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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Negative impact of unilateral coercive measures on the
enjoyment of human rights****Report of the Special Rapporteur on the negative impact of unilateral
coercive measures on the enjoyment of human rights***Summary*

The present report is the fifth annual report submitted to the Human Rights Council by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy.

In it, the Special Rapporteur considers the impact of unilateral coercive measures on the human rights of people in eight countries and the emergence of international legal norms against the extraterritorial use of unilateral sanctions. He concludes with a call for the drafting of a declaration on unilateral coercive measures and the rule of law and for the appointment of a special representative of the Secretary-General on unilateral coercive measures.



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I. Introduction

1. The present report is the fifth annual report submitted to the Human Rights Council by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights. It was prepared pursuant to Council resolutions 27/21, in which the mandate of the Special Rapporteur is set out, and 36/10, by which that mandate is extended for a period of three years.

II. Overview of the activities of the Special Rapporteur

2. On 28 June 2018, the Special Rapporteur made a presentation to the humanitarian task force on the Syrian Arab Republic to brief Member States on the human rights concerns arising from the implementation of sanctions on the Syrian Arab Republic.

3. On 17 October, the Special Rapporteur presented a report to the General Assembly in which he reviewed developments regarding unilateral sanctions applied to certain countries and addressed concerns arising from the use of unilateral sanctions in war and in peace (A/73/175).

4. On 7 March 2019, the Special Rapporteur participated in a panel discussion held by the Organization for Defending Victims of Violence. The discussion highlighted the human rights violations suffered by Iranians as a result of unilateral actions taken by the United States of America, including violations of the rights to health and food and the right to protection from extreme poverty.

5. On 29 May 2019, the Special Rapporteur led a panel discussion hosted by International Physicians for the Prevention of Nuclear War on whether economic sanctions against the Syrian Arab Republic might be holding civilians hostage. He also met with Government officials and parliamentarians.

6. On 27 June 2019, the Special Rapporteur was the keynote speaker at an international seminar on unilateral coercive measures and their impacts hosted by the Embassy of Cuba in Austria. His presentation highlighted the human rights concerns arising from the use of unilateral sanctions on Cuba, Iran (Islamic Republic of) and Venezuela (Bolivarian Republic of).

III. Recent developments regarding the use of unilateral sanctions

A. Islamic Republic of Iran

7. The Special Rapporteur restates at the outset that the reimposition of a comprehensive trade embargo on the Islamic Republic of Iran, purporting to apply to third parties worldwide under the threat of adverse consequences for corporations also doing business in the United States is a significant step backwards (A/HRC/39/54, para. 34), especially since it violates Security Council resolution 2231 (2015)¹ and deprives the Islamic Republic of Iran of the relief to which it is entitled under the Joint Comprehensive Plan of Action and Council resolution 2231 (2015).

8. Multiple credible sources point to instances of undue compliance with United States measures against the Islamic Republic of Iran. In particular, there has been a virtual collapse in trade between the European Union and the Islamic Republic of Iran in recent

¹ Member States are obligated under Article 25 of the Charter of the United Nations to accept and carry out the decisions of the Security Council.

months,² which is strong evidence that a number of firms are unwilling to take the risk of losing access to United States markets or of facing huge financial or criminal penalties in the United States if they keep doing business with the Islamic Republic of Iran. There are reports of significant losses for European Union firms related to the termination of their activities in the Islamic Republic of Iran,³ despite the recent entry into force of updated Regulation No. 2271/96 of the Council of the European Union (see also paras. 55–56 below).

9. Also, there are recurring reports that payments and financial flows are affected by de facto bans on the use of the international wire transfer payment system (particularly from the SWIFT system), making humanitarian exemptions ineffective. Without the ability to pay, no food or medicine can be bought. This situation effectively amounts to an unlawful blockade, or may be comparable to collective reprisals, both of which are banned under humanitarian law (A/HRC/30/45, para. 42). The Special Rapporteur has called on the United Nations and on the independent procurement agencies of third countries to remedy the situation and ensure in particular that humanitarian supplies reach target countries (A/73/175, para. 36). He has also taken note of the recent establishment by France, Germany and the United Kingdom of Great Britain and Northern Ireland, with the support of the European Union, of the Instrument in Support of Trade Exchanges (INSTEX), to facilitate legitimate trade between European economic operators and the Islamic Republic of Iran by shielding European Union companies from the effects of extraterritorial, secondary United States sanctions. According to its sponsors, INSTEX will support legitimate European trade with the Islamic Republic of Iran, focusing initially on the goods most essential to the Iranian population, such as pharmaceuticals and medical devices and the agri-food sector.⁴ At the time of writing, some measure of uncertainty still surrounds this mechanism. According to certain sources, the European Union side has shown some trepidation, in the face of threats by United States officials, in terms of shielding European Union companies trading with the Islamic Republic of Iran from United States sanctions. That said, it is expected that in the long term INSTEX will be open to economic operators from third countries who wish to trade with the Islamic Republic of Iran.

10. The Special Rapporteur notes with concern the statement made by the Iranian Red Crescent Society that United States sanctions have already prevented it from obtaining any foreign financial aid to assist victims of the recent flooding that has killed at least 70 people and inundated some 1,900 communities in the Islamic Republic of Iran.⁵ This points to the ineffectiveness of humanitarian exemptions to sanctions, a situation that cannot be justified in terms of humanitarian law.

B. Cuba

11. In previous reports to the General Assembly, the Special Rapporteur noted that the expectations raised by the United States' recognition, under President Barack Obama in 2014, that the embargo on Cuba in place since 1960 was a failed policy and that, in the words of Mr. Obama, "isolation hasn't worked" and by the subsequent moves towards normalizing relations between the two countries have been shattered since 2017, when the current United States Administration returned to a hard-line policy of comprehensive economic isolation (A/73/175, para. 6, and A/72/370, paras. 7–8).

² Trade between the Islamic Republic of Iran and European Union member States during the first month of 2019 stood at €343.38 million, which represents an 82.72 per cent decline compared with the corresponding period in 2018. See "Iran trade with EU plunges", *Financial Tribune*, 13 April 2019.

³ See, e.g., Peter Campbell, "Renault hit by Iran withdrawal as quarterly sales drop 5 per cent", *Financial Times*, 26 April 2019.

⁴ See www.diplomatie.gouv.fr/en/country-files/iran/events/article/joint-statement-on-the-creation-of-instex-the-special-purpose-vehicle-aimed-at.

⁵ See, e.g., Reuters, "Flood-hit Iran getting no financial aid from abroad due to US sanctions: statement", 7 April 2019.

12. The situation in that regard has only worsened since 2017. On 2 May 2019, the United States re-activated the provisions of Title III of the Helms-Burton Act of 1996, thereby extending the reach of the embargo to foreign companies trading with Cuba. The move allows for civil suits to be brought before United States courts against European Union companies (and companies of other countries, including Canada) for “trafficking” in property expropriated by the Government of Cuba from United States owners after 1959.⁶

13. Reactivating Title III means unilaterally terminating the *modus vivendi* between the European Union and the United States that rests on a bilateral agreement reached in London in 1998 according to which the United States waived Titles III and IV of the Helms-Burton Act and committed to resist the extraterritorial application of legislation of that kind in the future,⁷ thereby ending the transatlantic dispute that the adoption of the Helms-Burton Act had prompted.⁸ This marks a significant shift in Euro-Atlantic relations.

14. Indeed, the European Union has already called on the United States to continue to fully respect and implement the London agreement of 1998. It has stressed repeatedly that it has “firmly and continuously opposed any such measures, due to their extraterritorial impact on the European Union, in violation of commonly accepted rules of international trade”,⁹ adding that “we cannot accept that unilaterally imposed measures impede our economic and commercial relations with Cuba”.¹⁰

15. Meanwhile, the embargo imposed on Cuba has continued to exert a massive toll on the Cuban economy, as reported by the Government of Cuba¹¹ and by international organizations.¹² The impacts on human rights of this policy of comprehensive economic coercion continues to be documented.¹³ The repeated condemnations by the international community of the unilateral sanctions on Cuba have gained new momentum and nearly universal consensus since the latest General Assembly resolution on the necessity of ending the economic, commercial and financial embargo imposed by the United States against Cuba was adopted on 1 November 2018, with 192 States voting in favour and 2 States (Israel and the United States) voting against.¹⁴

C. Bolivarian Republic of Venezuela

16. In recent months the Bolivarian Republic of Venezuela has witnessed an escalation in the political standoff between the Government and the opposition, which has turned into a legitimacy struggle. An intense international media campaign has taken place, most of it hostile to the government of President Nicolás Maduro. The decision taken by the United States and by a number of Western States to stop recognizing the Maduro government in favour of the self-proclaimed interim “president” Juan Guaidó has been met with threats, both veiled and open, of military intervention in the name of humanitarian intervention. All this has added to an already unstable political situation and a disastrous economic situation

⁶ Stephen Wicary, “Trump nears key Cuba sanctions decision over support for Maduro”, 27 February 2019.

⁷ Stefaan Smis and Kim van der Borght, “The EU-US compromise on the Helms-Burton and D’Amato acts”, *American Journal of International Law*, vol. 93, No. 1 (January 1999), pp. 227–236.

⁸ Brigitte Stern, “Vers la mondialisation juridique?: les lois Helms-Burton et D’Amato-Kennedy”, *Revue générale de droit international public*, vol. 100, No. 4 (1996), pp. 979–1,003.

⁹ See https://eeas.europa.eu/delegations/un-new-york/53167/eu-explanation-vote-united-nations-general-assembly-ending-economic-commercial-and-financial_en.

¹⁰ *Ibid.*

¹¹ In a submission to the General Assembly dated 9 July 2018, the Government of Cuba reported accumulated losses caused by the embargo amounting to \$933,678,000,000 (A/73/85, p. 27).

¹² See, e.g., the submission of the United Nations Development Programme dated 11 June 2018 (A/73/85, pp. 137–142).

¹³ See, e.g., the submission of the World Health Organization/Pan American Health Organization dated 4 June 2018 (A/73/85, pp. 151–155). See also A/72/370, para. 8.

¹⁴ General Assembly resolution 73/8 is the latest in a long series of Assembly resolutions, adopted annually since 1992, on the necessity of ending the economic, commercial and financial embargo imposed by the United States against Cuba.

which have, in turn, had terrible repercussions on the enjoyment of human rights. Given the propaganda-filled rhetoric often used by all sides, it is difficult to gauge the respective importance of the various causes of the virtual collapse of the Venezuelan economy. However, international observers generally agree that the unilateral economic sanctions adopted by the United States and other countries, coupled with a multifaceted “economic war”, have played a non-negligible role in crippling the economy of the Bolivarian Republic of Venezuela (see A/HRC/39/47/Add.1).

United States sanctions

17. The United States has been applying a growing number of economic sanctions on the Bolivarian Republic of Venezuela for more than a decade¹⁵ and has “blacklisted” the country on various grounds. Since 2005, the United States has made an annual determination that the Bolivarian Republic of Venezuela has “failed demonstrably ... to make substantial efforts to adhere to its obligations under international counter-narcotics agreements”.¹⁶ The Special Rapporteur notes that the President of the United States, Donald Trump, made the most recent determination for the fiscal year 2019 in September 2018, but at the same time also waived foreign aid restrictions for programmes to support democracy promotion.¹⁷ Based on that determination, the United States Department of the Treasury has imposed economic sanctions on at least 22 individuals with connections to the Bolivarian Republic of Venezuela, including several current or former Venezuelan officials, and 27 companies, by listing them as “specially designated narcotics traffickers” pursuant to the Foreign Narcotics Kingpin Designation Act.

18. The Bolivarian Republic of Venezuela has also been subjected to terrorism-related sanctions since 2006, as United States officials have expressed concern about the lack of cooperation on anti-terrorism efforts. Since then, the United States Secretary of State has made an annual determination that the Bolivarian Republic of Venezuela is not cooperating fully with United States anti-terrorism efforts.¹⁸ As a result, the United States has prohibited all commercial arms sales and retransfers to the Bolivarian Republic of Venezuela since 2006.

19. Other United States sanctions have been based on the designation by the United States Department of State of the Bolivarian Republic of Venezuela as a “tier 3” country since 2014.¹⁹ “Tier 3” countries are defined as those whose governments do not fully comply with the minimum standards set out in the Trafficking Victims Protection Act and are not making significant efforts to do so.²⁰ They are subject to a variety of aid restrictions, which may be waived by the President for national interest reasons.²¹

20. Yet another round of economic sanctions have been enacted by the United States in direct relation to the ongoing political crisis in the Bolivarian Republic of Venezuela. The United States claims that the sanctions are a response to increasing repression in the Bolivarian Republic of Venezuela. In December 2014, the Congress of the United States enacted the Venezuela Defense of Human Rights and Civil Society Act.²² Among other provisions, the Act requires the President to impose sanctions (asset freezes and visa restrictions) against those whom the President determines are responsible for significant acts of violence or serious human rights abuses associated with the February 2014 protests or, more broadly, against anyone who has directed or ordered the arrest or prosecution of a person primarily because of the person’s legitimate exercise of freedom of expression or assembly.

¹⁵ Congressional Research Service, “Venezuela: overview of US sanctions” (8 March 2019).

¹⁶ Such a determination is made pursuant to the procedures set forth in the Foreign Relations Authorization Act, Fiscal Year 2003.

¹⁷ Congressional Research Service, “Venezuela: overview of US sanctions” (8 March 2019).

¹⁸ Such a determination is made pursuant to section 40A of the Arms Export Control Act.

¹⁹ United States Department of State, *Trafficking in Persons Report* (June 2019), p. 48.

²⁰ *Ibid.*, p. 37.

²¹ Congressional Research Service, “Venezuela: overview of US sanctions” (8 March 2019)

²² In 2016, Congress extended the Act until 2019.

21. Based on this move by Congress, and acting pursuant to the powers vested in him by the International Emergency Economic Powers Act and the National Emergencies Act, then United States President Obama declared a national emergency with respect to the Bolivarian Republic of Venezuela as early as 2015,²³ finding that:

The situation in Venezuela, including the Government of Venezuela's erosion of human rights guarantees, persecution of political opponents, curtailment of press freedoms, use of violence and human rights violations and abuses in response to antigovernment protests, and arbitrary arrest and detention of antigovernment protestors, as well as the exacerbating presence of significant public corruption, constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States.²⁴

This declaration, contained in executive order 13692, paved the way for sanctions to be imposed on the Bolivarian Republic of Venezuela.

22. At first, the sanctions, which included the freezing of assets located in the United States and a ban on entry into United States territory, targeted various designated high-ranking officials of the armed forces and security services. But that initial sanction regime already had the potential to be extended to "any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be responsible for or complicit in ... or to have participated in, directly or indirectly" in certain actions or behaviour in relation to the Bolivarian Republic of Venezuela unilaterally determined by the United States as being illicit, such as "actions or policies that undermine democratic processes or institutions", "actions that prohibit, limit, or penalize the exercise of freedom of expression or peaceful assembly" or "public corruption by senior officials within the Government of Venezuela".²⁵

23. Another ground for being targeted by United States sanctions is "to be a current or former official of the Government of Venezuela",²⁶ which is particularly disturbing because it ascribes guilt on the basis of a person's association to the Government, not the commission of any wrongful act. In executive order 13692, the "Government of Venezuela" is defined the Government, any political subdivision, agency or instrumentality thereof, including the Central Bank, and any person owned or controlled by, or acting for or on behalf of, the Government. To date, the Department of the Treasury has imposed financial sanctions on 80 Venezuelans pursuant to executive order 13692.

24. Under the Obama Administration, the Department of the Treasury froze the assets of seven Venezuelans: six members of the national security forces and one prosecutor involved in repressing anti-government protesters. From May 2017 to March 2019, under the Trump Administration, and as the political situation in the Bolivarian Republic of Venezuela has deteriorated, the Department sanctioned an additional 73 government and military officials. These officials include President Maduro and his wife; the Executive Vice-President; eight Supreme Court members; the leaders of the army, the national guard and the national police; and four state governors.

25. During the same period, the United States imposed broader financial sanctions on the Bolivarian Republic of Venezuela through three additional executive orders "because of the government's serious human rights abuses, antidemocratic actions, and responsibility for the deepening humanitarian crisis".²⁷ In August 2017, President Trump issued executive order 13808, which prohibits access to the United States financial markets, including its debt and equity markets, by the Government of the Bolivarian Republic of Venezuela, including its oil company *Petróleos de Venezuela*. It is noted that the executive order includes certain exceptions to minimize the impact on the Venezuelan people and United

²³ Executive order 13692 of 8 March 2015, "Blocking property and suspending entry of certain persons contributing to the situation in Venezuela", *Federal Register*, vol. 80, No. 47 (11 March 2015).

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Congressional Research Service, "Venezuela: overview of US sanctions" (8 March 2019).

States economic interests. For example, transactions with CITGO Holding, Inc., which is owned by *Petróleos de Venezuela*, are allowed, as are certain transactions by United States owners of certain Venezuelan/*Petróleos de Venezuela* bonds on secondary markets, financing for agricultural and medical exports, and short-term financing to facilitate trade.²⁸

26. In March 2018, President Trump issued executive order 13827, which prohibits transactions involving the issuance and use by the Government of the Bolivarian Republic of Venezuela of any digital currency, digital coin or digital token (the Maduro government had launched a cryptocurrency known as “the petro” in February 2018, in an effort to circumvent sanctions).²⁹ In May 2018, President Trump issued executive order 13835, which prohibits transactions related to the purchase of Venezuelan debt, including accounts receivable, and to any debt owed to the Bolivarian Republic of Venezuela pledged as collateral. United States officials assert the action was intended to deny corrupt Venezuelan officials the ability to improperly value and sell off public assets in return for kickbacks.³⁰

27. Then, on 1 November 2018, President Trump issued executive order 13850, setting forth a framework to block the assets of and prohibit certain transactions with persons operating in the gold sector (or any other sector of the economy as determined in the future by the Secretary of the Treasury) or to be responsible or complicit in transactions involving deceptive practices or corruption and the Government of the Bolivarian Republic of Venezuela. In January 2019, pursuant to executive order 13850, the United States Administration sanctioned 7 individuals and 23 companies for involvement in a corruption scheme involving currency exchange practices that generated more than \$2.4 billion.

28. Finally, on 28 January 2019, pursuant to executive order 13850, the Office of Foreign Assets Control of the Department of the Treasury designated *Petróleos de Venezuela*, which is the lifeline of the Venezuelan economy. As a result, all property and interests in property of *Petróleos de Venezuela* subject to United States jurisdiction have been blocked, and United States citizens and companies generally are prohibited from engaging in transactions with the company.

European sanctions

29. By contrast, the sanctions imposed by the European Union, in force since November 2017, have remained limited to an embargo on the export of weapons and equipment for internal repression and to a travel ban and an asset freeze targeting 18 Venezuelans “holding official positions and responsible for human rights violations as well as for undermining democracy and the rule of law in Venezuela”.³¹ However, it was reported in February 2019 that the European Union was considering imposing more sanctions on the Maduro government, although the option of an oil embargo is excluded at this stage. The Foreign Minister of Malta, Carmelo Abela, said, following a meeting of European Union ministers of foreign affairs in Brussels, that “the intention ... is that sanctions can be possible on certain individuals rather than on issues that might have an effect on an already weakened economy” and that “having further (sectoral) sanctions is not excluded but primarily we are focused on certain individuals”.³²

Economic warfare

30. “For some time now, the United States had been using Venezuela’s vulnerabilities to engage in a low-grade economic war. Instead of military action, the US has imposed selected economic sanctions against certain Venezuelans, ... with threats of worse to come. But, as of January 28, 2019, the US has declared a full-scale economic assault. Indeed, it declared an embargo against *Petróleos de Venezuela* ... that controls the world’s largest oil

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Council of the European Union, “Venezuela: EU renews sanctions for one year”, press release, 6 November 2018.

³² Reuters, “EU studying more sanctions on Venezuela, no oil embargo: Malta”, 4 February 2019.

reserves and produces virtually all of Venezuela's foreign exchange".³³ This large-scale economic warfare has been widely documented, including by a United Nations expert (A/HRC/39/47/Add.1). Very disturbing accounts of the effects of these measures have surfaced, and it has been asserted in a report, of which one of the authors, Jeffrey Sachs, is a world-renowned professor in economics and senior advisor to the United Nations, that:

The sanctions reduced the public's caloric intake, increased disease and mortality (for both adults and infants), and displaced millions of Venezuelans who fled the country as a result of the worsening economic depression and hyperinflation. They exacerbated Venezuela's economic crisis and made it nearly impossible to stabilize the economy, contributing further to excess deaths. All of these impacts disproportionately harmed the poorest and most vulnerable Venezuelans.

Even more severe and destructive than the broad economic sanctions of August 2017 were the sanctions imposed by executive order on January 28, 2019 and subsequent executive orders this year; and the recognition of a parallel government, which as shown below, created a whole new set of financial and trade sanctions that are even more constricting than the executive orders themselves.³⁴

31. The authors of that same report also found that:

The sanctions have inflicted, and increasingly inflict, very serious harm to human life and health, including an estimated more than 40,000 deaths from 2017–2018; and that these sanctions would fit the definition of collective punishment of the civilian population as described in both the Geneva and Hague international conventions.³⁵

Humanitarian aid as a weapon

32. The use of humanitarian aid as a weapon is another striking aspect of this "total" economic war.³⁶ As noted by one commentator:

Ostensibly aimed at alleviating Venezuela's spiralling crises of hunger, health, and security, the humanitarian aid put forward by the United States also serves another purpose. Venezuelan opposition leaders here and the US officials offering much-needed aid posit that the mission could induce military officers to turn away from their government. Aid groups on the ground worry, however, that a political operation thinly padded with humanitarian objectives could send a precarious situation down an even worse path – disastrous American efforts to intervene in Latin America from decades past serve as a reminder of how badly things can go.³⁷

Attempts at using humanitarian supplies with a view to fuelling tensions within the Bolivarian Republic of Venezuela and ultimately provoking regime change arguably fall under the definition of unilateral coercive measures, which, based on Human Rights Council resolution 27/21, could be understood as measures including, but not limited to, economic and political ones, imposed by States or groups of States to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights with a view to securing some specific change in its policy (see also A/HRC/30/45, para. 13). Concerns have been expressed that "using what was apparently an aid mission to challenge

³³ Steve Hanke, "The US declares economic war against Venezuela", *Forbes*, 29 January 2019.

³⁴ Mark Weisbrot and Jeffrey Sachs, "Economic sanctions as collective punishment: the case of Venezuela" (Washington, D.C., Center for Economic and Policy Research, April 2019), p. 1.

³⁵ Ibid. See also Pasqualina Curcio Curcio, *The Visible Hand of the Market: Economic Warfare in Venezuela* (Editorial Nosotros Mismos, 2017).

³⁶ See Dylan Baddour, "When humanitarian aid is used as a weapon to bring down regimes", *The Atlantic*, 21 February 2019; Rachele Krygier and Siobhan O'Grady, "In Venezuela, humanitarian aid has become a political weapon", *The Washington Post*, 15 February 2019; Kelsey Gilman, "Why US-backed aid to Venezuela harkens back to a dark history of covert operations", *Public Radio International*, 25 February 2019.

³⁷ Dylan Baddour, "When humanitarian aid is used as a weapon to bring down regimes".

a president stood against the principles of humanitarianism”.³⁸ Responding to a question on the situation in the Bolivarian Republic of Venezuela, the Spokesperson of the United Nations Secretary-General has said that “humanitarian action needs to be independent of political, military or other objectives”.³⁹

33. It is crucial to reaffirm the core humanitarian principles of humanity, neutrality, impartiality and independence that should always govern the work of humanitarian organizations. The first three principles (humanity, neutrality and impartiality) have been formally endorsed in General Assembly resolution 46/182,⁴⁰ while the fourth principle (independence) has been recognized in Assembly resolution 58/114. The Assembly has repeatedly stressed the importance of promoting and respecting these principles within the framework of humanitarian assistance.⁴¹

34. Economic sanctions are preventing the Government of the Bolivarian Republic of Venezuela from addressing the dire economic situation and the humanitarian crisis in the country. Global banks voluntarily comply with United States sanctions that prohibit transactions involving certain debts or equities, and certain other transactions and services involving the Government, thus effectively impeding the latter’s access to financial markets.⁴² The Government has already pointed to the serious financial consequences of the previous sanctions restricting access by *Petróleos de Venezuela* to financial markets, stressing that these amounted to “closing the possibility of issuing and negotiating optimally new debt, which may eventually lead to the breach of the obligations internationally incurred by the Republic, placing the assets that are outside the national territory at serious risk, which potentially can be subject to embargo and executed for the forced and anticipated fulfilment of the obligations contracted by the country”.⁴³

35. Concerns have been expressed about the possibility that the stronger sanctions on *Petróleos de Venezuela* “will further exacerbate Venezuela’s difficult humanitarian crisis, already marked by shortages of food and medicines and mass migration, by limiting the country’s key source of revenue”.⁴⁴ In 2018, the former Ambassador of the United States to Venezuela, William Brownfield, said: “If we are going to sanction [*Petróleos de Venezuela*], it will have an impact on the entire people, on the ordinary citizen. The counter-argument is that the people suffer so much from the lack of food, security, medicines, public health, that at this moment perhaps the best resolution would be to accelerate the collapse, even if it produces a period of suffering of months or perhaps years”.⁴⁵

D. Russian Federation

36. The restrictive measures imposed by the European Union on the Russian Federation were extended again in 2018, until 31 July 2019,⁴⁶ whereas those enacted by the United

³⁸ Ibid.

³⁹ Comment made on 11 February 2019 during the daily press briefing by the Office of the Spokesperson for the Secretary-General (www.un.org/press/en/2019/db190211.doc.htm).

⁴⁰ In that resolution, the General Assembly also stresses that the sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations and that humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country.

⁴¹ See also www.unocha.org/sites/dms/Documents/OOM-humanitarianprinciples_eng_June12.pdf.

⁴² See, e.g., the sanctions policy statement issued by HSBC, available from www.business.hsbc.pl/-/media/library/markets-selective/poland/pdf/additional-restrictions-pl.pdf.

⁴³ Permanent Mission of the Bolivarian Republic of Venezuela to the United Nations Office and other international organizations in Geneva, “On the economic war and unilateral coercive measures against the Bolivarian Republic of Venezuela”, email to the Special Representative, 12 July 2018. See also A/73/175, para. 12.

⁴⁴ Congressional Research Service, “Venezuela: overview of US sanctions” (8 March 2019).

⁴⁵ See www.youtube.com/watch?v=IJBoe3AvSvc.

⁴⁶ The main European Union sanctions targeting the financial, energy and defence sectors of the Russian Federation in relation to the events in Ukraine and Crimea were extended most recently through

States have gradually been expanded.⁴⁷ Amid reports that the sanctions have unintended effects, including boosting the domestic (indigenous) capabilities of Russian industries and the agricultural sector,⁴⁸ to the detriment of Europe,⁴⁹ there are regular indications that Russian workers experience the adverse effects of the sanctions in their daily lives, especially through price increases.⁵⁰ This being so, the Special Rapporteur has demonstrated in previous reports (A/HRC/36/44/Add.1, paras. 62–65, and A/HRC/39/54/Add.1, para. 29), on the basis of converging data provided by European Union think tanks and producer federations, as well as of Russian Federation official statistics, that the sanctions and retaliatory measures by the targeted country have resulted in both sides incurring losses in terms of gross national product. In the European Union in particular, agricultural producers have been the most adversely affected.

37. The Special Rapporteur has expressed concern in his recent reports to the Human Rights Council (A/HRC/39/54, para. 42) and the General Assembly (A/73/175, para. 10) about the effects of the sanctions applied by the United States to the Russian aluminium company RUSAL, which have adversely affected its operations and the daily lives of tens of thousands of workers. The Special Rapporteur welcomes the lifting of these measures in January 2019.⁵¹ He wishes to reiterate his appreciation to the authorities of the United States for having responded positively and lifted the sanctions.

E. Qatar

38. The restrictive measures imposed by various Gulf countries on Qatar remain in force. The Special Rapporteur has received an invitation to visit Saudi Arabia, one of the Gulf countries applying such measures, and Qatar. The International Court of Justice may be expected to render, in the course of 2019, its judgment in the contentious proceedings initiated by Qatar claiming that the measures amount to violations of the International Convention on the Elimination of All Forms of Racial Discrimination. While the proceedings before the Court are pending, Qatar has also decided to make use of the procedure contemplated by article 11 of the Convention to challenge the restrictive measures adopted against it by some of its neighbouring States.⁵² It has been reported that early in May 2019 the Committee on the Elimination of Racial Discrimination held closed-door hearings with one representative from each of the three States involved to discuss preliminary issues such as jurisdiction and the admissibility of the complaints brought by Qatar before the Committee. On 10 May 2019, the Committee decided to postpone its review of the case until its forthcoming session, to be held in August 2019.

Council Decision No. 2018/2078. Other targeted sanctions are being implemented by the European Union, in particular against various designated Russian officials in relation to an escalation in the Kerch Strait and the Sea of Azov and violations of international law by the Russian Federation, which used military force with no justification.

⁴⁷ See, e.g., Henry Meyer, Laurence Arnold and Olga Tanas, “All about the US sanctions aimed at Putin’s Russia”, *Washington Post*, 8 April 2019.

⁴⁸ Judy Twigg, “Russia is winning the sanctions game”, *The National Interest*, 14 March 2019.

⁴⁹ See, e.g., Reuters, “German business group sees damage from Russia sanctions at around 100 bln euros”, 11 January 2019.

⁵⁰ “Russia suffering under new US sanctions”, *Deutsche Welle*, 10 April 2018.

⁵¹ “US lifts sanctions on Deripaska-controlled companies”, *Financial Times*, 27 January 2019.

⁵² Under article 11 of the Convention, a State party may file a communication to the Committee when it considers that another State party is not giving effect to the provisions of the Convention. On 8 March 2018, Qatar submitted two inter-State communications, one against Saudi Arabia and one against the United Arab Emirates. It is unclear whether the submission of an inter-State communication to the Committee is an obstacle to the exercise by the International Court of Justice of its jurisdiction over the claims made by Qatar based on the Convention. Article 22 of the Convention provides for referral to the Court only when the dispute is not settled by negotiation or by the procedures expressly provided for in the Convention. Interpretation of that provision in the case of Qatar involves complex issues of jurisdiction, parallel proceedings and *lis pendens* under international law.

F. State of Palestine

39. In 2018, the State of Palestine submitted an inter-State communication under the International Convention on the Elimination of All Forms of Racial Discrimination against Israel. In it, the State of Palestine claimed discrimination and other practices and policies that violate State obligations under the Convention.⁵³ The detailed contents of the communication have not been made public yet, but it may be assumed that the State of Palestine could seek to challenge, inter alia, the continuing blockade implemented by the occupying Power, as constituting a breach of obligations under the Convention. It should be recalled that the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has found that the blockade constitutes collective punishment of the people of Gaza, contrary to article 33 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (A/70/392, para. 22, and A/73/175, para. 30). The Special Rapporteur also cannot but draw attention to an alarming recent report in which the United Nations Relief and Works Agency for Palestine Refugees in the Near East states that more than one million people in Gaza – half of the population of the territory – may not have enough food by June 2019 as a result of the blockade coupled with other factors such as successive conflicts that have razed entire neighbourhoods and public infrastructure to the ground.⁵⁴

G. Syrian Arab Republic

40. Measures which, when superimposed, become comprehensive economic sanctions continue to be imposed on the Syrian Arab Republic by a number of States and regional organizations, such as the European Union, which again in 2018 extended its restrictive measures, until 1 June 2019.⁵⁵ The measures are being maintained as the political-military process towards peace evolves and as the situation on the ground becomes more stable. The reason for extending sanctions is that the human rights of Syrians continue to be violated by the Government. This effectively means fighting the blaze of human rights violations not with a hose but with a flamethrower.

41. In recent months, the United States has strongly tightened the measures that prohibit oil exports to the Syrian Arab Republic through targeted sanctions on foreign entities accused of facilitating transactions on oil deliveries to that country,⁵⁶ as well as through the issuance of an advisory to the maritime petroleum shipping community issued by the Office of Foreign Assets Control to “alert persons globally to the significant US sanctions risks for parties involved in petroleum shipments to the Government of Syria”.⁵⁷ The stated objective of these measures is to “disrupt support for the Assad regime by preventing the normalization of economic and diplomatic relations and the provision of reconstruction funding, as well as permanently denying the regime the use of chemical weapons. The United States is committed to isolating the Assad regime and its supporters from the global financial and trade system in response to the continued atrocities committed by the regime against the Syrian people”.⁵⁸ Such an overt claim that sanctions are being used to prevent the normalization of economic and diplomatic relations and reconstruction funding is a crude admission of disregard for the principles of the Charter of the United Nations, human rights and humanitarian law.

⁵³ See www.ohchr.org/EN/HRBodies/CERD/Pages/InterstateCommunications.aspx.

⁵⁴ See www.unrwa.org/newsroom/press-releases/more-one-million-people-gaza-%E2%80%93-half-population-territory-%E2%80%93-may-not-have (13 May 2019).

⁵⁵ Council of the European Union, “Syria: EU extends sanctions against the regime by one year”, press release, 28 May 2018.

⁵⁶ United States Department of the Treasury, “Treasury designates illicit Russia-Iran oil network supporting the Assad regime, Hizballah, and Hamas”, 20 November 2018; Alex Wayne, “US sanctions Russian companies to choke off oil for Syria”, Bloomberg, 20 November 2018.

⁵⁷ United States Department of the Treasury, “OFAC advisory to the maritime petroleum shipping community”, 25 March 2019.

⁵⁸ *Ibid.*

42. The restrictions imposed by the United States are reportedly having a catastrophic impact on the Syrian economy and population and forcing the Government of the Syrian Arab Republic to ration gasoline.⁵⁹ This situation, coupled with the effects of the random piling-up of 52 packets of other, so-called “smart”, sanctions and the comprehensive sanctions, effectively means imposing misery on an entire population. The measures are clearly indiscriminate, and thus arguably unlawful under international law, as previously stressed by the Special Rapporteur. This is all the more disturbing given that there used to be flexibility with regard to the implementation of sanctions on the Syrian Arab Republic in order to alleviate the situation of the civilian population. For example, in 2013 the European Union decided to selectively lift its oil embargo in relation to territories held by insurgent groups in the Syrian Arab Republic.⁶⁰ However, this reportedly boosted the capabilities of extremist Jihadist forces controlling those territories.⁶¹

H. Yemen

43. The Special Rapporteur, who has previously drawn attention to the humanitarian crisis in Yemen (A/73/175, para. 31, and A/72/370, paras. 31–32), notes with concern that the flow of essential foodstuffs and other commodities into Yemen continues to be restricted de facto, even though the naval blockade was lifted after the United Nations Verification and Inspection Mechanism for Yemen was set up.⁶² Obstacles to the flow of goods identified by United Nations agencies present in Yemen include obstacles on all sides to safe passage for aid delivery and delays in approving project agreements.⁶³ This includes what the World Food Programme has identified as “the obstructive and uncooperative role of some of the Houthi leaders in areas under their control”.⁶⁴ The Special Rapporteur notes that the Stockholm Agreement reached on 13 December 2018, which includes an agreement on the city of Hodeidah and the ports of Hodeidah, Salif and Ras Issa, represents a first step towards re-establishing regular trade with and from Yemen (S/2018/1134, annex). The Security Council, which is to be commended for having endorsed the agreement, has called on the parties to the conflict to continue to engage constructively, in good faith and without preconditions, with the Special Envoy for Yemen, including on continued work towards stabilizing the Yemeni economy (Council resolution 2451 (2018)). The Stockholm Agreement remains to be fully implemented on the ground.

IV. Emerging consensus of the international community to condemn and resist the extraterritorial application of unilateral sanctions

A. Condemnation of the extraterritorial application of unilateral sanctions

44. Rejection of the United States embargo on Cuba has become so widespread within the international community that in 2018 a near-universal consensus was reached by the General Assembly. Moreover, successive Assembly resolutions nominally concerned with the Cuban embargo actually have a broader scope and broader implications, since they contain language that clearly applies to unilateral coercive measures in general, whatever

⁵⁹ Donna Abu-Nasr, “US sanctions on Iran mean Damascus drivers queue for gas”, Bloomberg, 14 April 2019.

⁶⁰ Council of the European Union, “Council eases sanctions against Syria to support opposition and civilians”, press release, 22 April 2013.

⁶¹ Julian Borger and Mona Mahmood, “EU decision to lift Syrian oil sanctions boosts jihadist groups”, *The Guardian*, 19 May 2013.

⁶² Stephanie Nebehay, “UN quietly steps up inspection of aid ships to Yemen”, Reuters, 5 April 2018.

⁶³ Office for the Coordination of Humanitarian Affairs, “Yemen humanitarian update covering 22 March–17 April 2019”, issue No. 6.

⁶⁴ World Food Programme, “World Food Programme to consider suspension of aid in Houthi-controlled areas of Yemen”, press release, 20 May 2019.

the context. In its resolutions, the Assembly calls on all States to refrain from using unilateral coercive measures. The measures condemned are laws and regulations adopted by States the extraterritorial effects of which affect the sovereignty of other States, the legitimate interests of entities or persons under their jurisdiction and the freedom of trade and navigation. The Assembly also makes clear that States that refrain from promulgating and applying laws and measures of the kind dealt with in the present report or that repeal or invalidate any such measures already in force would be acting in conformity with their obligations under the Charter of the United Nations and international law, which, inter alia, reaffirm the freedom of trade and navigation (see, e.g., resolution 73/8, paras. 2–3).

45. In the preamble of its resolutions, the General Assembly refers to certain general principles, including the sovereign equality of States, non-intervention and non-interference in their internal affairs and freedom of international trade and navigation, which are also enshrined in many international legal instruments. It also refers to declarations and resolutions of different intergovernmental forums, bodies and Governments that express the rejection by the international community and public opinion of the promulgation and application of measures of the kind referred to above.

46. It would thus appear that the international community views as unlawful those unilateral coercive measures the extraterritorial effects of which affect the sovereignty of other States, the legitimate interests of entities or persons under their jurisdiction and the freedom of trade and navigation. Being almost universally proclaimed as such by the international community, that view therefore qualifies as an emerging rule of customary international law.

B. Obligation to resist the extraterritorial application of unilateral sanctions

47. There is a legal argument that States may be under a legal obligation not to recognize the effects of unlawful sanctions, especially those applied extraterritorially and secondary economic sanctions. In fact, there exists in international law an obligation of non-recognition of (at least certain) unlawful situations. Such an obligation derives from the well-established general principle of law *ex injuria jus non oritur*, meaning that legal rights cannot derive from illegal acts.⁶⁵ It is set out in particular in article 41 (2) of the articles on responsibility of States for internationally wrongful acts: “No State shall recognize as lawful a situation created by a serious breach [by a State of an obligation arising under a peremptory norm of general international law], nor render aid or assistance in maintaining that situation”.⁶⁶

48. What are the peremptory norms the violation of which can give rise to the obligation of non-recognition? The forcible acquisition of territory is the most well-known example, and appears to be the unlawful situation *par excellence* covered by the obligation of non-recognition under customary international law.⁶⁷ But breaches of other peremptory norms can arguably be directly relevant to the same obligation, such as the right to self-determination, the prohibition of racial discrimination and apartheid, and basic principles of international humanitarian law.⁶⁸ The Special Rapporteur has already made the point that all three sets of peremptory norms referred to above could possibly be breached through the imposition of (at least certain forms of) economic sanctions.

49. The right to self-determination is recognized, inter alia, in common article 1 (1) of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which also spells out that, by virtue of that right, all peoples freely determine their political status and freely pursue their economic, social and

⁶⁵ Martin Dawidowicz, “The obligation of non-recognition of an unlawful situation”, James Crawford, Alain Pellet and Simon Olleson, eds., *The Law of International Responsibility* (Oxford, Oxford University Press, 2010), pp. 677–686.

⁶⁶ See General Assembly resolution 56/83, annex, as modified by A/56/49(Vol. I)/Corr.4.

⁶⁷ Dawidowicz, “The obligation of non-recognition of an unlawful situation”.

⁶⁸ *Ibid.*

cultural development. Common article 1 (2) provides that in no case may a people be deprived of its own means of subsistence. It has been noted in that respect that “the imposition of economic sanctions on a state may raise special risks of depriving a people of its means of subsistence”.⁶⁹ The manner in which such risks may materialize in given cases, through interference with the various economic, social and cultural rights, has been highlighted by the Committee on Economic, Social and Cultural Rights in paragraph 3 of its general comment No. 8 (1997) on the relationship between economic sanctions and respect for economic, social and cultural rights. It has been observed that “it is plain that in a given case, universally imposed sanctions regimes, which are insufficiently tailored or targeted and which lack adequate humanitarian exemptions, could have the cumulative effect of depriving a population, or substantial sections of it, of their means of subsistence”.⁷⁰ Along the same line, it seems plausible to argue that “[u]nilateral economic sanctions (as opposed to multilateral UN measures under Chapter VII of the Charter) imposed by one State on another, to compel that State to change a particular political or economic policy, could amount to a prohibited intervention and a denial of self-determination”.⁷¹ Respect of self-determination in that context is to be read in context with the rule precluding economic and political coercion, affirmed, among others, by the General Assembly, in its Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations of 1970 (resolution 2625 (XXV)).

50. The prohibition of racial discrimination, another prominent peremptory norm, may be infringed by sanctions implemented on the basis of the country of residence or the nationality of the targeted populations, violating, inter alia, article 26 of the International Covenant on Civil and Political Rights and articles 1 and 2 of the International Convention on the Elimination of All Forms of Racial Discrimination. Finally, a plausible argument can be made that core rules of international humanitarian law may be disregarded through the imposition of economic sanctions affecting basic human rights or the civilian population at large, even in peacetime (A/73/175, paras. 16–36, and A/71/287, para. 28; see also A/HRC/30/45).⁷²

51. The International Court of Justice has found in two cases that States were under an obligation to not recognize an unlawful situation. In 1971, the Court held that the presence of South Africa in Namibia was illegal and that States Members of the United Nations were under an obligation to refrain from any act and in particular any dealings with the Government of South Africa implying recognition of the legality of its presence in and administration of Namibia.⁷³ In 2004, the Court found that the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, were contrary to international law. It held that Israel had violated certain obligations erga omnes including the obligation to respect the right of the Palestinian people to self-determination, certain rules of humanitarian law applicable in armed conflict which are fundamental to the respect of the human person and elementary considerations of humanity, and article 1 common to the four Geneva Conventions. The Court then stated:

Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal

⁶⁹ Ben Saul, David Kinley and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (Oxford, Oxford University Press, 2014), p. 117.

⁷⁰ *Ibid.*, p. 118.

⁷¹ *Ibid.*, p. 107.

⁷² The Office of the United Nations High Commissioner for Human Rights has stated that humanitarian law provisions, such as the prohibition against the starvation of a civilian population as a method of warfare and the obligation to permit the free passage of all consignments of essential foodstuffs and medical supplies, are crucial for the evaluation of economic coercive measures (A/HRC/19/33, para. 10).

⁷³ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, at p. 58, para. 133.

situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction.⁷⁴

52. The Special Rapporteur deems that a number of analogies may be drawn from those two advisory opinions, which may be of relevance to the specific case of unlawful economic sanctions.

53. The International Law Commission could be called upon to include in its programme of work the issue of the obligation not to recognize unlawful situations, with a view to further clarifying certain aspects of that rule, in particular its plausible status as customary law in situations where economic coercion infringes the principle of self-determination, the prohibition of racial discrimination or core rules of international humanitarian law.⁷⁵

54. The General Assembly should be called upon to affirm solemnly, through a resolution that, as a consequence of the obligation of non-recognition, States are expected to take appropriate measures, including in their domestic laws, to deny giving any effect to or recognizing or enforcing in any manner, in their respective jurisdictions, extraterritorial secondary sanctions. This would reinforce the recent call made by the Human Rights Council for all Member States neither to recognize these measures nor to apply them, and to take effective administrative or legislative measures, as appropriate, to counteract the extraterritorial application or effects of unilateral coercive measures (resolution 34/13, para. 3).

55. This is precisely what the European Union did in 1996 when it adopted Council Regulation (EC) No. 2271/96 in reaction to the imposition by the United States of restrictive measures concerning Cuba, Libya and the Islamic Republic of Iran, measures that have negatively affected the interests of natural and legal persons in the European Union engaging in business, legitimate under European law, with those countries. The Regulation has since been updated to cover the more recent United States sanctions on the Islamic Republic of Iran and, again, to cover the withdrawal of the United States from the Iranian nuclear agreement. The Regulation basically provides protection against and counteracts the effects of the extraterritorial application of the sanctions measures covered, “where such application affects the interests of persons ... engaging in international trade and/or the movement of capital and related commercial activities between the Community and third countries”.⁷⁶ European Union persons and entities shall not comply, “whether directly or through a subsidiary or other intermediary person, actively or by deliberate omission, with any requirement or prohibition, including requests of foreign courts, based on or resulting, directly or indirectly, from the [sanctions covered] or from actions based thereon or resulting therefrom”.⁷⁷ The regulation also provides that “[n]o judgment of a court or tribunal and no decision of an administrative authority located outside the Community giving effect, directly or indirectly, to the [sanctions covered] or to actions based thereon or resulting therefrom, shall be recognized or be enforceable in any manner”.⁷⁸

⁷⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, at p. 200, para. 159.

⁷⁵ On the contents of the obligation in general, see, e.g., Stefan Talmon, “The duty not to ‘recognize as lawful’ a situation created by the illegal use of force or other serious breaches of a jus cogens obligation: an obligation without real substance?”, in Christian Tomuschat and Jean-Marc Thouvenin, eds., *The Fundamental Rules of the International Legal Order* (Leiden/Boston, Martinus Nijhoff, 2006), pp. 99–126. See also Djamchid Momtaz, “L’obligation de ne pas prêter aide ou assistance au maintien d’une situation créée par la violation d’une norme impérative du droit international général”, *Anuario Colombiano de Derecho Internacional*, vol. 10 (2017), pp. 205–219.

⁷⁶ Council Regulation (EC) No. 2271/96 of 22 November 1996 protecting against the effects of the extraterritorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, art. 1.

⁷⁷ *Ibid.*, art. 5.

⁷⁸ *Ibid.*, art. 4.

56. It remains unclear, however, at the time of writing, whether appropriate implementation mechanisms, including penalties for non-compliance, have been duly adopted (or will be in the short term) at the national level by European Union member States, as called for in the regulation. It is also unclear whether European Union authorities and member States are willing, as a matter of policy, to implement the regulation in a meaningful manner. The recent collapse in the volume of trade between the European Union and the Islamic Republic of Iran, as noted above, confirms the concerns expressed by Iranian officials that, despite the official discourse, the European Union might not show the adequate resolve to effectively counter United States secondary sanctions.

V. Recommendations and proposals of the Special Rapporteur

Recommendations on sanctions and the rule of law addressed to the General Assembly, the Human Rights Council and the Office of the Secretary-General

57. The Special Rapporteur has previously requested that Member States begin consultations on a draft declaration on unilateral coercive measures and the rule of law, to be presented at an upcoming session of the General Assembly, to establish an international consensus on the minimum human rights protections which must be applied to the use of unilateral coercive measures (A/HRC/39/54, para. 53 and annex). He appreciates the fact that the Assembly, in its resolution 71/193, took note with interest of the proposals he had put forward in his report to the Assembly at its seventy-first session, which included a call for the Human Rights Council and the Assembly 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 have been adversely affected by unilateral coercive measures (A/71/287, para. 37).

58. In its most recent resolution on the negative impact of unilateral coercive measures on the enjoyment of human rights, the Human Rights Council requested the Special Rapporteur, taking into account the views of Member States, to continue his work on identifying a set of elements to be considered, as appropriate, in the preparation of a draft United Nations declaration on the negative impact of unilateral coercive measures on the enjoyment of human rights, and to submit those elements to the Council in his next report (resolution 40/3, para. 23). The Council also requested the Office of the United Nations High Commissioner for Human Rights to organize a biennial panel discussion, in accordance with Council resolution 27/21, entitled “The way forward to a United Nations declaration on the negative impact of unilateral coercive measures on the enjoyment of all human rights, including the right to development”, for the forty-second session with the participation of Member States, relevant United Nations bodies, agencies and other relevant stakeholders. In that respect, it requested the Special Rapporteur to act as rapporteur for the panel discussion and to prepare a report thereon, and to submit and present the report to the Council at its forty-third session (resolution 40/3, para. 27). In response to that request, the Special Rapporteur has started preparations for the panel discussion, the outcomes of which will be presented in his next reports to the Council and the Assembly. He looks forward to engaging in fruitful discussions with all stakeholders and welcomes in advance any contributions that States, United Nations agencies and other stakeholders would like to make.

59. The Special Rapporteur proposes that the draft declaration (or treaty or convention) be supplemented by a statement stressing the existence of an obligation on States under international law not to recognize unlawful situations arising from the imposition of unilateral extraterritorial (secondary) sanctions, nor to render any aid or assistance to the sanctioning party in that respect, and affirming that States are expected to take appropriate measures, including in their domestic laws, to deny giving any effect to or recognizing or enforcing in any manner, in their respective jurisdictions, extraterritorial secondary sanctions.

Representative of the Secretary-General on unilateral coercive measures

60. The Special Rapporteur has suggested, in his previous reports to the Human Rights Council and the General Assembly (A/HRC/39/54, para. 52, and A/73/175, para. 54), that the Secretary-General appoint a special representative on unilateral coercive measures with a remit that would be broader than that of the Special Rapporteur and that would include facilitating a dialogue to solve the underlying causes of such measures (or, alternatively, several special representatives, each in charge of a country-specific sanctions regime, as appropriate). The Special Rapporteur believes that this would be a welcome step by the United Nations, especially in light of recent worrying developments related to the increased use of comprehensive sanctions and embargoes. It is a step that would permit the United Nations to be involved in mitigating initiatives and to provide support to affected people and communities. The Special Rapporteur also expresses hope that the vast majority of countries, as part of their commitment to protecting innocent segments of the population, in particular the most vulnerable, would support the idea of appointing such a special representative of the Secretary-General.

VI. Conclusions

61. As evidenced by the cases mentioned in section III of the present report (which is of course by no means exhaustive), the recent application of ever more stringent economic sanctions worldwide is a salient feature of international relations, one that is creating an increasing level of tension of which millions of innocent people are the daily victims. It is no exaggeration to assert that economic sanctions and blockades are increasingly becoming a threat to international peace and security, to the extent that their unwarranted and systematic use exacerbates inter-State tensions and leads to more violations of human rights, while distorting the architecture of the collective security system embodied by the Charter of the United Nations.

62. It used to be claimed that resort to unilateral sanctions was a means of exerting pressure on targeted States that avoided military confrontation.⁷⁹ The increased use of blockades and of sanctions regimes of such a scale and magnitude that they practically amount to full-scale embargoes, with no alternative to the targeted Government other than unconditional surrender, unilateral sanctions have lost the alleged quality of a diplomatic tool and appear more and more as a preamble for violent confrontation.⁸⁰ It is worth recalling that Article 2 (4) of the Charter of the United Nations sets out an obligation on States to refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Moreover, while scholars continue to argue about whether “force” in the meaning of article 2 (4) of the Charter should be interpreted as extending also to “economic coercion”, it has been persuasively advocated that such a view constitutes the correct interpretation of that Charter provision.⁸¹

⁷⁹ For a criticism of that view, see A/70/345, para. 7.

⁸⁰ A typical case is that of the Bolivarian Republic of Venezuela, where crippling economic sanctions are used in conjunction with repeated, almost unveiled, threats of military intervention. See, e.g., “Trump says all options are on the table for Venezuela”, *Reuters*, 23 January 2019.

⁸¹ See, e.g., “The use of nonviolent coercion: a study in legality under Article 2 (4) of the Charter of the United Nations”, *University of Pennsylvania Law Review*, vol. 122, pp. 983–1011.