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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Elements for a draft General Assembly declaration on unilateral coercive measures and the rule of law (updated)**

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

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\* The present document is being issued without formal editing.

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## Introduction

The Secretariat has the honour to transmit to the Human Rights Council the updated text of Elements for a draft General Assembly declaration on unilateral coercive measures and the rule of law, which was prepared by Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, pursuant to Council resolution 40/3. The present version is the third and the latest version of the Elements for a draft General Assembly declaration on unilateral coercive measures and the rule of law submitted to the Council by the current mandate holder.

### A. Basic facts

1. Resolution 34/13 adopted by the Human Rights Council on 24 March 2017 “urged all States to refrain from imposing unilateral coercive measures, also urged the removal of such measures, as they are contrary to the Charter and norms and principles governing peaceful relations among States at all levels, and it should be recalled that such measures prevent the full realization of economic and social development of nations while also affecting the full realization of human rights”.
2. Unilateral coercive measures have a tendency to remain in force irrespective of the achievement of its purported objective.
3. Unilateral coercive measures requiring extraterritorial application to third parties of laws adopted by a source country against a target country, and which call for secondary sanctions on such third parties in case of non-compliance, are unlawful under international law.
4. Unilateral coercive measures in a number of cases entail severe adverse impacts on the enjoyment of human rights of targeted populations and individuals, have often proven to be inefficient, and are most likely to entail unintended effects in the form of adverse human rights impacts on non-designated third parties.

### B. Basic principles

5. In compliance with article 41 of the UN Charter, the Security Council should be recognised as having the exclusive right to impose economic financial and other non-forcible measures on targeted states or individuals and this is for the purpose of giving effect to its decisions. Accordingly unilateral coercive measures should be phased out as early as possible starting with those found to have the most egregious effects in terms of denials of human rights;
6. The extraterritorial application to third parties of laws adopted by source countries to sanction a target country and which call for secondary sanctions on such third parties in cases of non-compliance, should not be recognised by third parties through the generalisation of “Blocking statutes” and should be phased out;
7. Whilst targeted States have a responsibility to mitigate the adverse human rights impact of unilateral sanctions imposed by source countries, the latter are also accountable for any adverse effects on human rights occurring in target countries, even if such effects are unintended, to the extent that “when an external party takes upon itself even partial responsibility for the situation within a country (whether under Chapter VII of the Charter or otherwise), it also unavoidably assumes a responsibility to do all within its powers to protect the economic, social and cultural rights of the affected population” (Committee on Economic, Social and Cultural Rights, General Comment No. 8 on the relationship between economic sanctions and respect for economic, social and cultural rights, E/C.12/1997/8, para. 13).
8. The inhabitants of a given country do not forfeit basic economic, social and cultural rights by virtue of any determination that their leaders have violated norms of international peace and security, as affirmed by the Committee on Economic, Social and Cultural Rights in its general comment No. 8 on the relationship between economic sanctions and respect for economic, social and cultural rights (See E/C.12/1997/8, para. 16).

9. In situations where unilateral coercive measures inflict undue sufferings/have an egregious human rights impact, on the population of a targeted State, whatever legal motive is invoked, they become clearly illegal and their source countries should be called to account. This applies in particular to comprehensive embargoes coupled with secondary sanctions aimed at the economic isolation of the target country, the effects of which may be comparable with those of a wartime blockade.

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

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

12. The present Declaration is without prejudice to the procedural and substantive requirements arising from the legal regime of countermeasures in the sense of the International Law Commission's Draft Articles on the Responsibility of States for internationally wrongful acts.<sup>1</sup>

13. When comprehensive embargoes coupled with secondary sanctions aimed at the economic isolation of the target country produce effects comparable with those of a wartime blockade, the relevant rules of international humanitarian law applicable to blockade, as well as the general requirements of necessity, proportionality and discrimination and the prohibitions of starvation and collective punishment, should become applicable *mutatis mutandis*.

### **C. Mitigation: Universally/Generally accepted rules of behaviour**

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

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

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

(a) The parties considering the implementation of unilateral sanctions are under an obligation to conduct a transparent human rights impact assessment (HRIA) of the measures envisaged, before sanctions are applied, and to monitor on a regular basis, as long as sanctions remain in force, the effects of implementation of the measures, including as regards their adverse effects on human rights; there should be effective mechanisms in place at national level to ensure that State authorities in charge of sanctions programmes adjust or change the sanctions regime with a view to preventing human rights violations identified through HRIAs;

HRIAs should allow for the effective public participation of the populations affected by sanctions, and ensure that information gathered be made publicly (and widely) available.

NGOs and international organizations may also conduct HRIAs of sanctions programmes, especially in cases where the State enacting sanctions fails to conduct such assessment.

HRIAs should also be conducted in cases of sanctions imposed by groups of States or regional organizations.

(b) The parties implementing unilateral sanctions are under an obligation to ensure effective humanitarian exemptions mechanisms whose effectiveness can be gauged by target country institutions, both governmental and non-governmental, for satisfying basic human rights and essential humanitarian needs; there should be no exception to the principle

<sup>1</sup> A/56/10.

expressed in article 1 paragraph 2 of both ICCPR and ICESCR to the effect that: “In no case may a people be deprived of its means of subsistence”;

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

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

1. Impacted groups whether the impact is intended or unintended (by comprehensive or sectoral sanctions), and
2. Individuals and legal persons and entities targeted (by targeted sanctions) but found not to have been given a chance to benefit from due process.

The need for such mechanisms stems from a number of multilateral human rights instruments such as the Universal Declaration of Human Rights (Articles 8 and 10), the International Covenant on Civil and Political Rights (Articles 2 and 14 (1)), the Convention on the Rights of the Child (Article 39), the International Convention on the Elimination of All Forms of Racial Discrimination (Article 6) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 14). Where it is found to prevail, the lack of effective mechanisms for the judicial review of unilateral sanctions measures, and remedies and redress for victims as appropriate, should be addressed without delay to the extent that such situation amounts to a denial of justice.

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

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

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

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

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

(iv) Reversibility of the measures;

- (v) Appropriate humanitarian exceptions;
  - (vi) A regular mechanism to monitor potential adverse impact and unintended consequences of these measures; and
  - (vii) Availability of effective compensation/reparations (including financial) when unwarranted adverse impacts on human rights have occurred.
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