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**Requests addressed to the Advisory Committee stemming from Human Rights Council resolutions:
Human rights and unilateral coercive measures**

**Preliminary research-based report on human rights
and unilateral coercive measures**

Prepared by Imeru Tamrat Yigezu, Rapporteur of the drafting group on human rights and unilateral coercive measures

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Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–4	3
II. Scope of the report.....	5	4
III. The notion of unilateral coercive measures.....	6–10	4
IV. Negative impact of unilateral coercive measures on the enjoyment of human rights	11–16	6
V. Survey of country case studies.....	17–35	8
A. Cuba	18–24	8
B. Zimbabwe	25–27	10
C. Islamic Republic of Iran	28–32	10
D. Impact of unilateral coercive measures in third states: the case of Pakistan	33–35	11
VI. Summary of responses from states and other stakeholders	36–46	12
A. States	37–40	12
B. Intergovernmental organisations	41–42	13
C. Special procedures.....	43	14
D. National human rights institutions.....	44–45	14
E. Non-governmental organisations.....	46	15
VII. Potential mechanisms to assess the negative impact of unilateral coercive measures and promote accountability.....	47–62	15
A. The challenge of territorially and jurisdictionally limited obligations.....	51–55	16
B. The accountability imperative	56–58	18
C. Access to independent evidence	59	19
D. The consideration of financial and administrative efficiency	60	19
E. The need to secure the most appropriate expertise	61	19
F. Minimizing politicization	62	20
VIII. Concluding remarks and recommendations	63–66	20

I. Introduction

1. In view of the increasing concern regarding the adverse impact of unilateral coercive measures on the enjoyment of human rights,¹ the Human Rights Council by resolution 19/32 requested the Office of the United Nations High Commissioner for Human Rights to organize a workshop to explore the issue of the relationship of unilateral coercive measures and human rights, including the various aspects of the negative impact of unilateral coercive measures on the enjoyment of human rights by the affected population, with the participation of States, academic experts and civil society representatives.² The workshop, which was held in April 2013, examined the various issues and views around the topic, including the legitimacy of such measures from the perspective of human rights. A number of conclusions and recommendations were submitted to the Human Rights Council for its consideration, among which was the proposal for tasking the Advisory Committee to conduct an overall review of independent mechanisms to assess the impact of unilateral coercive measures and to promote accountability.³

2. By its resolution 24/14, the Human Rights Council, requested the Advisory Committee to prepare a research-based report containing recommendations on mechanisms to assess the negative impact of unilateral coercive measures on the enjoyment of human rights and to promote accountability. A progress report is to be presented to the Human Rights Council at its twenty-eighth session. The resolution also requested the Advisory Committee to seek the views and inputs of Member states and relevant special procedures, national human rights institutions and non-governmental organizations during the preparation of the report.⁴

3. Pursuant to recommendation 12/6 adopted at its twelfth session, the Advisory Committee established a drafting group consisting of Mr. Lebedev, Mr. Okafor, Mr. Soofi, Mr. Ziegler and Mr. Yigezu. The drafting group elected Mr. Ziegler as Chairperson and Mr. Yigezu as its Rapporteur.⁵ The Committee requested the drafting group to submit a draft progress report to the Advisory Committee at its thirteenth session, taking into account the replies to the questionnaire prepared during the twelfth session and subsequently circulated to Member States, relevant special procedures, national human rights institutions and non-governmental organizations.

4. The Drafting Group held preliminary meetings during the Advisory Committee's twelfth session to discuss the mandate given to it and to prepare a questionnaire that was approved by the Committee and subsequently circulated to Member States, relevant special procedures, national human rights institutions and non-government organizations on 10 March 2014. As of July 2014, only nine responses have been received from three States,

¹ See for example, G.A. Resolution A/RES/66/156 adopted on 19 December, 2011; G.A. Resolution A/RES/67/170 adopted on 20 December, 2012; Report of the Secretary General on Human Rights and Unilateral Coercive Measures, A/65/199, 15 July 2010; Report of the Secretary General, "Unilateral economic measures as a means of political and economic coercion against developing countries", A/66/138; Report of the Secretary General on Human Rights and Unilateral Coercive, A/67/181, 25 July 2012.

² A/HRC/RES/19/32, para.16(a).

³ A/HRC/24/20, para.31.

⁴ See paras. 20 and 21, A/HRC/RES/24/14, 8 October 2013.

⁵ The members of the Drafting Group would like to thank Herman Gill and Joanna Enns of the Osgood Law School, York University, Toronto, Canada and Mr. Mohammed Mahmood Al Hinai for their valuable research input to this study. The report has also benefitted from the written contributions of members of the Drafting Group.

one inter-governmental organization, one special procedures, three national human rights institutions and one non-governmental organization.⁶ Due to the low number of responses received to date, there may be a need to resend the questionnaire to the respective stakeholders in order to garner sufficient replies to the questionnaire so as to adequately reflect the views of stakeholders in the final draft progress report.

II. Scope of the report

5. Pursuant to paragraph 20 of Council Resolution 24/14, this report is to focus on the adverse consequences of unilateral coercive measures on the enjoyment of human rights of the civilian population of targeted States and to come up with recommendations on the appropriate mechanism that may be used to assess the negative consequences of such measures and to promote accountability. Accordingly, the question of the legality of unilateral coercive measures does not fall within the scope of this report. It has already extensively been dealt with in the thematic study of OHCHR on the impact of unilateral coercive measures on the enjoyment of human rights⁷ and has also been a subject of discussions during the two workshops organized by OHCHR in April 2013 and in May 2014 at the request of the Human Rights Council.⁸

III. The notion of unilateral coercive measures

6. The use of the term “unilateral coercive measures” itself is of recent coinage. It has been used broadly to include measures such as “unilateral economic sanctions” “unilateral economic measures” and “coercive economic measures” in various studies on the subject as well as in United Nations documents and resolutions. To date, the term “unilateral coercive measures” does not seem to have a commonly agreed upon definition. Despite the intensive discussion that the term has triggered among scholars and within the different bodies in the United Nations in the past couple of decades, the definition used for the term and, particularly the main elements to be used for describing the term, remains elusive in certain respects.

7. The most commonly used definition of the term is “*the use of economic measures taken by one State to compel a change of policy of another State*”.⁹ Some studies on the subject as of late, however, tend to hold the view that the term “unilateral” may be used in a broader sense to include States, group of States and “autonomous” regional organizations unless such measures are authorized under Chapter VII of the Charter of the United Nations.¹⁰ In a recent article, one author on the subject states that “...one can distinguish the

⁶ Responses were received from three States (Colombia, Islamic Republic of Iran and Lebanon); one intergovernmental organization (the European Union); one special procedures (Mr. Alfred-Maurice de Zayas, the independent expert for the Promotion of a Democratic and Equitable International Order; the National Human Rights Institutions (Bolivia, Madagascar and Romania; and one non-governmental organization (Permanent Assembly for Human Rights).

⁷ See, A/HRC/19/33.

⁸ See presentations and statements made during these two workshops available at: www.ohchr.org/NewsEvents/Seminars/Pages/Presentations.aspx and www.ohchr.org/EN/NewsEvents/Seminars/Pages/WorkshopCoerciveMeasures.aspx respectively

⁹ Andreas F. Lowenfeld, *International Economic Law* (Oxford University Press, 2002), p. 698, cited in “Thematic Study, supra at note.6.

¹⁰ See definitions given to the term “unilateral coercive measures” by Douhan A.F found in A/HRC/24/20, paragraph 11, p.6 and in the paper presentation made by Tzanakopoulos, A, available at www.ohchr.org/EN/NewsEvents/Seminars/Pages/WorkshopCoerciveMeasures.aspx

unilateral sanctions practice of individual states and organizations – such as the EU, the US, Canada or Japan – from the mandatory sanctions of the UNSC.¹¹ This approach to defining unilateral coercive measures seems to have, more or less, gained support currently. Due to the current increased use of what is referred to as “targeted” or “smart sanctions” employed by States on individuals, groups and/or entities believed to be in a position of power to influence or determine actions in targeted States, defining the term “unilateral coercive measures” should also consider the inclusion of these categories of persons or entities.

8. Based on the above considerations, the working definition preferred for the purpose of this study is to use the broader definition of the term “unilateral coercive measures” as *“the use of economic, trade or other measures taken by a State, group of States or international organizations acting autonomously to compel a change of policy of another State or to pressure individuals, groups or entities in targeted states to achieve foreign policy objectives without the authorization of the UN Security Council”*.

9. Sanctions, including unilateral coercive measures employed by States, take different forms or a combination of measures ranging from restriction or disruption of trade, financial and investment flows between sender and targeted countries to restrictions on social and cultural exchanges.¹² Most of these categories of sanctions, usually called traditional or comprehensive sanctions, involve coercive measures intended to impose economic pressure on targeted states by way of preventing them from importing or exporting certain goods and services deemed strategically important or more specifically target banking and financial sectors of targeted states. “Targeted” or “smart sanctions” are considered as new forms of coercive measures aimed at putting pressure on persons or entities who are considered to hold political decision-making powers in targeted governments or persons deemed to engage in terrorism or other forms of violence and whose behaviour is thought to be undesirable from the perspective of the sender state. These types of sanctions may take the form of freezing of assets and travel bans of individuals, groups or entities in targeted countries or may target particular commodities from being exported from targeted states or entering such states (e.g. diamonds or luxury goods; arms embargoes etc.).¹³

10. Unilateral coercive measures that are comprehensive in nature are intended to cause economic hardship on targeted states and thereby do not really make a distinction between states and the civilian population including women and children and other vulnerable groups residing in targeted states that bear the brunt of such severe economic hardships. Consequently, comprehensive unilateral coercive measures usually result in an adverse impact on the enjoyment of human rights of the civilian population of targeted states disproportionately affecting the poor and vulnerable groups in the society particularly in terms of access to food, health care and basic livelihood, among others. “Targeted sanctions”, by contrast, are designed to put economic pressure on selected individuals or entities and may therefore not entail negative consequences on enjoyment of human rights

¹¹ C. Portela, The EUs Use of ‘Targeted’ Sanctions: Evaluating Effectiveness, CEPS Working Document, No.391, March 2014.

¹² For a more detailed description of the different types of sanctions see, Marc Bossuyt, “The Adverse consequences of economic sanctions on the enjoyment of human rights”, working paper prepared for the Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights (E/CN.4/Sub.2/2000/33).

¹³ See Bernard Sitt et. al, “Sanctions and Weapons of Mass Destruction in International Relations”, Geneva Centre for Security Policy, 2010, available online at: http://www.cesim.fridocuments/publications/geneva_papers_16.pdf

of the civilian population at large. This by no means implies that targeted sanctions do not give rise to violations of human rights of individuals or entities targeted particularly regarding their civil and political rights.¹⁴ However, since comprehensive sanctions are the ones that usually have negative consequences on the enjoyment of human rights of the civilian population of targeted states, this study mainly focuses on such measures.

IV. Negative impact of unilateral coercive measures on the enjoyment of human rights

11. Several resolutions and declarations made within the United Nations system, Human Rights bodies and the former Commission on Human Rights Council have expressed increasing concerns about the negative impact of sanctions including unilateral coercive measures on the enjoyment of human rights, particularly their negative impact on the human rights of the civilian population of targeted States and, more so, on vulnerable groups such as women, children, the elderly and minorities.¹⁵ The Human Rights Council has also followed this trend.¹⁶

12. There is a general consensus that unilateral coercive measures, particularly those that are comprehensive in nature and manifested in the form of trade embargoes, restrictions in financial and investments flows between sender and target states, may have a serious impact on the enjoyment of human rights of the civilian population in targeted and non-targeted states. This is so because economic sanctions in general, including unilateral coercive measures irrespective of their declared intentions (such as preventing gross violations of human rights of regimes targeted), usually translate into having a severe impact on the population at large and in particular vulnerable groups in the society who become the true victims of such sanction rather than the regimes they are supposed to target.¹⁷ Regarding this, the Committee on Economic, Social and Cultural Rights has declared that “*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*”.¹⁸ Although the latter statement seems to apply to sanctions adopted by the United Nations Security Council, it equally applies to unilateral coercive measures.

¹⁴ See T. Biersteker and S. Eckert, “Addressing Challenges to Targeted Sanctions: An Update of the ‘Watson Report’ 2009 and B. Fassbender, “Targeted Sanctions and Due Process: The responsibility of the UN Security Council to ensure that fair and clear procedures are made available to individuals and entities targeted with sanctions under Chapter VII of the UN Charter”, Study Commissioned by the United Nations Office of Legal Affairs, Office of the Legal Council, available online at: http://www.un.org/law/council/Fassbender_study.pdf; see also OHCHR Thematic Study, A/HRC/19/33, para. 27.

¹⁵ See for example, GA Resolutions 51/103 (Dec.12, 1996), 52/120 (Dec.12, 1997), 53/41 (Dec.9, 1998), 54/172 (Dec. 17, 1999), 66/156 (Dec.19, 2011), 67/170 (March 20, 2012); Sub-Commission Res. 2000/1, Human Rights and Humanitarian Consequences of Sanctions, Including Embargoes, UN Doc. E/CN.4/Sub.2/RES/2000/1; Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women (1995), para. 145, GA Resolution S-27/2 para.30, GA Resolution 60/1, World Summit Outcome (A/RES/60/1), 24 October 2005, paras. 106–110, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Res.1997/35, 28 August 1997.

¹⁶ A/HRC/RES/15/24 (6 October, 2010), A/HRC/DEC/18/120, (17 October, 2011) A/HRC/RES/24/14 (8 October, 2013).

¹⁷ See, Supplement to an Agenda for Peace, UN Doc. A/50/60-S/1995/1, para. 70.

¹⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 8, The Relationship Between Economic Sanctions and Respect for Economic, Social and Cultural Rights, UN Doc.E/C.12/1997/8, para. 16, (1997).

13. Several human rights obligations of States incorporated in the various core international human rights instruments provide limitations on unilateral coercive measures that have an impact on the enjoyment of human rights of the civilian population in targeted states. These include, *inter alia*, the right to life,¹⁹ the right to an adequate standard of living, including food, clothing, housing and medical care²⁰; freedom from hunger and the right to health²¹. In this respect, the Vienna Declaration and Programme of Action of 1993 calls upon states to “*refrain from any unilateral measures not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among states and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights and in international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing and the necessary social services.*”²²

14. Previous studies conducted at the request of the Sub-Commission on Human Rights and by the Human Rights Council have already documented the likely negative impact of unilateral coercive measures on the civilian population of targeted and non-targeted States including case studies documenting the impact of such measures. These studies have clearly indicated the likely and actual negative impact of unilateral coercive measures on the civilian population, particularly on vulnerable groups including women, children, the infirm and older persons as well as the poor due to the deprivation of access to basic services such as life-saving equipment and medication, food products, educational equipment and the loss of jobs. They have also pointed out that long-term unilateral coercive measures have more severe negative impact on the economic, social and cultural rights of the affected population enshrined in the core human rights instruments such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.²³

15. In this regard, presentations made during the workshops organized in April 2013 and, more recently, in May 2014, have highlighted some of the negative impact of both multilateral and unilateral coercive measures on the enjoyment of human rights of the civilian population particularly the disproportionate impact such measures have on women and children. One of the panelists stressed that the impact of unilateral coercive measures is more deeply felt by women and excluded communities and that women are the first to lose jobs, moved out of higher education, get malnourished and face food insecurity and gave specific examples of the plight of women and children in the Islamic Republic of Iran and Cuba to this effect.²⁴ Several presentations made at the May 2014 workshop have also unequivocally shown the negative impact of both multilateral and unilateral coercive measures on the enjoyment of human rights in targeted and non-targeted states and, more so, on women, children, minorities, the elderly and the disabled citing examples of such

¹⁹ Universal Declaration of Human Rights, Art. 3; International Covenant on Civil and Political Rights, Art. 6(1); Convention on the Rights of the Child, Art. 6(1).

²⁰ Universal Declaration of Human Rights, Art. 25(1); International Covenant on Economic, Social and Cultural Rights, Art. 11(1); Convention on the Rights of the Child, Art. 27(1).

²¹ International Covenant on Economic, Social and Cultural Rights, Arts. 11(2) and 12(1).

²² Vienna Declaration and Program of Action, para. 31, A/CONF.157/23, World Conference on Human Rights, Vienna, June 14, 1993.

²³ See studies, *supra* notes 6 and 11.

²⁴ A.M Chenoy, Presentation made at the workshop on the various aspects relating to the impact of the application of unilateral coercive measures on the enjoyment of human rights by the affected population in the States targeted, Geneva, 5 April 2013.

impact in countries such as Iraq, the Islamic Republic of Iran, Yugoslavia, Haiti and Myanmar.²⁵

16. Several studies and reports made noted the difficulty of assessing the impact of unilateral coercive measures, particularly of those that are comprehensive in nature, and have recommended the need for a more robust and independent mechanism for assessing and monitoring the impact of such measures including promoting accountability in this regard.²⁶ Some of the reasons that give rise to this challenge are restrictions to gain access to the target country in which sanctions are imposed,²⁷ (cite para 69 of supplement to an agenda for peace supra) and the difficulty to distinguish the negative impact of unilateral coercive measures on the enjoyment of human rights of the affected population when such measures are imposed in conjunction with multilateral sanctions.²⁸ When considering an appropriate mechanism for the assessment and monitoring of the negative impact of unilateral coercive measures on the enjoyment of human rights, it is hence essential to establish a body which, as far as possible, may have access to target states whose human rights are likely to be affected by such measures and with an adequate expertise to undertake such a task.

V. Survey of country case studies

17. To date, few case studies are available on the impact of unilateral coercive measures on the enjoyment of human rights of the civilian population in targeted or non-target states. Below case studies have been well documented and serve to highlight some of the main adverse impact of unilateral coercive measures on the enjoyment of human rights of target and non-targeted States.

A. Cuba

18. The economic sanctions on Cuba were at the outset imposed by the United States of America in the 1960s and were subsequently amended by the Cuban Democracy Act of 1992 and the Helms-Burton Act of 1996 and other legislative and executive acts. These acts essentially impose economic, commercial and financial embargoes against Cuba.²⁹

19. The US congress passed the Trade Sanctions Reform and Export Enhancement Act (TSRA) in October 2000. The Act started to ease the enforcement of the embargo and allowed the sale of agricultural goods and medicine to Cuba for humanitarian reasons. From the year 2005 onwards, exports to Cuba were required to be on a cash-in-advance

²⁵ See particularly the presentations made by Haifa Zangana, Dursun Peksen and Sarah Zaidi at the Workshop on the Application of Unilateral Coercive Measures on the Enjoyment of Human Rights by the Affected Population in particular their socio-economic impact on women and children in States targeted, Geneva, 23 May 2014 available at:

www.ohchr.org/EN/NewsEvents/Seminars/Pages/Workshop/CoerciveMeasures.aspx

²⁶ G. Haufbauer and J. Schott and K. Elliot, *Economic Sanctions Reconsidered: History and Current Policy*, 2nd ed. (Washington, DC: Institute for International Economics, 1990) pp 32–33; R. Garfield, *The Impact of Economic Sanctions on Health and Well Being*, Relief and Rehabilitation Network Paper, Overseas Development Institute, London, 1999.

²⁷ See supra note 17, para. 69.

²⁸ See supra note 7, para. 30.

²⁹ For more details on economic sanctions imposed by the United States against Cuba, see Manchak, B, “Comprehensive Economic Sanctions, the Right to Development and Constitutionally Impermissible Violations in International Law” Vol. 2 Issue 2, Boston College of Third World Law Journal, pp 421–424.

basis with full payment before the products were shipped to Cuba. The transactions had to be made through banks in a third country. In the year 2009, the US government eased those restrictions by allowing the Cuban government to pay for food and agricultural products after the shipment is made.³⁰

20. US embargo on medicines and technologies in Cuba has led to limitation on human rights of citizens in Cuba. Amnesty International based on several fact-finding reports show that the embargos contribute to malnutrition especially affecting women and children, poor water supplies, lack of medicine supplies.³¹ The United Nations High Commissioner described the effects of embargoes on Cuban people as “disastrous”.³² The American Association for World Health (AAWH) which conducted a detailed health survey in Cuba showed that the U.S. embargo on food and the *de facto* embargo on medical supplies has wreaked havoc with the island’s model primary health care system.³³

21. According to UNICEF, Cuba was unable to import nutritional products intended for children and for consumption in schools, hospitals and day care centres.³⁴ In addition, food shortages were linked to a devastating outbreak of neuropathy numbering in the tens of thousands. By one estimate, daily caloric intake dropped 33 percent between 1989 and 1993.³⁵

22. The embargo also restrict Cuba's access to water treatment chemicals and spare-parts for the island's water supply system. This has led to serious cutbacks in supplies of safe drinking water, which in turn has become a factor in the rising incidence of morbidity and mortality rates from water-borne diseases.

23. Access to essential medicines and equipment have also been impacted by the sanctions. Of the 1,297 medications available in Cuba in 1991, physicians now have access to only 889 of these same medicines – and many of these are available only occasionally. Because most major new drugs are developed by U.S. pharmaceuticals, Cuban physicians have access to less than 50 percent of the new medicines available on the world market. Due to the direct or indirect effects of the embargo, the most routine medical supplies are in short supply or entirely absent from some Cuban clinics.³⁶ In the case of patients with psychiatric disorders, advanced drugs are also unavailable. The embargo imposed against Cuba not only affects the supply of medicine. Health and health services depend on functioning water and sanitation infrastructure, on electricity and other equipment, such as X-ray facilities and refrigerators to store vaccines. The embargo also slowed down the renovation of hospitals, clinics and care centres for the elderly.³⁷

24. According to the Cuban government, Cuba must pay above-market prices and tariff on goods purchased and shipped from distant markets, and the blockade imposes difficult terms on credit and trade and blocks access to many goods and technologies. It is estimated that the embargo on Cuba creates a virtual tax of 30 percent on all imports.”³⁸

³⁰ Amnesty International, *The US Embargo Against Cuba: Its Impact on Economic and Social Rights*, (2009).

³¹ *Ibid.*

³² See, A/HRC/4/12, para. 7.

³³ AAWH cited in Amnesty International, *supra* at note 26, p.16.

³⁴ *Ibid.*

³⁵ Maria C. Werlau, *The Effects of the US Embargo on Health and Nutrition in Cuba: A Critical Analysis*, (1998).

³⁶ *Ibid.*

³⁷ Amnesty International, *supra* at note 26.

³⁸ Richard Garfield, “The Impact of the Economic Crisis and US Embargo on Health in Cuba”, *American Journal of Public Health* 87, No.1 (1997): pp. 15–20.

B. Zimbabwe³⁹

25. Sanctions against Zimbabwean leaders were imposed by the European in 2002 which include, among others, targeted sanctions in the form of a travel ban and asset freeze on members of the government and persons and entities associated with it. The motivation of the sanctions has its origins in the agrarian reform begun by President Mugabe in 2000–2001, which entailed the expropriation of land from white farmers, and which was accompanied by a wave of political violence and the intimidation of the opposition.⁴⁰

26. Zimbabwe's population of 13 million has indeed suffered. Poverty and unemployment are high, while infrastructure is sorely lacking. Diseases like HIV/AIDS, typhoid and malaria give the country an average life expectancy of 53–55 years. The country is rich in minerals, but this has neither been translated into sustainable economic growth nor prosperity for its people.

27. A report published by UNICEF in 2010 also states that around 34% of children under 5 are underdeveloped, 2 percent are lost and 10 percent are underweight. Zimbabwe has one of the highest rates of orphaning in the world (25 percent of all children) and experience of violence and abuse is widespread. At least 21 percent of girls' first sexual encounter is forced and the perception that family violence is acceptable is shared by both women and men (48 and 37 percent, respectively). Corporal punishment is legally administered. Two-thirds of children report experiencing such punishment at school. The combination of poverty, neglect and violence contributes to the large number of children on the move, resulting in unsafe migration and child exploitation.⁴¹

C. Islamic Republic of Iran

28. Acting through the UN Security Council and regional or national authorities, the United States, European Union member States, Japan, the Republic of Korea, Canada, Australia, Norway, Switzerland and others have put in place a strong interlocking matrix of sanctions measures relating to Iran's nuclear, missile, energy, shipping, transportation, and financial sectors.

29. According to the International Civil Society Network (ICAN), a US based non-profit organization, smart sanctions imposed on the banking, gas and the insurance sector has wreaked the lives of many Iranian citizens as price hikes have led to high costs of food prices (increases by 1500% in two years 2010–2012). Besides increasing black cash economy and increased criminalisation, women's access to higher education has decreased. Women are being pushed out of the job market. Further, the sanctions triggered a collapse of industry, skyrocketing inflation, and massive unemployment. Moreover, the country's middle class has disappeared, and even access to food and medicine has been compromised.⁴²

30. The sanctions imposed on the Islamic Republic of Iran by different countries and the UN has hit the citizens of Iran hard. The economic sanctions threaten the lives of Iranians through the scarcity of medicine. Although the sanctions enacted by the US and the European Union claim to not impose a shortage on humanitarian items, in reality, they have

³⁹ Ibid.

⁴⁰ C. Portella, *supra*. at note 10.

⁴¹ Available at: <http://www.unicef.org/zimbabwe/zimbabwe2010>

⁴² ICAN, 'What the Women Say: Killing them Softly: The Stark Impact of Sanctions on the lives of Ordinary Iranians, Brief 3 (July 2012), available at <http://www.gnwp.org/wp/ICAN-Brief-3.pdf>

immensely affected the delivery and availability of medical supplies. The import of medicines containing antibiotics (of types that are not produced inside Iran) have decreased by 20.7 percent and prices increased by over 300 percent. The estimated twenty thousand patients of Thalassemia throughout the country receive only a few days of their monthly medicinal needs, and several patients with Thalassemia have died. Chemical weapon survivors, a side-effect of the Iran-Iraq war in the 1980s, in need of medicine and equipment, including cornea transplants and inhalers, similarly suffer from a shortage or lack of medicine. In essence, the medicines used to treat Hemophilia, cancer, Thalassemia, Multiple Sclerosis and transplant and kidney dialysis are either not produced domestically, or are produced, but are not as effective as those imported from Europe and North America. The shortage of medicine for such chronic diseases often leads to death.⁴³ Hence, a wave of deterioration of living conditions and destruction has been imposed on the Islamic Republic of Iran by the economic sanctions, and when this wave reaches the country, it is unequally distributed among citizens, i.e. those living in poverty and the marginalized areas, and outside of the popular base of the government suffer the effects of sanctions more.⁴⁴

31. According to the annual report published by UNICEF in 2012, a recent DHS report has shown a drop in the under-5 mortality rate from 36 to 22.52 per 1,000 live births between 2000 and 2010. However, 20.3/1000 child deaths happen before the first birthday and 15.29/1000 during the first month of life highlighting the need to improve neonatal healthcare. The report also revealed that the average under-five mortality rate in lower income regions is three times that of higher income regions.⁴⁵

32. It may be noted here that due to the imposition of both multilateral and unilateral sanctions on the Islamic Republic of Iran, it may be difficult to distinguish the impact that unilateral sanctions had on the enjoyment of the human rights of the civilian population.

D. Impact of unilateral coercive measures on third states: the case of Pakistan

33. More recently, unilateral sanctions on the Islamic Republic of Iran, strictly revised and enforced over time, have negatively affected non-targeted states in its neighborhood like Pakistan specifically by blocking the Iran-Pakistan Gas Pipeline project critical to overcome grave energy crisis in Pakistan.⁴⁶ Pakistan's industrial development has depressed since the industries highly dependent on electricity and gas began to face electricity and gas shortfalls. This has caused rising unemployment in a predominantly youth population with severe consequences for the economy, society, nation and most importantly the individuals so affected. Moreover, endemic load shedding across the country spanning up to 18 hours daily has led to violence in the form of frequent energy riots.⁴⁷ The energy crisis is thus hindering the progressive realization of socio-economic rights of the citizens of Pakistan in addition to abridging their rights to security of life and property.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Available at: http://www.unicef.org/about/annualreport/files/Iran_COAR_2012.pdf

⁴⁶ Ahmed Faraz Khan, "Power Struggle Leads to 12-18 hours of Loadshedding," *Dawn*, April 11 2014, available at: <http://www.dawn.com/news/1099086/power-shortage-leads-to-12-18-hours-of-loadshedding>.

⁴⁷ "Power Riots: Wapda Complex Attacked for Loadshedding," *Express Tribune*, April 9 1999. Available at: <http://tribune.com.pk/story/53287/powerriots-wapda-complex-attacked-over-loadshedding/>, "Another Day of Outrage at Outages across Punjab," *Dawn*, June 18, 2012 available at: <http://www.dawn.com/news/727441/another-day-of-outrage-at-outages-across-punjab>

34. To meet the existing energy shortfall, the Government of Pakistan has signed a multi-billion dollar agreement for procuring gas through pipeline from Iran whereby it will import 750 million cubic feet gas per day (MMCPD) extendable to one billion cubic feet gas (BCFD) per day,⁴⁸ which would definitely ease the gas deficit in the country to a reasonable level and help curb rising inflation. The Iran-Pakistan Gas Pipeline Project is undoubtedly the need of the hour for energy starved Pakistan. This has come to a grinding halt as a direct consequence of US' unilateral sanctions on Iran.⁴⁹ The failure to complete the Project within the stipulated timeframe would make Pakistan liable for \$3 million per day in the form of penalty. Significantly, a state already burdened with international and local loans cannot further afford such a hefty penalty.

35. Failure to complete the project would clearly adversely impact the human rights of citizens of Pakistan including, *inter alia*, their right to life, right to food, right to health, right to development, right to education and right to employment and socio-economic growth. These fundamental rights are guaranteed to the citizens of Pakistan by international treaties such as International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR).

VI. Summary of responses from states and other stakeholders

36. As mentioned earlier, Human Rights Council resolution 24/14 requested the Advisory Committee to seek the view and inputs of different stakeholders, namely, Member States, relevant special procedures, national human rights institutions and non-governmental organizations on the issue of unilateral coercive measures and its adverse consequences on the enjoyment of human rights. To date only 9 stakeholders have responded to the questionnaire circulated by the Advisory Committee to this effect.⁵⁰ Following is a summary of the main highlights of the responses given from the different stakeholders.

A. States

37. *Columbia* views unilateral coercive measures as being against the principle of sovereignty, self-determination and cooperation among states. With respect to the issue of the adverse impact of unilateral coercive measures on the enjoyment human rights in targeted states, it underlines that such measures affect the most vulnerable persons such as those with low income including having an adverse impact on employment and thereby on the right to work. It also recommends that relevant UN mechanisms could be used to address the negative impact of unilateral coercive measures and specifically mentions the Universal Periodic Review (UPR) as a potential mechanism to assess such impact.

⁴⁸ Zafar Butta, IPgas pipeline: Iran wants assurance that Pakistan is 'all in,' *Express Tribune*, November 25 2013 available at:

<http://tribune.com.pk/story/470696/ip-gas-pipeline-iran-wants-assurance-that-pakistan-is-all-in>

⁴⁹ Although under U.S legislation sanctions on Iran have been in place for a longer period, the Iranian entity with whom Pakistan's Inter-State Gas System (ISGS) entered into the gas purchase agreement was specifically sanctioned on September 24 2012, that is after Pakistan had signed the gas purchase agreement. Thereafter, Pakistan has expressed reservations over the impact of sanctions on the project to tensions between Iran and the U.S. See, <http://timesofindia.indiatimes.com/world/pakistan/Pakistan-may-face-sanctions-over-gas-pipeline-with-Iran-US/articleshow/23512299.cms>

⁵⁰ Romania's National Human Rights Institution has responded but not included here due to translation problems.

38. *The Islamic Republic of Iran* considers that unilateral coercive measures violate international treaties such as the UN Charter and the Vienna Declaration. It also underlined that unilateral coercive measures have a negative socio-economic impact on vulnerable persons, eliminates the middle class and engenders the creation of black market and smuggling activities in countries where such measures are imposed. It also mentions that unilateral coercive measures affect the economic, social and cultural rights of the civilian population targeted by such measures which, among others, implicates the right to life, the right to food, clothing, housing and health.

39. Furthermore, it stated that unilateral coercive measures disproportionately affect women, children and persons with disabilities. It also points out that there is currently no effective UN mechanism that assesses and promotes accountability in regard to the adverse impact of unilateral coercive measures on the enjoyment of human rights. Finally, it outlines a set of recommendations that it regards as appropriate for the assessment of the adverse consequences of unilateral coercive measures on the enjoyment of human rights and promoting accountability, among others:

- (a) An independent body under the General Assembly;
- (b) A monitoring mechanism under the UN Security Council to examine the legality of UN Security Council sanctions;
- (c) A set of principles or a legal framework to assess the human rights impact of such measures;
- (d) Compensation mechanism for families affected by such measures; special procedures of the Human Rights Council.

40. *Lebanon* considers unilateral coercive measures as illegitimate due to their violation of the UN Charter and Security Council resolutions passed to this effect. It considers that unilateral coercive measures have an adverse impact on human rights of citizens of targeted states, especially their rights to life, adequate standard of living, right to development, freedom of thought, conscience and religion. Such measures particularly have an adverse impact on people who suffer from health problems and create housing problems for the youth including violation on the right to movement; disruption of the national economy and impact of citizens of third states through proliferation of illicit trading; migration waves and the increase in child and women prostitution. It pointed out that there currently does not exist any effective human rights norms or mechanisms to address the adverse impacts of unilateral coercive measures. Finally, it suggests that an international tribunal of human rights may be the most effective mechanism for addressing the issue.

B. Intergovernmental organisations

41. *The European Union* referred to the presentation made by Mr. Kees Smit Sibinga, at the workshop held in Geneva on 5 April 2013, as reflected notably in paragraphs 12 and 14 of the report A/HRC/24/20 presented to the Human Rights Council in September 2013 as summarized below.

42. For the European Union, sanctions are essentially a foreign policy instrument that concerned relations between States and should always be applied in accordance with international law and human rights. It does not consider the Human Rights Council as the appropriate form to address the issue. Restrictive measures have to be proportionate to their objectives and not have an economic motivation and be drafted in accordance with Article 6 of the Treaty of the European Union and thus with respect for fundamental rights and freedoms. As guaranteed, *inter alia*, in the European Convention on Human Rights including due process and the right to an effective remedy. The sanctions should be targeted

and should minimize any unintended impact on the population. Sanctions applied by the EU always include clearly defined safeguards in order to limit any unintended effects and to ensure any unintended effects to ensure that human rights are respected. Travel bans, asset freezes and financial and trade restrictions stress the preventive nature of these measures and the inclusion of standard exemptions in order to guarantee human rights and basic needs.

C. Special procedures

43. *The Independent Expert for the Promotion of a Democratic and Equitable International Order, Mr. Alfred-Maurice de Zayas*, noted that his mandate includes, among others, the consideration of the impacts of unilateral coercive measures and has devoted several paragraphs in his report to the General Assembly in 2013 (A/68/284 paras 12, 40–45 and recommendations 69 c),d) and m) identifying that unilateral coercive measures constitute an obstacle to achieving a democratic and equitable international order. He recalled the general comment No.8 of the Committee on Economic, Social and Cultural Rights which states that economic sanctions often cause a significant disruption in the distribution of food, pharmaceuticals and sanitation supplies, jeopardize the quality of food and the availability of clean drinking water, severely interfere with the functioning of basic health and education system and undermine the right to work. He further noted that unilateral coercive measures impede the realisation of the rights to a standard of adequate living for the health and well-being. He mentions that the US embargo against Cuba and the human rights violations against Iraq from 1991–2003 can be taken as specific examples of the adverse impact of UCMs on the enjoyment of human rights. He then pointed out that currently there are no current human rights norms and mechanisms that effectively address the negative impacts of unilateral coercive measures and suggests that the Universal Periodic Review can be used as a mechanism to assess the negative impact of unilateral coercive measures.

D. National human rights institutions

44. *Defensoria del Pueblo del Estado Plurinacional of Bolivia* states that unilateral coercive measures do not only have an economic purpose but are also political and judicial. Referring to the embargo against Cuba, it highlighted its negative impact on the Cuban population and the whole Caribbean Region. The Ombudsman also stresses the threat of these measures on human rights and suggests that these impacts may be assessed by National Human Rights Institutions, the OHCHR and the Committee on Economic, Social and Cultural Rights.

45. *The CNDH of Madagascar* stated that unilateral coercive measures have an impact on national sovereignty and on political, economic and social rights of targeted states including on the right to development. It further noted that the rights violated by unilateral coercive measures are: civil and political rights, social and economic rights, women and children rights. The most affect groups are those that are vulnerable such as women, children, prisoners, persons with disabilities, unemployed persons and the poor. It also pointed out that the main impact of unilateral coercive measures in non-targeted states is the restriction on freedom of commerce, freedom of movement and recourse to war. It noted that there is no effective human rights mechanism to deal with the negative impact of unilateral coercive measures on the enjoyment of human rights. It further noted that the most efficient human rights mechanisms are the special procedures mandates but also underlined that this must be complemented by education and self-control and that mandate holders can contribute to the study and research on the impact of unilateral coercive

measures on human rights through dissemination of information and sensitization in order to put an end to such measures and promote accountability.

E. Non-governmental organisations

46. *The Permanent Assembly for Human Rights (APDH)*, stated that unilateral coercive measures affect economic, social and cultural rights, rights to work, health, housing and education. In the long term, it also affects civil and political rights such as protection against discrimination. The first victims are the most vulnerable groups such as women, children, the elderly and the disabled. Such measures also accentuate discriminatory feelings, the occurrence of false nationalisms and the creation of artificial social archetypes. It cited examples of unilateral coercive measures by the USA against Cuba; Israel against Palestine, Russia against Ukraine and tax havens that gain from the persistence of such measure, resistance of core countries to control climate change and to share technical and health progress that primarily affects poor countries. It suggests that these impacts could be mitigated by UN mechanisms and agencies already existing and that this depends on the degree of moral authority and professionalism of its members and on the self-restraint of the core countries to abide by their decisions. It suggested that the OHCHR should be empowered to take on the task including the consideration of the ICJ, Regional tribunals (e.g. IACHR and the ECHR and arbitration systems as possible mechanisms. UN agencies dealing with commercial issues should also be considered including the potential involvement of inter-ministerial bodies and regional political bodies. It also expressed the need to adopt an international convention on the subject.

VII. Potential mechanisms to assess the negative impact of unilateral coercive measures and promote accountability

47. In exploring the mechanisms that can be used to assess the negative impact of unilateral coercive measures and/or mitigating their adverse impact on human rights, it is essential to point out from the outset that the possible mechanisms contemplated in this study would, for obvious reasons, be focussed on the relevant Human Rights bodies because of their greater and more specialized expertise in human rights. Moreover, the human rights bodies have been specifically established with the aim of promoting and protecting all human rights as well to ensure and monitor that human rights obligations assumed by States and that are incorporated in the various international human rights instruments are respected.

48. Accordingly, non-human rights oriented bodies, such as the World Trade Organization (WTO), are excluded from the ambit of this study since their mandate is not directly related to promoting human rights.⁵¹ The UN General Assembly and Security Council may be considered as potential mechanisms for this purpose due to the fact that they have frequently deal with the potential impact of sanctions on human rights, including unilateral coercive measures. However, both bodies do not seem to be appropriate mechanisms since they are more political and their experience to date shows difficulties in balancing unilateral coercive measures with human rights.⁵²

⁵¹ See Tilahun Weldie Hindeya, “Unilateral Trade Sanctions As A Means To Combat Human Rights Abuses: Legal and Factual Appraisal” (2013) Vol. 7 No.1 pp. 108–116.

⁵² See S. Braha, “The Changing Nature of U.S. Sanctions against Yugoslavia” (1999) 8 Michigan State University-DCL, Journal of International Law 273.

49. In general, UN human rights bodies may be categorized into two broad types: treaty-based bodies, on the one hand, and their charter-based counterparts, on the other. The treaty-based bodies include, *inter alia*, the Committee on the Elimination of Discrimination Against Women, the Committee on the Right of the Child, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee.⁵³ The charter-based bodies include the Human Rights Council and its various mechanisms and procedures such as the Universal Periodic Review (UPR) mechanism, the Complaints Procedure, which is composed of two separate working groups, and the various special procedures (namely, the special rapporteurs, independent experts and the Expert Working Groups) established by the Human Rights Council.⁵⁴

50. Due to the multiplicity of treaty-based and charter-based human rights bodies mentioned above and their different characteristics and mandates, it would be necessary to further examine some of the main considerations, challenges and opportunities that may be taken into account in identifying the most suitable candidate to take on the role of assessing the adverse impact of unilateral coercive measures on the enjoyment of human rights and promote accountability in this respect. The following are the main considerations and challenges identified in this study:

A. The challenge of territorially and jurisdictionally limited obligations

51. In light of the fact that unilateral coercive measures are imposed by one State against another State or against persons of another State, one issue that arises in this regard is whether treaty-based bodies would be suitable as a mechanism of choice for assessing and/or promoting accountability in regard to unilateral coercive measures adversely affecting the enjoyment of human rights. Generally, the obligations assumed by State parties to almost all the various human rights treaties have been framed in a rather narrow manner. For instance, the International Covenant on Civil and Political Rights (ICCPR) provides that State parties to the Convention undertake to ensure the enjoyment of all rights contained in the Covenant to all individuals and peoples within their territories or subject to their jurisdiction.⁵⁵ Furthermore, when closely read, the International Convention on the Elimination of Racial Discrimination (ICERD) limits the obligations of State parties in a similarly narrow territorial and jurisdictional manner.⁵⁶ The Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) follow the same pattern.⁵⁷ The International Convention on Economic, Social and Cultural Rights (ICESCR) formulates the obligations assumed by State parties in a more or less similar fashion, except that in this case, the obligations to ensure the enjoyment of human rights to individuals within the territory of a state subject to its jurisdiction is modified by the obligation of the relevant states parties to engage in “international assistance and cooperation” toward the achievement of this goal.⁵⁸ However, whether or not

⁵³ See P. Alston and R. Goodman, *International Human Rights* (New York: Oxford University Press, (2013), pp.691–693.

⁵⁴ Ibid.

⁵⁵ See the International Covenant on Civil and Political Rights, Art. 2.

⁵⁶ See the International Convention on the Elimination of Racial Discrimination, Arts. 2–4.

⁵⁷ See the Convention on the Elimination of all forms of Discrimination against Women, Art. 2; and the Convention on the Rights of the Child, Art. 2.

⁵⁸ See the International Covenant on Economic, Social and Cultural Rights, Art. 2.

a state is legally (as opposed to morally) obliged to help ensure the enjoyment of socio-economic and cultural rights in another State is still a subject of controversy.⁵⁹

52. The foregoing discussion tends to indicate that the territorial and jurisdictional mandates conferred to the treaty-based bodies within their respective treaties is framed quite narrowly and does not seem to extend to victims of the adverse impact of unilateral coercive measures who usually do not reside within the territory, or subject to the jurisdiction of the State imposing the challenged measures. This begs the question as to how such treaty-based bodies can procedurally entertain petitions of individuals or groups who claim to have been victims of human rights violations when such persons are outside the territory or jurisdiction of the State they wish to complain against. On the other hand, it may be argued that the obligations of state parties to the relevant treaties to ensure the enjoyment of human rights to all individuals and peoples *within their territories or those subject to their jurisdiction* could be read more flexibly in order to accommodate the ability of the relevant treaty-based body to entertain claims lodged against State parties by persons outside the territories such states or normally regarded as being outside their jurisdiction.⁶⁰ In this instance, the phrase “within its jurisdiction”, found in almost all of the treaties, may be interpreted to include any person against whom the relevant state has taken measures, including unilateral measures, that may affect their human rights. Yet, even such interpretive manoeuvre is subject to significant controversy.⁶¹

53. It must be noted, however, that a treaty-based body may require state parties to include in their periodic state reports how unilateral coercive measures that they have imposed may have violated the human rights of persons who are outside their territories or jurisdictions or what measures, if any, they have taken to properly assess or mitigate such adverse effects. Moreover, past experience has shown that treaty-based bodies have an indirect way to exercise their jurisdiction through adopting general comments. Even then, the issue of the territorial and jurisdictional limits of these treaty-based bodies may pose a challenge.

54. What the above discussion points out is that in the process of endeavouring to identify the appropriate mechanism(s) to assess and/or promote accountability to mitigate the effects of unilateral coercive measures on the enjoyment of human rights, efforts should be made, at a minimum, to avoid, or at least minimize, a potential controversy regarding the limits of the territorial and jurisdictional mandates of the treaty-based bodies. An obvious way of doing so is to avoid the treaty-based bodies as the mechanism of choice to undertake the task.

55. This would lead to a consideration of one or more of the charter-based bodies as the more preferable or potential mechanism of choice to undertake the assessment and/or promote accountability to mitigate the adverse impact of unilateral coercive measures on the enjoyment of human rights since the mandates of these bodies are formulated in a more flexible manner. This stems from the fact that the Preamble to the Charter of the United Nations, the source from which the charter-based bodies ultimately derive their mandates, *inter alia*, calls for all States “to promote *universal* respect for and observance of human

⁵⁹ See, for example, the debate on the ways and means of ensuring the enjoyment of the right to development. On this debate, see O.C. Okafor, “A Regional Perspective: Article 22 of the Charter on Human and Peoples’ Rights” in S. Marks, ed., *Realizing the Right to Development: Essays in Commemoration of Twenty-five Years of the United Nations Declaration on the Right to Development* (Geneva and New York: Office of the UN High Commissioner for Human Rights (2013) at 373.

⁶⁰ See H. Kindred, et al, *International Law chiefly as it is applied to Canada*, 7th edition (Toronto, Emond Montgomery, (2006) at 431 and 547.

⁶¹ *Ibid.*

rights”⁶² and furthermore obliges all States to take *joint* and separate action to achieve universal respect for and observance of human rights and fundamental freedoms *for all without distinction to race, sex, language and religion* (refer to Arts 55 and 56 of the Charter).⁶³ The latter language is clearly more flexible and better avoids the potential controversy in regard to jurisdiction that could be used to distract and potentially impede the assessment of unilateral coercive measures and their impact on the enjoyment of human rights.

B. The accountability imperative

56. It does not seem to be debatable that States who impose unilateral coercive measures that have an impact on the enjoyment of human rights of the civilian population of targeted or non-targeted states ought to be accountable in some way for their actions. Indeed, the entire human rights system would be much weaker were accountability of one kind or another not be one of its main goals and without which the entire human rights system would lose its rationale. For instance, in the area of addressing poverty reduction and the right to development, which has historically witnessed one of the largest accountability gaps in the broader human rights field, a call for the creation of institutions that ensure accountability has been deemed imperative. Indeed, the key documents that will shape the post-2015 Development Agenda has called for development efforts to be driven and shaped by building “accountability institutions for all,”⁶⁴ and further emphasized the need to establish “a participatory monitoring framework for tracking progress” and “mutual accountability mechanism for all stakeholders”⁶⁵. It has also been mentioned by Bossuyt in his study on sanction that “the full array of legal remedies should be available for victims of sanctions regimes at any point for the violation of international law,” and he mentions in this respect national courts, international or regional human rights bodies and the International Court of Justice as the potential fora for such claims.⁶⁶

57. All UN human rights bodies, be it the treaty-based or charter based ones, suffer to a similar degree from a lack of a supra-national authority that can enforce their demands on states that have allegedly violated their human rights obligations.⁶⁷ All of these bodies exact accountability in a similarly “softer way” primarily through slower, more consensual process of socialization, and sometimes, ostracization.⁶⁸ Rarely is a state punished for its human rights violations in a way in which violators tend to be sanctioned in domestic legal systems.⁶⁹

58. What follows from the above discussion on the issue of accountability in regard to unilateral coercive measures having an adverse impact on the enjoyment of human is that the selection of one kind or the other of the charter-based or treaty-based mechanisms for

⁶² See the Charter of the United Nations, available at: www.un.org/en/documents/charter

⁶³ Ibid.

⁶⁴ See A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development, available at: <http://www.post2015hlp.org/the-report/>

⁶⁵ See A Life of Dignity for all: Accelerating Progress towards the Millennium Development Goals and Advancing the United Nations Development Agenda beyond 2015, Report of the Secretary-General, A/68/202, 26 July 2013.

⁶⁶ Supra at note 11, para. 106.

⁶⁷ See O.C. Okafor, *The African Human Rights System, Activist Forces and International Institutions*, Cambridge: Cambridge University Press, 2007 at 40–61.

⁶⁸ Ibid. See also R. Goodman and D. Jinks, “How to Influence States: Socialization and International Human Rights Law” (2004), 54 *Duke Law Review Journal* 7.

⁶⁹ Ibid.

the task does not provide for a clear solution. However, it should be noted that the Universal Periodic Review may be better suited to ensuring a measure of accountability for the imposition of unilateral coercive measures at the global level since it targets each and every UN member state over each four year cycle.

C. Access to independent evidence

59. Another important consideration for selecting the best-suited mechanism(s) for the assessment and/or mitigation of the adverse effects of unilateral coercive measures on the enjoyment of human rights is the extent of the given body's access to robust or more direct independent evidence. It appears that while charter-based bodies as a group do not necessarily enjoy an advantage in this regard over their treaty-based counterparts, and vice versa, the special procedures of the Human Rights Council do in fact enjoy such an advantage. This is because these are often able to undertake on-site visits to the relevant states and areas. This factor leads to the charter-based bodies, especially the special procedures, as the preferred mechanism to perform this task.

D. The consideration of financial and administrative efficiency

60. The United Nations system is currently striving to be as financially and administratively efficient and cost-effective as possible without significantly cutting down its relevant programs. This consideration suggests that a multiplicity of mechanisms to take on the task of assessing and promoting accountability for the negative impact of unilateral coercive should be avoided. A single charter-based or treaty-based body ought therefore to be considered as a mechanism of choice to perform the task at hand.

E. The need to secure the most appropriate expertise

61. Given the fact, that unilateral coercive measures of a comprehensive nature are more likely to have an adverse impact on the enjoyment of economic and social rights especially in relation to women, children and other vulnerable groups in targeted States and that this has also been given emphasis in Human Rights Council resolution 24/14,⁷⁰ the mechanism of choice may need to be a body or a person who has the requested expertise in the area of economic and social rights and the rights of women and children. In the context of treaty-based bodies, this will imply three specific bodies that are best positioned to perform the task jointly, namely, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of all forms of Discrimination against Women, and the Committee on the Rights of the Child. However, financial and administrative considerations as pointed out earlier, may dictate against taking this more cumbersome route. Again, this would lead us to the charter-based option by way of designating a special procedure of the Human Rights Council. The appointment of such a special procedure will allow the Human Rights Council more flexibility to select the person that it considers best suited for the position with adequate expertise in the three areas identified.

⁷⁰ Supra note 3 para 4.

F. Minimizing politicization

62. The issue of the imposition of unilateral coercive measures is deeply tied to global politics and the challenge that is posed to the multilateral ideal by the actions of many states.⁷¹ As such, for the mechanism that may eventually be selected to perform the task as well as for it to gain the most popular legitimacy and effectiveness, some attempt should be made, at the very least, to select a mechanism which has the best chance of minimizing the politicization of the issue. With a couple of exceptions, both the treaty-based and charter-based bodies are designed to be as non-political as possible and therefore do not enjoy any specific advantage in this respect. Almost all of the subsidiary bodies and special procedures of the Human Rights Council (except the working group on situations that forms part of the complaints mechanism) are composed of, *or at least should be composed of*, independent experts. On the other hand, it should be acknowledged that the Human Rights Council itself is also a fairly political process. On balance, however, if the complaints procedure and the UPR are excluded, this factor is more or less neutral as to the choice between the charter-based and treaty-based bodies.

VIII. Concluding remarks and recommendations

63. The fact that unilateral coercive measures are likely to have a negative impact on the enjoyment of human rights on the civilian population of targeted and, in some cases, non-targeted states, does not seem to be a subject-matter of controversy. However, assessing the impact of unilateral coercive measures on human rights of the civilian population, and more particularly, on vulnerable groups such as women and children would require on-site visits to the states affected by such measures to verify, in an independent manner, the actual effects such measures have had on the different segments of the population.

64. From the discussion in the previous section of this study, one obvious conclusion is that this function should squarely rest on one of the relevant human rights bodies (that is either one treaty-based body or one charter-based body). The significant challenge faced by the treaty-based bodies in attempting to discharge this function is the narrow territorial/jurisdictional manner in which the obligation of states are framed in the respective treaties which suggests that a charter-based body, which tends to have a more flexible mandate, is preferable to undertake the task.

65. Almost all of the factors considered for selecting the most appropriate mechanism for the assessment of the adverse effect of unilateral coercive measures on the enjoyment of human rights, appear to point to the conclusion that only one of the special procedures (either a special rapporteur, independent expert or a special representative to the UN secretary-general) should be deployed to undertake the task. The need for the selected mechanism to have as much direct access as possible to robust and independent evidence; to align with the United Nations administrative and financial efficiency goals; and to have a great degree of flexibility to select and deploy the most appropriate technical expertise in the area, would tend to support the appointment of a special procedure by the Human Rights Council. It is highly recommended, therefore, that a dedicated Human Rights Council mechanism be created for the assessment of the negative impact of unilateral coercive measures on the enjoyment of human rights.

⁷¹ See C. Chinkin, "The State that acts alone: Bully, Good Samaritan or Iconoclast?" (2000) *European Journal of International Law* 11 at 31; and A.R. Coll, "Harming Human Rights in the Name of Promoting them: The Case of the Cuban Embargo" (2007) 12 *UCLA Journal of International Law and Foreign Affairs* 199.

66. In regard to promoting accountability for the negative impact of unilateral coercive measures on the enjoyment of human rights, the most appropriate means to hold states accountable in this regard seems to be the use of the Universal Periodic Review (UPR) mechanism and for the relevant treaty-based bodies to require member States to address this issue in their periodic reports so as to garner increased public opinion that can pressure States to prevent or, at least, to mitigate the impact of such measures on the enjoyment of human rights. There may also be a need to consider developing specific rules, procedures and guidelines by the Human Rights Council in order to ensure transparency and more accountability if and when States employ unilateral coercive measures that are likely to have a negative impact on the enjoyment of human rights of targeted or non-targeted States.
