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

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, prepared pursuant to Council resolutions 27/21 and 30/2. In the report, the Special Rapporteur lists the key activities that he undertook between July 2016 and June 2017. He then focuses on the issues of remedies and redress for victims of unilateral coercive measures, on the basis of a review, assessment and evaluation of the various mechanisms available to victims. Finally, he recommends steps to be taken to reinforce or create avenues for remedies.

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

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* The annex to the present report is circulated as received, in the language of submission only.

I. Introduction

1. The present report is submitted by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, pursuant to Human Rights Council resolutions 27/21, 30/2 and 34/13.

2. The General Assembly, in its resolution 70/151, and the Human Rights Council, in its resolution 30/2, requested the Special Rapporteur to focus on the negative impact of unilateral coercive measures on the enjoyment of human rights of victims and to address the issues of remedies and redress with a view to promoting accountability and reparation in his next reports to the two bodies.

3. Pursuant to these requests, the Special Rapporteur, in his report to the General Assembly at its seventy-first session (A/71/287), focused on issues of remedies and redress for victims of unilateral coercive measures. The report included a review of conceptual aspects of the remedies for violations of human rights caused by unilateral coercive measures in general international law, international human rights law and international humanitarian law. The report was drafted in parallel with, and intended to be read in conjunction with, the report that the Special Rapporteur had earlier submitted to the Human Rights Council (A/HRC/33/48), which presented a preliminary review and evaluation of the various mechanisms actually or potentially available to States and to individuals affected by unilateral coercive measures to enable them to seek remedy and redress.

4. In his report to the General Assembly at its seventieth session (see A/70/345, para. 56 (a)), the Special Rapporteur proposed the creation of a register of unilateral coercive measures likely to have a human rights impact, to be maintained and updated by the Secretary-General. In his previous report to the Human Rights Council and his report submitted to the General Assembly at its seventy-first session (A/71/287), he called upon the two bodies to restate in a solemn manner, through a declaration, the right of victims to an effective remedy, including appropriate and effective financial compensation, in all situations where their human rights were adversely impacted by unilateral coercive measures.

5. The General Assembly, in its resolution 71/193, took note with interest of the proposals contained in the report of the Special Rapporteur and requested him to include in his report to the General Assembly at its seventy-second session more information on the discussion of his proposals at the Human Rights Council.

6. The Human Rights Council, in its resolution 34/13, requested the Special Rapporteur to continue to pay special attention and identify immediate solutions to the negative impact of unilateral coercive measures on the enjoyment of human rights of victims, and to focus, in his next reports to the Human Rights Council and to the General Assembly, on the resources and compensation necessary to promote accountability and reparations for victims.

7. In the present report, therefore, the Special Rapporteur focuses on the identification of possible mechanisms to ensure the availability of efficient remedies and redress for victims of unilateral coercive measures. The report begins by summarizing the status of his proposals regarding the establishment of a United Nations register of unilateral sanctions likely to have a human rights impact and the adoption of a declaration on unilateral coercive measures and the rule of law. Then, in the light of the findings of his previous report (see A/HRC/33/48, paras. 48-50 and 74), he elaborates on the possible features of a compensation commission that might be established to provide remedies for victims of unilateral coercive measures. He also addresses certain relevant issues raised by the practice of extraterritorial sanctions, as well as issues regarding the extraterritorial character of human rights obligations of States. The present report will be supplemented by the report on the same topic that the Special Rapporteur will submit to the General Assembly at its seventy-second session.

8. The Special Rapporteur welcomes any comments, information and suggestions that governments, non-governmental organizations and any other interested parties may provide

on remedies and redress in relation to the negative impact of unilateral coercive measures on human rights.

II. Activities of the Special Rapporteur

9. Between 1 July 2016 and 30 June 2017, the Special Rapporteur issued seven press releases, three of which were issued jointly with other special procedure mandate holders.

10. On 4 April 2016, the Special Rapporteur participated in the eighteenth session of the Working Group on the Right to Development, where he engaged in an interactive dialogue with experts on the implementation and realization of the right to development.

11. On 12 October, the Special Rapporteur presented a statement at the International Seminar on the Right to Development, organized by the Independent Permanent Human Rights Commission of the Organization of Islamic Cooperation in Abu Dhabi. In the statement he reflected on the thirtieth anniversary of the Declaration on the Right to Development and considered ways of using that right to promote effective and sustainable development.

12. On 16 October, the Special Rapporteur presented his report (A/71/287) to the General Assembly. In the report the Special Rapporteur reviewed the conceptual aspects of remedies for violations of human rights caused by unilateral coercive measures in international law.

13. The Special Rapporteur carried out an official country visit to the Russian Federation from 24 to 28 April 2017 (see A/HRC/36/44/Add.1). He thanks the authorities of the Russian Federation for their engagement with his mandate. At the end of his visit, the Special Rapporteur issued a press statement conveying his preliminary observations and recommendations, observing that sanctions might have led to economic losses to the European Union and the Russian Federation totalling $155 billion, without apparent benefit. He noted that targeted sanctions against individuals lack any form of due process, which violated the rule of law.

14. The Special Rapporteur carried out an official visit to the institutions of the European Union from 19 to 22 June 2017 (see A/HRC/36/44/Add.2). He thanks the authorities of the European Union for their engagement with his mandate. At the end of his visit, the Special Rapporteur issued a press statement conveying his preliminary observations and recommendations.

III. Follow-up to previous recommendations of the Special Rapporteur

15. Since his appointment, the Special Rapporteur has submitted annual reports to the Human Rights Council and the General Assembly, containing observations and recommendations relating to his mandate.

16. The Special Rapporteur reiterates all his previous recommendations, in particular the recommendation that a consolidated central register should be set up at the level of the United Nations to recapitulate the list of all unilateral coercive measures in force. This register should be kept according to the standards currently applied to Security Council sanctions and made public. Targeted or sender/source States or groups of States should be invited to notify the Council of unilateral coercive measures in force at their initiative and of the evolution of those measures. Such a mechanism could draw on the model of the United Nations Register of Conventional Arms, which includes data on international arms transfers as well as information provided by Member States on military holdings, procurement through national production and relevant policies.

17. The Special Rapporteur has duly noted the concerns expressed by the Human Rights Council in its resolution 34/13, where it underlined the necessity of examining the wide range of impact of unilateral coercive measures on international humanitarian and human rights law, and on the economy, peace, security and social fabric of States, as well as the

need to monitor human rights violations associated with unilateral coercive measures and to promote accountability. In the same resolution, the Council recognized the importance of the quantitative and qualitative documentation of any such negative impact in the context of ensuring the accountability of those responsible for human rights violations resulting from the application of unilateral coercive measures against any State. The Special Rapporteur believes that the establishment of a consolidated register of unilateral coercive measures will be required to ensure the availability of such documentation. The register must be supplied with the necessary information and must function effectively in order to evaluate accurately the negative impact of unilateral sanctions and hence to ensure accountability and redress for victims. As the Special Rapporteur has already pointed out (see A/71/287, para. 39), measures aiming to ensure transparency in sanctions regimes that are already in force are a prerequisite for the implementation of the right to a remedy for adverse consequences for human rights of unilateral coercive measures. The Special Rapporteur welcomes the support for his proposal for a central register expressed by some participants at the thirty-third session of the Human Rights Council.[1]

18. The Special Rapporteur also wishes to reiterate his call to the Human Rights Council and the General Assembly to restate in a declaration the right of victims to an effective remedy, including appropriate and effective financial compensation, in all situations where their human rights are adversely impacted by unilateral measures. While such a right is arguably acknowledged in theory and principle as a necessary component of human rights, it has not, to date, been recognized or affirmed in a specific manner, and it is frequently ignored or set aside in practice. Unlike victims of armed conflict, for whom the right to a remedy and the conditions of its realization have been affirmed and widely recognized at the international level,[2] victims of unilateral sanctions all too often remain in legal limbo.

19. The Special Rapporteur worked further on his proposals for a draft declaration and a register of unilateral sanctions, and held a meeting of a high-level expert working group on 3 June 2017 to review, assess and refine the two proposals and agree on the language to be put before the Human Rights Council. The outcome document of the meeting is annexed to the present report.

IV. Extraterritoriality and international sanctions

20. The issue of extraterritoriality in relation to international sanctions raises two separate, albeit interrelated questions: whether the extraterritorial reach of sanctions is to be deemed admissible (or lawful) under international law, including international human rights law, and whether States (or international organizations) are subject to extraterritorial obligations under human rights instruments in relation to the application and effects of sanctions.

A. Extraterritorial sanctions under international law

1. General international law

21. For over two decades, the Government of the United States of America has commonly applied the country's domestic sanctions law to foreign persons and institutions.[3] For example, it has sanctioned foreign financial institutions for having engaged in financial transactions initiated outside the United States that do not comply with

[1] See, for instance, the comments by Tehmina Janjua, Permanent Representative of Pakistan, on behalf of the Organization of Islamic Cooperation (13 September 2016).

[2] See, for instance, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

[3] M. Rathbone, P. Jeydel and A. Lentz, "Sanctions, sanctions everywhere: forging a path through complex transnational sanctions laws", *Georgetown Journal of International Law*, vol. 44 (2012-13), pp. 1055-1126.

the country's sanctions regimes, and has tried to regulate foreign exchange transactions.[4] It has been recently reported that the Government of the United Kingdom of Great Britain and Northern Ireland is in the process of introducing new legislation displaying the same features, albeit in a more limited form.[5] By contrast, the European Union is understood to refrain generally from applying any restrictive measures having extraterritorial reach.[6] The European Union adopted in 1996 instruments of European Union law which are still in force, designed to counter the purported extraterritorial effects of United States sanctions regimes, which the European Union sees as unlawful. The provisions state: "A third country has enacted certain laws, regulations, and other legislative instruments which purport to regulate activities of natural and legal persons under the jurisdiction of the [European Union] Member State; … by their extra-territorial application such laws, regulations and other legislative instruments violate international law".[7]

22. There is a general understanding that extraterritorial sanctions disregard commonly accepted rules governing the jurisdiction of States under international law.[8] The concept of State jurisdiction describes the limits of the legal competence of a State to make, apply, and enforce rules of conduct upon persons. It concerns essentially the extent of each State's right to regulate conduct or the consequences of events.[9] In other words, jurisdiction concerns the power of the State under international law to regulate or otherwise impact upon people, property and circumstances and reflects the basic principles of State sovereignty, equality of States and non-interference in domestic affairs.[10]

23. International law relating to jurisdiction generally relies on a distinction between prescriptive jurisdiction (i.e. the law-making capacity) and enforcement jurisdiction (i.e. the capacity to ensure compliance with the law). Prescriptive jurisdiction must be based upon certain recognized criteria to avoid conflicts of sovereignty among States. These criteria are generally described as follows:

- The territoriality principle, according to which a State may pass laws governing people and property in its own territory
- The nationality principle, according to which a State may regulate the conduct of its citizens in any part of the world
- The effects doctrine, according to which a State may regulate conduct that has a direct, foreseeable and substantial effect within its territory, even though the acts giving rise to the effects are undertaken abroad; this principle can be seen as an extension of the territoriality principle
- The passive personality principle, according to which a State has jurisdiction over conduct directed against the welfare of its own citizens

[4] See, for instance, M. Cosnard, "Les lois Helms-Burton et d'Amato-Kennedy, interdiction de commercer avec et d'investir dans certains pays", *Annuaire français de droit international*, vol. 42 (1996), pp. 33-61.

[5] See United Kingdom Foreign and Commonwealth Office and HM Treasury Department for International Trade, "Public consultation on the United Kingdom's future legal framework for imposing and implementing sanctions", presented to Parliament in April 2017, p. 16. According to this document, a "UK nexus" (enabling the Government to enforce sanctions) might be created by such things as a sterling transaction overseas that clears in the United Kingdom, action by a local subsidiary of a United Kingdom parent company (depending on the structure of governance), action taking place overseas but directed from within the United Kingdom, or financial products or insurance bought on United Kingdom markets but held or used overseas.

[6] See, for instance, J. Scott, "Extraterritoriality and territorial extension in EU law" *American Journal of Comparative Law*, vol. 62 (2014), pp. 87-126; J. Scott, "The new EU 'extraterritoriality' ", *Common Market Law Review*, vol. 51 (2014), pp. 1343-1380.

[7] Council of the European Union, "Council Regulation (EC) No. 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom", *Official Journal of the European Union*, L 309 (29 November 1996), preamble.

[8] See M. Cosnard, "Les lois Helms-Burton et d'Amato-Kennedy", pp. 36-50.

[9] R. Jennings and A. Watts, eds., *Oppenheim's International Law*, 9th ed. (1992), p. 456.

[10] M.N. Shaw, *International Law* (Cambridge, Cambridge University Press, 2014), p. 469.

- The protective principle, according to which a State may regulate conduct of foreigners that could prejudice its most vital interests; however, while this concept is well established in international law, uncertainties remain as to its extent and the acts it covers
- The universality principle, according to which all States may exercise jurisdiction over certain criminal activities, notably piracy and slavery, regardless of the place of perpetration and the nationality of victims or offenders

24. Against this background, it is generally assumed that extraterritorial sanctions are unlawful.[11] The reason for this is basically that most extraterritorial sanctions cannot invoke any of the above-mentioned criteria.[12] In particular, the effects doctrine, sometimes invoked by the United States as a justification for the implementation of extraterritorial measures, could be potentially legally warranted in only a very limited number of cases, given the cumulative requirements that the said effects (of the situation that has triggered the decision to impose sanctions) on the territory of the targeting State be direct, foreseeable and substantial. It also appears that extraterritorial sanctions cannot generally be justified as legitimate countermeasures under the law of State responsibility.

25. A number of negative reactions to the practice of extraterritorial sanctions have been expressed over time by United Nations organs, other international organizations and individual States, and are reflected in the academic literature. The assumption that extraterritorial sanctions are unlawful is shared by a vast number of countries.[13] Since 1992, the General Assembly has annually voiced its condemnation of the extraterritorial reach of the embargo imposed on Cuba by the United States.[14] For its part, in 1996, the European Union adopted a so-called blocking statute, under which European Union companies are prohibited from complying with extraterritorial sanctions imposed by the United States.[15] The European Union has also expressed its position against extraterritorial sanctions in its own guidelines on "restrictive measures" as follows:

> "The EU will refrain from adopting legislative instruments having extra-territorial application in breach of international law. The EU has condemned the extra-territorial application of third country's legislation imposing restrictive measures which purports to regulate the activities of natural and legal persons under the jurisdiction of the Member States of the European Union, as being in violation of international law".[16]

26. A comprehensive study aimed at evaluating the practice of extraterritorial unilateral sanctions under international law would far exceed the scope of the present report. This remains a task for the future, preferably to be undertaken by the International Law Commission. Such a study would require a comprehensive enquiry into the existence, the content and the precise current legal status of any rule prohibiting recourse to extraterritorial sanctions in present-day international law. The study would also have to recapitulate all known critical reactions to extraterritorial sanctions at the United Nations level, but also those of regional organizations or individual States or those voiced in the

[11] See C. Beaucillon, "Practice makes perfect, eventually? Unilateral State sanctions and the extraterritorial effects of national legislation", in N. Ronzitti, ed., *Coercive Diplomacy, Sanctions and International Law* (Leiden/Boston, Brill/Nijhoff, 2016), pp. 103-126; and S. Emmenegger, "Extraterritorial economic sanctions and their foundation in international law", *Arizona Journal of International & Comparative Law*, vol. 33 (2016), pp. 633-660.

[12] See M. Cosnard, "Les lois Helms-Burton et d'Amato-Kennedy", pp. 36-50.

[13] In addition to the various resolutions of the General Assembly and the Human Rights Council condemning the use of extraterritorial sanctions, the countries of the Non-Aligned Movement have firmly rejected this practice (see, for instance, Asian-African Legal Consultative Organization resolution RES/51/S 6). See also Council of the European Union, "Council Regulation (EC) No. 2271/96", referred to above. Canada, Japan and other countries appear to share the same views.

[14] See General Assembly resolution 47/19 and subsequent resolutions.

[15] Council of the European Union, "Council Regulation (EC) No. 2271/96".

[16] Council of the European Union, "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy" (15 June 2012), para. 52.

form of protests, domestic blocking legislation, non-recognition by domestic courts etc. The study would also have to assess the potential implications of the use of extraterritorial sanctions in terms of the law of international responsibility. It is worth mentioning in that respect that, in 2006, the International Law Commission examined a preliminary Secretariat report on extraterritorial jurisdiction, which could form the basis for long-term work on the codification of international law on the matter.[17] That proposal could (or should) be revived in some form.

2. International human rights law

27. The adverse effects of international coercive measures in general on the enjoyment of human rights of targeted populations have been widely documented. The question arises whether extraterritorial sanctions display specific features (i.e. whether they are likely to have specific adverse consequences on human rights) that can be distinguished from those arising from the use of sanctions in general. It is submitted that such specific effects flow from extraterritorial sanctions, to the extent that they affect the ability of the targeted country (and its population), as well as that of third countries not involved in the dispute between source and target countries, to interact with the global business and financial community. They are likely, per se, to have specific, additional adverse consequences on human rights, including the right to development. Most international businesses, while legally not subject to the jurisdiction of the targeting State, will in practice be unwilling to entertain any economic relations with parties in the targeted State that might lead to their "violating" the provisions of the extraterritorial sanctions regime — and thus might jeopardize their ability to pursue their own business activities in the targeting State. This has led to the damaging practice of over-compliance by trading partners of targeted countries. The result is a de facto blockade of the target State, voluntarily complied with by economic actors that are not even legally subject to the jurisdiction of the targeting State. The distinct additional impact of extraterritorial sanctions may also be related to their effects on the targeted State's ability to gain access to international financial institutions, foreign financial markets and international aid.

28. As an example, the impact of the extraterritorial sanctions imposed on Cuba by the United States (before their lifting, de jure rather than de facto, in 2016) on the country's ability to conduct commerce with the outside world and access international financial markets has been described as amounting de facto to a global embargo. The Helms-Burton Act had the effect of blocking access by Cuba to global financial institutions, as well as to access to the SWIFT financial messaging system, which had severe effects in the context of the economic crisis of Cuba.[18]

29. Extraterritorial application of unilateral sanctions may also have an adverse impact on the enjoyment of human rights in third countries, which are not targeted directly, but are prevented by the operation of the (extraterritorial) foreign law from entertaining economic relations with the target country. It has long been recognized that economic sanctions enacted against States by the Security Council may cause unintended adverse consequences for third parties, such as trade partners. Article 50 of the Charter of the United Nations provides that, if preventive or enforcement measures against any State are taken by the Security Council, any other State that finds itself confronted with special economic problems arising from the carrying out of those measures has the right to consult the Security Council with regard to a solution of those problems.

30. It is fair to assume that the same adverse effects may derive from the application of unilateral (extraterritorial) sanctions, but in that situation no rule comparable to Article 50 of the Charter seems to apply.

31. Regulation No. 2271/96 of the Council of the European Union (the "blocking statute") was intended to address and remedy the adverse effects of foreign extraterritorial sanctions on economic enterprises of the European Union engaging in international trade

[17] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10).

[18] C.J. Gordon, "The U.S. Embargo against Cuba and the Diplomatic Challenges to Extraterritoriality", *Fletcher Forum of World Affairs*, vol. 36 (2012), pp. 69-70.

and/or the movement of capital and related commercial activities between the (then) European Community and (targeted) third countries.[19] The protection against the extraterritorial application of sanctions lies in particular in the mandatory non-recognition in the European Union of their legal effects.[20] It is to be noted that, while economic operators in the European Union are generally prohibited from complying in any way with the extraterritorial sanctions,[21] they can nevertheless seek authorization to comply fully or partially to the extent that non-compliance would seriously damage their interests or those of the Community.[22] Interestingly, the instrument also provides in detail for remedies in favour of affected persons. European Union enterprises engaged in trade or economic relations with a target country are to be entitled to recover any damages, including legal costs, caused to that person by the application of the extraterritorial laws. Such recovery may be obtained from the natural or legal person or any other entity causing the damages or from any person acting on its behalf or intermediary. The recovery could take the form of seizure and sale of assets held by those persons, entities, persons acting on their behalf or intermediaries within the European Union, including shares held in a legal person incorporated within the European Union.[23]

32. It is probably fair to note that, although the blocking statute appears at first sight to be a powerful tool enabling the European Union to protect itself against the effects of extraterritorial sanctions, it has unfortunately failed in the past to protect some European Union companies (including banks), which incurred huge penalties from the United States Department of the Treasury on the grounds of non-compliance with United States sanctions. It is disturbing to observe that the European Union and its member States have generally refrained from enforcing the provisions of the blocking statute or from exercising any form of diplomatic protection in favour of their nationals affected by the extraterritorial effects of foreign sanctions. Further, it is noteworthy that the application of this instrument has not been extended by the European Union to cover the most recent United States sanctions regimes having extraterritorial reach.

B. Extraterritorial obligations of States in relation to sanctions

33. The question is still being debated whether the obligations of States under the International Covenant on Economic, Social and Cultural Rights extend extraterritorially "to the point at which a State imposing sanctions might be held responsible for any consequential deprivation (of the right to food or health care, for example), even if the sanctioning State exercised no formal jurisdiction or control over the population concerned".[24] However, the Special Rapporteur wishes to emphasize that there are strong and convergent legal arguments pointing to the existence of extraterritorial State obligations under the Covenant that may cover situations of imposition of international sanctions. As it has been observed, "it is now widely agreed that human rights treaties may, in principle, impose on States parties obligations not only when they adopt measures applicable on their own territory, but also extraterritorial obligations, which may include positive obligations going insofar as the State can influence situations located abroad".[25] It seems difficult to deny that sanctions come within the category of situations where States can influence situations located abroad.[26]

[19] Council Regulation (EC) No. 2271/96, art. 1.

[20] Ibid., art. 4.

[21] Ibid., art. 5.

[22] Ibid., art. 5.

[23] Ibid., art. 6.

[24] M. Craven, "The violence of dispossession: extra-territoriality and economic, social, and cultural rights", in M. Baderin and R. McCorquodale, eds., *Economic, Social, and Cultural Rights in Action* (Oxford, Oxford University Press, 2007), p. 71.

[25] O. De Schutter, "A human rights approach to trade and investment policies", November 2008, para. 3.2. Available from www.iatp.org/sites/default/files/451_2_104504.pdf.

[26] Ibid.

34. Firstly, the International Covenant on Economic, Social and Cultural Rights has no territorial or jurisdictional limitations on the scope of its application.[27] Whereas article 2 (1) of the International Covenant on Civil and Political Rights sets out the obligation of States parties to respect and ensure the rights of all individuals within its territory and subject to its jurisdiction, the equivalent provision in article 2 (1) of the International Covenant on Economic, Social and Cultural Rights avoids any reference to "jurisdiction" or "territory". Furthermore, the latter, using language that has no equivalent in the former, imposes an obligation upon all States to take steps, individually and through international assistance and cooperation, with a view to achieving the full realization of the recognized rights on a progressive basis.[28] This clearly implies that States parties assume certain obligations of an external or international nature.[29] Thus the International Covenant on Economic, Social and Cultural Rights can be deemed as setting forth certain extraterritorial obligations for State parties in respect of individuals in third States.[30]

35. Secondly, the concept of "jurisdiction", which is the criterion (and an alternative to "territory") for the applicability of the legal human rights obligations of States, has been extended over time to address satisfactorily situations where a restrictive application of the territorial or jurisdictional requirements in the relevant treaty would have prevented its application. Thus, jurisdiction has been established with respect to "occupied" territory[31] and to territory over which a State assumes some form of "effective control".[32] Taking these findings as a starting point, and applying these to situations where the measures complained of (i.e. sanctions) have extraterritorial effects by their very nature, it may be reasonably argued that a State imposing sanctions should incur liability for violations of human rights even if it does not exercise formal "jurisdiction" or "control" over the population or the territory targeted. This is all the more so since, as previously mentioned, the International Covenant on Economic, Social and Cultural Rights does not contain territorial or jurisdictional limitations.

36. In addition, an argument can be made that such position would be consonant with the rule of customary international law which prohibits a State from allowing its territory to be used to cause damage on the territory of another State, a requirement that has gained

[27] M. Sepulveda and C. Courtis, "Are extra-territorial obligations reviewable under the optional protocol to the ICESCR?", *Nordic Journal of Human Rights*, vol. 27 (2009), p. 55; see also M. Milanovic, *Extraterritorial Application of Human Rights Treaties* (Oxford, Oxford University Press, 2011), p. 17.

[28] The reference to international cooperation is further reiterated in arts. 11 (2) and 15 (4) of the International Covenant on Economic, Social and Cultural Rights. Art. 23 states that international action for the achievement of the recognized rights should include such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study.

[29] M. Craven, "The violence of dispossession", p. 71.

[30] See, for instance, F. Coomans, "The extraterritorial scope of the International Covenant on Economic, Social and Cultural Rights in the work of the United Nations Committee on Economic, Social and Cultural Rights", *Human Rights Law Review*, vol. 11 (2011), pp. 1-35.

[31] See Gondek, *The Reach of Human Rights in a Globalising World: Extraterritorial Application of Human Rights Treaties* (Antwerp, Intersentia, 2009); F. Coomans, "The extraterritorial scope of the International Covenant on Economic, Social and Cultural Rights", p. 6.

[32] See, for example, International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 112, referring to the findings of the Committee on Economic, Social and Cultural Rights that the obligations of Israel under the Covenant applied to all territories and populations under its effective control (see E/C.12/1/Add.90, paras. 15 and 31). See also European Court of Human Rights, *Loizidou v. Turkey* (application No. 15318/89), judgment on preliminary objections of 23 March 1995, para. 62: "The responsibility of a Contracting Party may also arise when as a consequence of military action — whether lawful or unlawful — it exercises effective control of an area outside its national territory".

particular relevance in international environmental law[33] and may be deemed relevant to the field of protection of human rights.[34]

37. Further, such arguments in favour of extraterritorial obligations under human rights treaties are fully consistent with the actual practice of the Committee on Economic, Social and Cultural Rights. In its general comment No. 8 (1997), on the relationship between economic sanctions and respect for economic, social and cultural rights, the Committee set out certain obligations borne by parties responsible for the imposition, maintenance or implementation of the sanctions, whether it be the international community, an international or regional organization, or a State or group of States. Among these obligations flowing from the recognition of economic, social and cultural human rights, the Committee identified the obligation to respond to any disproportionate suffering experienced by vulnerable groups within the targeted country.

38. In the same general comment, the Committee expressed the view that, when an external party took upon itself even partial responsibility for the situation within a country, it also unavoidably assumed a responsibility to do all within its power to protect the economic, social and cultural rights of the affected population. The Special Rapporteur believes that there lies the crux of the matter: notwithstanding the responsibility of the targeted State to do its utmost to protect its own population, a State imposing sanctions, insofar as it practically assumes even partial responsibility for the situation within the targeted country, is also ipso facto under an obligation to protect the economic, social and cultural rights of the affected population.

39. Other findings of the Committee point in the same direction. In its general comment No. 14 (2000) on the right to the highest attainable standard of health, the Committee emphasized that States parties should refrain at all times from imposing embargoes or similar measures restricting the supply of another State with adequate medicines and medical equipment. This clear position by the Committee, it has been noted, may be interpreted as an implicit recognition of extraterritorial human rights obligations in the area of economic, social and cultural rights.[35]

40. It should be added that, as a matter of principle, there is no apparent reason to exclude the applicability of the general principles of State responsibility (and/or the responsibility of international organizations, as the case may be) in cases of damage caused to a third country by the application of sanctions imposed by source States (or international organizations). The basic principle enunciated in article 1 of the articles on responsibility of States for internationally wrongful acts (comprising text adopted by the International Law Commission in 2001), according to which every internationally wrongful act of a State entails the international responsibility of that State, should be deemed to apply equally to wrongful acts of a State entailing damages to human rights of persons or populations of other countries. In relation to the international responsibility of a State for unlawful acts, it has even been observed that a State is under a duty to control the activities of private persons within its State territory, and that the duty is no less applicable where the harm is caused to persons or other legal interests within the territory of another State.[36] Arguably, the same duty shall apply a fortiori to unilateral sanctions that are directly attributable to the

[33] As noted by the Committee on Economic, Social and Cultural Rights in its general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities.

[34] See N. Vennemann, "Application of international human rights conventions to transboundary State acts", in R. M. Bratspies and R.A. Miller, eds., *Transboundary Harm in International Law, Lessons from the* Trail Smelter *Arbitration* (Cambridge, Cambridge University Press, 2006), pp. 295-307; De Schutter and others, "Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights", *Human Rights Quarterly*, vol. 34 (2012), p. 1084; L. Bartels, "The EU's human rights obligations in relation to policies with extraterritorial effects", *European Journal of International Law*, vol. 25 (2014), pp. 1081-1083.

[35] F. Coomans, "The extraterritorial scope of the International Covenant on Economic, Social and Cultural Rights", p. 12.

[36] I. Brownlie, *System of the Law of Nations. State Responsibility* (Oxford, Clarendon Press, 1983), p. 165.

State. Unlawful assertion of jurisdiction through extraterritorial application of domestic (sanctions) measures, to the extent that it results in adverse effects (economic or otherwise) on third countries, should also entail the international responsibility of the targeting State.

V. Options for the establishment of specialized compensation commissions for victims of unilateral coercive measures

41. The Special Rapporteur has previously mentioned the possibility of establishing a compensation commission for the purpose of providing effective compensation to victims of unilateral coercive measures (see A/HRC/33/48, paras. 48-50 and 74). It is submitted that this option would be the clearest way to ensure general availability of remedies for victims since, to date, few international forums are available to victims, whether States, individuals or entities, as a matter of fact and law, and there remains a measure of controversy as to the competence of United Nations human rights bodies to address claims based on the effects of imposition of unilateral coercive measures.

42. It is submitted that such a compensation commission could draw on the model of past similar mechanisms, which were most often created to address the need to provide for remedies for victims of armed conflict. In particular, the precedent of the United Nations Compensation Commission should be considered. The Commission was established as a subsidiary organ of the Security Council by resolution 687 (1991), with a mandate to review, decide and pay the claims for which Iraq was liable as a result of its unlawful invasion of Kuwait.[37] Despite criticism of the Commission, related mainly to the politicized circumstances of its creation, the lack of application of the rule of law in the adjudication of claims and the origin of the resources allocated to the victims (which were diverted from Iraqi oil export revenue), lessons may be drawn from the functioning of the Commission, and some of its features are of direct relevance to the right of victims to seek reparations for violations of human rights.

43. An enquiry may also need to be conducted on the relevance of other compensation commissions, whatever their title. A number of such mechanisms were set up in the past, whether by agreement between the States concerned or by decision of the Security Council.

44. Such a compensation commission could be set up under the Security Council or, alternatively, be established by means of a multilateral convention negotiated under the auspices of the United Nations.

45. An important issue is that of the resources and financing of the compensation commission. States which have imposed unilateral coercive measures on other States could be called upon to contribute financially to it. It is also submitted that one pragmatic possibility for the financing of the compensation commission would be to provide for the diversion of all or part of the financial contributions of the targeted State to multilateral financial institutions and its subsequent allocation to the compensation commission, without any negative consequence for the targeted country. The latter would therefore retain its full membership rights, including voting rights, in the multilateral financial institution(s) concerned, as if the contributions had not been diverted.

46. The institutional features and modalities of functioning of the compensation commission call for special attention. A preliminary issue to be addressed is whether it would be preferable to establish a single, all-purpose compensation commission for all existing sanctions regimes or, alternatively, several compensation commissions, each designed to provide for the reparations of damage suffered by victims of a single sanctions regime.

[37] See M. Frigessi di Rattalma and T. Treves, eds., *The United Nations Compensation Commission, A Handbook* (The Hague, Kluwer Law International, 1999); H.M. Holtzmann and E. Kristjánsdóttir, *International Mass Claims Processes: Legal and Practical Perspectives* (Oxford, Oxford University Press, 2007).

47. The compensation commission would need to operate according to strict rules of procedure, and should be designed so as to allow for an expedient, fair and efficient evaluation and adjudication of the claims. The following features would have to be agreed upon, in particular:

(a) The composition of the adjudicatory body of the compensation commission; the creation of one single panel or several and the modalities of designation and replacement of the members of the commission (or panels);

(b) The method of determining the amount of damages and their allocation to the victims;

(c) The establishment of a secretariat and a supervisory body;

(d) The requirements regarding the claimants and conditions of admissibility of the claims (eligibility criteria); the United Nations Compensation Commission adopted a system of consolidated claims, under which only States were entitled to submit claims on behalf of their nationals and corporations, but an alternative would be a direct right of action for victims;

(e) The applicable rules of procedure, proof and evidence;

(f) The time limits for the submission of claims;

(g) The provisions regarding an appeal or review mechanism for decisions of the commission.[38]

VI. Conclusions and recommendations

48. **The Special Rapporteur is of the view that the time has come for the international community to reaffirm the principle that all persons whose enjoyment of human rights has been affected by unilateral coercive measures are entitled to an effective remedy, including appropriate and effective financial compensation. Such affirmation necessarily flows from the general principle, enshrined in the Universal Declaration of Human Rights and a number of other human rights instruments, that everyone has the right to an effective remedy for acts violating his or her fundamental rights. There is no reason why unilateral coercive measures should be exempted from this general principle, which is intended to benefit all victims of human rights violations, irrespective of the particular facts or context of such violations. It is worth recalling that, in the 2030 Agenda for Sustainable Development, States have pledged to act for the promotion of the rule of law at the national and international levels and to ensure equal access to justice for all (target 16.3 of the Sustainable Development Goals).**

49. **It is necessary to extend the paradigm from remediation to prevention of the adverse effects of unilateral sanctions. States should thus be called upon to take resolute steps, at an early date and in good faith, towards termination of unilateral coercive measures in force and renunciation of their use, in accordance with international law. A commitment by States to abolish unilateral sanctions and give precedence to means of peaceful settlement of international disputes and differences would be in line with their obligation under the Charter of the United Nations to settle their international disputes by peaceful means such that international peace and security and justice are not endangered, in accordance with Chapter VI of the Charter.**

50. **The fact that States increasingly resort to unilateral coercive measures raises some basic principles of international law which need to be reaffirmed. Assuming that there will be a transition period pending complete termination and elimination of**

[38] On institutional characteristics of the Compensation Commission, see, for instance, F.E. McGovern, "Dispute system design: the United Nations Compensation Commission", *Harvard Negotiation Law Review*, vol. 14 (2009), pp. 171-193.

unilateral coercive measures, States are urged to comply during that transition period with universally accepted rules of behaviour, called for by international law and international human rights law, aiming at the mitigation of the adverse human rights impacts of unilateral sanctions. These basic principles and rules of behaviour are set out in detail in the elements for a draft declaration on unilateral coercive measures and the rule of law contained in appendix II of the annex to the present report. The rules of behaviour advocated include, inter alia, the obligation to conduct a transparent human rights assessment of coercive measures, to monitor on a regular basis the effects of implementation of the measures, to ensure effective exemptions for satisfying basic human rights and essential humanitarian needs, and to guarantee due process and the availability to victims of judicial review for obtaining remedies and redress.

51. **The other proposal put forward by the Special Rapporteur, i.e. the establishment of a United Nations register of unilateral sanctions likely to have a human rights impact, is a simple, practical, viable and fair means to ensure transparency in the implementation of sanctions during the transition period. This transparency will be helpful to the Security Council, civil society organizations and the business sector. The Special Rapporteur believes that such a mechanism could be agreed and established and begin operations in the very near future.**

52. **The Special Rapporteur must strongly emphasize the paradoxical fact that the same countries which apply unilateral sanctions with extraterritorial reach and effects are the same ones which generally oppose the recognition of the extraterritorial character of State obligations assumed under the Covenants, in particular the International Covenant on Economic, Social and Cultural Rights. He concurs with the view of the Committee on Economic, Social and Cultural Rights that, as a matter of law and logic, the imposition of sanctions on a third country entails at least partial responsibility of the targeting State for the situation within the targeted country, which in turn implies the legal responsibility also of the targeting State to protect, extraterritorially, the human rights of the affected population, especially their fundamental economic, social and cultural rights. The Special Rapporteur therefore calls for a solemn reiteration, in the form of a declaration on unilateral coercive measures and the rule of law, of the basic principle that unilateral coercive measures involving extraterritorial application of domestic measures are unlawful under international law. He trusts that such condemnation of extraterritorial measures as unlawful reflects the understanding of most countries of the world, irrespective of their legal systems.**

53. **The Special Rapporteur also calls for an explicit recognition of the basic principle of the extraterritorial character of the human rights obligations of States in cases of imposition of sanctions on third countries; such action entails the legal accountability of targeting States for measures affecting negatively the enjoyment of human rights of the affected populations.**

54. **Finally, the Special Rapporteur wishes to reiterate that the establishment of an ad hoc compensation commission under the United Nations for victims of unilateral coercive measures is a viable option to ensure accountability and the availability of remedies and redress while gaps still remain in domestic and international mechanisms for the judicial review of unilateral sanctions.**

Annex

Outcome document of the expert working group convened in Geneva on 3 June 2017

1. An expert consultation was held at the OHCHR, Palais Wilson in Geneva on 3 June 2017 to review and evaluate the initiatives put forward by the Special Rapporteur in his reports to the Human Rights Council and the General Assembly, i.e. a United Nations Register of unilateral sanctions likely to have a human rights impact and a United Nations Declaration on unilateral coercive measures and the rule of law.

2. In addition to the Special Rapporteur, Mr. Idriss Jazairy, the following experts were in attendance: Professor Mark Bossuyt (Member of the Committee on the Elimination of Racial Discrimination, Member of the Permanent Court of Arbitration in The Hague and a former judge at the Belgian Constitutional Court), Professor Alena Douhan (Associate Professor of international law, Belarusian State University, Minsk, Belarus), Mr. Hans-Jakob Schindler (Coordinator of the ISIL(Da'esh)/Al-Qaida/Taliban Monitoring Team), Ms. Catherine Marchi-Uhel (Ombudsperson, Security Council ISIL (Da'esh) and Al-Qaida Sanctions Committee), Professor Aslan Abashidze (Member of the United Nations Committee on Economic, Social and Cultural Rights, Professor at the International Law Department, Moscow State Institute of International Relations and Director of Center for Innovations in Education and Legal Research at Peoples' Friendship University of Russia), Professor Matthew Happold (Professor of Public International Law at the University of Luxembourg and a barrister at 3 Hare Court, London),Professor Antonios Tzanakopoulos (Associate Professor of Public International Law, University of Oxford) and Mr. Pierre-Emmanuel Dupont (Director, Public International Law Advisory Group) who moderated the workshop. Mr. Alfred de Zayas (Independent Expert on the promotion of a democratic and equitable international order) could not attend but submitted a statement.

3. The first session of the expert consultation was devoted to the draft Declaration on unilateral coercive measures and the rule of law. One participant first addressed the issue of the legal force of resolutions of the General Assembly, stressing that for a General Assembly resolution to have legal effects, it should have a normative character, it should receive the support or at least the absence of opposition from a large number of States, including the States particularly affected by the matter concerned, and the adoption of the resolution should be followed by a uniform and constant state practice in conformity with the behaviour prescribed in the resolution. Another participant addressed the issue of mechanisms of and remedies for human rights protection against unilateral coercive measures. Unilateral coercive measures have an impact a broad range of human rights, and their 'contributory nature' in ongoing human rights situations brought before the Human Rights Council was underlined by one participant. Possible responses to unilateral coercive measures were identified, and a distinction was made between immediate and long-term responses. Responses to measures targeting States (including Special Procedures of the Human Rights Council, United Nations fact-finding missions, [1] a United Nations compensation commission, etc.) and responses to measures directed against individuals or entities (including, but not limited to, judicial review before domestic courts of the sanctioning state, which is unfortunately subject to a range of legal and practical limitations, if available at all, in many scenarios). It was also called for a reform of the 'targeted sanctions' processes to ensure due process guarantees, that would include the mandatory and immediate opening of criminal or administrative process in parallel to inclusion in a sanctions list, and lifting of the sanctions (and financial compensation) if a person is recognized not-guilty. A participant referred to the under-utilized inter-State complaints procedure, which should be engaged and in some cases could facilitate negotiation and friendly settlement under treaty bodies (e.g. Art. 41 International Covenant

[1] *See* Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (A/RES/46/59).

on Civil and Political Rights). It was suggested that sanctions should also be tested in the context of the Universal Periodic Review of the Human Rights Council. Another participant examined the relevance of the work of the International Law Association on Reparation for Victims of Armed Conflict, stressing that all victims of human rights violations are entitled to access to mechanism for reparations. Several participants stressed the importance of the right of access to a court, as called for by Article 6 of the European Convention on Human Rights and other instruments.

4. The second session focused on the United Nations Register of unilateral sanctions likely to have a human rights impact. The possible institutional features and practical modalities of functioning of such mechanism were extensively discussed, and participants generally agreed that such Register could possibly under certain conditions benefit from wide acceptance from the international community. The relevance of the United Nations Register of Conventional Arms as a possible precedent was examined, as well as possible guidance to be drawn from the practical operation of the Sanctions Committee and the Ombudsperson of the Security Council ISIL/Al Qaeda sanctions regime, and from the experience of the Committee on Economic, Social and Cultural Rights in relation to sanctions. Participants generally shared the view that unilateral sanctions were primarily to be reported (including information about the alleged impact on human rights of the measures) by targeted States, although reporting by targeting State was also possible. The depository of the Register would then notify the targeting state of the allegation by the targeted state of the alleged impact on human rights of the measures, and invite the targeting state to respond to the allegation and to include in the response, information on whether it has conducted an assessment of the possible inadvertent (or unintended) impact on human rights of the measures, and if so provide the result of such assessment, and whether it has taken any steps to mitigate such impact. It was also suggested that a focal point should be created by States for civil society organizations to be able to interact with their respective Government as regards possible notification of unilateral sanctions for inclusion in the Register. Also, the inclusion of a potential dispute settlement mechanism associated with the Registry was discussed, as well as the possibility that such dispute settlement mechanism be entitled to rule on reparation claims for adverse impact of sanctions on human rights.

Appendix I

Elements on the United Nations register of unilateral sanctions likely to have a human rights impact

1. It is suggested that the next General Assembly resolution on human rights and unilateral coercive measures include the following elements:

Preamble

2. Welcoming the proposal made by the Special Rapporteur of the Human Rights Council on the negative impact of unilateral coercive measures on the enjoyment of human rights, submitted pursuant to [---], and recalling the reports of the Secretary-General on [---], to establish a consolidated central register at the level of the United Nations Secretariat to recapitulate the list of all unilateral sanctions in force, and sharing the Special Rapporteur's view that the first obstacle to a global evaluation of the negative impact of unilateral sanctions on human rights is the unavailability of global and standardized updated data, and that full transparency in this regard would be helpful both to the United Nations, to private enterprises involved in international trade, and to the civil society at large,

Operative paragraphs

- [---]. Requests the Secretary-General to establish and maintain at United Nations Headquarters in New York a universal and non-discriminatory Register of unilateral sanctions, to include information on unilateral sanctions, to be reported by targeted States, or by States implementing sanctions as the case may be, in accordance with procedures including applicable standards initially comprising those set out in the annex to the present resolution and subsequently incorporating any adjustments to the standards decided upon by the General Assembly at its [---] session in the light of the recommendations of the panel referred to in paragraph below;

- [---]. Also requests the Secretary-General, with the assistance of a panel of independent experts to be nominated by him on the basis of equitable geographical representation and upon proposals by States, to elaborate the technical procedures and applicable standards for comparability of data, to make any adjustments to the annex to the present resolution necessary for the effective operation of the Register, and to prepare a report on the modalities for ensuring the universality and non-discriminatory character of the Register, to raise awareness concerning the Member States concerning the Register and its procedures, and to submit this report to the General Assembly at its [---] session;

- [---]. Calls upon all Member States to provide annually for the Register data in accordance with the procedures established by paragraph 26 above, and the annex to the present resolution;

- [---]. Decides, with a view to ensuring the universality and non-discriminatory character of the Register, to keep the operation of the Register under review, and, to this end:

(a) Invites Member States to provide the Secretary-General with their views, not later than [insert date 2 years ahead], on:

(i) The operation of the Register during its first two years;

(ii) Any identified obstacles to achieving the universality and non-discriminatory character of the Register;

(iii) Possible improvements or expansion of scope to include a monitoring function;

Register of unilateral sanctions

1. The Register of unilateral sanctions likely to have a human rights impact (the "Register") shall be established, with effect from [1 January 2018], and maintained at the Headquarters of the United Nations in New York.

2. Member States are requested to provide data for the Register, addressed to the Secretary-General, on an annual basis by [30 April] each year in respect of unilateral coercive measures implemented by them or targeting them and in force during the previous calendar year;

3. The first such registration shall take place by [30 April 2018] in respect of the calendar year [2017];

4. The data so provided shall be recorded in respect of each Member State.

5. Member States are requested to designate focal points for civil society organizations to be able to interact with their respective Government as regards unilateral sanctions;

6. Upon notification of the unilateral sanction by the targeted State or States, the Secretary-General shall seek the views of the source State or group of States and vice versa.

7. Unilateral sanctions covered are those taken by virtue of law or executive decision or under any other form by the source State or group of States.

8. The Register shall be open for public consultation.

9. In addition, the Secretary-General shall provide annually a consolidated report to the General Assembly of the data registered.

Appendix II

Elements for a draft General Assembly declaration on unilateral coercive measures and the rule of law

A. Basic principles

1. Full account should be taken of the position expressed in resolution 34/13 adopted by the Human Rights Council on 24 March 2017, which 'urged all States to refrain from imposing unilateral coercive measures, also urged the removal of such measures, as they are contrary to the Charter and norms and principles governing peaceful relations among States at all levels, and recalled that such measures prevent the full realization of economic and social development of nations while also affecting the full realization of human rights' ;

2. Unilateral coercive measures have a tendency to remain in force irrespective of the achievement of its purported objective;

3. Unilateral coercive measures involving extraterritorial application of domestic measures are unlawful under international law;

4. Unilateral coercive measures in a number of cases entail severe adverse impacts on the enjoyment of human rights of targeted populations and individuals, have often proven to be inefficient, and are most likely to entail unintended effects in the form of adverse human rights impacts on non-designated third parties;

5. Whilst targeted States have a responsibility to mitigate the adverse human rights impact of unilateral sanctions imposed by source countries, the latter are also accountable for any adverse effects on human rights occurring in target countries, even if such effects are unintended, to the extent that "when an external party takes upon itself even partial responsibility for the situation within a country (whether under Chapter VII of the Charter or otherwise), it also unavoidably assumes a responsibility to do all within its powers to protect the economic, social and cultural rights of the affected population" (Committee on Economic, Social and Cultural Rights, General Comment No. 8 on the relationship between economic sanctions and respect for economic, social and cultural rights, E/C.12/1997/8, para. 13);

6. The inhabitants of a given country do not forfeit basic economic, social and cultural rights by virtue of any determination that their leaders have violated norms of international peace and security, as affirmed by the Committee on Economic, Social and Cultural Rights in its general comment No. 8 on the relationship between economic sanctions and respect for economic, social and cultural rights (See E/C.12/1997/8, para. 16).

7. In situations where unilateral coercive measures inflict undue sufferings/have an egregious human rights impact, on the population of a targeted State, whatever legal motive is invoked, they become clearly illegal and their source countries should be called to account.

8. Such call for the removal of unilateral coercive measures applies to comprehensive measures as well as to targeted measures and to economic as well as to financial measures;

9. As a consequence, the basic principle should be that States and groups of States should commit themselves to refraining from imposing unilateral coercive measures, as well as remove such measures as are in force, and shall commit to using other means of peaceful settlement of international disputes and differences;

10. The present Declaration is without prejudice to the procedural and substantive requirements arising from the legal regime of countermeasures in the sense of the International Law Commission Draft Articles on the Responsibility of States for International Wrongful Acts;

B. Mitigation: Universally/Generally accepted rules of behaviour

11. Pending the total removal and termination of all existing unilateral coercive measures and renunciation to their use, all efforts should be made to mitigate the adverse effect of unilateral sanctions on human rights;

12. The transitional period preceding the total removal and termination of all existing unilateral coercive measures and renunciation to their use should be shortened to the greatest extent possible.

13. During the transitional period, the following universally accepted rules of behaviour shall be asserted to mitigate the adverse impacts of unilateral sanctions:

(a) The parties implementing unilateral sanctions are under an obligation to conduct a transparent human rights impact assessment of the measures envisaged, and to monitor on a regular basis the effects of implementation of the measures, including as regards their adverse effects on human rights;

(b) The parties implementing unilateral sanctions are under an obligation to ensure effective exemptions for satisfying basic human rights and essential humanitarian needs;

(c) There must be an end to the politicization of what was intended to be a purely technical interbank international financial transfer mechanism, whose manipulation in the form of selective exclusion is tantamount to re-introducing comprehensive sanctions on targeted countries;

(d) Mechanisms to guarantee due process, and the availability of judicial review for obtaining remedies and redress for unilateral coercive measures, should be available to:

- Impacted groups, though non-targeted (by comprehensive or sectoral sanctions), and
- Individuals and legal persons and entities targeted (by targeted sanctions).

(e) The basic components of the requirement of due process in relation to unilateral coercive measures, pending their total elimination, shall be the following:

(i) Mechanisms and procedures for judicial review of unilateral coercive measures:

- The factual and legal grounds for the measures have to be disclosed to the concerned parties;
- The availability of, and the mechanisms and procedures for, a right to appeal/judicial review, should be made known to the targeted parties upon notification to the concerned parties;
- Such mechanisms and procedures should allow for a review of the substantive factual and legal grounds for the unilateral coercive measures, in accordance with international law and international humanitarian law, as well as in compliance with internationally recognized procedural standards;
- Such mechanisms and procedures should be in place and available at the same level (either domestic or international [either regional organization or the United Nations]) as the source of the unilateral coercive measures concerned; in case of unavailability of procedures for remedies at the domestic level or at the level of a group of countries imposing sanctions, the targeted countries or persons should be entitled to seek remedies by the Committee of the treaty body concerned, i.e. CESCR;
- Such mechanisms and procedures should be of a judicial nature or at least, for a transitional period, of the nature of an Ombudsperson or other quasi-judicial mechanism;

(ii) Notification of the measures to the parties concerned as soon as practicable, without affecting the effectiveness of the measures;

(iii) Time-bound limitation of the measures, and biannual monitoring and review;

(iv) Reversibility of the measures;

(v) Appropriate humanitarian exceptions;

(vi) A regular mechanism to monitor potential adverse impact and unintended consequences of these measures; and

(vi) Availability of effective compensation/reparations (including financial) when unwarranted adverse impacts on human rights have occurred.