. Sanctions regimes are introduced or remain in force even if all targeted individuals and entities have been delisted. Reportedly, such sanction regimes establish uncertainties in commercial interactions and have inadvertent detrimental effects on national economies.

38. While the Special Rapporteur welcomes the efforts of targeting States to introduce²⁶ and update humanitarian exemption mechanisms,²⁷ she notes with concern that humanitarian exemptions and mechanisms to supply humanitarian aid are usually complex and confusing. In particular, the factsheet issued by the United States on the provision of humanitarian assistance and trade to combat COVID-19²⁸ is informational but does not carry the force of law nor does it supersede the actual legal provisions cited. Targeted Governments insist that such humanitarian exemptions are costly and nearly non-existent.

39. The Special Rapporteur notes that the grounds for and purposes of sanctions have also changed. According to the developers of the Global Sanctions Database, more than 40 per cent of the sanctions introduced today aim to pursue the enhancement of democracy, human rights protection and other similar purposes,²⁹ rather than to address threats to peace, breaches of peace or acts of aggression or to respond to violations of *erga omnes* obligations.³⁰ Nearly all of these sanctions are taken by States and regional organizations unilaterally.

40. The proliferation of so-called “Magnitsky sanctions” provides a clear illustration of this point. The Sergei Magnitsky Rule of Law Accountability Act of 2012 adopted by the United States imposed financial sanctions and entry bans on “certain persons related to the detention, abuse, and death of Sergei Magnitsky or responsible for certain gross violations of human rights in the Russian Federation”. As at 8 May 2020, 54 individuals and 1 entity

²⁴ Phyllis Bennis, “Sanctions in the era of pandemic”, *Al Jazeera*, 12 May 2020.

²⁵ See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25848&LangID=E; Yisell Rodríguez Milán, “La historia no contada de cómo un avión con suministros médicos desde China no ha podido entrar a Cuba”, *Gramma*, 1 April 2020 (in Spanish).

²⁶ Council of the European Union, “Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions)”, paras. 25–28.

²⁷ See www.treasury.gov/resource-center/sanctions/Programs/Documents/covid19_factsheet_20200416.pdf; https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/sanctions_en.

²⁸ See www.treasury.gov/resource-center/sanctions/Programs/Documents/covid19_factsheet_20200416.pdf.

²⁹ See <http://globalsanctionsdatabase.com/>.

³⁰ See, e.g., *Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970*, p. 3, at p. 32. See also Bruno Simma, “Does the UN Charter provide an adequate legal basis for individual or collective responses to violations of obligations erga omnes?” in *The Future of International Law Enforcement: New Scenarios – New Law?*, Jost Delbrück, ed. (Berlin, Duncker and Humblot, 1993), pp. 126–127; Human Rights Committee, general comment No. 31 (2004) on the nature of the general obligation imposed on States parties to the Covenant, para. 2.

had been sanctioned in connection with the Magnitsky Act, which sought to introduce targeted sanctions against a broad number of people for the alleged commission of a specific crime rather than for the massive and gross violations of fundamental human rights in the absence of procedural guarantees.

41. The Special Rapporteur also notes the expansion of the Magnitsky sanctions in terms of both territorial application and scope. In particular, the adoption of the Global Magnitsky Human Rights Accountability Act of 2016 allowed the United States to impose targeted sanctions 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”³¹ by expanding the notion of “official corruption”.³² Executive Order 13818 expanded the application of the Magnitsky Act to include blocking the property of a broad group of individuals. Sanctions also include the ineligibility to receive visas, the revocation of already issued visas or other documents and the blocking of property without court consideration.³³ As of 8 May 2020, global Magnitsky sanctions had been applied to 94 persons, including officials from 24 countries, and 102 entities.

42. Similar legislation has been adopted and implemented in Estonia (2016),³⁴ Canada (2017),³⁵ Lithuania (2017),³⁶ Gibraltar (2017),³⁷ Latvia (2018),³⁸ Jersey (2019)³⁹ and Kosovo (2020).⁴⁰ The States members of the European Union,⁴¹ as well as a number of other States (Australia,⁴² the United Kingdom of Great Britain and Northern Ireland,⁴³ Georgia⁴⁴ and Moldova⁴⁵), have considered adopting or have pending draft legislation of this kind. The Special Rapporteur notes the selectivity and double standards that arise when such sanctions are introduced in the absence of any valid legal ground.

43. Consequently, the Special Rapporteur underscores that the issue of extraterritoriality of unilateral sanctions, already considered by the former Special Rapporteur,⁴⁶ becomes all

³¹ See www.treasury.gov/resource-center/sanctions/Programs/Documents/12212017_glomag_faqs.pdf.

³² Sergei Magnitsky Rule of Law Accountability Act of 2012, sect. 402 (a) (12).

³³ National Defense Authorization Act for Fiscal Year 2017, sect. 1263 (b).

³⁴ Obligation to Leave and Prohibition on Entry Act of 1998, as amended. See also European Observatory of Crimes and Security, “Estonia becomes first European nation to introduce a ‘Magnitsky law’”, 12 December 2016.

³⁵ Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law).

³⁶ Law on the Legal Status of Aliens, as amended. See also Renée Picard, “Lithuania: parliament adopts version of Magnitsky Act”, *Organized Crime and Corruption Reporting Project*, 16 November 2017.

³⁷ Proceeds of Crime Act of 2015, as amended. See also “Govt tables ‘Magnitsky amendment’ to Proceeds of Crime legislation”, *Gibraltar Chronicle*, 10 November 2017.

³⁸ Decision of 8 February 2018 entitled “On the proposal to introduce sanctions against the officials connected to the Sergei Magnitsky case”. See also www.saeima.lv/en/news/saeima-news/page:55/26575-saeima-approves-proposed-sanctions-against-the-officials-connected-to-the-sergei-magnitsky-case.

³⁹ Sanctions and Asset-Freezing (Jersey) Law 2019.

⁴⁰ Magnitsky Act. See also Xhorxhina Bami, “Outgoing Kosovo govt adopts Magnitsky Act”, *Balkan Insight*, 29 January 2020.

⁴¹ See www.europarl.europa.eu/news/en/press-room/20190307IPR30748/meps-call-for-eu-magnitsky-act-to-impose-sanctions-on-human-rights-abusers; Council of the European Union, outcome of Council 3738th meeting, 9 December 2019 (EU Doc.14949/19), p. 6; Jacopo Barigazzi, “EU to prepare Magnitsky-style human rights sanctions regime”, *Politico*, 9 December 2019.

⁴² The Parliament of Australia has initiated an inquiry into the use of targeted sanctions to address human rights abuses. See www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/MagnitskyAct.

⁴³ William James and Kyle MacLellan, “Britain to introduce a Magnitsky law after Brexit: Foreign minister”, *Reuters*, 29 September 2019; Polina Lyadnova, Matthew Fisher and Edward Crane, “UK Passes New Sanctions Legislation”, *Cleary Gottlieb*, 12 June 2018.

⁴⁴ Maria Shagina, “Magnitsky-style sanctions in the Eastern Partnership”, *European Council on Foreign Relations*, 26 April 2019.

⁴⁵ Ibid.

⁴⁶ A/HRC/39/54.

the more important, especially due to overcompliance by private actors and the increasing use of cybertechnologies.

44. The complexity, comprehensiveness and extraterritoriality of legislation have resulted in the establishment of workarounds. One such workaround welcomed by the Special Rapporteur is the Instrument in Support of Trade Exchanges (INSTEX), which was created in 2019 by France, Germany and the United Kingdom to foster trade between Europe and the Islamic Republic of Iran by circumventing United States sanctions against that country. The initial transactions have involved humanitarian goods used by the Islamic Republic of Iran to fight COVID-19.⁴⁷

45. The Special Rapporteur also notes that there has been an equally significant expansion in the means and mechanisms of applying unilateral sanctions. In particular, the freezing of assets of State and private banks is being actively used to put pressure on States (the Syrian Arab Republic, Venezuela (Bolivarian Republic of) etc.), thereby preventing them from procuring their citizens' basic needs, including food and medicines, despite COVID-19. For example, the Bank of England refused to unfreeze any part of the US\$ 1 billion in gold held from the Central Bank of the Bolivarian Republic of Venezuela during the pandemic (assets initially frozen to demonstrate non-recognition of Nicolás Maduro as President of the country),⁴⁸ not even, as reported by the United Nations Development Programme (UNDP), for procuring medicines and other humanitarian goods.

46. 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 a loan of US\$5 billion from the International Monetary Fund for use in fighting COVID-19,⁴⁹ despite repeated calls by the United Nations⁵⁰ and the European Union⁵¹ to "leave no one behind" and to demonstrate solidarity and cooperation in the face of global evil. A similar situation has reportedly happened in respect of requests by Cuba and the Sudan for emergency loans from the World Bank.

47. The Special Rapporteur emphasizes the impact of the development of cybertechnologies on unilateral sanctions. The Security Council, in its resolutions 2419 (2018), 2462 (2019) and 2490 (2019), has recognized that the use by individuals and non-State entities of new information and communication technologies may constitute a threat to international peace and security. As a result, cyberattacks or other offensive uses of information and communication technologies can be considered grounds for introducing sanctions. United Nations organs have repeatedly called upon States to prevent the use of the Internet to advocate, commit, incite, recruit for, fund or plan terrorist acts (General Assembly resolution 73/174 etc.). Consequently, United States Executive Order 13694, as amended by later documents, introduced and expanded the list of "cyber-enabled activities subject to sanctions"⁵² such as blocking property and interests in property in a broad number of cases, to include attacks on critical infrastructure, interference in the election process, disruption of networking or computer operations, misappropriation of financial funds and personal information etc.

⁴⁷ "EU sells medical goods via INSTEX" Financial Tribune, 3 April 2020.

⁴⁸ See Exclusive: Venezuela asks Bank of England to sell its gold to U.N. for coronavirus relief – sources 29.04.2020.

⁴⁹ Abubakr Al-Shamahi, "Can the IMF overcome US roadblocks to give aid to Iran?," *Al Jazeera*, 17 April 2020; Ian Talley and Benoit Faucon, "U.S. to block Iran's request to IMF for \$5 billion loan to fight coronavirus", *Wall Street Journal*, 7 April 2020. See also letter dated 29 May 2020 from the Bolivarian Republic of Venezuela addressed to the Special Rapporteur.

⁵⁰ General Assembly resolution 74/270 on global solidarity to fight COVID-19; OHCHR, "Bachelet calls for easing of sanctions to enable medical systems to fight COVID-19 and limit global contagion", 24 March 2020; www.un.org/en/un-coronavirus-communications-team/we-are-all-together-human-rights-and-covid-19-response-and.

⁵¹ "EU will support Iran to receive loan from IMF: Borrell", *Islamic Republic News Agency*, 23 March 2020; "EU foreign policy chief regrets US blocking IMF loan to Iran", *Radio Farda*, 23 April 2020.

⁵² United States, Cyber-Related Sanctions Program.

48. The same approach has been taken by the European Union and the United Kingdom⁵³ since 17 May 2019 in response to serious or attempted cyberattacks, understood as actions involving: access to information systems, information systems interference, data interference or data interception.⁵⁴ Both have introduced visa and entrance prohibitions and requested the freezing of assets of listed persons or the refusal to make assets or funds available to them.

49. The introduction of sanctions in response to cyberattacks has aggravated the existing problem of targeted sanctions when punishment is decided and imposed by executive bodies in the absence of court hearings and due process guarantees. Reference to cyberthreats makes the acquisition and disclosure of evidence problematic and all allegations rather ill-founded. The scope of individuals and legal entities targeted by such sanctions is expanding.

50. Cybertechnologies are also influencing the scope of private entities involved in the implementation of sanctions regimes. In particular, the United States Cyber-Related Sanctions Regulations impose special obligations on United States persons facilitating or engaging in online commerce.⁵⁵ They correspond to and reflect therefore the emergence of a new type of sanction besides economic, financial, political and other kinds of sanctions – cybersanctions.

51. The Special Rapporteur notes that software can also be qualified as a commodity today. As a result, trade in software can also be limited as part of a sanctions regime. For example, the Islamic Republic of Iran, in its letter dated 12 March 2020 addressed to the Secretary-General, refers to its inability to buy and install up-to-date flight planning software because of United States sanctions. Moreover, no person whose property and interests in property have been blocked can export or re-export software to Crimea, making the list of available technologies limited. Services and software cannot be used for commercial Internet services, connectivity etc.⁵⁶ or even for non-commercial activities such as those carried out using Zoom or other educational platforms that may be directly prescribed in the service agreements or prescribed by United States legislation.⁵⁷ United States-registered companies also block social media accounts as a part of the Magnitsky sanctions regime.⁵⁸

52. The Special Rapporteur underscores that the contemporary system does not provide for a comprehensive mechanism for the protection of human rights and for accountability and redress for those whose rights have been violated by unilateral sanctions. Existing mechanisms provide only for the possibility of diplomatic protection by States, as in the case of Qatar when it instituted proceedings before the International Court of Justice,⁵⁹ the Committee on the Elimination of Racial Discrimination,⁶⁰ the Universal Postal Union (UPU)⁶¹ and through individual appeals to regional courts (in particular, the European

⁵³ Until 31 December 2020, the United Kingdom will apply the European Union cybersanctions. See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/813212/HM_Treasury_Notice_CA_regime.pdf.

⁵⁴ Council Regulation (EU) 2019/796 of 17 May 2019 concerning restrictive measures against cyber-attacks threatening the Union or its Member States, art. 1 (1)–(2); Council Decision (CFSP) 2019/797 of 17 May 2019 concerning restrictive measures against cyber-attacks threatening the Union or its Member States, arts. 1, 4 and 5.

⁵⁵ United States, Department of the Treasury, Office of Foreign Assets Control, Cyber-Related Sanctions Regulations.

⁵⁶ United States, Executive Order 13685, general license No. 9, “Exportation of certain services and software incident to Internet-based communications authorized”, para. (d).

⁵⁷ Zoom terms of service effective 13 April 2020, para. 12. See <https://zoom.us/terms>.

⁵⁸ Donie O’Sullivan and Artemis Moshtagian, “Instagram says it’s removing posts supporting Soleimani to comply with US sanctions”, *CNN Business*, 13 January 2020; Jonny Tickle, “Chechen leader Kadyrov banned from Instagram again, loses account with 1.4 million followers”, *RT*, 13 May 2020.

⁵⁹ See www.icj-cij.org/en/case/172. Judgement of 14 July 2020 <https://www.icj-cij.org/files/case-related/173/173-20200714-JUD-01-00-EN.pdf>

⁶⁰ See www.ohchr.org/EN/HRBodies/CERD/Pages/InterstateCommunications.aspx.

⁶¹ “Qatar’s resolution on postal services gets UPU backing”, *Gulf Times*, 29 February 2020

Court of Justice in accordance with article 275 of the Treaty on the Functioning of the European Union), all of which have rather limited competence.

IV. Preliminary outline of areas of interest to the Special Rapporteur

53. Due to the highly complex nature and expanding scope of unilateral sanctions, as well as the dubious legality of a substantial part of them, the Special Rapporteur would like to highlight key areas of interest and concerns that need to be addressed in order to establish a legal framework within the scope of the mandate.

54. In the current health crisis, it is necessary to identify and assess first of all the negative impact of unilateral coercive measures on the enjoyment of human rights in emergency situations, including the COVID-19 pandemic, which in turn means identifying the specific nature of the problem and, for most targeted areas, those portions of the population that have been hit the hardest, the most-affected human rights, the sufficiency and adequacy of humanitarian exemptions and the delivery of humanitarian aid.

55. The Special Rapporteur underscores the accelerating expansion of new and different forms, types and terms used to identify unilateral means of pressure (unilateral coercive measures, sanctions, unilateral sanctions, bilateral sanctions, international sanctions, sectoral or territorial sanctions etc.), and the need to identify the actors involved (targeting and targeted States, source States etc.). The current uncertainty and ambiguity in the terminology makes it impossible to identify a legal framework and the applicable standards, which undermines the rule of law, the world order and the authority of the United Nations.

56. The Special Rapporteur thus expresses her concern about the lack of analysis and systemization of existing terminology pertinent to the mandate and plans to assess the legality of various forms of sanctions imposed by States and international organizations without or beyond the authorization of the Security Council, *inter alia*, as concerns general international law, international economic law, human rights law, refugee law and international humanitarian law.

57. Another trend relates to the expansion of categories and number of targets (direct or indirect, primary or secondary, intended or unintended, specific or non-selective), which are usually not identified or are ignored.

58. A special analysis shall focus on assessing the impact of various types of sanctions to all categories of human rights, including collective rights, and the responsibility to protect. In view of specific targets, additional concerns relate to the legal grounds, the particularities and the legality of sanctions imposed on individuals and non-State entities, especially due to the proliferation of Magnitsky-like acts.

59. The extraterritorial effects of unilateral sanctions raise special concerns for the Special Rapporteur due to the increasing number of reported cases of human rights violations. This includes the broad scope of 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 various aspects of overcompliance.

60. Recent developments demonstrate the importance of clearly, transparently and effectively regulating the scope, adequacy, legality and effectiveness of humanitarian exemptions. It has been repeatedly reported that confusing legislation and the complexity and cost of licensing processes make references to the very possibility of exemptions rather fictitious.

61. The enjoyment of human rights can only be guaranteed if the system provides for an effective mechanism of human rights protection. The Special Rapporteur thus reaffirms the importance of carrying out a detailed analysis of the possibility of using existing universal and regional mechanisms to protect the rights of those negatively affected by unilateral sanctions, as well as the importance of establishing an effective mechanism in this regard.

To protect the rights of those affected, the Special Rapporteur plans to pay special attention to the consideration of individual complaints.

62. The freedom of States to conduct international relations is limited by international law. The Charter of the United Nations grants the Security Council extraordinary powers to decide on the application of, *inter alia*, non-military measures for the maintenance of international peace and security. Recognizing that the United Nations is the guarantor of the world order, the Special Rapporteur stresses the need to establish a transparent and comprehensive system of control, delisting, restoration of rights, reparation and compensation under the auspices of the United Nations.

63. The Special Rapporteur will also focus particular attention to the specific impact of cybertechnologies on the grounds, types, scope and means of unilateral sanctions in the existing legal framework.

V. Establishment of networking cooperation

A. Networking cooperation within the United Nations

64. The notion of sanctions has been broadly used and discussed by different organs of the United Nations and other international organizations. Some have focused on specific aspects of the application of sanctions, others on the relationship between the available mechanisms and the consequences of counter-terrorism and still others on economic sanctions, cooperation among States, protection of human rights as a whole or the protection of the rights of women, children, the elderly and other vulnerable categories of the population.

65. Each of those organs and organizations establishes a specific legal regime to regulate its particular sphere of responsibility and to establish corresponding purposes, principles and a legal regime. As a result, States are often seeking to achieve the purposes of one regime at the expense of another, in so far as the application of unilateral sanctions touches on a broad scope of issues, including security, cybersecurity, the rule of law, trade and development, human rights and humanitarian and refugee law. The Special Rapporteur affirms, then, the need for a better understanding of the relationships and intersections between these bodies, their legal regimes and the mandate. This should be done not for pure abstract or academic purposes but because it is the only way to help States and international organizations to better understand their rights and obligations under international law in the sphere of unilateral action and to protect, correspondingly, the rights of affected people, especially taking into account the most vulnerable, who are the ones suffering the most.

66. The Special Rapporteur underscores the importance of interacting with the United Nations sanctions architecture, which includes a number of subsidiary organs of the Organization.

67. The Special Rapporteur intends to engage with the sanctions committees established by the Security Council. Member States do not implement United Nations sanctions uniformly because of variations in their capabilities, domestic legal requirements and interests. United Nations sanctions may also become the basis for supplemental unilateral measures or be cited as justification for purely unilateral measures. Sometimes the process by which a Member State applies the decisions of a sanctions committee is challenged within its domestic legal system on the grounds that it violates human rights that the State is obliged to protect.

68. The Special Rapporteur believes that cooperation with the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, through its Executive Directorate, in conjunction with the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism could focus on strengthening the Committee's efforts to ensure the protection of sanctioned individuals' human rights. Reports by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

indicate that the Committee and its Executive Directorate have not achieved their full potential in this regard.⁶²

69. The Special Rapporteur would also find it desirable to engage with the Office of the Ombudsperson of the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities, as the Office considers requests from individuals and other subjects of the Committee's targeted sanctions that petition for delisting. While the Ombudsperson has strived to work transparently and reach fair conclusions, questions have been raised by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism about the adequacy of due process guarantees in the procedures. The Ombudsperson and the Focal Point for Delisting, while dealing mostly with counter-terrorism sanctions, may provide models for the involvement of the United Nations in dealing with sanctions more generally, including unilateral ones.

70. Although the United Nations Office on Drugs and Crime does not impose or manage sanctions, the States that benefit from its support often use targeted financial sanctions in their efforts to curtail criminal activity. The Special Rapporteur believes it would be useful to develop cooperation with this Office to reinforce States' consideration of the human rights consequences of enacting and implementing sanctions.

71. The Special Rapporteur would also deem it important to develop a cooperative relationship with the Department of Peace Operations and the Security Council Working Group on Peacekeeping Operations as States increasingly hold a favourable view of sanctions as a way to restore peace and security following armed conflict. Such sanctions are typically applied against military officers and others who violate peace agreements or otherwise undermine post-conflict stability.

72. The Special Rapporteur believes that active interaction with other parts of the United Nations human rights system is vital for effectively protecting the rights of those affected by the application of unilateral sanctions. The Special Rapporteur plans to open information-exchange channels with the treaty bodies that monitor the implementation of the main international human rights conventions. She believes that the treaty bodies can be key intermediaries for providing guidance and advice to States on their use of sanctions in the context of implementing human rights treaties.

73. The Special Rapporteur looks forward to cooperating closely with the other special rapporteurs, independent experts and working groups on many levels with respect to her mandate's focus on unilateral coercive measures, when such measures affect the rights they oversee under their respective mandates. The Special Rapporteur believes the focus of her mandate provides the Office of the United Nations High Commissioner for Human Rights with a unique vantage point insofar as sanctions can affect a wide range of human rights and insofar as this unique vantage point can be leveraged to the advantage of the Office's work more generally.

74. The Special Rapporteur will endeavour to develop communications with the Special Adviser to the Secretary-General on the Responsibility to Protect, who is the officer responsible for overseeing the overall role of the United Nations in fulfilling the Organization's responsibility to protect, as the application of unilateral sanctions can undermine the ability of States to meet their responsibilities in that regard towards their own populations.

75. The Special Rapporteur insists that economic sanctions today can often be qualified as unilateral coercive measures that undermine normal inter-State relations and the rule of law and that bear enormous humanitarian costs. The Special Rapporteur appreciates that the Special Committee on Peacekeeping Operations and the Security Council Working Group on Peacekeeping Operations consider issues pertaining to sanctions as part of their ongoing examination, entrusted by the General Assembly, of how the United Nations can improve

⁶² See, e.g., A/HRC/34/61 and A/HRC/40/52.

its ability to achieve its objectives. She feels that exchanging information could be of mutual benefit.

B. Networking cooperation with specialized agencies of the United Nations and other international organizations

76. The Special Rapporteur is interested in establishing dialogues with relevant United Nations specialized agencies and other international organizations that deal with international trade, as trade is frequently the subject of sanctions that can have a negative impact on the enjoyment of human rights.

77. The Special Rapporteur will engage with the World Trade Organization (WTO) to assess developments regarding article XXI of the General Agreement on Tariffs and Trade, which authorizes contracting parties to impose sanctions that would otherwise violate the terms of the Agreement if there is a national security reason or some other “emergency in international relations”. Until recently, the sanctioning State was generally considered to be the sole judge of what constituted a justifiable action in line with article XXI, thereby leaving this article open to potential abuse. In 2019, however, a dispute settlement panel determined that WTO had jurisdiction to decide on related matters.

78. The Special Rapporteur intends to exchange information with the United Nations Conference on Trade and Development, UNDP, the regional economic commissions and other relevant United Nations organs to improve the tracking of trade-related sanctions and their impact on human rights and to improve the general knowledge about the impact of sanctions and related policies on human rights.

79. The Special Rapporteur will initiate dialogues with the International Monetary Fund and the World Bank with respect to the human rights impact of sanctions in the financial sphere. These sanctions can affect human rights by affecting trade and development, including when used to combat financial crimes. The Special Rapporteur will also seek opportunities to cooperate with the Financial Action Task Force, which issues guidance and maintains a blacklist of States that are not doing enough to control the use of funds in financing terrorism and money-laundering. The Organization for Economic Cooperation and Development is also a candidate for cooperation given that it carries out studies and analyses on sanctions but does not generally consider their human rights impact.

80. Given that unilateral sanctions affect the fundamental human rights of those who are directly or indirectly targeted by them, the Special Rapporteur deems it important to develop cooperation with the United Nations organs concerned with the right to adequate food and nutrition in collaboration with the Special Rapporteur on the right to food. In particular, the Special Rapporteur would like to cooperate the Food and Agriculture Organization of the United Nations and the World Food Programme, as they have identified sanctions as contributing to food insecurity and as having a negative impact on the right to adequate food and nutrition. The Committee on World Food Security formulates policy recommendations regarding food security and nutrition, and the Special Rapporteur considers that the role of sanctions with respect to these issues offers opportunities to cooperate. The mandate of the United Nations System Standing Commission on Nutrition is to maximize policy coherence among United Nations agencies and explore new and emerging nutrition-related issues, and the Special Rapporteur believes that gathering its input regarding sanctions and their human rights impact could be useful.

81. The Special Rapporteur also considers it a priority to establish a dialogue with the World Health Organization regarding sanctions that can impede the ability of targeted States to obtain foreign medicines and medical equipment that may be necessary to ensure the right to health in situations that can range from local disease outbreaks to pandemics, as well as during non-crisis periods.

82. As mentioned above, the Special Rapporteur is cognizant that refugee flows and migrations can be intensified by sanctions against the countries that the migrants or refugees are fleeing, as has occurred recently when millions of Venezuelans fled to Colombia and the hundreds of thousands of Afghans returned to Afghanistan from the

Islamic Republic of Iran. Consequently, she intends to develop cooperation with Office of the United Nations High Commissioner for Refugees and IOM to focus on improving knowledge about the impact of sanctions on the human rights of migrants and refugees.

83. The expanded use of information and communication technologies as the grounds, means and mechanisms leading to the application of unilateral sanctions encourages the Special Rapporteur to engage with the International Telecommunication Union (ITU) and UPU, as their sphere of work increasingly encompasses issues in which sanctions and other coercive measures affect human rights. Specifically, ITU has become more involved in matters relating to the governance of technologies that it had traditionally handled only at a technical level, while UPU is drawn into issues involving sanctions that disrupt the orderly functioning of the global postal system.

84. By analogy, the Special Rapporteur believes that unilateral sanctions can have a negative impact on international research, the development of knowledge, access to information and the rights to education and freedom of expression. The Special Rapporteur deems that cooperation with the United Nations Educational, Scientific and Cultural Organization is desirable with respect to clarifying this impact and developing guidance for engaging in academic endeavours in the context of sanctions.

C. Networking cooperation with regional actors

85. Regional organizations play an important role in fostering cooperation between their member States and in protecting human rights. The Special Rapporteur plans to maintain and build on the valuable work of her predecessor in developing contacts and establishing an ongoing dialogue with European Union officials, as well as with the European Court of Justice, which is periodically called upon to judge the legality of United Nations, European Union and United States sanctions, and other relevant organs. The previous Special Rapporteur has noted concerns among European officials that European Union unilateral sanctions may at times adversely affect human rights or result in extraterritorial effects.⁶³

86. The Special Rapporteur believes it is important to develop a cooperative relationship with the Council of Europe, in view of its interaction with States with respect to their human rights activities, and with the European Court of Human Rights, which periodically rules on the legality of the implementation of United Nations and other unilateral sanctions applied by States.

87. The Special Rapporteur plans to establish ongoing dialogues with other regional actors that sometimes impose sanctions against States and/or individuals for violating norms of conduct embodied in the organizations' charters or other documents, with the aim of ensuring that human rights are not negatively affected. Among the relevant organizations are the League of Arab States, the African Union and the Organization of American States.

VI. Other projected activities of the Special Rapporteur

A. Individual communications

88. It has been repeatedly recognized by the Human Rights Council and the General Assembly that States should behave in accordance with international law, including human rights, refugee and humanitarian standards. If they do not, their activities could be qualified as unilateral coercive measures. The rights of individuals can only be effectively protected in the presence of effective remedies. Unilateral sanctions have enormous humanitarian effects on the population in general, as well as its individual members.

89. The Special Rapporteur reaffirms her assurance of the importance of communications with direct and indirect victims of unilateral coercive measures and civil society actors concerning individual cases, general patterns and trends of human rights

⁶³ A/HRC/39/54/Add.1, para. 45.

violations, cases affecting a particular group or community, and the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

B. Cooperation with civil society

90. The Special Rapporteur believes that cooperation with civil society should not be limited to complaint procedures. Cooperation with relevant non-governmental organizations is a valuable means of obtaining up-to-date information about emerging and evolving human rights issues arising from the imposition of sanctions. Cooperation with large non-governmental organizations that operate internationally, address the range of human rights and also carry out research (Amnesty International, Human Rights Watch etc.) can be particularly useful, while cooperation on specific human rights issues affected by coercive measures can be developed with organizations that focus on those issues.

91. The Special Rapporteur notes the importance of the work done by academic institutions in terms of monitoring, researching and developing the legal understanding of the problem of sanctions and unilateral coercive measures and the effects of sanctions on the enjoyment of human rights. This includes not only academic work but also sanctions registries. Research on sanctions by scholars at Kiel University and Konstanz University of Applied Sciences in Germany and Drexel University in the United States,⁶⁴ for example, has led to the creation of databases that vary by types of sanction and time periods studied. Other databases, such as the targeted sanctions consortium database of the Graduate Institute of Geneva, are projects of the institutions themselves.⁶⁵ The Special Rapporteur welcomes cooperation with scholarly institutions, research groups and individual experts as part of civil society and believes that academics can play an important role in monitoring the impact on human rights of unilateral sanctions, identifying and interpreting the international laws applicable to their use and establishing the sanctions reference tool referred to below.

C. Sanctions reference tool

92. The current situation is exacerbated by the complexity of the subject, the multitude of targets and types of sanctions and the complexity, opaqueness and confusing character of existing legislation. The absence of a comprehensive registry of sanctions adds to the challenge. Both international organizations and States maintain registries of sanctions imposed by them (see, e.g., the European Union sanctions map, the United States sanctions list and the United Kingdom sanctions guidance), which are often not easy to navigate.⁶⁶ Some databases have been established and maintained by scholars (see, e.g., the targeted sanctions initiative of the Graduate Institute of Geneva) but none of these is official. As a result, both international and national companies quite often have to pay risk assessment companies (see, e.g., LexisNexis Risk Solutions, the Payoneer Blog and the Association of Certified Sanctions Specialists). This approach prevents individuals and companies of the targeting, targeted and third States from being involved in the interaction. In particular, it has been reported that foreign companies refuse to deal with Syrian banks even if they are not on a list of sanctioned entities.

93. The absence of a comprehensive sanctions registry is in part due to the lack of an international legal obligation for States to be transparent about their sanctions or, by extension, about enforcement processes and penalties. One result is that it is unclear at times whether a Government's announcement or threat of sanctions reflects actual legislation or regulations or is political rhetoric, in which case the latter may have the effect

⁶⁴ Gabriel Felbermayr and others, "The Global Sanctions Data Base", 14 October 2019.

⁶⁵ See <https://graduateinstitute.ch/research-centres/global-governance-centre/targeted-sanctions-initiative>.

⁶⁶ See www.sanctionsmap.eu/#/main; <https://sanctionssearch.ofac.treas.gov/>; www.gov.uk/guidance/uk-sanctions.

of a true sanction. While an official international registry of sanctions is desirable for global compliance and analysis, for example of a sanction's legality, it would require broad-based agreement and cooperation, including from States that may initially resist participation. To guarantee transparency and reliable statistics, the Special Rapporteur intends to establish, under the auspices of the mandate, a sanctions reference tool, to be developed as an integrated system of individual sanctions databases of States and international organizations, official statistics and other sources of official data without any prejudice to the legality of unilateral measures. Due to the complexity and controversy of the problem, the Special Rapporteur believes that the only way to protect human rights affected by unilateral sanctions is to take a systematic approach.

D. Guidance and recommendations for developing national and international laws

94. The Special Rapporteur believes that it is important, in fulfilling her mandate, to elaborate draft guidelines on the ways, means and mechanisms to prevent and minimize the negative impact of unilateral coercive measures, in particular on human rights. The first step in this regard has already been taken by the Special Rapporteur in the context of the COVID-19 global health crisis, as she has urged States to take steps to increase cooperation, solidarity and consensus to save lives and leave no one behind in the time of emergency.

95. The Special Rapporteur also believes that it is important to periodically review the development of national legislation regulating the imposition and implementation of sanctions, taking into account that unilateral activities and legislation are behind the majority of the aspects discussed above. The development of appropriate recommendations is also viewed by the Special Rapporteur as an efficient means to build consensus among States.

96. For these purposes, the Special Rapporteur will continue to carry out country visits and engage in cooperation, offering her expertise to Governments and all relevant actors, including United Nations bodies, specialized agencies and programmes, non-governmental organizations, regional and subregional international institutions and the victims of unilateral coercive measures.

E. Follow-up and report on the implementation of Human Rights Council and General Assembly resolutions related to the mandate

97. The Special Rapporteur considers that, as a priority, an overall review should be carried out of the activities of relevant United Nations bodies and mechanisms, including the Office of the United Nations High Commissioner for Human Rights, the human rights treaty bodies, the universal periodic review and the special procedures of the Human Rights Council. The Special Rapporteur invites them to pay attention, within the framework of their mandates, to the adverse impact and consequences of unilateral sanctions on the situation of persons whose rights have been violated by the application of such sanctions and to promote accountability. In that regard, she will cooperate with and draw the attention of the relevant United Nations bodies and mechanisms to situations and cases – through all available communications tools, including letters containing information of allegations and urgent appeals – and request them to respond to and provide details of the steps taken to implement the Human Rights Council and General Assembly resolutions related to the mandate. The Special Rapporteur will then follow up on and report to the Council and the Assembly.

VII. Conclusions and recommendations

A. Conclusions

98. In conclusion, the Special Rapporteur recognizes that her mandate starts at a very challenging time when the very notion, grounds, purposes, targets, subjects, mechanisms and means of unilateral sanctions are drastically changing and expanding in the absence of consensus about their application and relevant legal grounds. The global health crisis created by COVID-19 has revealed the depth of the problem and demonstrated clearly that unilateral coercive measures may be deadly, especially for women, children, the elderly and other vulnerable categories of the population.

99. An analysis of the situation based on the submissions received from States and other relevant information demonstrates that, despite the repeated resolutions of the Human Rights Council, the General Assembly and the Security Council, States and international organizations are applying sanctions without or beyond the authorization of the Security Council to States, non-State entities and individuals.

100. The world community should undoubtedly have mechanisms to react to mass gross violations of human rights and to punish perpetrators. States are free to apply means of pressure that do not constitute violations of international law, or the illegality of which is excluded under international law, in particular, in the course of countermeasures taken in response to violations of international law committed against it or in response to violations of *erga omnes* obligations as formulated by the International Court of Justice. Taking such countermeasures should not, however, result in the arbitrary application of unilateral sanctions.

101. Therefore, the Special Rapporteur underscores that unilateral coercive measures and unilateral sanctions are interdependent. All unilateral coercive measures are unilateral sanctions but not all unilateral sanctions can be qualified as the unilateral coercive measures. Drafting a definition of unilateral coercive measures is important to establish a legal framework; such a definition will thus be an obligatory element of the declaration on unilateral coercive measures and the rule of law.

102. The absence of cooperation between States on the issue of unilateral coercive measures and the absence of clear, consistently used terminology means that there is an enormous possibility for abuse. The increasing number of sanctions applied by States and international organizations testifies to the necessity to restore the status of the United Nations as the centralized system of control over the use of any enforcement measure taken in accordance with the Charter of the United Nations and fundamental principles of international law.

103. All sanctions without or beyond the authorization of the Security Council can only be applied if they are in accordance with the principles of legality, legitimacy, necessity and proportionality and if due account is taken of the international obligations of States, especially in the sphere of human rights law, refugee law and humanitarian law. As the COVID-19 pandemic has demonstrated, no “high values” could justify the violation of fundamental human rights, including the right to life, the right to health and the right to food, especially in respect of those whose rights unilateral sanctions seek to promote.

104. Given the above-mentioned developments and challenges in the application of unilateral sanctions and the increasing number of people affected by such sanctions, the world community must take proportionate responses to guarantee that human rights are observed. The current situation clearly demonstrates that the tasks, the spheres of involvement and the mechanisms for the fulfilment of the mandate have expanded accordingly.

B. Recommendations

105. All States and international organizations should work together to guarantee that human rights are not violated by unilateral sanctions. Any progress in the area can only be achieved if actions taken are based on the principles of consensus, solidarity, observance of the rule of law, legitimacy, necessity, proportionality and protection of human rights, especially the rights of women, children, the elderly and other vulnerable categories of the population. No double standards can ever be applied.

106. All national legislation, policies and practices on the introduction and implementation of unilateral sanctions should reflect the principles of legality, legitimacy, necessity, proportionality and protection of human rights, especially the rights of women, children, the elderly and other vulnerable categories of the population. Laws, policies and practices should be precise, clear and transparent to avoid mistaken identification, confusion about the legal regime or mechanisms of humanitarian exemptions or overcompliance.

107. Regardless of the grounds and purposes for introducing unilateral sanctions, humanitarian concerns should always be taken into account. Sanctions, even when implemented for legitimate purposes, must comply with human rights standards, protect the fundamental rights to life, liberty and personal security, to due process and the presumption of innocence, and to freedom from suffering, as well as essential core economic, social and cultural rights, and include relevant humanitarian exemptions and procedural safeguards.

108. The United Nations should exercise full control over the legality of unilateral measures and pay special attention to the expanding use of unilateral measures, which do not formally constitute sanctions against States but the cumulative effect of which is equivalent to or at least compatible with that of comprehensive sanctions.

109. All States and international organizations should ensure that the basic needs of the population are met, including in times of emergency, irrespective of the nature of the emergency. Under no circumstances should trade in humanitarian goods and commodities, such as medical equipment, its component parts, software, medicines, protective kits and food, be subject to any form of direct or indirect unilateral sanction. Accordingly, any impediment to such trade, including impediments to financial transactions, the transfer of currencies or credit documents and transportation, should be removed.

110. States and international organizations are urged to review and minimize the whole scope of unilateral sanctions in full compliance with obligations arising from the Charter of the United Nations, international humanitarian law and international human rights law, as well as other international obligations, to guarantee that the rule of law is observed in the international arena and to enable sanctioned States to recover economically and to guarantee the well-being of their people in the aftermath of the COVID-19 pandemic.