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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Targets of unilateral coercive measures: notion, categories and vulnerable groups

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, submitted in accordance with Assembly resolution [75/181](#) and Human Rights Council resolutions [27/21](#) and [45/5](#).

* [A/76/150](#).



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

Summary

In the present report, the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, provides an overview and assessment of the notion and categories of targets of unilateral coercive measures (direct or indirect, primary or secondary, intended or unintended or specific or non-selective, among other categories). In her report, she addresses the issue of the human rights impact that unilateral coercive measures have on those targets. She also discusses those targets in connection with the extraterritorial effects of unilateral coercive measures, which raise special concerns for the Special Rapporteur owing to the increasing number of reported cases of human rights violations.

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I. Introduction

1. The present report is submitted to the General Assembly pursuant to its resolution 75/181 and Human Rights Council resolutions 27/21 and 45/5, in which the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights was requested to, inter alia, gather all information relevant to the negative impact of unilateral coercive measures on the enjoyment of human rights; to study relevant trends, developments and challenges; and to make guidelines and recommendations on ways and means to prevent, minimize and redress their adverse impact on human rights; as well as to draw the attention of the Assembly, the Council and the United Nations High Commissioner for Human Rights to relevant situations and cases.

2. The Special Rapporteur has taken note of the accelerating expansion of new and different forms and types of unilateral means of pressure and terms used to identify them (unilateral coercive measures, sanctions, unilateral sanctions, bilateral sanctions, international sanctions, autonomous sanctions, sectoral or territorial sanctions, among others) and of the need to identify the actors involved, including the various types of targets. She has recognized the current uncertainty and ambiguity with regard to all aspects of unilateral means of pressure as an impediment to identifying a legal framework and applicable standards, thereby undermining the rule of law, the world order and the authority of the United Nations. In view of the expansion of the categories and number of targets of unilateral sanctions, the present report contains an overview and assessment of the targets (direct or indirect, primary or secondary, intended or unintended and specific or non-selective, among other categories) and of the human rights impact that sanctions have on them. In the report, she discusses those targets in connection with the extraterritorial effects of unilateral sanctions, which raise special concerns for the Special Rapporteur owing to the increasing number of reported cases of human rights violations.

3. For the purposes of the present report, on 24 November 2020, the Special Rapporteur issued a call for submissions from States, United Nations agencies, regional and international organizations, human rights institutions, civil society, scholars, research institutions and others about the notion, characteristics, legal status and targets of unilateral sanctions. Responses were received from the Governments of Australia, China, Cuba, Belarus, Denmark, Guyana, Iran (Islamic Republic of), Ireland, Mauritius, the Russian Federation, the Syrian Arab Republic, Venezuela (Bolivarian Republic of) and Zimbabwe. Responses were also received from the European Union and its Parliament. Numerous non-governmental organizations (NGOs) and civil society organizations also responded, as did academics and other individuals concerned.¹ The Special Rapporteur expresses her gratitude to all respondents.

4. The preparation of the present report was further facilitated by the results of an expert consultation involving academics and international law practitioners that was convened by the Special Rapporteur on 26 April 2021. The Special Rapporteur expresses her gratitude to all participants.

5. The Special Rapporteur underscores that the term “unilateral sanctions” is used here without prejudice as to its legality or illegality and refers to any means of pressure applied by States or international organizations without or beyond authorization of the Security Council. She further underscores that unilateral sanctions applied by States, groups of States or regional organizations without or beyond the authorization

¹ Office of the United Nations High Commissioner for Human Rights (OHCHR), “Call for submissions: UCM-Study on the notion, characteristics, legal status and targets of unilateral sanctions”. Available at www.ohchr.org/EN/Issues/UCM/Pages/HRC48-report.aspx.

of the Council, not in conformity with the sanctioning actor's international obligations or whose illegality is not excluded under the law of international responsibility, regardless of the announced purpose or objective – including, but not limited to, economic, financial, political or any other sort of State-oriented or targeted measures applied to other States, individuals, companies or other non-governmental entities and intended to change the policy or behaviour of another State, obtain from it the subordination of the exercise of its sovereign rights, secure advantages of any kind or signal, coerce or punish the State being thus sanctioned – constitute unilateral coercive measures and are therefore illegal under international law.

II. Notion and types of targets of unilateral coercive measures

6. The Special Rapporteur observes that the notion encompassing targets of sanctions is extremely broad. It ranges from States and their populations to companies, organizations and individuals, as well as other groups and individuals whose human rights are affected by the imposition and enforcement of sanctions. Targets of sanctions may be direct or indirect, intended or unintended or primary or secondary, among other categories.

7. The Special Rapporteur notes that the overall impact of unilateral sanctions on their targets may, at times, approach that of Security Council sanctions, owing to the dominance of certain sanctioning parties, in particular the United States of America and the European Union, in international trade and in the operation of globally vital financial systems. That impact may be economic, political or humanitarian, or any combination thereof. When major trading States coordinate their actions and jointly apply sanctions against the same targets, as the United States, the European Union, the United Kingdom of Great Britain and Northern Ireland and Canada began to do in 2021 with sanctions affecting China,² Myanmar³ and Belarus⁴, the impact on human rights can be indistinguishable from that of sanctions imposed by the Council, which all Member States are obliged to apply.

III. Direct (primary) targets of unilateral sanctions

A. States

8. Sanctions against States imposed in the 1990s through Security Council resolutions caused enormous humanitarian harm to the populations of targeted States, preventing them from obtaining sufficient food and medicine to ensure the rights to health and to life and affecting all other human rights as well.⁵ While the Council has moved towards more targeted sanctions, the Special Rapporteur notes with concern that unilateral actors still actively apply broad economic and financial sanctions on States. The effects on the populations of target States are often pervasive.

² United States of America, Department of the Treasury, “Treasury sanctions Chinese government officials in connection with serious human rights abuse in Xinjiang”, press release, 22 March 2021.

³ Daphne Psaledakis and Simon Lewis, “US, allies coordinate new sanctions on Myanmar junta”, Reuters, 17 May 2021.

⁴ United Kingdom of Great Britain and Northern Ireland, “Belarus sanctions: joint statement by Canada, the EU, UK and US”, 21 June 2021.

⁵ Beate Bull and Arne Tostensen, “Bolstering human rights by means of ‘smart’ sanctions”, in *Human Rights in Development Yearbook 1999–2000*, The millennium edition, Hugo Stokke and Arne Tostensen, eds., (The Hague, Kluwer Law International, 2001), p. 88; and Andrea Ornelas, Marcela Aguila Rubin and Simon Bradley, “Measuring the real impact of sanctions”, [Swissinfo.ch](https://www.swissinfo.ch), 27 March 2013.

9. Some of those sanctions have been sustained over prolonged periods, notably those applied by the United States against Cuba (from 1960 to today). Recent cases include, inter alia, the restoration of economic sanctions imposed by the United States against the Islamic Republic of Iran (from 2018 to today), the sanctions applied by the United States against the Syrian Arab Republic under the Caesar Syria Civilian Protection Act of 2019 (the Caesar Act) (from 2020 to today) and the economic sanctions applied by the Economic Community of West African States (ECOWAS) against Mali (2020). The Special Rapporteur welcomes the fact that ECOWAS rescinded its sanctions after several months and did not reimpose them in response to similar circumstances in 2021, after restraint was urged for humanitarian reasons.⁶

10. Sanctions against States are intended to create economic disruptions that make it costly for the targeted State to maintain the conduct, policy or governing system that the sanctioning party finds objectionable. Disruptions often include restricting trade and impeding the international operations of the targeted State's central bank. "The 'theory' behind economic sanctions is that economic pressure on civilians will translate into pressure on the Government for change" (E/CN.4/Sub.2/2000/33, para. 48). That rarely occurs, however, causing civilians to suffer needlessly, and the Special Rapporteur regrets that States nevertheless continue the practice.

11. Reports received from sanctioned States in response to the Special Rapporteur's call for submissions indicate that the humanitarian effects of unilateral sanctions indiscriminately harm their entire populations. Cuba reported that unilateral coercive measures were "intended to cause economic and political hardship in the States against which" they were directed; they therefore made "no real distinction between the targeted States and the civilian populations residing in those States, disproportionately affecting children, women and other vulnerable groups", who bore the brunt of the negative effects of such measures.⁷ Similarly, the economic effects of United States sanctions against the Bolivarian Republic of Venezuela "have been transferred to the 30 million citizens that make up the Venezuelan population, severely and negatively affecting the enjoyment of ... human, economic, social, political and cultural rights", including the rights to health, to adequate food and to live in a dignified manner.⁸

12. The Special Rapporteur recalls that research conducted, as part of her mandate, on, inter alia, the impact of unilateral coercive measures on human rights in the context of the coronavirus disease (COVID-19) pandemic (A/75/209), as well as outside research on the same topic,⁹ has shown that humanitarian exemptions fail to eliminate the harm caused by sanctions to the human rights of a target country's population.

B. Economic sectors

13. The Special Rapporteur notes that the impact of sectoral sanctions on the human rights of a country's population can be tantamount to the impact of sanctions against the State itself when the targeted sector is critical to the national economy – as it usually is. Sectoral sanctions apply non-selectively to individuals and organizations acting in a specific sphere of the economy, without any identifiable reason or violation

⁶ Abdul Rashid Thomas, "President Bio condemns military takeovers at ECOWAS meeting as crisis deepens in Mali", *Sierra Leone Telegraph*, 31 May 2021.

⁷ Submission by the Government of Cuba.

⁸ Submission by the Government of the Bolivarian Republic of Venezuela.

⁹ Michael J. Strauss, "The (il)legality of unilateral sanctions in light of the inadequacy of humanitarian exemptions", *Journal of the Belarusian State University. International Relations* (forthcoming).

on their part. In particular, the United States applies non-selective sanctions in the financial, energy, defence, railway, metals and mining sectors of the Russian Federation, to impose costs for its purported aggression in Ukraine.¹⁰ Sectoral sanctions have also imposed by the United States in the gold,¹¹ oil and financial sectors of the Venezuelan economy.¹² The same approach has been taken by the European Union in relation to the Russian energy, defence, financial and dual-use goods sectors in general. Moreover, the European Union has introduced an import ban on goods from, and a ban on tourism services in, the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation.¹³

14. A special form of sectoral sanctions can be seen in the closing of airspace to flights of air companies registered in a designated State (Qatar (2017–2020), the Bolivarian Republic of Venezuela (2019–today) and Belarus (2021–today), among others) and in prohibiting the air companies of the sanctioning country from entering the airspace of designated States, thereby affecting the travel industry of the designated State. Similar situations exist for other sanctioned countries.¹⁴

15. United States and European Union sanctions against the oil sector of the Islamic Republic of Iran in the early 2010s spread to “every aspect of the economy” and, despite humanitarian exemptions, had such consequences as the inability to import sufficient medical supplies,¹⁵ thus affecting the rights to health and to life of the entire population of the sanctioned State. Similarly, United States sanctions against the State oil company of the Bolivarian Republic of Venezuela act as sanctions against the nation’s main economic sector and “likely contributed to the steeper decline of the Venezuelan economy”,¹⁶ a crisis affecting a wide range of human rights.

16. The Special Rapporteur recalls that, during the ongoing COVID-19 pandemic, the High Commissioner for Human Rights urged that sectoral sanctions be eased or suspended in the light of “their potentially debilitating impact on the health sector and human rights” in targeted countries.¹⁷ To date, such calls have not been heeded.

¹⁰ Kimberly Strosnider and David Addis, “New sanctions targeting Russian financial and energy sectors”, *Global Policy Watch*, 18 July 2014; United States, Executive Order 13662 blocking property of additional persons contributing to the situation in Ukraine (20 March 2014); and United States, Department of State, “Russia fact sheet”, 18 December 2018, available at <https://2017-2021.state.gov/russia-fact-sheet/index.html>.

¹¹ United States, Executive Order 13850 blocking property of additional persons contributing to the situation in Venezuela (1 November 2018).

¹² United States, Department of the Treasury, Office of Foreign Assets Control, Venezuela Sanctions Regulations 31 CFR Part 591: General License No. 36A Authorizing Certain Activities Necessary to the Wind Down of Transactions Involving Rosneft Trading S.A. or TNK Trading International S.A.

¹³ European Council, “EU restrictive measures in response to the crisis in Ukraine”. Available at www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis, accessed on 4 January 2021.

¹⁴ Letter dated 27 April 2021 from the Syrian Arab Republic.

¹⁵ Grégoire Mallard, Farzan Sabet and Jin Sun, “The humanitarian gap in the global sanctions regime: assessing causes, effects and solutions”, *Global Governance: A Review of Multilateralism and International Organizations*, vol. 26, No. 1 (2020), p. 123.

¹⁶ United States, Government Accountability Office, “Venezuela: additional tracking could aid treasury’s efforts to mitigate any adverse impacts US sanctions might have on humanitarian assistance”, 8 February 2021.

¹⁷ OHCHR, “Bachelet calls for easing of sanctions to enable medical systems to fight COVID-19 and limit global contagion”, 24 March 2020.

C. Individuals

17. In recent years, States and regional organizations have increasingly imposed sanctions unilaterally against individuals, companies and organizations, justifying such targeted or “smart” sanctions to “punish the wrongdoers” on the basis of their proportional humanitarian impact; the strategy is aimed at “enhancing their precision and sparing the vast majority of innocent civilians from undue hardship”.¹⁸ The Government of Spain notes that it has become a “general rule” that “sanctions must be imposed, as far as possible, on the individuals or bodies responsible for the undesired policies or actions in order to mitigate adverse effects on third parties”.¹⁹

18. Measures taken against targeted individuals include freezing their financial assets and other property in the sanctioning State or under the control of parties associated with the sanctioning State; blocking their financial transactions that involve the currency of the sanctioning State, that are processed through the sanctioning State’s financial system or that rely on international financial systems such as the Society for Worldwide Interbank Financial Telecommunication (SWIFT); and prohibitions on their travel, in particular their entry into or transit through the sanctioning country. These measures are often imposed together.

19. The Special Rapporteur notes that such sanctions inherently deny targeted individuals the enjoyment of a broad range of protected rights, including the right to property, to freedom of movement, to liberty and security, to privacy and family life, to freedom of expression, to work and to freely choose one’s employment and, at times, the rights to health, to life and to freedom from forced labour. They also deprive targeted individuals of the entire range of due process rights, including the right to a fair trial, to be presumed innocent until proven guilty, to be informed promptly about the nature of any accusations, to defend oneself, to defend one’s reputation and to an effective remedy.

20. In the light of the above, she expresses concern that sanctioning States have been rapidly expanding the list of reasons for which individuals may be targeted. These include individuals:

(a) Accused of involvement in acts that the sanctioning party attributes to a foreign State, such as alleged violations of international law, frequently in the area of human rights, or alleged State-supported terrorism;²⁰

¹⁸ Adam Winkler, “Just sanctions”, *Human Rights Quarterly*, vol. 21, No. 1 (February 1999), p. 155.

¹⁹ Spain, Ministry for Foreign Affairs, the European Union and Cooperation, “International sanctions”.

²⁰ For example, sanctions imposed by the United States under the Sergei Magnitsky Rule of Law Accountability Act of 2012 against Russian nationals accused of participating in the investigation, arrest, imprisonment and death of the tax lawyer Sergei Magnitsky; sanctions imposed in 2021 by Canada, the United Kingdom, the United States and the European Union against Chinese officials they accused of having carried out a State program of human rights abuses against Uyghurs (Lorne Cook, “EU, US, UK, Canada target China officials over Uyghur abuses”, Associated Press, 22 March 2021); and sanctions imposed by the Islamic Republic of Iran against the President of the United States, Donald Trump, and members of his Government for alleged terrorism (Pars Today, “Iran slaps sanctions on Trump, other US officials over terrorism”, 19 January 2021).

(b) In a position to make or influence changes in a State's conduct or policy that are sought by the sanctioning party;²¹

(c) Who are officials of, or associated with, a foreign Government that the sanctioning State considers to be illegitimate and is seeking to remove from power, in order for another Government be installed in the State concerned;²²

(d) In another State and who are accused of acts that undermine democracy in that State;²³

(e) Allegedly acting to destabilize the territorial integrity or governance of another State or who "actively" support such acts;²⁴

(f) Obstructing the work of international organizations in another State;²⁵

(g) Alleged to be involved in, associated with or otherwise supporting a non-State terrorist group²⁶ or criminal organization;²⁷

(h) Alleged to engage in corruption in another State;²⁸

(i) Participating in a judicial process in which nationals of the sanctioning State may be investigated, charged and tried for international crimes;²⁹

(j) Declining to perform activities that the sanctioning State wants them to undertake in pursuit of its own interests, which may conflict with those of the

²¹ For example, sanctions imposed in 2011 by the United States and the European Union against the President of the Syrian Arab Republic, Bashar Al-Assad (BBC, "Syria: EU imposes sanctions on President Assad", 23 May 2011); sanctions imposed in 2019 by the United States against the Supreme Leader of the Islamic Republic of Iran and other senior Iranian officials (United States, Executive Order 13876 imposing sanctions with respect to Iran (24 June 2019); and United States, Department of the Treasury, "Treasury Designates Supreme Leader of Iran's Inner Circle Responsible for Advancing Regime's Domestic and Foreign Oppression", press release, 4 November 2019).

²² For example, sanctions imposed by the United States against the President of the Bolivarian Republic of Venezuela, Nicolas Maduro (United States, Department of the Treasury, "Treasury Sanctions the President of Venezuela", press release, 31 July 2017).

²³ For example, sanctions imposed in 2021 by Canada, the United Kingdom, the United States, and the European Union against officials in Belarus (United States, Department of the Treasury, "Treasury Sanctions Belarus Officials for Undermining Democracy", press release, 2 October 2020).

²⁴ European Union, Council decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

²⁵ European Union, Council Decision 2014/499/CFSP of 25 July 2014 amending decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

²⁶ United States, Executive Order 12947 prohibiting transactions with terrorists who threaten to disrupt the Middle East peace process (23 January 1995); and sanctions imposed in 2016 by the European Union against individuals allegedly associated with Islamic State in Iraq and the Levant (ISIL, also known as Da'esh) and Al-Qaida (European Council, "Fight against terrorism: EU strengthens its legal arsenal against ISIL/Da'esh and Al-Qaida", press release, 20 September 2016).

²⁷ Sanctions imposed in 2018 by the United States against the alleged leader of an international drug cartel (Associated Press, "US sanctions Colombian drug trafficker and emerald companies", 5 June 2018).

²⁸ United States, Executive Order 13818 blocking the property of persons involved in serious human rights abuse or corruption (20 December 2017); and United Kingdom, Global Anti-Corruption Sanctions Regulations 2021.

²⁹ United States, Executive Order 13928 Blocking property of certain persons associated with the International Criminal Court (11 June 2020).

individual's State (i.e. an individual who declines to act as an agent of the sanctioning State);³⁰

(k) Who are family members or associates of a sanctioned individual and who are presumed to benefit from the individual's alleged acts;³¹

(l) Accused of carrying out transactions with a sanctioned State, entity or individual and who, under certain unilateral sanctions regimes,³² may be located in anywhere in the world.

21. The Special Rapporteur recalls that the rights affected are not only enshrined in international conventions, but also part of customary international law and embodied in the Universal Declaration of Human Rights, and that all States have the obligation to respect and protect them for every individual. This therefore brings the legality of unilateral targeted sanctions into question.

22. The Special Rapporteur highlights that sanctions are usually imposed in the absence of criminal charges or proceedings in any jurisdiction against the listed individuals, and that due process rights protect not only individuals, through standards for evidence and thresholds for guilt, but also the rule of law itself. She observes with concern that ignoring those rights has led to individuals being sanctioned erroneously,³³ and that that is reported to occur with some frequency.³⁴

23. While it is claimed that the targeted sanctions imposed by the European Union against individuals now have "due process guarantees" that "allow individuals to challenge their listing" in court,³⁵ the Special Rapporteur notes the absence of such guarantees prior to the decision to impose sanctions and that subsequent challenges can take time,³⁶ during which those sanctions "can severely obstruct the life of designees – unfairly if the target has been wrongly identified".³⁷ Other sanctioning States, such as the United States, do not necessarily inform targeted individuals of

³⁰ Letter of allegation dated 26 August 2020 from the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights and letter of urgent appeal dated 2 February 2021 from the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, addressed to the United States of America, on information received concerning the situation of Mr. Alireza Rahnavard (documents AL USA 22/2020 and UA USA 9/2021).

³¹ Sanctions imposed in 2011 by the European Union against family members and associates of the former President of Egypt, Hosni Mubarak (Council Regulation (EU) No. 270/2011 of 21 March 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt); and sanctions imposed by the European Union, in 2012, and the United States, in 2020, against family members and associates of the President of the Syrian Arab Republic, Bashar Al-Assad (Karen DeYoung and Sarah Dadouch, "Trump administration imposes sanctions on Syria's Assad, family and close associates", *The Washington Post*, 17 June 2020).

³² For example, sanctions under the United States Caesar Syria Civilian Protection Act of 2019.

³³ ANSA, "Ristoratore a Verona per errore in lista nera sanzioni Usa", 2 April 2021.

³⁴ "Experts say there are many cases that happen behind the scenes, where banks are told to freeze payments of individuals and companies that are wrongly targeted" (Justin Harper, "Italian restaurant owner wrongly targeted by US sanctions", BBC, 2 April 2021).

³⁵ Clara Portela, *Targeted Sanctions against Individuals on Grounds of Grave Human Rights Violations: Impact, Trends and Prospects at EU Level* (European Parliament, April 2018), p. 23.

³⁶ The duration of proceedings in European Union courts is sometimes lengthy (Katri Annikki Havu, "Damages liability for non-material harm in EU case law", *European Law Review*, vol. 44, No. 4 (2019), p. 492–514.

³⁷ Clara Portela, *Targeted Sanctions against Individuals*, p. 23.

sanctions against them,³⁸ causing them to suddenly discover that they have been cut off from carrying out financial transactions, travelling and accessing their property.

24. Obtaining redress is difficult. It can take months for the United States Government to grant lawyers seeking to represent sanctioned individuals the licences needed to provide them with legal services and request their de-listing, and it has been estimated that decisions on de-listings usually take about two years.³⁹

25. The Special Rapporteur further notes an expansion of cases of listing individuals and companies for activities that do not constitute criminal acts or wrongdoings under international law at all: individuals and companies “associated with” the Government,⁴⁰ “benefiting from or supporting the ... regime”,⁴¹ doing business in the country or being a family member of senior State officials or businessmen.⁴² The Special Rapporteur is concerned that listing individuals and companies for acts that are not qualified as crimes under the legislation of their own or any other State⁴³ results in the violation of the right not to be held guilty for any offense that did not constitute an offense at the moment of its commission.⁴⁴ The Special Rapporteur recalls that the Nuremberg Tribunal⁴⁵ and subsequent international criminal processes⁴⁶ have deemed such collective punishment inappropriate.

26. The Special Rapporteur also notes that such reasons have no criminal nature and appear to be oriented towards conveying an unfavourable image of each sanctioned individual, harming their right to reputation and raising the question of whether other reasons given for listing them were deemed too weak to stand on their own.

27. Sanctions against one individual can affect the human rights of many others. Thus, “depending on the position of the targeted individual, the sanctions may ... affect a (potentially large) number of bystanders. For example, if a leader of an organization or business is targeted, this will likely affect employees, family members and others who are somehow (economically) dependent upon the targeted individual.”⁴⁷

³⁸ Letter of allegation dated 26 August 2020 from the Special Rapporteur addressed to the United States of America (document AL USA 22/2020).

³⁹ Letter of allegation dated 2 February 2021 addressed to the United States of America (document AL USA 9/2021).

⁴⁰ European Union, Council decision 2010/639/CFSP of 25 October 2010 concerning restrictive measures against certain officials of Belarus, art. 2.

⁴¹ European Union, Council decision 2012/36/CFSP of 23 January 2012 amending decision 2010/639/CFSP concerning restrictive measures against Belarus, art. 1 (1) and (2).

⁴² European Union, Council regulation (EU) 2021/996 of 21 June 2021 amending regulation (EC) No. 765/2006 concerning restrictive measures in respect of Belarus

⁴³ European Union, Council decision 2010/639/CFSP; Council decision (CFSP) 2017/496 of 21 March 2017 amending decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt; Council decision 2012/36/CFSP; and Council decision 2011/173/CFSP of 21 March 2011 concerning restrictive measures in view of the situation in Bosnia and Herzegovina, art. 1 (1) (c).

⁴⁴ International Covenant on Civil and Political Rights, art. 15 (1).

⁴⁵ Quincy Wright, “International law and guilt by association”, *American Journal of International Law*, vol. 43, No. 4 (October 1949), pp. 746–755.

⁴⁶ For example, the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (Tracy Isaacs, “Introduction”, in *Accountability for Collective Wrongdoing*, Tracy Isaacs and Richard Vernon, eds. (Cambridge, Cambridge University Press, 2011), p. 3.

⁴⁷ Nienke van der Have, “The proposed EU human rights sanctions regime: a first appreciation”, *Security and Human Rights*, vol. 30 (2020), p. 69.

28. The Special Rapporteur is especially troubled by the fact that unilateral actors are imposing sanctions against individuals with little knowledge about how they impact the targeted individuals' human rights – or the rights of others. This was acknowledged in the following statement from a report on a study conducted for the European Parliament in 2018: “Due to the difficulty of ascertaining the effects of individual sanctions on the designees, and particularly of obtaining credible information from the designees, research on this question is hardly available.”⁴⁸ The Special Rapporteur is alarmed by this disturbing admission, which signals that sanctioning States target individuals without determining if the sanctions respect or violate the States' human rights obligations. This suggests negligence at best and wilful violations at worst, as the work of the Special Rapporteur and others inside and outside the United Nations system unambiguously demonstrate that sanctions do indeed violate numerous human rights of targeted individuals.

D. Companies

29. The harm to human rights from sanctions imposed against companies is felt first by employees, who suffer in terms of labour rights (the right to work and the right to freely choose one's employment, among others), but the humanitarian damage reaches far beyond the companies themselves. The employees' families and other dependents, as well as the employees and families of entities that engage in business with a sanctioned enterprise, are also affected.

30. This “ripple effect” can spread very widely when the sanctioned company is a bank. United States banks, for example, are required to stop providing correspondent banking services to foreign banks that are sanctioned by the United States as “primary money laundering concerns”. That blocks the sanctioned banks from participating in the global financial system and prevents companies in every sector that are clients of those banks from making transactions involving United States dollars, the primary currency for world trade.⁴⁹ The clients of the sanctioned bank may also be targeted by secondary sanctions.

31. The Special Rapporteur highlights that the humanitarian impact can be extremely broad when a targeted company is a key contributor to a country's economy or when it produces or distributes goods or services that are essential to the well-being of its population. When a sanctioned company dominates the country's main economic sector, the humanitarian effects can spread throughout the population as if the entire sector itself were targeted.

32. Sanctions also harm the human rights of people who benefit from companies' activities in the social sphere, as with the State oil company of the Bolivarian Republic of Venezuela, *Petróleos de Venezuela*. The freeze and diversion of assets of that company's United States subsidiary, CITGO, have prevented Venezuelan children from receiving liver and bone marrow transplants in foreign hospitals under a program that the State had financed from CITGO revenue; the program was abruptly stopped when the sanctions were imposed in 2017.⁵⁰

33. Sanctions cripple companies' ability to do business internationally because the majority of mechanisms enabling trade are under the jurisdiction of the United States or the European Union, both prolific actors in imposing unilateral sanctions. This

⁴⁸ Clara Portela, “Targeted sanctions against individuals”, p. 22.

⁴⁹ Joshua P. Zoffer, “The dollar and the United States' exorbitant power to sanction”, *American Journal of International Law (AJIL) Unbound*, vol. 113 (2019), pp. 152–156.

⁵⁰ OHCHR, “Preliminary findings of the visit to the Bolivarian Republic of Venezuela by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights”, press release, 12 February 2021.

includes the possibility for the European Union to cut off SWIFT transactions,⁵¹ and the ability of the United States to control and block payments in United States dollars through Visa, MasterCard, American Express, Western Union and PayPal.⁵²

34. The Special Rapporteur emphasizes that companies, like individuals, are sometimes targeted erroneously, a situation made more likely by the lack of due process prior to sanctioning. The European Union has imposed sanctions against companies only to have the evidence of their alleged wrongdoing later found by European Union courts to be faulty or insufficient.⁵³

E. Organizations

35. The Special Rapporteur notes with regret the expanding practice of imposing unilateral sanctions on universities and research institutions whose activities are deemed undesirable by the sanctioning States, resulting in the denial of the right to education. On 22 February 2019, as part of its renewed sanctions against the Islamic Republic of Iran, the United States listed two Iranian universities, Shahid Beheshti University and Sharif University of Technology, for their research in nuclear physics, although the Minister of Science, Research and Technology of the Islamic Republic of Iran said that the research had been misinterpreted.⁵⁴ A similar situation referred to the listing by the United States of two Russian research institutions involved in developing and testing COVID-19 vaccines for their alleged involvement in chemical and biological weapons programs.⁵⁵

IV. Indirect targets of unilateral sanctions

A. Workers at companies

36. Unilateral sanctions affecting a company affect the rights of its workers, who may simply be doing their jobs and have no involvement or connection with the reason for the sanctions. The Special Rapporteur observes that the most obvious impact is on their labour rights, notably the rights to work, to decent employment and to freely choose one's employment. The workers may suffer reduced wages or working hours or may lose their employment, either provisionally or permanently.⁵⁶

37. Many other rights are affected when sanctions force a company to curtail such benefits as employer-subsidized health insurance, transport or education. In those cases, the rights to health, to freedom of movement and to education and, more broadly, the right to an adequate standard of living, are all affected.

⁵¹ Brian O'Toole, "Don't believe the SWIFT China sanctions hype", *Atlantic Council*, 15 September 2020; PYMNTS.com, "SWIFT says it 'has no authority' to unplug Russia or Israel", 8 October 2014; and Charter'97, "Economist: disconnecting from SWIFT will be a bomb for the regime", 25 November 2020.

⁵² See Renata Avila Pinto, "Digital sovereignty or digital colonialism?" *Sur: International Journal on Human Rights*, vol. 27 (July 2018), p. 20.

⁵³ European Court of Justice (Fourth Chamber), *Islamic Republic of Iran Shipping Lines v. Council of the European Union*, Case No. T-489/10, Judgement of the General Court, 16 September 2013, cited in Elena Chachko, "Foreign affairs in court: lessons from CJEU targeted sanctions jurisprudence", *Yale Journal of International Law*, vol. 44, No. 1 (2019), p. 17.

⁵⁴ Mustafa Melih Ahishali, "US adds 2 Iranian universities to sanctions list", Anadolu Agency, 18 February 2019.

⁵⁵ Mike Eckel, "US blacklists Russian entities for chemical, biological weapon research", RadioFreeEurope/RadioLiberty, 27 August 2020.

⁵⁶ Freshfields Bruckhaus Deringer, LLP, "How sanctions may affect your workplace", Lexology, 15 July 2015.

38. The Special Rapporteur refers to the conclusion of the International Labour Organization (ILO) that social protections linked to employment have a “key role in preventing and reducing poverty, enhancing income security and limiting inequality”.⁵⁷ In the case of a worker’s pension being reduced as the result of lower wages or a redundancy arising from sanctions, the effects can be long-lasting.

39. Workers’ rights are affected when unilateral sanctions target a State where the company’s owners, activities or clients are located; the economic sector in which the company operates; or a sector that the company depends on. They are also harmed when sanctions target individuals with key roles in the company’s ownership, management or functioning; when they target another company on which it relies for goods or services, including financing and shipping; or when the sanctions target the company’s clients.

40. The Special Rapporteur emphasizes that sanctions against a single company can affect large numbers of people associated with it. The bans by countries of the European Union and Ukraine on the Belarusian airline Belavia from flying through their airspace in 2021 have reportedly “negatively affected the well-being” of some “2,000 airline staff and over 5,000 family members”, although the employees “were not in any way involved or engaged in the event” that led to the sanctions.⁵⁸

41. United States sanctions were imposed against the captain of an Iranian oil tanker that carried Iranian gasoline to the Bolivarian Republic of Venezuela in 2020 because the tanker company that employed him was owned by the Islamic Republic of Iran, a State that the United States had designated as a sponsor of terrorism. The captain, who had trained for seaman’s work and had advanced in the ranks over his career, was doing the job for which he was hired under a contract, but he could suddenly no longer work or travel. The letter from the Special Rapporteur to the United States Government expressing her concerns about the captain’s rights⁵⁹ has received no response until now.

42. The broad sanctions imposed by the United States against the Islamic Republic of Iran in 2012–2015 was estimated through one study to have resulted in 18,000 job losses in the manufacturing sector.⁶⁰

B. Family members

43. The Special Rapporteur stresses that family members who are not direct targets of sanctions have their rights denied when sanctions are applied against an individual on whom they depend economically or for social benefits. The rights affected range from the right to a decent life to the rights to health and to education. The sanctions also disrupt their right to family life in numerous ways; a travel ban against the targeted person, for example, can provoke the separation of a family.

44. Family members of a non-targeted individual whose rights are affected by sanctions against a State, an economic sector, a company or an organization – such as a worker at a sanctioned company, a child who cannot obtain medical help or a student

⁵⁷ Christina Behrendt and Quynh Anh Nguyen, *Innovative Approaches for Ensuring Universal Social Protection for the Future of Work*, International Labour Organization Future of Work Research Paper Series (Geneva, International Labour Office, 2018), p. v.

⁵⁸ “Open address by Belavia – Belarusian Airlines employees to the international community”, Belavia, 28 June 2021.

⁵⁹ Letter of allegation dated 4 September 2020 from the Special Rapporteur addressed to the United States of America concerning the situation of Mr. Alireza Rahnavard (document AL USA 24/2020).

⁶⁰ Ali Moghaddasi Kelishomi and Roberto Nisticò, “Employment effects of economic sanctions”, Centre for Studies in Economics and Finance, University of Naples, Working Paper No. 615 (31 January 2021) pp. 6 and 26–27.

whose education is blocked by curtailed Internet access or a lack of fuel – are likewise indirect targets of the sanctions.

45. The Special Rapporteur highlights that the indirect effects of sanctions on family members can be enormous. In a statement made to the United States Congress on 6 October 1998, the former United Nations Humanitarian Coordinator in Iraq, Denis Halliday, stated that “sanctions have had a serious impact on the Iraqi extended family system. We’re seeing an increase in single-parent families, usually mothers struggling alone. There is an increase in divorce. Many families have had to sell their homes, furniture and other possessions to put food on the table, resulting in homelessness. Many young people are resorting to prostitution.”

C. Population as a whole

46. The Special Rapporteur notes with concern that most unilateral sanctions, regardless of the target, affect the rights of many people who are not direct targets themselves, including a State’s entire population. The sanctions by the United States against the oil sector in the Bolivarian Republic of Venezuela, for example, prevent people throughout the country from carrying on their everyday lives. The inability to sell oil abroad prevents the country from having the revenues needed to maintain basic infrastructure, and the resulting electricity shortages prevent every household from enjoying the right to a decent life, among many other human rights. Something as simple as the inability to charge a mobile telephone or to access the Internet impedes freedom of expression and harms the rights to health and to life in emergency situations. Without light for reading, people cannot enjoy the right to education. Water shortages arise because electric pumps cannot function, creating unsanitary situations and affecting the right to health. Meanwhile, the inability to import oil products like gasoline harms people’s freedom of movement, and, by preventing them from going to work or seeking medical help, the sanctions also affect their right to work, their right to health and, consequently, their right to life.⁶¹ Such conditions also deny the population its right to development.

47. The Special Rapporteur notes that the rights of the Syrian population are similarly harmed by the sanctions imposed by the United States under the Caesar Act, targeting individuals and companies accused of aiding the Government of the Syrian Arab Republic in rebuilding the country’s infrastructure, including schools and hospitals, and in restoring oil and gas production. Domestic actors other than the Government cannot engage in reconstruction on a major scale, but post-conflict rebuilding is essential for the enjoyment of economic and social rights, including the right to development through access to basic resources, education, health services, food, housing and employment.⁶²

48. A study of sectoral and targeted sanctions imposed against the Syrian Arab Republic since 2011 by the United States, the European Union and other Western countries concluded that, ultimately, “ordinary Syrians have been the ones hit hardest by the indirect impacts of the sanctions. These have included increased poverty levels, caused by unprecedented increases in the prices of basic products, a surge in the

⁶¹ OHCHR, “Preliminary findings of the visit to the Bolivarian Republic of Venezuela by the Special Rapporteur”.

⁶² Joint letter of allegation dated 21 December 2020 from the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, the Special Rapporteur on the right to food, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Independent Expert on human rights and international solidarity addressed to the United States of America regarding information received concerning the negative impact on human rights of sanctions authorized by the Caesar Syria Civilian Protection Act of 2019 (document AL USA 30/2020).

unemployment rate, sharp local currency devaluations, and poor business opportunities for” small and medium-sized enterprises and traditional businesses.⁶³

49. The precision of targeted sanctions is illusory in view of the breadth of their adverse impact.⁶⁴ While economic sanctions against a State affect a population’s rights indiscriminately, targeted sanctions affect them progressively, as the target becomes the starting point from which the humanitarian effects propagate via networks of workers, family members, associates and others – and onward through the networks that each of these groups have in turn. Sanctions against one individual can therefore affect the human rights of hundreds or thousands of others.

50. The Special Rapporteur stresses that the indirect impact of targeted sanctions on the human rights of a population has long been recognized. According to a document issued in 2004 by the Inter-Agency Standing Committee, if a targeted company or industry is a major local employer, sanctions that constrain its ability to trade “could reduce local funds for municipal governmental functions, including the provision of security, health and social services”, as well as for support that the company provides for the “health and education of employees or their dependents, investments in roads, communications, sanitation in communities where they live, or pension payments for former employees”.⁶⁵

51. The Special Rapporteur also expresses concern that the rights of a population are also harmed by sanctions against individuals in positions of government or civilian responsibility. This involved the right to food when an individual in the Democratic Republic of Congo was sanctioned because his relative was accused of having an association with Hizbullah; the individual was the largest producer of bread in the country.⁶⁶

52. The indirect impact that targeted sanctions have on a population can have repercussions that last for decades when people’s right to education is compromised. According to one study, if sanctions “reduce the educational attainment of young people”, their effects “may last long after they are lifted”.⁶⁷

D. Other States

53. The Special Rapporteur notes that neighbouring States are the first points of arrival when humanitarian problems – economic crises, lack of essential goods and other issues – in the State initially targeted or affected by sanctions result in outward migrations. Massive migrations endanger the lives of migrants, as they become

⁶³ Zaki Mehchy and Rim Turkmani, “Understanding the Impact of Sanctions on the Political Dynamics in Syria”, (London, London School of Economics and Political Science, January 2021), p. 35.

⁶⁴ Bryan R. Early and Marcus Schulzke, “Still unjust, just in different ways: how targeted sanctions fall short of just war theory’s principles”, *International Studies Review*, vol. 21, No. 1 (March 2019), pp. 57–80.

⁶⁵ Manuel Bessler, Richard Garfield and Gerard Mc Hugh, *Handbook for Assessing the Humanitarian Impact of Sanctions* (United Nations, Inter-Agency Standing Committee and Office for the Coordination of Humanitarian Affairs, October 2004), p. 65.

⁶⁶ Contribution by Joy Gordon, a professor at Loyola University in Chicago, United States, to the expert consultation on the notion, characteristics, legal status and targets of unilateral sanctions, convened by the Special Rapporteur on 26 April 2021 (see www.ohchr.org/Documents/Issues/UCM/expert-consultation-26April2021.pdf).

⁶⁷ Safoura Moeeni, “Family income and children’s education: evidence from targeted economic sanctions” (Naples, Italy, Centre for Studies in Economics and Finance, 28 October 2018), p. 6.

vulnerable to human trafficking and they travel without necessary transportation, food, places for rest or medical assistance.⁶⁸

54. Migrations provoked by sanctions involve not only nationals of the targeted State, but also others who had sought refuge or employment there in better times. As an example, the International Organization for Migration refers to the return to Afghanistan of more than 1 million Afghans from the Islamic Republic of Iran after the United States restored its sanctions against the latter country in 2018.⁶⁹

55. Companies in third States may also face the possibility that secondary sanctions will be imposed against them unless they cut business ties with a State or foreign company targeted by sanctions.⁷⁰ This can result in lost business, affecting the labour and other rights of the companies' workers and those dependent on them in the ways described above.

E. Sanctioning States

56. The Special Rapporteur reminds States that the detrimental humanitarian effects of unilateral sanctions are also felt by individuals in the sanctioning State, who are prohibited from continuing the transactions they previously had with the sanctioned State or party. This results in lost wages and jobs and the erosion of rights to health care, education, a decent standard of living and dignity.

57. The Special Rapporteur admits that Governments of sanctioning States often take measures to mitigate the domestic effects thereof. As far back as 1980, when the United States imposed an embargo on cereal exports to the Soviet Union, it also created a program to offset the anticipated decline in domestic cereal prices to prevent United States farmers from suffering.⁷¹ The Lithuanian spa "Belorus", under the control of the Management Department of the administration of the President of Belarus, insisted on the need to unblock its funds, which had been frozen in a Lithuanian bank, as the freeze prevented the payment of salaries to Lithuanian employees of the sanatorium.⁷²

58. The Special Rapporteur cautions that the impact of sanctions on the rights of people in the sanctioning State are difficult to predict accurately and that sanctions sometimes cause greater harm in the sanctioning State than they do in the targeted country, while still being maintained for their political impact.⁷³ Consequently, efforts to offset the damage to business and rights in the sanctioning State may only be possible after harm has been done.

⁶⁸ Joel Alexander Lopez, "Venezuelan refugee crisis: a consequence of US economic sanctions", Bachelor of Arts honours thesis, State University of New York, University at Albany, 2019.

⁶⁹ Frud Bezhan, "Afghanistan, the 'unintended casualty' of US sanctions on Iran", RadioFreeEurope/RadioLiberty, 14 August 2018; International Organization for Migration (IOM), "Return of undocumented Afghans: weekly situation report, 29 December 2019–4 January 2020"; and IOM, "Return of undocumented Afghans: weekly situation report, 21–27 May 2021".

⁷⁰ Özgür Özdamar and Evgeniia S. Hahin, "Consequences of economic sanctions: the state of the art and paths forward", *International Studies Review* (2021), p. 13.

⁷¹ Heritage Foundation, "The Soviet grain embargo", *Backgrounders*, No. 130 (2 January 1981).

⁷² LRT, "Belarusian spa in Lithuania goes to court over asset freezes", 29 January 2021.

⁷³ Donald E. deKieffer, "The purpose of sanctions", *Case Western Reserve Journal of International Law*, vol. 15, No. 2 (1983), p. 207.

V. Targets of secondary sanctions

A. Overview of secondary sanctions

59. Secondary sanctions affect the same economic and property rights of individuals, their right to travel and other human rights in the same way as primary sanctions do. They are imposed by a sanctioning State against individuals and companies in the targeted country or in third countries who cooperate with a target of the primary sanctions in ways forbidden by the sanctions regime.

60. The Special Rapporteur notes with concern that secondary sanctions are used frequently by the United States, while welcoming the fact that other sanctioning States have generally resisted the practice. As the use of the United States financial system and United States dollar in international transactions is extremely widespread, the United States asserts that it has jurisdiction on this ground. Secondary sanctions thus “cut off foreign individuals or companies” from the United States financial system “if they engage in certain conduct with a sanctioned entity, even if none of that activity touches the United States directly”.⁷⁴ Under the Sergei Magnitsky Rule of Law Accountability Act of 2012 and the Caesar Act sanctions regimes, the United States may impose secondary sanctions against any non-United States person, anywhere in the world, whom it determines is engaged in an activity prohibited by its sanctions, without due process.⁷⁵

61. The Special Rapporteur notes with concern that humanitarian actors, including NGOs and their employees and volunteers in sanctioned States, are often threatened with civil or criminal penalties or secondary sanctions because of their efforts to minimize the humanitarian harm caused by sanctions to the rights of people in targeted countries.

62. While sanctioning States include humanitarian exemptions in their sanctions regimes, they have never been completely effective, and the Special Rapporteur welcomes efforts by the United States and the European Union to make it simpler for humanitarian actors to take advantage of them. In 2020, the United States issued a fact sheet that contained consolidated information about humanitarian exemptions in sanctions targeting Cuba, the Democratic Republic of Korea, Iran (Islamic Republic of), the Russian Federation/Ukraine, the Syrian Arab Republic and Venezuela (Bolivarian Republic of), and the European Union began publishing detailed guidance on providing goods and services for humanitarian purposes in countries where it imposes sectoral and targeted sanctions. In 2021, the European Union established a single contact point for providing humanitarian aid in places where its sanctions are applied.⁷⁶ The Special Rapporteur notes with regret, however, that measures taken are reported to remain ineffective.

63. On 10 December 2020, the Special Rapporteur issued a guidance note on humanitarian concerns and the negative impact of unilateral sanctions and their exemptions in the context of the COVID-19 pandemic. In the guidance note, she indicated that humanitarian organizations referred to unilateral sanctions as the main obstacle to the delivery of aid, including medicine, medical equipment, protective

⁷⁴ United States, Department of the Treasury, “Remarks of Secretary Lew on the evolution of sanctions and lessons for the future at the Carnegie Endowment for International Peace”, 30 March 2016.

⁷⁵ Joint letter of allegation dated 21 December 2020 addressed to the United States of America (document AL USA 30/2020).

⁷⁶ European Commission, “EU-level contact point for humanitarian aid in environments subject to EU sanctions”.

kits, food and other essential goods, and that humanitarian exemptions remained ineffective, inefficient and inadequate.

64. The Special Rapporteur regrets the extensive human rights impact that can arise from secondary sanctions against companies. As part of its sanctions against the Venezuelan oil sector, the United States imposed secondary sanctions in 2020 against four Greek tankers and their operating companies for loading Venezuelan oil, blocking them from transactions in United States dollars – the standard currency for tanker deals – and from calling at United States ports.⁷⁷ While this prejudices the due process and numerous other rights of the individuals directly and indirectly affected, ranging from labour rights to the right to freedom of movement, the scope of affected individuals includes those who rely on imported oil for transportation, heating or electricity, as the de facto removal of oil tankers from international service can prevent future shipments to destination countries, which can result in higher prices.

65. Similarly, on 20 November 2020, the United States sanctioned a Chinese company, the China National Electronics Import and Export Corporation, for allegedly helping the Government of the Bolivarian Republic of Venezuela to undermine democracy by supplying hardware, software and training that were supposedly used in suppressing the Government's opponents.⁷⁸ As the company's products are used in public defence and security, secondary sanctions that inhibit its ability to do business can deny the protection of rights that ultimately include the right to life.

66. The humanitarian consequences of sanctions against third-State companies also occurs as the result of the termination of contracts that those companies have with a sanctioned State or with a sanctioned party. This affects the economic and property rights not only of the owners and employees of the third-State companies, but also of others, as described above.⁷⁹

67. The Special Rapporteur underlines that the legality of secondary sanctions is doubtful under international law, beyond the questionable legality of the initial unilateral sanctions. She notes that applying extraterritorial jurisdiction to nationals and companies of third States for cooperating with targets of sanctions, and the alleged threats to such third-State parties implied by the sanctions regime itself, are not justified under international law and increase the risks of overcompliance with sanctions. The lawfulness of countermeasures against secondary sanctions is also a matter of debate,⁸⁰ and, in general, States have been reluctant to impose them.

B. National civil and criminal penalties and laws

68. While United States nationals may face civil or criminal penalties for violating sanctions, non-United States persons threatened with secondary sanctions are forced to choose whether to have continued access to the United States financial system or

⁷⁷ Greg Miller, "US sanctions target Greek tankers loaded with Venezuelan crude", *American Shipper*, 2 June 2020.

⁷⁸ United States, Department of the Treasury, "Treasury sanctions CEIEC for supporting the illegitimate Maduro regime's efforts to undermine Venezuelan democracy", press release, 30 November 2020.

⁷⁹ OHCHR, "Preliminary findings of the visit to the Bolivarian Republic of Venezuela by the Special Rapporteur".

⁸⁰ Tom Ruys and Cedric Ryngaert, "Secondary sanctions: a weapon out of control? The international legality of, and European responses to, US secondary sanctions", *British Yearbook of International Law* (22 September 2020), p. 65.

engage with the target of the primary sanctions.⁸¹ The Special Rapporteur notes that, for individuals, secondary sanctions harm not only their economic and property rights, but also their right to freedom of movement. For companies, banning their access to the United States financial system can result in lost business, thus producing the same damage to the rights of workers and others as described above. A company or individual subject to secondary sanctions is unable to engage in transactions with any person or entity in the United States and a vast number of persons or entities abroad, as such transactions inevitably involve the United States dollar and rely on the United States financial system.

VI. Overcompliance with sanctions

A. Reasons for overcompliance

69. The Special Rapporteur regrets that humanitarian problems in targeted countries are made worse by widespread overcompliance that exaggerates the impact of the sanctions while leaving humanitarian exemptions under-used. At a virtual webinar on the impact of unilateral coercive measures on national health systems of targeted countries and well-being of women, children and people in vulnerable situations, held in Geneva on 3 June 2021, she noted that humanitarian organizations unanimously report problems in trying to deliver food, medicine, vaccines and other essential goods to sanctioned countries because of growing overcompliance that results from the fear of penalties among banks, donors and transportation companies if sanctions are breached. Consequently, overcompliance drastically affects all population groups in sanctioned countries and prevents people from enjoying their human rights.

70. The fear arises from the complexity and lack of transparency of sanctions regimes, which heighten the potential for inadvertent violations. Penalties include secondary sanctions, financial penalties or prison sentences. Outside advice from compliance experts is often required, adding time and costs to the provision of authorized goods, services and humanitarian assistance to sanctioned countries.

71. One United States law firm noted that “widespread overcompliance ... has placed a significant practical restraint on humanitarian trade with” the Islamic Republic of Iran.⁸² A French law firm concluded that “a main impediment to the implementation of exempted [humanitarian] transactions arises from financial institutions’ behaviour, motivated by fear of sanctions”.⁸³ A Swiss sanctions lawyer noted that the consequences of overcompliance by banks “can be particularly dramatic for the targeted persons”.⁸⁴

72. The Special Rapporteur welcomes the recognition of the problem by the European Union. The European Commission has referred to “certain operators’ unwillingness to engage in transactions related to a sanctioned country or individual, even if those are legitimate (overcompliance), for fear of accidentally violating the sanctions, or a lack of economic incentives to engage” in comparison with “the risks

⁸¹ Roberto J. Gonzalez and Rachel M. Fiorill, “USA”, in *Sanctions 2020: A Practical Cross-border Insight into Sanctions Law* (London, Global Legal Group, 2019), p. 153.

⁸² Gibson, Dunn and Crutcher LLP, “Economic and trade sanctions developments in response to COVID-19”, 29 April 2020.

⁸³ Rebecca Guyot and Agustina Paladino, “United States economic sanctions on Iran in the context of COVID-19”, Cohen Amir-Aslani (n.d.).

⁸⁴ Submission by Nicolas Rouiller, a professor at the Business School Lausanne (Switzerland) and the Financial University of Moscow, to the expert consultation on the notion, characteristics, legal status and targets of unilateral sanctions, convened by the Special Rapporteur on 26 April 2021.

stemming from those transactions”. It has also indicated that “overcompliance should not lead to undermining the provision of humanitarian aid”.⁸⁵

73. The Special Rapporteur notes with regret, however, that overall access to information about being listed, about mechanisms of getting licenses and about humanitarian exemptions remains insufficient.

B. Forms of overcompliance

74. The Special Rapporteur points to the COVID-19 pandemic as having exposed how overcompliance affects the rights to health and to life by preventing the purchase and shipment of authorized goods. Banks in Switzerland blocked donation transfers to Cuba made by Swiss NGOs to buy supplies to fight COVID-19. A donation of medical equipment to Cuba by a Chinese entrepreneur was blocked by the last-minute decision of the United States shipper to not proceed, believing that United States regulations prevented it. Two Swiss companies stopped sending medical equipment to Cuba after being acquired by a United States company (A/75/209).

75. Some suppliers halt all business with sanctioned countries. It is reported that, in 2019, a Swedish medical products company told an Iranian NGO that provides free bandages to patients that, because of United States sanctions, it decided to suspend doing any business involving the Islamic Republic of Iran, including “business conducted under any form of exceptions” to the United States economic sanctions.⁸⁶

76. The fear of penalties deters donors from providing funds to humanitarian organizations. Even when donations are given, some NGOs operating in the Syrian Arab Republic “have had to cancel projects because they could not keep up with the paperwork required by donors”.⁸⁷

77. Overcompliance also harms the rights to freedom of information and to education, which in turn denies other rights to a population. Medical personnel, lawyers and others living in sanctioned countries, or who are citizens of sanctioned countries but no longer live there, are blocked from participating in online medical consultations and conferences that use the services of the communications technology company Zoom, under its terms of service.⁸⁸

78. Overcompliance also inhibits the publishing of academic research, depriving people everywhere of knowledge that can be essential to the enjoyment of human rights. The publisher Wiley cautions editors of its scholarly journals to “treat with caution any submission from a sanctioned country with regard to the subject matter and seek legal advice if necessary”.⁸⁹

79. Banks are particularly cautious owing to additional requirements that regulators impose to fight money-laundering and other financial crimes. Those requirements mean that banks “have to be specific regarding the client and the money they operate with. This obligation stretches to monitoring activities to assure that they are in no way violating the sanctioned regime. This is a resource-intensive and high-risk job

⁸⁵ European Commission, “Commission guidance note on the provision of humanitarian aid to fight the COVID-19 pandemic in certain environments subject to EU restrictive measures”, Commission notice, 16 November 2020.

⁸⁶ Mersiha Gadzo, “Iranians with rare disease dying under US sanctions”, Al Jazeera, 28 May 2021.

⁸⁷ IMPACT Civil Society Research and Development, *Invisible sanctions: How Overcompliance Limits Humanitarian Work on Syria – Challenges of Fund Transfer for Non-Profit Organizations Working on Syria* (Berlin, 2020), p. 3.

⁸⁸ Zoom, Zoom terms of service, 20 August 2020.

⁸⁹ Wiley, “Best Practice Guidelines on Research Integrity and Publishing Ethics”.

for the bank. Therefore, they often choose not to deal with such organizations amid sanctions.”⁹⁰

VII. Conclusions and recommendations

A. Conclusions

80. Unilateral sanctions increasingly imposed today on States, sectors of the economy, companies and individuals without authorization of the Security Council affect a growing number of targets far beyond the ones officially announced. They violate a broad range of human rights regardless of the nature of the target. The rights affected may vary depending on whether the target is a State, an economic sector, a company or organization or an individual; whether the target is direct or indirect; whether a target is intended or unintended; and whether the sanctions are primary or secondary.

81. Economic, financial and trade sanctions against States, as well as naval transportation, land or flight embargoes, affect the entire population of targeted countries because they exacerbate economic crises and make it impossible to purchase and deliver necessary technological, medical and other types of equipment, spare parts, reagents, medicine, vaccines, food and other essential goods, thus impeding the functioning of water, electricity, transportation and other public infrastructure. As a result, they affect the whole scope of human rights of the entire population (nationals and residents of the targeted country), namely, their primary civil, economic, social and cultural rights and the right to development. Travel and flight bans affect the freedom of movement of the residents of targeted countries.

82. In addition to their intermediate effect on the entire population of the country, unilateral sanctions imposed against sectors of the economy directly affect the economic and labour rights of the individuals employed in the corresponding sectors, as well as their family members and trade partners, resulting in rising poverty levels, involvement in the grey economy, criminal activity and human trafficking.

83. Targeted sanctions against a company directly affect its workers, as well as their family members and associates. When a targeted company dominates a key economic sector in a country, the humanitarian impact can spread throughout the population. The human rights affected by targeted sanctions against an individual are not limited to those enjoyed by the individual and may extend to large numbers of people through networks of family members, associates and others. They violate a broad scope of rights of targeted individuals without due process and often without guarantees of access to justice.

84. Third-country nationals and companies become direct targets of secondary sanctions, and nationals and companies of sanctioning States become targets of civil and criminal penalties introduced as means of implementing primary sanctions, creating similar effects on both listed individuals and companies and indirect targets. Sanctions against civil servants imposed *ex officio* prevent them from representing States and protecting the rights of nationals and residents of States in the international sphere, including in judicial institutions.

85. The implementation of unilateral sanctions in the cyber sphere, namely, preventing access to online payments, satellites, the Internet, software, publicly available information and communication platforms and services, targets the

⁹⁰ Surya P. Sabedi, ed., *Unilateral Sanctions in International Law* (Oxford, Hart Publishing, 2001).

entire population of targeted countries, affecting their economic and cultural rights, including the right to use the Internet, access to information and the rights to education and health, among other rights.

86. The fear of sanctions and of civil and criminal penalties results in zero-risk policies and overcompliance on the part of banks and other companies, thus compounding the effects of all categories of sanctions and covering not only the nationals and residents of targeted countries or other countries whose companies are designated, but also their trade partners and humanitarian actors, who thus become indirect targets.

87. International and national NGOs involved in delivering humanitarian aid, as well as their personnel, often become targets of secondary sanctions. The impediments they face in conducting their humanitarian work, such as carrying out bank transfers or delivering food, medicine and other essential goods, indirectly targets beneficiaries of humanitarian aid.

B. Recommendations

88. The Special Rapporteur calls upon all States and regional organizations to lift, suspend or minimize any unilateral measures that can be qualified as unilateral coercive measures as set out in paragraph 5 of the present report.

89. Humanitarian concerns must always be taken into account by States when deciding to apply or implement any unilateral measures (humanitarian precaution), as well as in the course of their implementation. The Special Rapporteur calls on the Office of the United Nations High Commissioner for Human Rights (OHCHR), in close cooperation with the Office for the Coordination of Humanitarian Affairs and relevant humanitarian actors, to establish a system for the monitoring and assessment of the humanitarian impact of unilateral sanctions on mortality rates, nutrition and malnutrition rates, school enrolment, vaccination rates, the spread of diseases, employment, social guarantees and access to medicine, among other factors.

90. Human rights must be guaranteed to every individual around the world, indiscriminately. Neither individuals nor the entire population of a given State should be turned into direct or indirect targets of unilateral coercive measures as “collateral damage”. No amount of “good intentions or objectives” can justify turning the entire population of a country into indirect or unintended targets of unilateral sanctions or justify causing human suffering (a violation of fundamental human rights) by both directly and indirectly targeted individuals under the guise of “collateral damage”.

91. Taking into account that unilateral coercive measures affect the ability of States to react to contemporary threats and challenges and affect all categories of human rights, the Special Rapporteur calls upon not only OHCHR, but all United Nations organs and specialized agencies, such as ILO, the International Civil Aviation Organization, the Office of the United Nations High Commissioner for Refugees, the United Nations Children’s Fund, the United Nations Population Fund and the World Health Organization, to include assessments of the legality and humanitarian impact of unilateral sanctions in their agendas.

92. Secondary sanctions and national civil and criminal legislation must not be used as means of enforcing unilateral sanctions, in view of the human rights that are thereby damaged.

93. Sanctioning parties must strive to make sanctions and compliance procedures simple and transparent, with clear guidance, in order to prevent

overcompliance that damages human rights. Sanctioning States, under the customary principle of due diligence, are obliged to take all necessary measures to prevent over-compliance in all cases, also for the enforcement measures taken in accordance with international law.
