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

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, prepared pursuant to Council resolutions 27/21 and 30/2. In the report, the Special Rapporteur lists the key activities that he undertook between July 2015 and June 2016. He then focuses on the issues of remedies and redress for victims of unilateral coercive measures, based on a review, assessment and evaluation of the various mechanisms available to victims. Finally, he recommends steps to be taken to reinforce or create avenues for remedies.

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Contents

I. Introduction

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

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

3. In the present report, the Special Rapporteur focuses on the issues of remedies and redress and, in line with his mandate, reviews, assesses and evaluates the various mechanisms available to victims of unilateral coercive measures. The report will be supplemented by the report that the Special Rapporteur will submit to the General Assembly at its seventy-first session, in which he will examine the conceptual aspects of the remedies relating to violations of human rights owing to the application of unilateral coercive measures in international law, human rights law and humanitarian law.

4. Given the complexity of the subject matter and its multifaceted and intricate aspects, the findings set out in this report, as well as the conclusion and the recommendations formulated, are preliminary and tentative. The Special Rapporteur welcomes any comments, information and suggestions that Governments, non-governmental organizations and any other interested parties may have on remedies and redress in relation to the negative impact of unilateral coercive measures on human rights.

II. Activities of the Special Rapporteur

5. Since 15 July 2015, the Special Rapporteur has sent requests for official visits to the European Union and Zimbabwe and a reminder to the United States of America. At the time of writing the present report, he had not received any replies. The Special Rapporteur received an invitation to visit the Syrian Arab Republic.

6. Between 15 July 2015 and 30 June 2016, the Special Rapporteur issued eight press releases, three of which were issued jointly with other special procedures.

7. On 17 September 2015, the Special Rapporteur participated in the first biennial panel discussion on the issue of unilateral coercive measures and human rights, held in Geneva.

8. On 26 October 2015, the Special Rapporteur presented his first report to the General Assembly (A/70/345), which consisted of a preliminary review of the human rights adversely affected by unilateral coercive measures.

9. The Special Rapporteur carried out his first official country visit to the Sudan from 23 to 30 November 2015 (see A/HRC/33/48/Add.1). He thanks the authorities of the Sudan for their engagement with his mandate. At the end of his visit, the Special Rapporteur issued a press statement containing his preliminary observations and recommendations.[1]

[1] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16824&LangID=E.

10. On 15 December 2015, the Special Rapporteur joined with three other mandate holders and sent a communication to India regarding the alleged blockage at the Nepal-India border of vessels carrying essential goods, which had resulted in a lack of basic supplies and services to the people of Nepal (see A/HRC/32/53. p. 29). The Government of India replied on 28 December 2015.[2]

11. On 22 February 2016, the Special Rapporteur sent letters to member States reiterating his request for information on unilateral coercive measures. Thirteen countries[3] sent written information. The Special Rapporteur thanks the Governments that replied and encourages all member States to provide him with the requested information so as to enable him to fulfil his mandate. In addition, in order to preserve the integrity of the Human Rights Council, he invites all States to engage in good faith with all special procedures, as requested by the Council in its resolutions, regardless of the voting record that led to the creation of the mandates.

12. On 21 June 2016, the Special Rapporteur participated in a side event, held during the thirty-second session of the Human Rights Council, on the negative impacts of unilateral coercive measures.

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

13. Since his appointment, the Special Rapporteur has submitted reports containing several observations and recommendations relating to the theme of his mandate to the Human Rights Council and the General Assembly.[4]

14. The Special Rapporteur reiterates all his recommendations, in particular the recommendation to set up a consolidated central register at the level of the Security Council or of the United Nations Secretariat to recapitulate the list of all unilateral coercive measures in force (see A/HRC/70/345, para. 56 (a)). This register should be kept according to the standards currently applied for Council sanctions and made public. Sender/source States or group of States should be invited to notify the Council of unilateral coercive measures in force at their initiative and of their evolution. Such a mechanism could draw on the model of the United Nations Register of Conventional Arms, which includes data on international arms transfers as well as information provided by member States on military holdings, procurement through national production and relevant policies.[5]

IV. Remedies available to States affected by unilateral coercive measures

A. Remedies available under the Charter of the United Nations

15. The Charter of the United Nations (Article 33) sets out a number of mechanisms for the settlement of disputes between sovereign States, which may be of relevance for States on which unilateral coercive measures that affect the enjoyment of human rights by their

[2] See https://spdb.ohchr.org/hrdb/31st/India_28.12.15_(16.2015).pdf.

[3] They were Angola, Bahrain, Belarus, Bolivia (Plurinational State of), Cuba, Ecuador, Iran (Islamic Republic of), Kuwait, Mexico, Montenegro, Russian Federation, Sudan and Syrian Arabic Republic.

[4] See A/HRC/30/45; and A/70/345, in particular, paras. 56, 64, 66, 68, 70, 72 and 76.

[5] See General Assembly resolution 46/36 L, para. 7.

populations have been imposed. These mechanisms are also referred to in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, according to which, States shall seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice.[6]

16. While States are free, as a matter of principle, to agree on such peaceful means as may be appropriate to the circumstances and the nature of their disputes,[7] they are obligated to fulfil in good faith their obligations under the Charter. The legality of recourse to countermeasures in situations where inter-State negotiations are under way remains questionable.[8]

17. The Charter also provides that the Security Council shall, when it deems necessary, call upon the parties to settle their dispute by peaceful means (Article 33(2)), and that any member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly (Article 35(1)). The Special Rapporteur points out that, in accordance with Article 50 of the Charter, any State confronted with special economic problems as a result of the implementation of United Nations sanctions have the right to consult the Security Council. The ongoing debates surrounding the application of Article 50 and the compensation mechanisms that could be devised to that effect should considered to some extent relevant also to the issue of compensation for the adverse impacts of unilateral coercive measures.[9]

B. Remedies available under specific dispute settlement clauses in treaties

1. International Court of Justice

18. The International Court of Justice has dual jurisdiction. The Court may be called upon to consider legal issues relating to unilateral coercive measures in the exercise of both its contentious jurisdiction and its advisory jurisdiction.

Contentious jurisdiction

19. The Court may only deal with an inter-State dispute when the States concerned have recognized its jurisdiction. Therefore, no State can be a party to proceedings before the Court unless it has consented thereto.[10] Disputes between targeting and targeted States regarding the application of unilateral coercive measures would fall under the broad

[6] See General Assembly resolution 25/2625, annex .

[7] See for example, *Handbook on the Peaceful Settlement of Disputes between States* (OLA/COD/2394) (United Nations publication, Sales No. E.92.V.7), paras. 19-20.

[8] It has been argued that "when the target State is engaged in negotiations in good faith, there should be no need to resort to countermeasures, and thus countermeasures would not be permitted under the requirement of necessity. It is only when the target State refuses to cooperate in dispute settlement in good faith that countermeasures become necessary". See Y. Iwasawa and N. Iwatsuki, "Procedural Conditions" in *The Law of International Responsibility*, J. Crawford, A. Pellet and S. Olleson, eds. (Oxford, Oxford University Press, 2010), p. 1153.

[9] With regard to the application of Article 50 of the Charter, see A/47/277-S/24111, para.41, in which the Secretary-General recommended that the Security Council devise a set of measures involving the financial institutions and other components of the United Nations system that can be put in place to insulate States from such difficulties. Such measures would be a matter of equity and a means of encouraging States to cooperate with decisions of the Council.

[10] See R. Mackenzie and others, *The Manual on International Courts and Tribunals*, 2nd ed. (Oxford, Oxford University Press, 2010), p. 14.

definition of international legal disputes, understood as a "disagreement on a point of law or fact, a conflict of legal views or of interests between two persons".[11] As only States may apply to and appear before the International Court of Justice,[12] international organizations, other entities and private persons are not entitled to institute proceedings before the Court. The legal standing of unrecognized States or de facto entities to apply to the Court is subject to controversy.[13] This issue may be relevant to certain sanctions regimes.

20. The jurisdiction of the Court in a contentious case brought by a targeted State against a targeting State could be based either on a dispute settlement clause or on a special agreement between the States concerned (an hypothesis a priori highly unlikely as regards sanctions) or could result from the recognition by the targeting State of the Court's compulsory jurisdiction. An example of such a treaty arguably providing for the jurisdiction of the International Court of Justice to hear a claim against the application of unilateral coercive measures is offered by the 1955 Iran-United States of America Treaty of Amity,[14] which was previously used by the Islamic Republic of Iran to institute contentious proceedings in the *Oil Platforms* case.[15]

21. According to article 38 of the Statute of the Court, it shall apply in the adjudication of disputes submitted to it, international conventions, international custom and the general principles of law, as well as judicial decisions and the teachings of the most highly qualified publicists of various nations. The Court may thus apply to a given case regarding unilateral coercive measures, human rights norms that may be relevant to the evaluation of sanctions, as briefly identified in a previous report of the Special Rapporteur.[16] There have been cases in the jurisprudence of the International Court of Justice in which the claimant State based part of its claims on the alleged violation by the respondent State of human rights norms.[17]

22. The International Court of Justice has already considered the legality of economic sanctions under public international law. Called to rule on, inter alia, the legality of acts of "economic pressure" exercised by the United States of America against Nicaragua, the Court stated that "a State is not bound to continue particular trade relations longer than it sees fit to do so, in the absence of a treaty commitment or other specific legal obligation".[18]

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[11] This is the classical definition of a legal dispute set out by the Permanent Court of International Justice in *The Mavrommatis Palestine Concessions (Greece v. Great Britain)*, Judgment of 30 August 1924, P.C.I.J. Series. A, No. 2, p. 11.

[12] See Statute of the International Court of Justice, art. 34 (1).

[13] On this matter, see for example, Sean D. Murply, "International judicial bodies for resolving disputes between States" in *Oxford Handbook on International Adjudication*, Cesare Romano, Karen Alter, Yuval Shany, eds. (Oxford, Oxford University Press, 2013), pp. 185-186.

[14] See *Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran*, 15 August 1955, 284 U.N.T.S. 93. On 14 June 2016, the Islamic Republic of Iran initiated proceedings before the International Court of Justice against the United States of America, alleging violations of the Treaty of Amity in relation to measures by the United States targeting Iranian entities, including the Central Bank of Iran.

[15] See *Oil Platforms (Islamic Republic of Iran v. United States of America), Judgments, I.C.J. Reports 2003*, p. 161.

[16] See A/70/345.

[17] See for example, Bruno Simma, "Human rights before the International Court of Justice: community interest coming to life?" in *The Development of International Law by the International Court of Justice*, Christian J. Tams and James Sloan, eds. (Oxford, Oxford University Press, 2013), pp. 577-603.

[18] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment of 27 June 1986, I.C.J. Reports 1986*, p. 14, para. 276; see also A/HRC/19/33, paras. 13-14.

This suggests that the freedom to impose measures restricting trade with a targeted State is circumscribed to situations where such measures would not involve a violation of existing treaty obligations. This leaves the Court much to decide upon as regards unilateral coercive measures, their legality or otherwise under public international law, and their conformity or otherwise with human rights, including an assessment of the legal significance and consequences of repeated resolutions of the General Assembly condemning recourse to unilateral coercive measures.

23. The Special Rapporteur recalls that States subject to unilateral coercive measures may verify the existence of treaties in force with the targeting State(s). Such treaties may provide a basis for the jurisdiction of the International Court of Justice in the event of a dispute regarding the interpretation or application of the treaty and could thus allow for a legal challenge of unilateral coercive measures resulting in violations of obligations set out in the relevant treaty, customary international law or relevant rules of human rights, including those forming part of *jus cogens*.

Advisory jurisdiction

24. The International Court of Justice may render an advisory opinion on any legal question at the request of any body or organ authorized by or in accordance with the Charter of the United Nations to make such a request.[19] In this regard, it should be noted that further to Article 96 of the Charter, the General Assembly or the Security Council may request the International Court of Justice to render an advisory opinion on any legal question. In advisory cases, States are not parties and there is no claimant or defendant. The Court invites States or international organizations to provide information to assist the Court in its determination of the point(s) of law at issue.

25. Despite the fact that the advisory opinions of the Court are non-binding, they are of great practical importance and could have far-reaching implications. Indeed,

> The importance of the advisory function stems from the fact that it affects the general interpretation of International Law for the international community rather than simply for the particular States or entities directly affected by an individual opinion. Thus, advisory opinions of the Court, if properly implemented cannot only guide the requesting organ but also may serve the interests of the whole international community.[20]

26. In that respect, the Special Rapporteur invites member States concerned to consider submitting to the International Court of Justice a request for an advisory opinion on the legality or otherwise of the unilateral coercive measures, especially under the angle of their compliance or otherwise with human rights norms. Such advisory opinion would be of great significance to the international community and for the advancement of the rule of law. For the General Assembly to take a decision to submit a request for an advisory opinion to the International Court of Justice on the legality or otherwise of unilateral coercive measures, a resolution adopted by a simple majority vote appears to be sufficient.[21]

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[19] On the advisory function of the International Court of Justice in general, see Mahasen M. Aljaghoub, *The Advisory Function of the International Court of Justice, 1946-2005* (Berlin/New York, Springer, 2006); and Shabtai Rosenne, *The Law and Practice of the International Court, 1920-2005*, 4th ed. Vols. I-IV (Boston, Massachusetts, Nijhoff Publishers, 2006).

[20] Ibid., p. 5.

[21] The question of whether a request for an advisory opinion constituted an "important question" in the meaning of Article 18 (2) of the Charter of the United Nations, thus requiring a two-thirds majority vote in the General Assembly, seems to have been resolved by the negative, as evidenced by the uncontroversial practice following the requests to the International Court of Justice to render advisory

27. The Special Rapporteur deplores the fact that, the Human Rights Council has not been authorized to request advisory opinions from the International Court of Justice although its status as a subsidiary organ of the General Assembly[22] would have warranted it. Such authorization has been given to a number of United Nations specialized agencies and main organs of the United Nations, including the Economic and Social Council.[23]

2. Inter-State arbitration

28. In addition to the International Court of Justice, a number of bilateral and multilateral treaties provide for the compulsory jurisdiction of an international arbitral tribunal in cases of dispute between the parties to the instruments with regard to the interpretation or application thereof. Such dispute settlement clauses could, in certain situations, be used to bring inter-State claims based on unilateral coercive measures that may violate some provisions of the treaty considered.[24]

3. World Trade Organization dispute settlement mechanism

29. To the extent that unilateral coercive measures imposed by a World Trade Organization (WTO) member State against another member State may arguably entail violations of the obligations set forth in the WTO agreements, the question arises as to whether recourse to the WTO Dispute Settlement Body is an option for a WTO member State faced with international sanctions.[25]

30. The State(s) affected should of course demonstrate that the measures considered contradict various provisions of the WTO agreements. It may be reasonable to think that some of the grounds for considering unilateral coercive measures unlawful under public international law would also be considered by the WTO dispute panel. Article 3.2 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes provides that the dispute settlement system of the WTO serves to preserve the rights and obligations of members under the covered agreements and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. In 1996, WTO Appellate Body, in *US–Gasoline* stated that "the General Agreement on Tariffs and Trade is not to be read in clinical isolation from public international law".[26] Regarding the possible invocation of security exceptions (such as that

opinions on the legal consequences of the construction of a wall in the Occupied Palestinian territory and on the accordance with international law of the unilateral declaration of independence in respect of Kosovo. See Jochen Frowein and Karin Oellers-Frahm, "Article 65", in *The Statute of the International Court of Justice: A commentary*, Andreas Zimmermann and others, eds. (Oxford, Oxford University Press, 2012), p. 1614.

[22] See General Assembly resolution 60/251.

[23] See General Assembly resolution 89 (I).

[24] See for example, the Treaty between the Federal Republic of Germany and the Republic of the Sudan concerning the Encouragement of Investments, 7 February 1963, art. 11, available at http://investmentpolicyhub.unctad.org/Download/TreatyFile/1420.

[25] The Russian Federation, WTO member since 2012, has referred to the option of bringing proceedings before the WTO Dispute Settlement Body to challenge European Union and United States sanctions against it. Russian Minister of Economic Development, Aleksey Ulyukaev, stated that the latest round of sanctions provided grounds to appeal to the WTO, and that they would appeal them: see *Russia Today*, "Russia to appeal against US, EU sanctions to WTO" (12 September 2014) available at http://rt.com/business/187432-wto-russia-sanctions-ulyukaev/; also E. Pickett and M. Lux, "Embargo as a trade defence against an embargo: the WTO compatibility of the Russian ban on imports from the EU", *Global Trade and Customs Journal*, vol. 10, No. 1 (2015), pp. 2-41.

[26] World Trade Organization, *United States – Standards for Reformulated and Conventional Gasoline*, Report of the Appellate Body, 29 April 1996 (WT/DS2/AB/R), p. 17.

set out in article XXI of the General Agreement on Tariffs and Trade)[27] as a defence by States imposing sanctions, it is to be noted that the legislative history of article XXI of the General Agreement on Tariffs and Trade indicates that this provision was not meant to be excluded from the WTO dispute settlement procedures.[28] That reinforces the argument that security exceptions were not conceived of as a self-judging provision.[29] On a related note, it has also been suggested that the WTO Dispute Settlement Body could possibly be seized of a dispute carrying human rights arguments.[30]

V. Remedies available to individuals and entities affected by unilateral coercive measures

A. Domestic remedies

31. Whether individuals or entities subject to unilateral coercive measures can benefit from effective judicial review before the domestic courts of the targeting State(s) depends in the first place on the country considered. It appears that in most jurisdictions, domestic courts are unlikely to grant remedies to individuals or entities affected by unilateral coercive measures, as the courts display a significant measure of deference vis-à-vis the political decisions underlying sanctions. It should also be noted that, under European Union law, domestic, or national, courts throughout the European Union are bound to apply European Union restrictive measures.

32. There have been cases, however, in which national implementation measures of United Nations sanctions have been challenged before domestic courts, for example, in the United Kingdom of Great Britain and Northern Ireland.[31] It is unclear whether any of the applicants were awarded damages. Reportedly, a case concerning sanctions-related damages is currently pending before the British High Court of Justice. The case was brought by Bank Mellat (an Iranian bank), after the Supreme Court of the United Kingdom ruled in 2013 that the 2009 order of the Government of the United Kingdom imposing financial restrictions on the bank in the United Kingdom was unlawful.

[27] This article allows a party to disregard its obligations under the General Agreement on Tariffs and Trade by "taking any action which it considers necessary for the protection of its essential security interests" with reference to various situations, including "in time of war or other emergency in international relations" and "in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security". This latter provision clearly refers to obligations to comply with Security Council resolutions under Chapter VII of the United Nations Charter and, as such, does not cover unilateral coercive measures.

[28] See M. J. Hahn, "Vital interests and the law of GATT: an analysis of GATT's security exception", *Michigan Journal of International Law*, vol. 12 (1991), pp. 556-567.

[29] See Mitsuo Matsushita and others, *The World Trade Organization: Law, Practice and Policy* (Oxford, Oxford University Press, 2006), p. 597.

[30] See for example, G. Marceau, "WTO dispute settlement and human rights", *European Journal of International Law*, vol. 13 (2002), pp. 753-814.

[31] See for example *The Queen on The Application of Aguy Georgias v. Secretary of State for The Home Department* [2008] EWHC 1599, in which a member of the Government of Zimbabwe targeted by a travel ban imposed on him by Council Common Position 2007/235/CFSP renewing restrictive measures against Zimbabwe, brought a claim for judicial review, which was dismissed by the High Court.

B. Human rights bodies

33. Within the United Nations system, there are a number of treaty-based mechanisms that potentially allow individuals to pursue claims against States based on violations of human rights.[32] Some of these mechanisms are, a priori, relevant to the situation of persons whose human rights have been infringed by unilateral coercive measures. It must, however, be emphasized that, in certain cases, such mechanisms may be unavailable because some States imposing unilateral coercive may not have ratified the relevant treaties or protocols.

34. It can be assumed that individuals whose enjoyment of human rights is adversely affected by the imposition of unilateral coercive measures could lodge complaints against the targeting State(s) with the Human Rights Committee or the Committee on Economic, Social and Cultural Rights, respectively, insofar as the targeting State(s) have ratified the Optional Protocol(s). Each Committee may consider individual communications alleging violations of any of the rights set forth in the Covenant concerned. As such, parties affected may initiate claims alleging violation of their rights pursuant to, for example, article 11 of the International Covenant on Economic, Social and Cultural Rights, which protects the right to an adequate standard of living, including food, clothing, housing and medical care and article 12 of the same Covenant, which protects the right to health.[33]

35. While anyone can lodge a complaint with the above-mentioned Committees alleging violations of rights protected under the respective Covenants, the Optional Protocols to the Covenants require that the authors of the communications must be under the jurisdiction of the State responsible for the violation (and the State must have ratified both the Covenant concerned and its Optional Protocol). It is unclear whether this requirement bars the submission of a communication against a State that has violated a protected right beyond its borders.[34]

36. However, extraterritorial application under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights should not be ruled out. Indeed, States may be bound by their obligations under the Covenant when acting extraterritorially.[35] The jurisprudence of international and regional bodies, such as the Human Rights Committee, the International Court of Justice and the European Court of Human Rights indicate that Governments can be held to account if they violate the fundamental rights of persons living outside their borders.[36]

37. In its general comment No. 15 (2002) on the right to water, for example, the Committee on Economic, Social and Cultural Rights made it clear that a State should not deprive another country of the ability to realize the right to water for persons in its jurisdiction (para. 31). The Committee has also indicated in its concluding observations on periodic reports of States parties that jurisdiction includes any territory over which a State

[32] See E/CN.4/2005/WG.23/2.

[33] See A/HRC/70/345, paras. 34-44.

[34] See Geneva Academy of International Humanitarian Law and Human Rights, "The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights", In-Brief No. 2 (Geneva, July 2013), p. 12. Available from www.geneva-academy.ch/docs/publications/The%20optional%20protocol%20In%20brief%202.pdf.

[35] See C. Courtis and M. Sepúlveda, "Are extraterritorial obligations reviewable under the Optional Protocol to the ICESCR?", *Nordic Journal of Human Rights*, vol. 27, No. 1 (2009); and F. Coomans, "The extraterritorial scope of the International Covenant on Economic, Social and Cultural Rights in the work of the United Nations Committee on Economic, Social and Cultural Rights", *Human Rights Law Review*, vol. 11, No. 1 (2011).

[36] See Geneva Academy of International Humanitarian Law and Human Rights, In-Brief No. 2, pp. 12-13.

Party has geographical, functional or personal jurisdiction. The Committee may also accept communications from individuals whose rights under the Covenant have been violated and who live outside the territory of the State party that they allege to be responsible.[37]

38. Furthermore, the Human Rights Committee, in its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, asserts that every State party to the Covenant is "obligated to every other State party to comply with its undertakings under the treaty" by considering that the violation of Covenant rights by any State party requires others to call on violators to "comply with their Covenant obligations". It would therefore be reasonable to assume that compliance with obligations under the Covenant is required in relation to the implementing of unilateral coercive measures.[38]

39. It is thus reasonable to assume that, in the case of unilateral coercive measures, complaints against targeting State(s) brought by corporate persons or individuals who are nationals of or resident in targeted States may be admissible.

40. Third parties may also bring complaints on behalf of individuals with their written consent.[39] A formal complaint should include a comprehensive chronology of facts with supporting documentation, an explanation as to how the facts violate specific provisions of the Covenant concerned and an indication of the form of remedies sought.

41. It would be desirable that the general rule according to which the Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted not be applicable to claims by victims of human rights violations resulting from unilateral coercive measures imposed by another country. It should also be noted that the complaint may be rejected if it is determined that the same matter (i.e. relating to the same author, the same facts and the same substantive rights) is being examined by another mechanism of international investigation or settlement.[40]

42. Applicants should, however, bear in mind that, given the large number of communications submitted, there may be a delay of several years between the initial submission and the Committee's final decision. When the Committee decides that the facts before it disclose a violation by the State party, it transmits its decision to the State party and invites it to provide information, within a set time frame, on the measures taken to give

[37] Ibid.

[38] See CCPR/C/USA/CO/4, in which the Human Rights Committee recommended that that the United States of America should interpret the International Covenant on Civil and Political Rights in good faith, in accordance with the ordinary meaning to be given to its terms in their context, including subsequent practice, and in the light of its object and purpose and review its legal position so as to acknowledge the extraterritorial application of the Covenant under certain circumstances, as outlined inter alia, in the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant (para. 4 (a)). As regards National Security Agency surveillance that is conducted worldwide, the Committee recommended that the United States should take all necessary measures to ensure that its surveillance activities, both within and outside the United States, conformed to its obligations under the Covenant, including article 17. In particular, measures should be taken to ensure that any interference with the right to privacy complied with the principles of legality, proportionality and necessity regardless of the nationality or location of individuals whose communications were under direct surveillance. (para. 22 (a)).

[39] See the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, art. 2; and E/C.12/49/3, rule 4.

[40] See the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, art. 3 (2); and the Optional Protocol to the International Covenant on Civil and Political Rights, art. 5 (2) (a).

effect to its decision and recommendations. The decisions of the Committees under the communication procedure cannot be appealed.

43. As regards remedies and redress, although a Committee may render a decision as to remedial action to be taken by the State, such as compensation to the victim(s), their decisions are not legally binding on the State. Modalities on follow-up to the Committee's recommendations are set out in the Optional Protocols to the Covenants. For example, as regards communications under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the State party concerned must submit a response within six months on the measures taken to give effect to the Committee's recommendations. The Committee may also request the State party to submit information in its subsequent periodic report on any measures taken to respond to the Committee's recommendations.[41]

44. A case relating to sanctions imposed by the United Nations was brought before the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights.[42] Two Belgian nationals, whose names were placed on the United Nations Sanctions Committee list in early 2003 at the initiative of Belgium, submitted a communication to the Committee, claiming that through its proposal to place their names on the Sanctions Committee list without "relevant information" and through the subsequent imposition of sanctions, Belgium had violated several provisions of the Covenant, including the right to a fair trial and effective remedy (arts. 2 (3) and 14) and the right to liberty of movement (art. 12). The Committee found that it was competent "to admit a communication alleging that a State party had violated rights set forth in the Covenant, regardless of the source of the obligation implemented by the State party", irrespective of the fact that the listing was effected at the request of Belgium by the Sanctions Committee further to Security Council resolution 1267. The Committee ruled that Belgium had violated the relevant rights protected under the Covenant.

45. In the light of the foregoing, the Special Rapporteur considers that the Committees established under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are a fortiori competent to address claims relating to the legality of unilateral coercive measures and to recommend remedies for victims thereof.

Special procedures of the Human Rights Council

46. Complaints based on violations of human rights through the imposition of unilateral coercive measures may also be submitted to the special procedures of the Human Rights Council. In this context, individuals or groups subject to unilateral coercive measures may bring allegations to the attention of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights who is empowered to act on individual cases by sending communications to the State(s) concerned in order to bring alleged violations and abuses to their attention. Communications may also be addressed to other special procedures, insofar as their mandate is of relevance to aspects of infringements of human rights related to the imposition of unilateral coercive measures. However, while States are expected to be accountable for national measures that have an adverse human rights impact on their domestic population, legal considerations alone are

[41] See the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, art. 9 (3).

[42] See Communication No. 1472/2006, *Sayadi and Vinck v. Belgium*, Views adopted on 29 December 2008.

not enough to determine whether source States will accept accountability for the adverse human rights impact of unilateral coercive measures across borders.

Human Rights Council complaint procedure

47. The Human Rights Council complaint procedure is another forum that is intended to address consistent patterns of gross and reliably attested violations of all human rights and fundamental freedoms occurring in any part of the world and under any circumstances, which could arguably be a mechanism to entertain complaints related to the impact of unilateral coercive measures. The process is designed to enhance cooperation with the State concerned. Upon prima facie review of a communication, the Council transmits it to the State concerned to obtain its views and to keep the lines of communication open between the applicant, the States and the Council at every stage of the process.

C. Compensation commissions

48. Compensation commissions have been established in a number of different contexts to deal with the settlement of claims arising out of situations of conflict or massive violations of human rights. These include the Commission for Real Property Claims of Displaced Persons and Refugees, the Claims Resolution Tribunal for Dormant Accounts in Switzerland, the Property Claims Commission established under United Nations Interim Administration Mission in Kosovo regulation No. 2006/10, and the International Commission on Holocaust Era Insurance Claims.

49. The United Nations Compensation Commission is a prominent example of such a mechanism. It was established as a subsidiary organ of the Security Council with a mandate to review, decide and pay the claims for which Iraq was liable as a result of its unlawful invasion of Kuwait. The Security Council, in its resolution 687 (1991), reaffirmed that:

> Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage — including environmental damage and the depletion of natural resources — or injury to foreign Governments, nationals and corporations, as a result of its unlawful invasion and occupation of Kuwait.

50. A similar compensation commission could probably be established for the purpose of providing compensation to victims of unilateral coercive measures. Such a compensation commission could be set up under the Security Council, or alternatively, be established by means of a multilateral convention negotiated under the auspices of the United Nations. States which have imposed unilateral coercive measures on other States could be called upon to contribute financially to such a commission.

D. Regional or international courts

European Union Courts

51. European Union sanctions — referred to in the European Union as "restrictive measures"[43] — are subject to full judicial review by the General Court, which may be appealed before the Court of Justice. This applies equally to measures taken to implement Security Council resolutions under chapter VII of the Charter of the United Nations and

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

"autonomous" European Union measures, as was made clear in the case of *Kadi and Al-Barakaat International Foundation v. Council and Commission*.[44] The courts of the European Union have developed, over time, a rich jurisprudence of cases brought by individuals or entities subject to restrictive measures and, in some cases, the applicants have actually obtained "delisting", even if the proportion of successful cases remains limited. Dozens of new actions for annulment are brought each year before the General Court.[45] Nonetheless, as was noted by Judge Allan Rosas,

> the fact that sanctions decisions are, in principle, subject to a "full" judicial control does not imply that the targeted persons or entities always, or even in most cases, succeed in obtaining the annulment of the restrictive measures. In fact, in 2015, most actions for annulment of Council decisions brought before the General Court were declared inadmissible or dismissed.[46]

52. The central provision governing direct actions for judicial review of European Union measures before European Union jurisdictions is article 263 of the Treaty on the Functioning of the European Union.[47] Such proceedings have to be instituted within two months of the publication of the measure, or of its notification to the plaintiff or, in the absence thereof, of the day on which it came to the knowledge of the plaintiff. As regards restrictive measures enacted under the Common Foreign and Security Policy, one important point is that article 275 of the Treaty on the Functioning of the European Union excludes, as a matter of principle, judicial review of acts relating to the Common Foreign and Security Policy.

53. However, the same article 275 provides for an exception to that principle:

> the Court shall have jurisdiction to monitor compliance with Article 40 of the Treaty on European Union and to rule on proceedings, brought in accordance with the conditions laid down in the fourth paragraph of Article 263 of this Treaty, reviewing the legality of decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter 2 of Title V of the Treaty on European Union.

54. It is therefore expressly provided that the General Court and the Court of Justice shall be competent to review the legality of decisions providing for restrictive measures against natural and legal persons adopted on the basis of the Common Foreign and Security

[44] See *Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities*, C-402/05 P and C-415/05 P, Court of Justice (Grand Chamber), Judgment of 3 September 2008. In the summary of the judgment, the Court made it clear that "the Community judicature must … in accordance with the powers conferred on it by the EC Treaty, ensure the review, in principle the full review, of the lawfulness of all Community acts in the light of the fundamental rights forming an integral part of the general principles of Community law, including review of Community measures which, like the regulation at issue, are designed to give effect to the resolutions adopted by the Security Council".

[45] In 2006, five actions for annulment of such acts were brought before the General Court; more recent figures are as follows: 93 new cases in 2011, 59 in 2012, 41 in 2013, 69 in 2014 and 55 in 2015. Much fewer cases are brought on appeal before the Court of Justice. In 2015, for instance, the Court decided seven such cases. See Allan Rosas, "EU sanctions policies: value imperialism, futile gesture politics or extravaganza of judicial control?", presentation at a seminar on European Union restrictive measures, Tallinn, 5 February 2016.

[46] Ibid.

[47] Art. 263, fourth paragraph, of the Treaty on the Functioning of the European Union provides that "any natural or legal person may … institute proceedings against an act [of a European Union institution] addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures".

Policy. European Union restrictive measures may also be challenged indirectly through recourse to a preliminary ruling under article 267 of the Treaty on the Functioning of the European Union, when an issue relating to interpretation of European Union sanctions legislation arises in proceedings before a national court of one of the 27 European Union member States.

55. With regard to the various grounds for review, it should be noted that a restrictive measure may be annulled if the institution concerned is found to have "misused" its power or used its power for purposes other than that for which it was granted. However, a more common reason is manifest error of assessment.[48] Such a review requires that the measures be substantiated by evidence and that the evidence be accurate, reliable, consistent and sufficiently complete. A judicial review may also be conducted in relation to rights of process, that is, the right to know the reasons for a legal measure, the right to a hearing in which one's interests are restricted, protection of one's right of defence in the case of possible sanction and the right to the administration of one's affairs with due care by the European Union institutions. A review may also be requested in relation to infringement of a treaty or any rule of law relating to its application, including breach of any substantive provision of European Union law and violation of fundamental rights. It also encompasses legal principles developed by the Court of Justice, namely non-discrimination, proportionality, legal certainty and protection of legitimate expectations.[49]

56. Judicial review by the courts of the European Union does not extend, however, to a review of the general motivations underlying the political decision to implement a sanctions regime or to blacklist a person. This means that European Union political institutions have broad discretion in defining the general criteria which are to determine the scope of targeted persons, entities and activities.[50] Therefore, it appears that the European Union courts are unlikely to address the legality of European Union restrictive measures from the viewpoint of their compliance with international law, although such compliance is actually asserted by the Council of the European Council.[51]

57. Even if no precedent exists, it does not seem controversial that an action for annulment of European Union restrictive measures against a specific country could also be brought before the European Union courts by the Government of a targeted State.[52] It seems to be well established that a third State (non-member of the European Union) can bring proceedings before the General Court or the Court of Justice under article 263 of the Treaty on the Functioning of the European Union, provided that the State concerned meets the standing requirements set out in that article, i.e. that the measure complained of is of "direct concern" to it.[53]

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[48] As was the case, for example, in *Safa Nicu Sepahan v. Council of the European Union*, T-384/11,General Court (First Chamber), Judgment of 25 November 2014.

[49] See D. Chalmers, G. Davies and G. Monti, *European Union Law*, 3rd ed. (Cambridge, United Kingdom, Cambridge University Press, 2010), p. 396; on judicial review of United Nations and European Union sanctions by the European Union courts, see for example, G. de Búrca, "The European Court of Justice and the International Legal Order after *Kadi*", *Harvard International Law Journal*, vol. 51, No. 2 (2010).

[50] See Allan Rosas, "EU sanctions policies".

[51] See Council of the European Union, Guidelines on implementation and evaluation of restrictive measures in the framework of the EU Common Foreign and Security Policy (15 June 2012), para. 9, in which it is stated that "the introduction and implementation of restrictive measures must always be in accordance with international law".

[52] Consultations at the European Court of Justice, 25 May 2016.

[53] See J. Rideau, « Recours en annulation – Conditions de recevabilité », *Jurisclasseur Europe* (Lexis Nexis, 2011), para. 71. At least one case — not related to sanctions — has been brought by a non-

58. What remains unsettled is whether individuals or entities found to have been unlawfully subject to European Union restrictive measures could be awarded damages by the European Union courts. Under article 268 of the Treaty on the Functioning of the European Union, private parties may bring action for damages before the General Court alleging a non-contractual liability of the European Union.[54] The Special Rapporteur confirmed that, to date, there has been only one decision by a European Union court granting damages to victims of wrongful restrictive measures. In this case,[55] the applicant, an Iranian company, was listed in 2011 in the restrictive measures relating to non-proliferation against the Islamic Republic of Iran. The General Court found that the Council had "manifestly erred" in listing the applicant and had not discharged its burden of proof. It found that the Council's error was "sufficiently serious" and had caused damage to the company's reputation. As such, the Court annulled the company's listing and awarded compensation for reputational harm suffered. However, the damages awarded were modest.[56]

59. Even if the judicial review of restrictive measures by European Union courts provides some form of legal remedy to affected persons and entities, and even if the scope and intensity of such judicial review appears unrivalled worldwide, some matters of concern remain. In particular, the practice of "relisting" delisted individuals or entities on other grounds, which is widely applied by the Council of the European Union, appears to the Special Rapporteur as a challenge to the authority of the European Union courts. Moreover, the pressure put on the courts by some States that have publicly criticized the delisting jurisprudence is a cause for concern.[57] In the same way, the Special Rapporteur notes that uncertainties as to the possibility of actually obtaining compensation for damages as a result of unlawful restrictive measures from the courts are a significant limitation to the effectiveness of remedies for victims of unlawful restrictive measures in the European Union legal system.

European Court of Human Rights

60. The European Court of Human Rights is competent to adjudicate on cases brought by individuals or legal entities for violations of the Convention for the Protection of Human Rights and Fundamental Freedoms.[58]

member of the European Union against the European Commission before the General Court: see *Swiss Confederation v. European Commission*, C-547/10P, General Court (Third Chamber), Judgment of 7 March 2013.

[54] See A. Rosas, "Counter-terrorism and the rule of law: issues of judicial control", in *Counter-terrorism: International Law and Practice*, A.M. Salinas de Frias, K.L.H. Samuel and N.D. White, eds. (Oxford, Oxford University Press, 2012), p. 91.

[55] See *Safa Nicu Sepahan v. Council of the European Union*, T-384/11, General Court (First Chamber), Judgment of 25 November 2014. This case is currently under appeal before the Court of Justice (C-45/15 P). A few other cases in which delisted persons or entities are seeking damages are currently pending before the General Court.

[56] In this case, Safa Nicu Sepahan Co. claimed €7.66 million plus interest, including €2 million in damages for harm to its reputation, however, the Court awarded only €50,000 as compensation for reputational damage.

[57] Judge Allan Rosas noted that "it is true that the case law [of EU courts] has caused some consternation and concern among the Council and the Commission and some [EU] member States fearing that this judicial control would undermine the efficiency of EU sanctions; see Allan Rosas, "EU sanctions policies".

[58] The European Convention on Human Rights was adopted in Rome on 4 November 1950 and entered into force on 3 September 1953. All 47 member States of the Council of Europe have ratified the Convention.

61. The Court is seized of a matter by means of individual applications from persons or entities claiming to be victims of a violation of the Convention or one of the Protocols thereto.[59] However, the Court may only consider a matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision was taken.[60] Furthermore, the Court does not consider applications that are "substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information".[61] The judgments of the Court are binding on the States parties to the Convention.[62]

62. The Court may award damages to the applicant, that is "afford just satisfaction to the injured party", if it "finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made".[63] However, it has been observed that "the European Court's primary remedy is a declaration that there has been a violation of the Convention" and the Court has been known not to award damages, "on the basis that its finding of a violation of the Convention is 'sufficient' just satisfaction".[64]

63. There have been a few cases related to restrictive measures that have been adjudicated by the European Court of Human Rights. In the case of *Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirket v. Ireland*, which concerned measures taken by Ireland in pursuance of European Union decisions taken to implement Security Council sanctions in respect of the former Yugoslavia. Ireland had impounded an aircraft leased by the national airline of the former Yugoslavia to a Turkish company in compliance with the restrictive measures regime targeting the former Yugoslavia. The Court found that the measure was an act of compliance by Ireland with its legal obligations under Community law. It took the view that "State action taken in compliance with such legal obligations is justified as long as the relevant organization is considered to protect fundamental rights, as regards both the substantive guarantees offered and the mechanisms controlling their observance, in a manner which can be considered at least equivalent to that for which the Convention provides".[65] The Court found that the protection of fundamental rights by Community law could be considered to be "equivalent" to that of the European Convention on Human Rights system, and consequently found that Ireland "did not depart from the requirements of the Convention when it implemented legal obligations flowing from its membership of the European Community".[66] It therefore concluded that Ireland's actions did not give rise to a violation of article 1 of Protocol No. 1 to the Convention, in relation to property rights.

64. In the case of *Nada v. Switzerland*, an Italian and Egyptian national claimed that the ban on entering or transiting through Switzerland, which had been imposed on him as a result of the inclusion of his name in the list annexed to the Federal Taliban Ordinance of the Swiss Government had violated various provisions of the European Convention on Human Rights, including his right to liberty (art. 5) and his right to respect for private and

[59] See European Convention on Human Rights, art. 34.
[60] Ibid., art. 35 (1).
[61] Ibid., art. 35 (2) (b).
[62] Ibid., art. 46 (1).
[63] Ibid., art. 41.
[64] Philip Leach, *Taking a Case to the European Court of Human Rights* (Oxford, Oxford University Press, 2011) 465-467.
[65] See *Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirket v. Ireland*, Application No. 45036/98, European Court of Human Rights (Grand Chamber), Judgment of 30 June 2005, para. 155.
[66] Ibid., para. 165.

family life, honour and reputation (art. 8). The Court found violations of articles 8 and 13 (right to an effective remedy) of the Convention. It stressed that, under Swiss law, no effective remedy by which to complain of the breaches of rights guaranteed by the Convention was available, since, even if the applicant was able to apply to the national authorities to have his name deleted from the list annexed to the Federal Taliban Ordinance, "those authorities did not examine on the merits his complaints concerning the alleged violations of the Convention. In particular, the Swiss Federal Court took the view that, whilst it could verify whether Switzerland was bound by the Security Council resolutions, it could not lift the sanctions imposed on the applicant on the ground that they did not respect human rights".[67] The Court explicitly referred in that regard to the finding of the Court of Justice of the European Union in the *Kadi* case that it was not a consequence of the principles governing the international legal order under the United Nations that any judicial review of the internal lawfulness of the contested regulation in the light of fundamental freedoms was excluded by virtue of the fact that that measure was intended to give effect to a resolution of the Security Council adopted under Chapter VII of the Charter of the United Nations.[68] It expressed the opinion that "the same reasoning must be applied, mutatis mutandis, to the present case, more specifically to the review by the Swiss authorities of the conformity of the Federal Taliban Ordinance with the Convention" and found that "there was nothing in the Security Council Resolutions to prevent the Swiss authorities from introducing mechanisms to verify the measures taken at national level pursuant to those Resolutions". In this case, the applicant's claim for "just satisfaction" in the form of damages under article 41 of the European Convention on Human Rights was dismissed.

65. The case of *Al-Dulimi and Montana Management Inc. v. Switzerlan*d was brought by Khalaf M. Al-Dulimi claiming that his right of access to a court guaranteed by article 6 of the European Convention on Human Rights had been violated by the Swiss authorities, which had refused to seek adjudication on his claim that his and his company's assets had been unlawfully frozen and confiscated by the Swiss authorities. The position of the Swiss Government was that the Swiss courts could not adjudicate because Switzerland had no discretionary powers and had to implement Security Council resolution 1483 and freeze the assets of persons connected with the Government of Iraq. The European Court of Human Rights held that this was a disproportionate restriction of Mr. Al-Dulimi's right under article 6 of the Convention, because neither the Security Council nor the Swiss courts were providing him with access to effective judicial review, which was essential, given the considerable restriction of freezing (since 1990) and confiscating (since 2006) his assets. The similarity between this and the *Kadi* case is obvious and it is noteworthy that the European Court observed that there was no Ombudsperson for the sanctions list related to Security Council resolution 1483 (as there is, as a result of the *Kadi* case, for the list relating to Security Council sanctions under Chapter VII of the Charter of the United Nations) and stressed that "for as long as there is no independent and effective judicial review, at the level of the United Nations, of the legitimacy of adding individuals and entities to the relevant lists, it is essential that such individuals and entities should be authorized to request the review by the national courts of any measure adopted pursuant to the sanctions regime".[69] However, the claim in respect of damages was dismissed.

66. One important potential limitation regarding the jurisdiction of the European Court of Human Rights is that the European Convention on Human Rights extends the obligation

[67] See *Nada v. Switzerland*, para. 210.

[68] Ibid., para. 212; also *Kadi and Al Barakaat International Foundation v. Council and Commission*, para. 299.

[69] See *Al-Dulimi and Montana Management v. Switzerland*, Application No. 5809/08, European Court of Human Rights (Second Section), Judgment of 26 November 2013, para. 134.

of its contracting parties to respect human rights to "everyone within their jurisdiction".[70] As a matter of fact, all of the three cases reviewed above concerned the effects of sanctions on persons or entities residing in a State party to the Convention. Although the jurisprudence of the Court has extended the extraterritorial application of its provisions,[71] it still seems to require that the State alleged to have violated the provisions of the Convention exercise some form of "effective control" over the territory where the applicant resides. It is thus still unclear and unsettled, to the Special Rapporteur at least, whether the European Court of Human Rights has jurisdiction to address claims of violations of the European Convention on Human Rights in relation to the adverse impacts of unilateral coercive measures imposed by member States of the Council of Europe on the human rights of persons or groups living in third countries.[72]

VI. Conclusion and recommendations

67. **Based on the review of existing mechanisms that have actually been used (or could arguably be used) to claim for damages for the adverse effects of sanctions, it appears that such mechanisms are generally few and that their powers to grant actually effective remedies and damages, including compensation and redress, are most often limited. Prima facie, for targeted individuals or private entities, the main, if not only, functioning and available legal mechanisms seem to be the courts of the European Union and the European Court of Human Rights. However, these institutions, themselves, seem to have limited ability, or willingness, to grant effective compensation to victims of violations of human rights owing to sanctions.**

68. **In each situation worldwide, where unilateral coercive measures are found to have a negative impact on human rights, the right to a remedy should be effectively available and be protected, and appropriate mechanisms at the national or international level should be available for the victims to obtain remedies, compensation and redress. It is not acceptable that the populations of a large number of States should be deprived of access to any forum or mechanism through which they could seek remedies, compensation and redress. The lack of such mechanisms contravenes some of the basic obligations enshrined in most human rights treaties.**

69. **The Human Rights Council and the General Assembly should be called upon to restate in a solemn manner, through a declaration, the right of victims to an effective remedy, including appropriate and effective financial compensation, in all situations where their human rights are affected by unilateral coercive measures.**

70. **States whose populations are affected by unilateral coercive measures should consider the jurisdictional options available to them by virtue of treaties in force, including the contentious jurisdiction of the International Court of Justice, or other available forums to challenge the legality and application of such measures with respect to international law, including human rights law.**

[70] See European Convention on Human Rights, art. 1.

[71] The European Court of Human Rights has acknowledged that "the concept of 'jurisdiction' [under] the Convention is not restricted to the national territory of the High Contracting Parties. In exceptional circumstances the acts of Contracting States performed outside their territory or which produced effects there, might amount to exercise by them of their jurisdiction". See *Issa and Others v. Turkey*, Application No. 31821/96, European Court of Human Rights (Second Section), Judgment of 16 November 2004, para.68.

[72] Consultations at the European Court of Human Rights, 15 June 2016.

71. **States should consider the opportunity of submitting to the International Court of Justice a request for an advisory opinion on the legality of unilateral coercive measures. An advisory opinion clarifying the status of unilateral coercive measures that do have adverse human rights impacts on innocent people in contemporary international law (including international human rights law) and its relationship to collective punishment would be of great significance to the international community and the advancement of the rule of law.**

72. **The United Nations mechanisms overseeing the implementation of United Nations human rights treaties, in particular the Committees established under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, should be reinforced and their competence to address human rights violations resulting from the imposition of unilateral coercive measures, irrespective of the location of the victim or the perpetrator, should be reaffirmed.**

73. **The principle of accountability could be upheld by including in the universal periodic review of each source State an item on the unilateral coercive measures that they apply to targeted countries with an assessment of their human rights impact.**

74. **The establishment of an appropriate mechanism to enable persons affected by unilateral coercive measures to seek remedies, compensation and redress at the United Nations level should be considered. Such a mechanism could take the form of a compensation commission set up by the Security Council. Alternatively, the mechanism could be set up by means of a multilateral convention, negotiated under the auspices of the United Nations, to which States would be invited to adhere and which would provide a forum through which individuals and entities affected by unilateral coercive measures could bring direct claims against targeting States or international organizations. Such a compensation commission could be called upon to review and adjudicate claims relating to human rights violations arising from the imposition of sanctions or it could rely on the findings of the Human Rights Committee and Committee on Economic, Social and Cultural Rights.**

75. **Alternatively, the possibility of adopting the format of the World Trade Organization Dispute Settlement Body could be reviewed in order to set up an adjudicatory body to address requests for compensation and reparation related to human rights violations resulting from the implementation of unilateral coercive measures.**