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**Поощрение и защита всех прав человека,
гражданских, политических, экономических,
социальных и культурных прав,
включая право на развитие**

Посещение Китая

**Доклад Специального докладчика по вопросу о негативном
воздействии односторонних принудительных мер
на осуществление прав человека Елены Довгань* ****

Резюме

Специальный докладчик по вопросу о негативном воздействии односторонних принудительных мер на осуществление прав человека официально посетила Китай с 6 по 17 мая 2024 года для изучения воздействия односторонних санкций на осуществление прав человека в стране, включая право людей на развитие. В настоящем докладе Специальный докладчик делает вывод о том, что санкции, вторичные санкции и чрезмерное соблюдение санкций приводят к сбоям в экономике с более широкими социально-экономическими последствиями и негативному воздействию на права человека в стране. Она рассматривает потенциальные негативные международные последствия давления и ограничений, вызванных санкциями в отношении китайских граждан, организаций и предприятий. Специальный докладчик также обсуждает ответные меры Китая на односторонние санкции, в частности разработку соответствующей правовой базы и меры по поддержке физических и юридических лиц, ставших объектом санкций, в рамках судебных разбирательств, связанных с ними. Она рекомендует отменить односторонние санкции, чтобы избежать политики снижения рисков и чрезмерного соблюдения санкций в соответствии с международными правовыми стандартами и правилами должной осмотрительности. Она призывает государства и международное сообщество обеспечить, чтобы меры, принимаемые по соображениям национальной безопасности или экономического развития и торговли, были совместимы с обязательствами государств по международному праву, включая международное

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право прав человека, и чтобы в вопросах, связанных с санкциями, всегда соблюдались и защищались юридические права и надлежащая правовая процедура.

Приложение

Доклад Специального докладчика по вопросу о негативном воздействии односторонних принудительных мер на осуществление прав человека Елены Довгань о ее посещении Китая

I. Introduction

1. The Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, visited China from 6 to 17 May 2024 at the invitation of the Government. On 17 May, she presented her preliminary observations to the Government, then attended a press conference.¹

2. She met with government representatives and their teams, including representatives of the Ministry of Foreign Affairs, the Ministry of Human Resources and Social Security, the Ministry of Commerce, the Ministry of Education, the National Ethnic Affairs Commission, the United Front Work Department of the Central Committee of the Communist Party of China, the Legislative Affairs Commission of the National People's Congress, the Ministry of Justice, the Ministry of Industry and Information Technology, the Ministry of Finance, the National Energy Administration and the Supreme People's Court. In addition to the capital, Beijing, the Special Rapporteur visited the Xinjiang Uighur Autonomous Region – in particular Urumqi, Shihezi, Changji and Hotan – and the city of Shenzhen, where she met with local government representatives.

3. She met with civil society organizations and businesses working in various areas and sectors, associations, and research institutions and academics. She also held consultations with representatives from the United Nations country team, and members of the diplomatic community in Beijing.

4. Before the visit, the Special Rapporteur issued an open call for contributions from relevant stakeholders,² and she received additional information from various stakeholders after the visit. She extends her gratitude to all her interlocutors who have generously offered their time, information and experiences to help her gather first-hand information and understand the impact of unilateral sanctions and overcompliance on the enjoyment of human rights in China and beyond.

5. The Special Rapporteur commends the Government of China, in particular the Ministry of Foreign Affairs, for the transparent and constructive manner in which it coordinated and facilitated the visit, and for its responsiveness in providing additional information and data during and after the visit.

II. Context

6. Since the end of the Second World War, amid the cold war and the shifting international relations and security contexts, there have been several periods of enforcement of unilateral coercive measures against China by the United States of America and a number of European countries, which took the form of arms-trade embargoes and export controls on certain categories of goods.

7. The current situation with regard to such measures has been shaped mainly since 2017 with the exertion by the United States of mounting pressure on Chinese technological companies, the imposition of export controls and the rising numbers of Chinese nationals, entities and businesses included in sanctions lists. These measures have been further

¹ See <https://www.ohchr.org/en/press-releases/2024/05/china-un-expert-says-unilateral-sanctions-must-not-be-used-foreign-policy>.

² See <https://www.ohchr.org/en/calls-for-input/2024/call-input-visit-peoples-republic-china>.

expanded more recently to include sanctions and restrictions of the type imposed by the United States under the Global Magnitsky Sanctions Programme, targeting Chinese officials, entrepreneurs, businesses and other entities related to the Xinjiang Uighur Autonomous Region and Hong Kong, China. During this period, Chinese nationals, entities and businesses have also been targeted for alleged circumvention of unilateral sanctions regimes and restrictions that have been imposed on third countries.

8. With the adoption in August 2018 of the National Defense Authorization Act for Fiscal Year 2019, the United States imposed bans on the importation and use of technology equipment produced by certain Chinese technological companies and China-based equipment manufacturers that the United States Congress had identified as posing a threat to national security. Since then, the United States Administration has undertaken unilateral action under key pieces of legislation – such as the National Emergencies Act (1976), the International Emergency Economic Powers Act (1977) and the more recent Countering America’s Adversaries through Sanctions Act (2017) – by expanding the number of Chinese nationals and entities that appear in the Specially Designated Nationals and Blocked Persons List and the Non-Specially Designated National Chinese Military-Industrial Complex Companies List of the Office of Foreign Assets Control in the United States Treasury, and in the Entity List of the Bureau of Industry and Security in the United States Department of Commerce.

9. Identification by the Office of Foreign Assets Control as a “specially designated national” or “non-specially designated national” results in comprehensive financial restrictions, through the blocking of financial transactions with and by any designated individual or entity. In a significant number of cases involving China, restrictions in the form of secondary sanctions are imposed on designated Chinese nationals and entities because of their alleged violation or circumvention of primary sanctions against third countries, mainly the Russian Federation, the Democratic People’s Republic of Korea and the Islamic Republic of Iran. The remaining cases concern primary sanctions against Chinese nationals or entities imposed on basis of the Global Magnitsky Human Rights Accountability Act (2016), the Uyghur Human Rights Policy Act of 2020, the Uyghur Forced Labor Prevention Act (2021), the Hong Kong Human Rights and Democracy Act of 2019 and the Hong Kong Autonomy Act (2020), among others.

10. Designation by the Office of Foreign Assets Control for inclusion in the Non-Specially Designated National Chinese Military-Industrial Complex Companies is done on the basis of Executive Order 13959, issued in November 2020, and Executive Order 14032, issued in June 2021, by which relevant provisions of the National Emergencies Act and the International Emergency Economic Powers Act were implemented in response to the perceived threat posed by the military and intelligence activities of China. The executive orders prohibit the provision of financial support, including through transactions in publicly traded securities and derivatives thereof, to any individual or entity that has been determined to be a “Communist Chinese military company”; any individual or entity determined “to operate or have operated in the defense and related materiel sector” of the economy of China; and any individual or entity determined “to own or control, or to be owned or controlled by, directly or indirectly”, such an individual or entity.³

11. More than 600 individuals and entities appear in the Specially Designated Nationals and Blocked Persons List and the Non-Specially Designated National Chinese Military-Industrial Complex Companies List, covering various sectors, including technology, construction, trade, aeronautics and aerospace, energy, banks and financial services, shipping and shipbuilding, and telecommunications.

12. The Entity List of the Bureau of Industry and Security includes foreign entities – including, but not limited to, businesses, research and academic institutions and government entities – that are perceived to be a national security concern, which are then subjected to export restrictions and licensing requirements for certain items under the Export

³ Executive Order 13959, on addressing the threat from securities investments that finance Communist Chinese military companies, 12 November 2020 (as amended by Executive Order 13974, 13 January 2021), sect. 1 (a); and Executive Order 14032, on addressing the threat from securities investments that finance certain companies of the People’s Republic of China, 3 June 2021, sect. 1 (a).

Administration Regulations. In some cases, such licensing requirements are required even if the items in question have been entirely produced outside the United States, containing no United States content, by non-United States individuals or entities, and using foreign-made equipment and technology, if the equipment or technology are subject to the Export Administration Regulations.⁴

13. The Bureau of Industry and Security maintains several other lists, including the Unverified List, containing entities whose end users the United States cannot verify, the Denied Persons List, containing entities perceived as a threat to national security, and the Military End User List. These lists, together with the Entity List, include a total of 754 Chinese entities in the technology, microelectronics, precision machinery, aeronautic and aerospace sectors, and several renowned Chinese research and scientific institutions.

14. In December 2022, on the basis of Executive Order 13818 of 2017,⁵ by which relevant sanctions-related legislation was implemented, the United States sanctioned – and added to the list of specially designated persons – several Chinese nationals and businesses, alleging that they were engaged in illegal, unreported and unregulated fishing, human rights abuse and violation of fundamental labour and environmental standards aboard certain Chinese distant-water fishing vessels.⁶

15. In May 2024, the Bureau of Industry and Security added 37 Chinese companies in its Entity List on grounds of national security for allegedly having procured United States-made components to produce advanced military equipment, including drones, and enable further development of the quantum and aerospace programmes of China.⁷

16. Restrictive measures imposed by the European Union against China have been relatively limited in scope, primarily targeting primarily certain individuals in relation to Xinjiang under the European Union Global Human Rights Sanctions Regime. However, since 2023, following the outbreak of the conflict in Ukraine, the European Union has imposed sanctions on certain Chinese companies, including for their alleged support for the military of the Russian Federation. With the most recent sanctions package against the Russian Federation, adopted in February 2024, the European Union has included four Chinese companies in its sanctions list and imposed on them export restrictions on dual-use goods and technology.⁸

17. Under the Global Human Rights Sanctions Regulations 2020,⁹ the United Kingdom of Great Britain and Northern Ireland has sanctioned Chinese government officials and entities in relation to Xinjiang, and, in February and March 2024, decided to sanction several Chinese companies and individuals for their alleged support for the military of the Russia Federation and for alleged malicious cyber campaigns against members of Parliament and the Electoral Commission.

18. Lastly, Canada, under the Special Economic Measures (People's Republic of China) Regulations,¹⁰ has imposed sanctions on four Chinese officials and one entity in relation to Xinjiang.

⁴ See <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-744/appendix-Supplement%20No.%204%20to%20Part%20744>.

⁵ See <https://www.govinfo.gov/content/pkg/DCPD-201700923/pdf/DCPD-201700923.pdf>.

⁶ See <https://home.treasury.gov/news/press-releases/jy1154>.

⁷ See <https://www.bis.gov/press-release/commerce-adds-37-prc-entities-entity-list-enabling-prc-quantum-and-aerospace-programs>.

⁸ See https://ec.europa.eu/commission/presscorner/detail/en/ip_24_963.

⁹ See <https://www.legislation.gov.uk/uksi/2020/680/made>.

¹⁰ See <https://laws.justice.gc.ca/eng/regulations/SOR-2021-49/page-1.html>.

III. Impact of unilateral sanctions on the economic and human rights situation

A. General economic impact

19. China represents a particular case with regard to the impact of unilateral sanctions and the means of their enforcement, given its strong and diverse economy and its growing global economic outreach. With a nominal gross domestic product of approximately \$18 trillion, China ranks second globally and has been one of the world's fastest growing economies for the past 15 years, with significant participation and integration in the global trade and supply chains.¹¹

20. In 2023, China was the third largest partner in terms of goods exports from the European Union (8.8 per cent) and the largest partner in terms of goods imports (20.5 per cent). China is a key trade partner of the United States, and the value of exported Chinese goods has quadrupled, from \$100 billion in 2001 to more than \$400 billion in 2023. It is also the third-largest export market for the United States, with exports to China reportedly supporting more than a million jobs in the United States.¹²

21. In 2022, the human development index of China increased to 0.788, meaning that the country was in the "high human development" category and ranked 74 out of 193 countries and territories,¹³ following significant efforts and investments in the areas of infrastructure, new technologies and decarbonization. Furthermore, 800 million people have been lifted out of poverty since 1978,¹⁴ at an estimated annual rate of poverty reduction of more than 11 million between 2017 and 2022¹⁵ and with particular attention given to poverty-stricken areas, a development that has been qualified as historically unprecedented.¹⁶

22. In the context of the above-mentioned macro-level economic and development trends, sanctions-related economic, trade and other restrictions imposed against Chinese individuals and entities may not have insurmountable adverse effects or cause significant socioeconomic disruptions in the long run. However, such restrictive measures, alongside the means of their enforcement and the related overcompliance, exacerbate uncertainty and fear of engaging with Chinese entities and businesses and may lead to forced, abrupt and radical changes in specific areas and sectors, thus negatively affecting the rights and lives of the people concerned in China.

23. In her numerous interviews with businesses, the Special Rapporteur received information about a significant drop in businesses' turnovers due either to direct sanctions-induced restrictions or to the overcompliance of foreign business counterparts out of fear of secondary sanctions – civil and criminal penalties – against them. Chinese business representatives described the swift loss of the totality of their businesses' overseas markets, mainly in the United States and Canada, and the significant drop in commercial relations with European business partners.

24. In Xinjiang Uighur Autonomous Region, a region subjected to multiple unilateral sanctions and export control regimes on grounds of allegations of human rights violations, the sectors most affected include the textile industry, cotton, tomato and other agricultural

¹¹ See United Nations Development Programme (UNDP), *Human Development Report 2023/2024: Breaking the Gridlock – Reimagining Cooperation in a Polarized World* (New York, 2024).

¹² See <https://www.cfr.org/backgrounder/contentious-us-china-trade-relationship>.

¹³ See UNDP, *Human Development Report 2023/2024*.

¹⁴ The base year for rural poverty standards.

¹⁵ Rong Ran and others, "Does China's poverty alleviation policy improve the quality of the ecological environment in poverty-stricken areas?", *Frontiers in Environmental Science*, vol. 10 (December 2022). According to information from the Government, between 2015 and 2020 all 832 poverty-stricken counties were lifted out of poverty.

¹⁶ World Bank Group and Development Research Center of the State Council, China, *Four Decades of Poverty Reduction in China: Drivers, Insights for the World, and the Way Ahead* (Washington, D.C., World Bank Group, 2022).

products, and new technologies and energies, such as polycrystalline silicon and other material for the photovoltaic industry.

25. It is worth noting that, according to reports, the few polycrystalline-silicon businesses in China that are included by the United States in its sanctions lists provided almost half the global supply of polycrystalline silicon used for solar energy, while cotton production in Xinjiang, also subject to sanctions, represents 90 per cent of domestic and more than 20 per cent of overall global production. The same global market share, 20 per cent, applies to the production in Xinjiang of tomatoes and tomato products, a sector also targeted by unilateral sanctions regimes, mainly by the United States.

26. Furthermore, the Special Rapporteur received information about the main three challenges that Chinese businesses faced owing to their inclusion in sanctions lists and the enforcement of sanctions-related restrictions, namely impediments in the procurement of foreign-produced high-tech supplies, restrictions in payments and access to foreign funding opportunities, and discontinuation or suspension of joint research and development programmes with foreign business counterparts, with an adverse effect on business development. In particular, her meetings with Chinese technology companies revealed concerns about the export controls enforced by the United States on advanced technological equipment, including semiconductors and microchips, mainly on grounds of national security and national economic priorities, and about the pressures on non-United States technology companies to follow suit.¹⁷

27. The Special Rapporteur was made aware of the extent to which emerging technologies and the development of comprehensive new technology ecosystems have an impact on peoples' lives. Decisions to impose sanctions and financial and technological restrictions, therefore, not only affect the technological companies and their workers, but may also cause severe disruption with potential negative real-life consequences for people both inside and outside China. Such people, including in the sanctioning States, are consequently prevented from benefiting from the results of scientific progress, thus impeding the achievement of Sustainable Development Goals 9, on building resilient infrastructure, promoting inclusive and sustainable industrialization and fostering innovation, and 11, on making cities inclusive, safe, resilient and sustainable.

28. So-called "targeted sanctions" are often imposed on large businesses with a direct effect on their economic performance and the socioeconomic situation of their workers. However, such measures may not prevent the occurrence of negative spillover effects, which may stigmatize and spotlight whole economic sectors, with broader negative socioeconomic implications. In the specific case of Xinjiang, it has been reported that owing to the risk of sanctions and commodity seizures for having, or being suspected of having, any nexus with Xinjiang, not only foreign but also Chinese businesses from other regions of the country hesitate to participate in supply chains that also involve businesses from Xinjiang at any stage, even if those businesses are not the target per se of sanctions.

29. Complex sanctions regulations and serious difficulties in navigating them – reported even by large corporations with significant financial and human resources – constitute one aspect that explains the above-mentioned business conduct, which falls within the broader category of "overcompliance". The other and more worrying aspect is that such unilateral coercive measures are important triggers in assessments by businesses of reputational risk, often resulting in excessive de-risking: instead of undertaking diligent and precise mapping of the sanctions regimes, the businesses opt to suspend commercial relations and block transactions based on broad geographic criteria and economic sectors, rather than on the specific type or actual scope of sanctions-related restrictions.

30. Lastly, the Special Rapporteur was informed about the adverse impact of unilateral sanctions imposed on other countries, which have resulted in economic and financial disruptions – such as difficulties in processing payments in United States dollars – between businesses in such countries and their Chinese counterparts, thus exacerbating the feeling of fear and uncertainty.

¹⁷ See <https://cepa.org/article/europe-must-beef-up-china-intelligence-or-accept-us-bullying/>.

B. Employment and social security

31. For the past 10 years, the average unemployment rate in China has been approximately 5 per cent, with 13 million jobs added on a yearly basis in various economic sectors. According to government figures from urban surveys, the unemployment rate has remained stable since 2018, and approximately 298 million foreign migrant workers are employed in Chinese businesses.¹⁸ In 2024, China aims to create more than 12 million new urban jobs and maintain its survey-based urban unemployment rate at approximately 5.5 per cent.¹⁹ Youth unemployment is approximately 14.5 per cent. However, with an estimated 12 million new graduates due to enter the job market in 2024, it cannot be ruled out that youth unemployment rates may rise again.²⁰

32. In 2023, the total workforce in China amounted to approximately 740 million,²¹ representing more than a quarter of the global workforce for the same year.²² The workforce in the renewable energy sector in China amounted to 4.5 million, representing 41 per cent of the global workforce in the sector. In particular, 51 per cent of the global workforce in the photovoltaic industry were employed in China, in a sector that has been targeted by unilateral sanctions.²³

33. Drawing from this data and considering the size of the Chinese economy and labour market, it may be surmised that unilateral sanctions and other restrictions imposed on Chinese entities and economic sectors appear not to have a serious adverse impact on employment at the macro level.

34. However, the sanctions-induced pressures on specific economic sectors undoubtedly affect the human rights and lives of the general population, independently of the grounds on which such pressures are exerted. Radical changes in the economic activities of enterprises with the rapid loss of global markets, and prior to any business readjustment or adaptation, have reportedly resulted in layoffs, adversely affecting people's right to work and entailing serious socioeconomic implications.

35. The Special Rapporteur received information from businesses that employed thousands of people and that were forced to undergo significant cuts in their workforce over a short period of time, in some cases of more than 50 per cent, while small and medium-sized enterprises filed for bankruptcy as a result of the abrupt loss of global markets. She also received information about the discontinuation of contracts with qualified foreign personnel, who, owing to financial constraints and budget cuts, were forced to leave the country, with the consequent adverse impact on their career development and lives.

36. She was informed about the situation in the Xinjiang Uighur Autonomous Region, including the multifaceted restrictions imposed on the basis of allegations of human rights violations, including forced labour, and the inclusion by the United States of businesses and entities – and those who maintain economic or commercial relations with them – in its sanctions lists. It is reported that since 2022, United States Customs and Border Protection has reviewed over 6,000 shipments valued at more than \$2 billion as a result of Xinjiang-related sanctions.²⁴ Other reports refer to the seizure of more than a thousand shipments of imported Chinese goods, including high-tech items.²⁵ The Special Rapporteur met with representatives of a number of businesses in the region, including companies in the area of

¹⁸ Figures provided by the Ministry of Human Resources and Social Security.

¹⁹ See <https://www.reuters.com/world/china/china-says-overall-pressure-employment-yet-ease-2024-03-09/> and <https://english.news.cn/20240318/815b1079e30c4bac8d8ecb0a3621843a/c.html>.

²⁰ See <https://www.globaltimes.cn/page/202405/1312760.shtml>.

²¹ Figure provided by the Ministry of Human Resources and Social Security.

²² According to statistics from the World Bank, the global workforce for 2023 amounted to more than 3.6 billion. See <https://data.worldbank.org/indicator/SL.TLF.TOTL.IN?locations=CN>.

²³ Information provided by the National Energy Administration.

²⁴ See <https://www.reuters.com/world/us-bars-imports-three-more-chinese-companies-over-uyghur-forced-labor-2023-12-08/>.

²⁵ See <https://www.reuters.com/world/china/exclusive-us-blocks-more-than-1000-solar-shipments-over-chinese-slave-labor-2022-11-11/>.

advanced technology and new energy – in particular those involved in the polycrystalline silicon and photovoltaic industry – that the United States has included in its sanctions lists.

37. It was reported that the inclusion by the United States in its sanctions lists of the Xinjiang Production and Construction Corps, on human rights grounds, has had an adverse impact on the socioeconomic situation in the whole region, given that this entity reportedly manages tens of thousands of enterprises in different sectors.

38. The inclusion by the United States of subsidiaries of larger business groups in sanctions lists has adversely affected the whole network of businesses belonging to these groups, both inside and outside China, thus having a cross-border and international spillover effect on the lives of people in other countries and regions. For instance, the inclusion of the Xinjiang branch of a large textile group caused broad reputational damage to the whole group, with consequent financial implications, resulting in the closure of businesses and factories located in several countries in South and South-East Asia,²⁶ and thus affecting the employment situation in those countries.

39. The high rate of integration of Chinese businesses, including in Xinjiang, in global supply chains may therefore explain the potential adverse international and cross-border spillover effects on the lives of people outside China that result from the inclusion by the United States of such businesses in sanctions lists. This is particularly the case in the current context of increasing pressure by the United States to investigate and identify any nexus with Xinjiang-based entities and to impose sanctions on all foreign or Chinese individuals or entities that have such a nexus.

40. While certain businesses in advanced technology and those involved in new energy sources may have managed to absorb the sanctions-induced adverse impact, others have faced significant challenges in terms of readjusting and recovering from the resulting financial losses and shortages of human resources. Those most likely to be affected are persons in vulnerable situations, including those in informal employment, older workers with fewer skills and less productive capacity, and women employed in certain sectors of economy, including agriculture.

41. Furthermore, since the social security system in China is contributions-based, any employment-related adverse effects of sanctions will ultimately affect the payment of contributions by the persons concerned, with a consequent effect on social security entitlements.

42. The Government informed the Special Rapporteur about its efforts to mitigate the short- and medium-term socioeconomic disruptions resulting from the sanctions-related restrictions on Chinese businesses and economic sectors, including programmes of business incentives to boost domestic research and development capabilities, and initiatives to strengthen national and regional supply chain networks, increase investment in cross-sector professional mobility, increase subsidies for businesses and start-ups and support the payment of social security premiums for all those in vulnerable or marginalized situations.

C. Education and academic and scientific cooperation

43. Discussions with academics and scholars highlighted a certain impact on the right to education, and on international cooperation in the sphere of academic and scientific research. Currently, more than a dozen Chinese academic and research institutions have been included by the United States in its sanctions lists, the majority of them in the Entity List and the Unverified List, both maintained by the Bureau of Industry and Security. Such measures are mainly motivated by national security concerns of the United States. In China, they predominantly target institutions focusing on advanced scientific research, including in the areas of microelectronics, supercomputing and artificial intelligence, and prominent academic institutions, such as the Beijing Institute of Technology, Nanchang University, Nanjing University of Science and Technology and Guangdong University of Technology, to name a few. The Special Rapporteur has learned that certain academic institutions in the

²⁶ Interview with the company concerned.

United States maintain web pages listing all foreign academic and research institutions that are sanctioned by the Government and are deemed “restricted” for any type of cooperation.²⁷

44. The Special Rapporteur was informed that besides the direct effects on the institutions, their staff and their students, there have been broader negative spillover effects on the Chinese academic and scientific community, including adverse reputational and operational consequences affecting the academic and professional careers of Chinese scholars, researchers and students affiliated with the institutions in question and with any Chinese institutions based in the United States, the United Kingdom and the European Union.

45. In particular, the Special Rapporteur was informed about the suspension of joint research programmes between Chinese and foreign academic institutions and research centres, the interruption of academic partnerships and student exchange and scholarship programmes,²⁸ the challenges faced by Chinese students to enrol or pursue their studies in foreign universities, and the overall growing stigmatization of Chinese academics, students and faculties in the current global context of heightened tensions and security concerns. Such practices have been reportedly extended to a broad range of scientific disciplines not strictly limited to those potentially linked to the spheres of Chinese defence, security or advanced technology, often resulting in arbitrary assessment of Chinese students’ and scholars’ general background as a criterion for collaboration, refusal of enrolment or even refusal to issue visas, lengthy interrogations and searches, and the cancellation of visas already granted.²⁹

46. In May 2020, under Proclamation 10043, the entry into the United States of certain Chinese nationals pursuant to an F or J visa to study or conduct research in the United States was suspended and limited, on the basis of national security concerns.³⁰ Since then, it has been reported that a number of academic exchanges and programmes between Chinese and United States academic institutions have been discontinued and the educational aspirations of a number of Chinese students have been adversely affected, with consequent negative effects on academic and scientific cooperation between the two countries. Similar trends have been reported with regard to academic and scientific cooperation between Chinese and European academic and research institutions.

47. In addition, there have been reports of negative spillover effects and discriminatory practices against Chinese nationals holding other visa types, including those with extraordinary ability in science, the arts, education, business or athletics, those with highly specialized knowledge and those participating in international cultural exchanges.³¹ It has been also reported that large United States-based businesses may have also faced pressure to avoid hiring Chinese graduates as interns by complying with the concerns stemming from Proclamation 10043.

48. Previously, in 2019, the United States Federal Bureau of Investigation had issued a brief entitled “China: the risk to academia”. In that document, while recognizing the valuable contribution of the vast majority of the more than 1.4 million international students and professors participating in the “open and collaborative academic environment” in the United States, the Bureau raised concerns that some foreign actors, particularly foreign State adversaries, sought to illicitly or illegitimately acquire United States academic research and

²⁷ See, for example, <https://researchcompliance.caltech.edu/export/restricted-party-screening/foreign-universities-sanctioned-by-the-us-government>, <https://www.brown.edu/research/foreign%20universities> and <https://research.uga.edu/export-control/resources/foreign-universities/>.

²⁸ See <https://www.federalregister.gov/documents/2020/07/17/2020-15646/the-presidents-executive-order-on-hong-kong-normalization>.

²⁹ Interviews with academics.

³⁰ See <https://www.federalregister.gov/documents/2020/06/04/2020-12217/suspension-of-entry-as-nonimmigrants-of-certain-students-and-researchers-from-the-peoples-republic>. F visas allow entry into the United States to attend universities or colleges, high schools, private elementary schools, seminaries, conservatories or other academic institutions, including language-training programmes. J visas are granted to foreign exchange visitors, including government or international visitors, interns, physicians, professors or research scholars, specialists, college or university students, students in secondary education, summer work visitors, teachers and trainees.

³¹ Submission by a civil society organization.

information to advance their scientific, economic and military development goals. The Bureau maintained that the Government of China had historically sponsored economic espionage and that China infringed intellectual property, and it openly framed some Chinese students for serving, wittingly or unwittingly, as collectors of economic, scientific, and technological intelligence from United States institutions.³²

49. Discussions with China-based foreign think tanks and research centres have revealed regressive trends with regard to the exchange of information between China, the United States and the European Union, which have serious repercussions on bilateral academic and scientific exchange and cooperation, thus negatively affecting the right of everyone to benefit from the results of academic and scientific research. They assert that this is of particular concern in an era when communication and mutual understanding are of vital importance in order to defuse existing tensions and foster international cooperation.

50. Furthermore, the inclusion by the United States of Chinese universities and research institutions in its sanctions lists has created a climate of uncertainty and fear among non-Chinese academia, and several reports have highlighted reluctance to engage in collaboration with their Chinese counterparts out of fear of being blacklisted by peers and donors, with possible serious reputational and financial implications. The Special Rapporteur notes with concern that certain academic interlocutors outside China refused to share information about changes in the policies of foreign academic institutions vis-à-vis Chinese scholars, as they had been advised not to engage with her. This appears to be a clear example of the extraterritorial impact of the enforcement of sanctions by sanctioning States on the right to education and academic freedom, exacerbating fear and overcompliance.

51. The Special Rapporteur notes with concern that such trends may not subside in the future as the mistrust and misunderstanding is passed on to new generations, compounded by unilateral decisions to discontinue funding and scholarship programmes with China, and those supported by Chinese institutions, with serious adverse effects on the enjoyment of the right to education.

52. For example, in July 2020, under Executive Order 13936, one of the most prominent United States scholarship and academic exchange programmes with China and Hong Kong, China, was suspended, among other restrictive measures.³³ Since then, there have been a few attempts, including by members of Congress, to reinstate it.³⁴ Furthermore, under the National Defense Authorization Act, the Government reportedly limits access to federal funding for United States institutions of higher education hosting Confucius Institutes, in addition to exerting pressures exerted on such institutions to sever their ties with Confucius Institutes altogether.³⁵

53. The Special Rapporteur has received information about suspension by European and United States-based academic institutions of their collaboration with students and scholars funded by the China Scholarship Council. This information can be corroborated through publicly available sources that refer to alleged concerns about possible government interference in academic and scientific research. It is to be noted that the Council grants more than 30,000 scholarships every year, both for foreign students studying in China and for Chinese students pursuing their studies in foreign academic institutions. The Council thus represents one of the most important vectors of cross-border academic and scientific collaboration, which may not only benefit the academic communities of the countries involved, but also contribute to global scientific progress in general.

³² See <https://www.fbi.gov/file-repository/china-risk-to-academia-2019.pdf>.

³³ See <https://www.federalregister.gov/documents/2020/07/17/2020-15646/the-presidents-executive-order-on-hong-kong-normalization>.

³⁴ See <https://thediplomat.com/2023/11/want-to-reset-china-us-relations-bring-back-fulbright-china/> and <https://thepienews.com/the-return-of-fulbright-exchanges-to-china-and-hong-kong/>.

³⁵ See https://basicresearch.defense.gov/Portals/61/Documents/Academic%20Research%20Security%20Page/Confucius%20Institute%20Waiver%20Program%20Guidance_3.28.2023.pdf?ver=u8kHF5hDwgV-Ofm9gBeXKQ%3D%3D.

D. Access to justice and redress

54. In her thematic and case-specific work, the Special Rapporteur has often highlighted the various challenges faced by States, entities and individuals directly or indirectly affected by unilateral sanctions in gaining access to judicial and quasi-judicial instruments with the purpose of effectively challenging and appealing against the imposition of unilateral sanctions or the means of their enforcement. Such challenges are mainly explained by the absence of a comprehensive mechanism mandated to examine and adjudicate on such cases. She has particularly stressed that in the current international system, the scope of mechanisms for protection against the adverse impact of unilateral sanctions is limited to issues pertaining to the diplomatic protection of States, through, *inter alia*, proceedings before the International Court of Justice and the submission of cases to international human rights bodies, while individual appeals are mainly dealt with by regional instruments and courts.³⁶

55. She has also stressed that unilateral primary and secondary sanctions and their enforcement often deprive targeted entities and individuals of the entire range of due process rights, including the right to a fair trial and the rights to be presumed innocent until proven guilty, to be informed promptly about the grounds of the sanctions and the evidence substantiating such grounds, to defend oneself, to have access to justice, to defend one's reputation and to receive effective remedy. She has highlighted procedural and due process challenges, and the absence of reviews of sanctions-related cases by the competent authorities of the sanctioning States or organizations.³⁷

56. Fairness of process and availability of effective review and remedy in sanctions-related matters constitute fundamental elements in ensuring the rule of law. The Special Rapporteur has raised concerns about the use of threats of imposition of unilateral sanctions and of civil and criminal penalties as a means of pressure, which ultimately undermines due process and forces the targets of such threats to comply with unilaterally imposed restrictions or fines without investing time, financial or other resources to challenge them out of fear of more significant repercussions.

57. During her visit, the Special Rapporteur received information confirming the above-mentioned challenges, including serious difficulties in appealing against the imposition of sanctions, in particular against inclusion in the lists maintained by the Office of Foreign Assets Control and the Bureau of Industry and Security of the United States. She was informed that the procedure for applying for removal from such lists is complex, costly and lengthy, and that any publicity of the case as a result of the appeal process may compound the adverse impact on the situation of the entity or individual concerned. It has been reported that only a handful of Chinese businesses have had the financial and human resources necessary to formally appeal their inclusion in the lists before the United States courts, but their cases have been pending for several years, without much hope of a positive outcome.

58. The Special Rapporteur is concerned about information that she received with regard to the issuance of protective orders banning access by plaintiffs to evidence, restrictions imposed on lawyers representing such cases in terms of communicating with and informing their clients, exorbitant fees charged to register the appeals and applications for removal and the absence of response by the competent judicial authorities. She is particularly concerned at the reported information that United States judicial authorities, in their examination of sanctions-related cases, tend to apply the principle of rebuttable presumption of an alleged wrongdoing, thus placing the burden of proof on the entity or individual concerned to rebut or disprove the alleged wrongdoing.

59. A specific case is the inclusion by United States Customs and Border Protection of a Chinese company – making silica-based products – in its Withhold Release Orders and Findings List, on the grounds of forced labour in the Xinjiang Uighur Autonomous Region. The business challenged this action, and its complaint described, *inter alia*, the failure of the United States authorities to correctly identify the location of the business, to give prior notice to the business about its inclusion in the list, to conduct any public hearing, investigation or

³⁶ See [A/HRC/45/7](#) and [A/HRC/48/59](#) and [A/HRC/48/59/Corr.1](#).

³⁷ See [A/76/174/Rev.1](#).

adjudication regarding the business and its labour practices and to give the business the opportunity to confront and address the specific factual evidence. Despite these procedural challenges and due process irregularities, the business continued its efforts to engage with the United States authorities through the Administrative Procedure Act,³⁸ by filing a petition for its removal from the list. In this context, the business appointed a third-party auditor and produced more than 10,000 pages containing thousands of documentary exhibits demonstrating that there was an absence of any nexus with Xinjiang in its supply chains and that the products did not contain materials produced using forced labour. The petition was summarily denied by Customs and Border Protection, without any indication that the submitted evidence had been reviewed and assessed, or any reference to regulations or policies to support its decision.³⁹

E. Response of China to unilateral coercive measures

60. During her visit, the Special Rapporteur received information about the Government's initiatives to respond to unilateral sanctions and other restrictive measures imposed and enforced by foreign countries on Chinese nationals and entities, and to mitigate the negative impact of unilateral sanctions on business activities and human rights. Measures cited include efforts to use legal means in international adjudication in public and private law, relevant support and guidance in such legal cases, and legal assistance at the domestic level to support businesses and individuals whose rights have been affected by unilateral sanctions and their enforcement. A number of administrative and operational measures were also cited, such as taxation holidays and subsidies for companies and individuals, professional training and reorientation programmes, and support for relocation to seek new job opportunities.

61. In the legislative sphere, the Special Rapporteur was briefed about the existing laws and regulations developed by China to protect individuals and businesses from the negative consequences of unilateral sanctions and other perceived discriminatory practices, under which these individuals and businesses are offered the opportunity to file lawsuits before the courts and the general framework of Government's response to such measures and practices is provided for, including in the form of countermeasures.

62. In September 2020, the Ministry of Commerce issued Order No. 4 of 2020, on the provisions on the Unreliable Entity List. Under article 2 of the order, the State was to establish the Unreliable Entity List System, and take measures in response to the following actions taken by a foreign entity in international economic, trade and other relevant activities: (a) actions endangering national sovereignty, security or development interests of China; or (b) actions suspending normal transactions with an enterprise, other organization or individual of China or applying discriminatory measures against an enterprise, other organization or individual of China, which would violate normal market transaction principles and cause serious damage to the legitimate rights and interests of the enterprise, other organization or individual of China. Under the order, the term "foreign entity" refers to an enterprise, other organization or individual of a foreign country.⁴⁰

63. The same order provides for the monitoring and investigation of actions taken by foreign entities. Under article 7, a decision on whether to include a foreign entity in the Unreliable Entity List would be based on consideration of factors including the following: (a) the degree of danger to national sovereignty, security or development interests of China; (b) the degree of damage to the legitimate rights and interests of enterprises, other organizations or individuals of China; and (c) its compliance with internationally accepted economic and trade rules.⁴¹

64. The inclusion of a foreign entity in the list of the Ministry of Commerce list results in specific measures being taken against the foreign entity concerned, under article 10 of the order. Such measures include restricting or prohibiting the engagement of the foreign entity

³⁸ See <https://www.justice.gov/sites/default/files/jmd/legacy/2014/05/01/act-pl79-404.pdf>.

³⁹ Submission on the case by the business concerned.

⁴⁰ See <http://english.mofcom.gov.cn/article/policyrelease/questions/202009/20200903002580.shtml>.

⁴¹ Ibid.

in China-related import or export activities, restricting or prohibiting investment in China by the foreign entity, restricting or prohibiting the entry into China of the foreign entity's relevant personnel or "means of transportation", restricting or revoking the relevant personnel's work or residence permits, and imposing a fine according to the severity of the circumstances. It is worth noting that, under article 11 of the order, provision is made for a period of time in which the foreign entity may "make rectifications", before the measures provided for in article 10 are taken.⁴²

65. In January 2021, the Ministry of Commerce issued Order No. 1 of 2021, on the rules on counteracting unjustified extraterritorial application of foreign legislation and other measures.⁴³ The order provides for the Government's response to situations where the extraterritorial application of foreign legislation and other measures, deemed to be in violation of international law and the basic principles of international relations, unjustifiably prohibits or restricts the citizens, legal persons or other organizations of China from engaging in normal economic, trade and related activities with a third State (or region) or its citizens, legal persons or other organizations (art. 2). Given its stipulated purpose, the order mainly addresses cases of the enforcement of secondary sanctions against citizens or entities of China for their engagement with third countries or regions, individuals or entities subjected to primary sanctions.

66. The same order provides for the creation of a working mechanism to assess and determine whether there exists unjustified extraterritorial application of foreign legislation and other measures, taking into consideration, under article 6, factors including the following: (a) whether international law or the basic principles of international relations are violated; (b) the potential impact on the national sovereignty, security and development interests of China; and (c) the potential impact on the legitimate rights and interests of the citizens, legal persons or other organizations of China. Under article 7, such an assessment may lead to the issuance of a prohibition order to the effect that the relevant foreign legislation and other measures are not accepted, executed or observed. Article 9 stipulates that where a person complies with foreign legislation or other measures within the scope of a prohibition order, and thus infringes upon the legitimate rights and interests of a citizen, legal person or other organization of China, the latter may institute legal proceedings in the Chinese courts and claim for compensation by the person. Similarly, where a judgment or ruling made in accordance with the foreign legislation in question causes losses to a citizen, legal person or other organization of China, the latter may institute legal proceedings and claim for compensation by the person who benefits from the judgment or ruling.⁴⁴

67. On 10 June 2021, the Standing Committee of the National People's Congress adopted the Law on Countering Foreign Sanctions, with the purpose of preserving national sovereignty, security and development interests and protecting the rights of citizens and organizations of China. Similarly to Order No. 1 of 2021 of the Ministry of Commerce, this law provides, in its article 3, for the promulgation of countermeasures in response to foreign actions that are deemed to be discriminatory and to be in violation of international law and the basic principles of international relations or interfere in the internal affairs of China.⁴⁵

68. Under article 4 of this law, the State Council may enter in a countermeasures list individuals or organizations that directly or indirectly participate in the drafting, decision-making or implementation of any discriminatory restrictive measure. Article 5 extends the scope of application, by authorizing the State Council to take countermeasures not only against the listed individuals or organizations, but also to the following: (a) the spouses and immediate relatives of listed individuals; (b) senior managers or actual controllers of listed organizations; (c) organizations in which listed individuals serve in senior management; and (d) organizations in which listed persons are the actual controllers or participate in establishment and operations. Article 13 of the law provides for the

⁴² Ibid.

⁴³ See <http://english.mofcom.gov.cn/article/policyrelease/questions/202101/20210103029708.shtml>.

⁴⁴ Ibid.

⁴⁵ See

<https://www.chinalawtranslate.com/en/counteringforeignsanctions/#:~:text=Article%201%3A%20Thi,s%20Law%20is,our%20nation's%20citizens%20and%20organizations.>

possibility of taking additional countermeasures, on the basis of other laws or other normative acts, for conduct endangering national sovereignty, security or development interests.

69. Under article 6 of the law, the State Council is authorized to take various measures against listed individuals and organizations, including denial of entry into and removal from China, seizure or freezing of property in China, and prohibition or restriction of transactions and cooperation with listed individuals and organizations.⁴⁶

70. Other provisions that refer to measures taken by China in response to unilateral coercive measures are contained in the Civil Procedure Law (2023), the Law on Judicial Immunity from Compulsory Measures concerning the Property of Foreign Central Banks (2005), the Law on Foreign Relations (2023), the Law on Foreign State Immunity (2023), the State Compensation Law (1994), the Foreign Trade Law (2004), the Foreign Investment Law (2019), the Export Control Law (2020), the Data Security Law (2021) and the Personal Information Protection Law (2021).

71. According to the information received, there are nine active cases before the Chinese courts with respect to the existing legal framework on countermeasures, on behalf of Chinese entities and businesses, and in which judgments are pending.

72. As countermeasures, the Government of China has reportedly targeted more than a hundred foreign individuals and entities since 2018, by imposing asset freezes, imports restrictions, visa bans and bans on transactions or collaboration with Chinese entities, and targeting mainly United States and European Union senior officials and a number of foreign businesses, including defence companies, research institutions, academics,⁴⁷ and representatives of civil society. Other measures have been taken in the context of the mounting tensions in bilateral economic and trade relations with the United States.⁴⁸

F. Issues of legality

73. The Special Rapporteur notes that, in November 2023, the United States Government extended for a further year the state of national emergency with respect to China, which had initially been declared in November 2020 through Executive Order 13959 and renewed under the new Administration in June 2021 through Executive Order 14032, with reference to an “unusual and extraordinary threat” to the national security, foreign policy and economy of the United States. As noted in by the Special Rapporteur in a previous communication, the state of national emergency announced by the United States as grounds for introducing unilateral sanctions does not correspond to standards for emergencies under the International Covenant on Civil and Political Rights, and is therefore illegal under international law.⁴⁹

74. While recognizing the freedom of States to decide on their foreign policy and economic security concerns, the Special Rapporteur stresses that measures may be taken only in accordance with their obligations under international law, including obligations with regard to the World Trade Organization (WTO), investment and international trade, with the rather narrow interpretation of economic and other security exemptions by the WTO Dispute Settlement Body.

75. The Special Rapporteur has repeatedly stated that under international law, unilateral measures without or beyond the authorization of the Security Council may be taken only if they: do not violate the international obligations of States (retortions), or their wrongfulness can be excluded as countermeasures taken in accordance with standards of the law of international responsibility; are taken against States (including individuals and/or entities whose activity can be attributed to States) for violations of international legal norms; aim to restore the fulfilment of international obligations; are proportionate to the breach committed;

⁴⁶ Ibid.

⁴⁷ See <https://www.scholarsatrisk.org/2021/05/china-revoke-sanctions-on-international-scholars-and-respect-free-and-open-scholarly-inquiry/>.

⁴⁸ See also <https://merics.org/en/report/how-china-imposes-sanctions>.

⁴⁹ See communication USA 5/2021, available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25879>.

are necessary; and do not violate peremptory norms of international law and fundamental human rights.

76. The application of secondary sanctions against Chinese companies and civil and criminal charges for alleged circumvention of sanctions regimes against third countries, individuals or entities is also illegal under international law as a means of enforcement of illegal unilateral coercive measures. Furthermore, secondary sanctions constitute violation of the prohibition of punishment for acts that did not per se constitute crimes at the moment when they were committed.

77. Introducing and raising trade tariffs in bilateral trade relations and designing and implementing investment policies are the sovereign right of every State and do not constitute unilateral coercive measures as long as they comply with the States' international obligations – including those emanating from their membership of international organizations, such as WTO – and with investment protection agreements and other types of bilateral and multilateral treaties. Any disputes about the legality of such measures must be resolved through the peaceful settlement of international disputes and in accordance with the law of international responsibility.

78. Unilateral targeted sanctions as punitive action violate, at the very least, obligations arising from universal and regional human rights instruments, many of which have a peremptory character, including procedural guarantees, the presumption of innocence, due process, access to justice and the right to remedy. References to their non-criminal nature are not valid owing to the high level of penalties, equivalent or sometimes higher than punishment in criminal cases. The inclusion of individuals in sanctions lists on the grounds of family or friendship ties with already listed individuals constitutes a collective punishment, prohibited by international law.

79. Where there are accusations of an alleged crime, such as malicious cyber campaigns against a third State, a criminal case must be initiated with full respect for the presumption of innocence, standards of due process and standards of the burden of proof in criminal law, in order to ensure full respect for the rights of the individual or entity concerned. Such accusations do not constitute legal grounds to impose unilateral sanctions.

80. The sanctioning of individuals under the United States Global Magnitsky Human Rights Accountability Act and the European Union Global Human Rights Sanctions Regime constitutes an attempt by sanctioning States to expand and enforce their jurisdiction extraterritorially, while often depriving sanctioned individuals of their right to due process and fair trial guarantees, including by undermining the principle of the presumption of innocence.

81. Attempts to introduce new grounds for sanctioning individuals and entities extraterritorially with reference to the need to counter “political warfare” by China,⁵⁰ or generally to introduce the concept of “political warfare”, have no basis in international law and may be misleading as regards the use of the term “warfare” from the perspective of international humanitarian law.

82. The idea of the presumption of legality of unilateral sanctions, and the reported application of the principle of rebuttable presumption of wrongdoing (presumption of guilt) in the case of businesses with an alleged nexus with Xinjiang and its key economic sectors, or entities included in sanctions lists, violate fundamental principles of international law and provisions of General Assembly and Human Rights Council resolutions, and constitute an attempt to supplement the legal standards with a so-called “rules-based order”. The Special Rapporteur recalls that under international law, States bear the burden of proof of illegality concerning any activity taken within their jurisdiction and extraterritorially.

IV. Conclusions

83. Unilateral sanctions against China, or against Chinese companies or individuals, neither conform with international law nor meet the criteria for collective

⁵⁰ <https://www.congress.gov/bill/118th-congress/senate-bill/3973/text>.

countermeasures under article 48 (1) (b) of the articles on responsibility of States for internationally wrongful acts, therefore constituting unilateral coercive measures. In view of the illegality of primary sanctions, the means of their enforcement, including secondary sanctions and civil and criminal charges for alleged circumvention of sanctions regimes, are equally illegal. While recognizing the freedom of States to take measures for the protection of all types of security, and their plans to develop, gain or maintain relative advantage in any economic sector, including high-tech and new technologies, the Special Rapporteur stresses that real or perceived national interests and priorities in any area do not create legal grounds for the imposition of unilateral sanctions. Instead, any adopted unilateral measure must first and foremost be in conformity with international legal obligations.

84. Primary unilateral sanctions, secondary sanctions, threats with sanctions and overcompliance with sanctions have a negative impact on the economic and social rights of all those employed in the targeted industries and economic sectors, and on their right to a decent life and freedom from poverty, their right to education, their right to enjoy the benefits of scientific and academic progress and its applications, the prohibition of discrimination on the grounds of nationality or ethnic origin, and their right of access to justice and to an effective remedy. They also have a negative effect extraterritorially on third-country nationals employed by or linked to Chinese businesses and their activities, the economies of developing countries following the withdrawal of Chinese businesses and their investments, and people dependent on humanitarian and development assistance from China, including through the Belt and Road Initiative and others.

85. Sanctions against broad sectors of the economy in Xinjiang Uighur Autonomous Region, coupled with sanctions against large businesses, affect the overall economy of the region, result in disruptions to industrial and trade relations, adversely affect all those involved in supply chains that have a presumed link to the region as a whole, including third-country nationals and entities, and thus result in rising unemployment, particularly affecting the most vulnerable. The Special Rapporteur also notes the existence of guidance notes and other formally non-binding documents issued by relevant authorities of the United States Government, which warn businesses elsewhere in China that choose to operate in Xinjiang or to engage with entities that use labour from Xinjiang of the possible reputational, economic and legal risks.⁵¹ Such documents may be perceived as an additional pressure that results in overcompliance, with a consequent adverse humanitarian impact for the region and the country as a whole.

86. Extensive means of enforcement of primary sanctions regulations, introduction of the principle of rebuttable presumption in sanctions-related proceedings, with the burden of proof placed on the accused, and the non-transparent, costly and lengthy processes to challenge and appeal against sanction-related designations all exacerbate fear and overcompliance with sanctions regimes, both inside and outside China, and discourages economic and other relations with the country, with the consequent adverse effects on the socioeconomic rights of those in China and elsewhere.

87. Sanctions against individuals and companies affect freedom of movement, economic rights, the presumption of innocence and the right to due process and fair trial guarantees. Access to justice and to an effective remedy is further affected by the existing complex and extensive compliance requirements, the non-transparent decision-making processes pertaining to inclusion in sanctions lists, the non-disclosure of information used as grounds for such inclusion, the lengthy, costly and inefficient processes of appeals for delisting, and the reluctance of legal professionals to engage in sanctions-related cases. All of these factors constitute serious challenges, mainly for those businesses and individuals without sufficient means to defend their case, either through their national judicial system or through appeals to the judicial bodies of the sanctioning State.

⁵¹ See, for example, the Xinjiang Supply Chain Business Advisory, available at <https://www.dhs.gov/sites/default/files/publications/xinjiang-business-advisory-13july2021-1.pdf>.

88. The presumption of legality of unilateral sanctions and the application of the principle of rebuttable presumption of wrongdoing in relation to sanctions are contrary to international law and the principles of responsibility for wrongful acts at the international and national levels, and violate the presumption of innocence, a peremptory norm of international law. States must not shift the burden of proof of legality of their acts on to the individuals or entities under sanctions. The burden of proof of illegality of acts or omissions of the entities and individuals under sanctions lies with the States, and only in those cases in which State jurisdiction is properly determined.

89. Proceedings to challenge the sanctions imposed and inclusion in sanctions lists are lengthy, in some cases taking more than three years. Consequently, the formal submission of a case to the courts of sanctioning countries does not prevent the humanitarian impact (primarily in the areas of employment and social security), adversely affecting the rights of those whose protection was presumably the intention. Requests to provide detailed information about every employee recruited by a company results in disclosure of their personal information and might constitute violation of their right to privacy.

90. Using so-called unverified lists makes the status of listed entities and individuals even more uncertain, undermining their activities and the possibility of protecting their rights.

91. The inclusion in sanctions lists of companies in new technology and energy sectors, including polycrystalline silicon, batteries, electric vehicles and solar and wind power, may undermine further research and development and opportunities for countries with relations with China to benefit from scientific progress and its applications in these sectors, with potentially broader developmental and possible environmental implications.

92. The inclusion in sanctions lists of Chinese universities and research institutions and the adoption in the United States of Proclamation 10043, imposing visa and travel restrictions, negatively affect the rights of Chinese students and academics to education, hamper their participation in international academic cooperation and innovation, and impose conditionalities on academic freedom and on the right to benefit from results of scientific research. Reported cases of lengthy interrogations at borders and inspection of phones and computer information may constitute violations of the right to privacy. The reported suspension of academic and exchange programmes with China and of programmes jointly or individually financed by Chinese institutions, and “advice” provided to and the consequent reluctance of foreign academic institutions and scholars to cooperate with Chinese universities, academics or professionals, constitute discrimination on the grounds of nationality.

93. The adoption and enforcement of legislation to counter defamation and disinformation, coupled with threatening and stigmatizing statements and rhetoric against targeted States, entities and individuals, result in arbitrary enforcement and targeting, undermine the flow and exchange of information and freedom of expression and, owing to heightened fear and overcompliance, prevent access to legal assistance, due diligence and cooperation. Reputational risks and consequent legal implications may also adversely affect the rights and conduct of third parties involved in sanctions-related matters, including the legal professionals representing such cases, and may further exacerbate overcompliance.

94. The Special Rapporteur recalls that eradicating poverty and ensuring a decent life for all constitute fundamental elements of any effort to prevent and counter international terrorism in accordance with the United Nations Global Counter-Terrorism Strategy. Unilateral sanctions and sanctions-induced prohibition and restrictions, particularly those with the de facto result of economic isolation of targeted States or regions, may significantly undermine counterterrorism efforts to ensure regional and global peace and security.

95. Legislation in China to counter sanctions mostly conforms to standards of international law, including the majority of countermeasures standards.

Administrative, legislative and economic measures taken by China – including the development of legislation, financial support mechanisms, training, taxation holidays, job creation, support for the domestic market and the provision of financial and legal assistance – have helped it to mitigate, to a great extent, the negative humanitarian impact of unilateral sanctions and overcompliance, but have not eliminated this impact completely.

96. The observed absence of a devastating humanitarian impact must not, however, be used as grounds for the introduction, justification or legitimization of unilateral sanctions, the means of their enforcement or overcompliance. The mere fact that unilateral coercive measures violate international law is sufficient to invoke the responsibility of States in accordance with international law.

V. Recommendations

97. The Special Rapporteur recalls that under the Charter of the United Nations, States must observe the principles and norms of international law. States must respect the principles of sovereign equality, non-intervention in the domestic affairs of States, the promotion and protection of human rights, the obligation to engage in dialogue to settle any disputes in accordance with the principles and norms of international law, including the principle of humanity, the obligation to cooperate in good faith, and other treaty and customary norms of international law, including agreements on the protection of international trade and investment and on mutual enforcement of judicial decisions.

98. The Special Rapporteur calls on sanctioning States to lift and suspend all unilateral sanctions imposed against China and Chinese nationals and businesses without the authorization of the Security Council, whose use cannot be justified as retortion or countermeasures in accordance with international law. No good intentions or references to the need to protect national foreign, economic or technology interests may be used as grounds for or justification of unilateral sanctions, as such sanctions are contrary to international law and ultimately result in human rights violations.

99. The Special Rapporteur reiterates the illegality of the extraterritorial application of unilateral sanctions. She calls on sanctioning parties to avoid using secondary sanctions for circumvention of sanctions regimes against third States or their nationals and businesses, to lift those already imposed and to revoke criminal and civil charges for circumvention of unilateral sanctions regimes.

100. She requests States to take all the legislative, institutional and administrative measures necessary to eliminate or mitigate cases of overcompliance and ensure that the activity of businesses under their jurisdiction and control does not violate human rights extraterritorially. Non-fulfilment by a State of this obligation itself constitutes a violation of the relevant human rights and may be used as grounds for the responsibility of the State in question for violations of human rights treaty obligations.

101. The Special Rapporteur calls on banks, businesses and other entities to avoid overcompliance with unilateral sanctions, which is contrary to their obligation to promote and protect human rights and to avoid discrimination of any kind.

102. She urges States to cease the practice of adopting non-binding interpretative documents on sanctions, which nevertheless are often treated as laws by the authorities and courts of sanctioning States and which exacerbate uncertainty and confusion, thus resulting in widespread overcompliance.

103. She urges all States to lift sanctions imposed on academic institutions and any other limitations in the academic sphere, which may violate the rights to education, freedom of expression and academic freedom, and the right of everyone to enjoy the benefits of scientific progress and its applications and the outcomes of academic research.

104. Without prejudice to the legality of unilateral sanctions, sanctioning States are obliged to provide access, without discrimination, to judicial protection of all human rights affected by unilateral sanctions, the means of their enforcement and overcompliance, including economic, social and cultural rights, and including through affordable, fast, clear and transparent procedures with unimpeded access to legal assistance.

105. States must refrain from adopting and implementing legislation to counter defamation and disinformation, and from engaging in hate speech and reputational risk campaigns. Instead, they should review and revoke relevant legislation and act in accordance with the principle of due diligence to avoid such conduct and acts against sanctioning countries, their entities and individuals, and against their own nationals and nationals of the third countries. Any limitations on access to information and freedom of expression may be imposed only in strict conformity with articles 19 and 20 of the International Covenant on Civil and Political Rights.

106. Measures taken on grounds of national security concerns and national trade policies, and those taken for the purpose of protecting national interests and development priorities, may be taken only if they are aligned with the international obligations of States, including those emanating from their membership of WTO, and with international agreements on investment, double taxation, trade, the economy and others.

107. States must settle their disputes by peaceful means, including via the Appellate Body of WTO dispute settlement process. The Special Rapporteur urges States not to block the appointment of new members to the Appellate Body, and to restore its function as an authorized dispute settlement mechanism in the area of trade.

108. While welcoming the adoption of “blocking” and anti-sanctions legislation developed by China as further steps towards the minimization of overcompliance and the protection of the rights of Chinese entities and individuals, the Special Rapporteur calls on the Government of China:

(a) To further develop and expand the framework of protection of the rights of domestic producers, so that they do not engage in overcompliance;

(b) To ensure that measures to counter sanctions are applied only in full conformity with counter-measures standards in response to the violation of international obligations by a perpetrator and only to entities or individuals whose activity is attributable to Governments;

(c) To review existing lists on the basis of whether the activity of listed individuals, in particular family members, academic staff or personnel of non-governmental organizations, can be attributed to sanctioning States, in accordance with counter-measures standards, and to amend the lists accordingly;

(d) To take all the measures necessary to avoid or minimize discriminatory labour policies in businesses operating on its territory owing to the fear of possible repercussions of unilateral primary and secondary sanctions and overcompliance, and to support employees, including those belonging to minorities, in the use of all possible and available means of protecting their rights, including through the judicial system.

109. The Special Rapporteur calls on States affected by unilateral sanctions to cooperate on the development of uniform counter-sanction legislation aimed at ensuring that the measures taken against sanctioned parties or third parties are in conformity with international law and with the purpose of promoting and protecting the rights of the persons concerned, whether natural or legal. Such measures may include the provision of legal assistance and support in the use of national and international mechanisms for the protection of human rights.

110. The Special Rapporteur urges international organizations, including the Office of the United Nations High Commissioner for Human Rights, the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization and others, to include in their agendas assessment of the negative impact of unilateral

sanctions and of overcompliance with sanctions concerning economic, social and cultural rights, including labour rights, the prohibition of discrimination and the right to education, in particular in countries under sanctions, and to regularly monitor that impact.

111. The Special Rapporteur invites the human rights treaty bodies, especially the Committee on the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights, to consider reviewing sanction-related cases in their concluding observations and through their complaints procedures, with due account taken of the objective impossibility of petitioners to exhaust domestic remedies. She also invites the Human Rights Committee to address the impediments in the exercise of the rights to a fair trial, to presumption of innocence, to access to justice and to remedies when human rights are affected by unilateral sanctions, the means of their enforcement and overcompliance.

112. The Special Rapporteur calls on international non-governmental organizations to include in their agendas the impact of unilateral sanctions, the means of their enforcement and overcompliance on the rights of nationals and residents of China, and the regional impact and adverse spillover effects.
