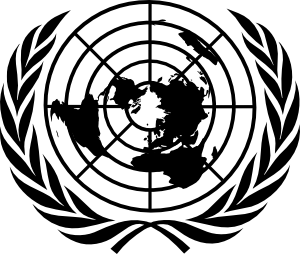
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**Statement by**

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**SPECIAL RAPPORTEUR ON THE NEGATIVE IMPACT OF UNILATERAL COERCIVE MEASURES ON THE ENJOYMENT OF HUMAN RIGHTS**

71th session of the General Assembly

Third Committee

Item 69 (b)

20 October 2016

New York



Madame Chair,

Excellencies,

Distinguished Delegates,

I have the honour to introduce my 2016 annual thematic report.

My report to the General Assembly (A/71/287) this year focuses on issues of remedies and redress for victims of unilateral coercive measures, in line with the request of General Assembly resolution 70/151. My report is a review of the conceptual aspects of remedies for violations of human rights caused by unilateral coercive measures in general international law, in international human rights law and in international humanitarian law.

The report supplements the report I submitted to the thirty-third session of the Human Rights Council (A/HRC/33/48), where I also addressed the issues of remedies and redress for victims of unilateral coercive measures. This however was an empirical review and assessment of the various mechanisms available to victims. I am compelled to say in this regard that existing mechanisms that have actually been used, or could arguably be used, to claim for damages for adverse effects of sanctions are generally few. Furthermore, their powers to grant actually effective remedies and damages, including compensation and redress, are most often limited.

Allow me to first update you on my interactive dialogue at the HRC. On one hand, I was very pleased with the interest expressed by members of the NAM, the OIC, the African Group and the Arab Group. A significant proportion of members of the HRC supported the suggestion I made to set up a consolidated register of UCMs in force within the UN system – a point I will revert to in few minutes. They expressed support to my proposal to establish a compensation commission through which individuals and entities affected by unilateral sanctions could bring direct claims against targeting States or international organizations. However I regretted the absence in the debate of the Western European and other States Group. Nevertheless, I would like to welcome once again the confirmation of the European Union for my visit by the end of this year. I express the hope that my long standing request to visit a key source country of UCMs will also be accommodated soon in the interest of constructive dialogue.

Excellencies,

Distinguished Delegates,

At the outcome of this preliminary enquiry into issues of remedies, redress and accountability for victims of UCMs, I formulate here 4 concluding recommendations.

1. **On a “Declaration on Unilateral Coercive Measures and the Rule of Law**

The Human Rights Council and the General Assembly should be called to restate in a solemn manner, through a Declaration, the applicability of the Rule of Law in all its dimensions and implications to the field of UCMs. This Declaration should in particular reaffirm the illegality of collective punishment and the necessity to respect the principle of proportionality. The Declaration would also recognize the right of innocent victims to an effective remedy, including appropriate and effective financial compensation, in all situations where their human rights are adversely impacted by unilateral coercive measures. This “Declaration on Unilateral Coercive Measures and the Rule of Law” could build inter alia on the precedents of the 1970 Friendly Relations Declaration[[1]](#footnote-1)  and the 1986 Declaration on the right to development[[2]](#footnote-2).

It is suggested that the preparation of this Declaration should be entrusted to an open-ended drafting group of governmental experts designated by the General Assembly and of which I could be the Facilitator.

The Declaration would be an occasion for the international community to reaffirm and regroup in one statement certain basic and commonly accepted rules of general international law, human rights law and international humanitarian law that encompass unilateral coercive measures. I am thinking of four areas of interest:

1. Responsibilities of States

As far as States and international organizations are concerned the Declaration would indicate that their resort to unilateral sanctions may arguably entail their international responsibility. Such responsibility, generates an obligation on the State or international organization concerned to make full reparation. It may arise in situations where hostile acts against a State, such as UCMs, are found to constitute internationally wrongful acts. The wrongfulness of UCMs may derive *inter alia* from any egregious impact on human rights. It may also follow from their possible non-compliance with norms of human rights law that are binding on the targeting State(s) or international organization(s);

1. Right to remedy

In the context of human rights law, the Declaration would assert the right to a remedy, enshrined in a number of multilateral instruments, for violations of international human rights law that may be triggered by UCMs.

The right to a remedy is now implemented through procedural mechanisms enabling individuals to complain about violations by States of their treaty-based human rights. Examples of such mechanisms are the Optional Protocols to both the ICESCR and ICCPR, and regional courts such as the European Court of Human Rights. These mechanisms are relevant to complaints brought by victims of human rights violations related to the implementation of UCMs. However, the competence of present regional bodies is often constrained by political considerations.

The Declaration could therefore recognize a need to set up or adapt appeals mechanisms. The latter would address complaints concerning UCM-related human rights violations whether relating to substance or to procedure and irrespective of the location of the perpetrator and the victim(s).

1. Applicability of humanitarian law to UCMs

In cases where UCMs are imposed in the context of armed conflict, the Declaration should reaffirm that the rules of international humanitarian law should be applied to the extent that they are relevant to UCMs. It would call for a ban on collective reprisals, a prohibition against the starvation of a civilian population and the obligation to permit the transfer of payment, international transport and free passage of essential foodstuffs and medical supplies. Along the same line, the Declaration could stipulate that those mechanisms generally available to victims of violations of the law of armed conflict, should be available to victims of UCMs implemented during such conflict. This would include compensation commissions and international criminal tribunals

1. Inhabitants remain rights-holders in targeted countries

The Declaration should recall finally that the Committee on Economic, Social and Cultural Rights rightly stressed in 1997 that “the inhabitants of a given country do not forfeit their basic economic, social and cultural rights by virtue of any determination that their leaders have violated norms relating to international peace and security”[[3]](#footnote-3). The Declaration would make clear that among those rights that people “do not forfeit” when UCMs are imposed on their country, is the right to an effective remedy. It would affirm that States shall take resolute steps to eliminate sanctions regimes where no, or insufficient provisions are made for effective remedies for persons, entities or peoples targeted or otherwise adversely affected.

The Declaration would therefore contribute to fill an existing unacceptable gap in human rights protection.

1. **On a centralised UN Register of Unilateral Coercive measures**

I would like first to reiterate my recommendation made last year to set up a consolidated central register, either at the level of the Security Council or of the United Nations Secretariat, to recapitulate the list of all unilateral coercive measures in force. Indeed transparency on sanctions regimes in force is a prerequisite to the implementation of the right to a remedy for possible adverse consequences of unilateral coercive measures on human rights. This register of UCMs would be updated regularly. It would be kept according to the standards currently applied for Council sanctions and would be made public. Sender/source States or group of States would be invited to notify the Council of unilateral coercive measures in force at their initiative and of their evolution.

The new mechanism would be conceived as a universal and non-discriminatory Register of unilateral coercive measures. It would include information provided by Member States or groups thereof that are either source or target, of unilateral coercive measures.

The mechanism would operate according to defined procedures that may be subsequently adjusted by the General Assembly. An advisory panel of governmental experts would be called on to make recommendations to the General Assembly on such technical procedures and on any subsequent adjustments necessary for the effective operation of the Register.

1. **On the urgent need for truly international mechanisms for remedies, compensation and redress**

Notwithstanding the future adoption of a Declaration, I also call for decisive, practical steps by the international community aiming at enhancing as soon as possible the existing mechanisms allowing victims of human rights violations related to unilateral coercive measures to claim for damages and obtain redress. In particular, the Committees established under the International Bill of Rights to address individual complaints should be reinforced and their competence reaffirmed. The purpose of this would be to address human rights violations resulting from unilateral coercive measures, irrespective of the location of the victim or of the perpetrator.

Remedies, compensation and redress at the UN level could take the form of a Compensation Commission set up either by the UN Security Council or by means of a multilateral convention. It would provide a forum through which individuals and entities affected by unilateral coercive measures could bring direct claims against the targeting State(s) or international organization(s). Such Compensation Commission could be called to review and adjudicate claims based on possible human rights violations arising from the imposition of sanctions, or rely upon the findings of the ICCPR and ICESCR. Alternatively, the format of the Dispute Settlement Body of the WTO could be used to set up an adjudicatory body for addressing requests for compensation and reparation.

1. **On complementary reporting and review of UCMs**

Another major step forward in terms of transparency and accountability would be a decision to include in the Universal Periodic Review of each source State an item on the unilateral coercive measures they apply to targeted countries with an assessment of their human rights impact.

Ends.

1. Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, A/RES/25/2625. [↑](#footnote-ref-1)
2. A/RES/41/128 [↑](#footnote-ref-2)
3. UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 8: The relationship between economic sanctions and respect for economic, social and cultural rights, 12 December 1997, E/C.12/1997/8. [↑](#footnote-ref-3)