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ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION

EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATION: SANCTIONS IMPOSED AGAINST THIRD PARTIES

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I. Introduction

1. The topic "Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties" has been on the agenda of the Asian-African Legal Consultative Organization (AALCO) since 1997, when it was first introduced at the Thirty-Sixth Annual Session of the Organization, held in Tehran, Iran, on the recommendation of the Islamic Republic of Iran. A Preliminary Study on the topic "Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties" was prepared by the AALCO Secretariat, and considered at the Thirty-Sixth Session, in Iran in 1997. The study *inter alia* pointed out that the exercise of extraterritorial jurisdiction included the following important issues: a) sovereignty – in particular economic sovereignty; and b) non-interference in internal affairs of a State.

2. Thereafter, the topic has been considered at the successive sessions of the Organization, including at the Thirty-Seventh (New Delhi, 1998) , Thirty-Eighth (Accra, 1999) , Thirty-Ninth (Cairo, 2000) , Fortieth (New Delhi-HQ, 2001) , Forty-First (Abuja, 2002) , Forty-Third (Bali, 2004) , Forty-Fourth (Nairobi, 2005) , Forty-Fifth (New Delhi-HQ, 2006) , Forty-Sixth (Cape Town, 2007), Forty-Seventh (New Delhi-HQ, 2008), Forty-Eighth (Putrajaya, 2009), Forty-Ninth (Dar es Salaam, 2010), Fiftieth (Colombo, 2011), Fifty-First (Abuja, 2012), Fifty-Third (Tehran, 2014) and Fifty-Eighth (Dar-es-Salaam, 2019).[1]

3. At the Forty-Third Session of the Organization (Bali, 2004), the Secretariat was directed "to continue study of the legal implications related to the Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties and the executive orders imposing sanctions against target States."[2] The Resolution also urged Member States to provide relevant information and materials to the Secretariat relating to national legislation and related information on this topic.

4. At the Fifty-First Annual Session of AALCO (Abuja, Nigeria) held in 2012, the AALCO Secretariat was mandated by its Member States to undertake a Special Study on the 'legal

[1] It was considered at the Forty-Second Session (Seoul, 2002) of the Organization as a non-deliberated item.
[2] RES/43/S 6, 25 June 2004.

implications of the application of unilateral sanctions on third parties' vide resolution AALCO/RES/51/S 6. At the Fifty-Second Annual Session held in New Delhi (HQ) in 2013 an abstract of the study was released and thereafter the study was successfully completed and entitled 'Unilateral and Secondary Sanctions: An International law Perspective'. It was published on 24 February 2014.

5. At the Fifty-Third Annual Session of AALCO, held from 15-18 September 2014 in Tehran, the Islamic Republic of Iran, the Secretariat was mandated by its Member States *vide* resolution AALCO/RES/53/S 6 to "continue to study the legal implications related to the Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties and the executive orders imposing sanctions against target States", and to "further research on the implications of unilateral and extraterritorial sanctions on international trade and its effect on AALCO Member States."

6. The topic was once again on the agenda of AALCO at the behest of the Islamic Republic of Iran, and discussed at its Fifty-Eighth Annual Session, held in Dar-es Salaam, the United Republic of Tanzania from 21-25 October 2019. The Member States observed that State sovereignty, rule of law, non-intervention and the duty to cooperate are fundamental principles of international law, which stand to be violated when States impose unilateral sanctions. It was held that unilateral sanctions breach the consensual and multilateral framework of international law, including the foundational principle of the UN Charter, enshrined under Article 2(4), which prohibits intervention in the internal affairs of a State. It was also highlighted that unilateral sanctions, apart from being impermissible under international law, served no real purpose- as they seldom advanced any substantive policy goal; seldom achieved the objective for which they are imposed in the first place; they increased costs of international trade in general; and lastly, they go beyond the scope of UN Security Council Resolutions, thus, straining peaceful international relations between States. Such measures, being an improper exercise of extraterritorial jurisdiction, not only have a negative impact on international cooperation between States, as envisaged under the UN Charter, but also blatantly violate the human rights of the people of the target State subject to unilateral sanctions, posing a serious challenge to international peace and security.

7. During the discussion, Member States frequently highlighted the illegal nature of unilateral sanctions and their adverse consequences, and quoted the work of the UN Special Rapporteur

on the negative impact of unilateral coercive measures, the ILC Articles on State Responsibility, and the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in this regard.

8. It was finally recommended in the session that the AALCO Secretariat further undertakes work on a Special Study on the Illegality of Sanctions against Humanitarian and Human Rights Considerations. This Study is, thus, a work in continuance with the previous studies on this topic by AALCO, prepared in accordance with and as per the continued discussions between Member States at the successive Annual Sessions of AALCO, and especially at the Fifty-Eighth Annual Session held in Dar-es Salaam, the United Republic of Tanzania, 2019; and purposed to bring forth the current international law and policy perspective to the topic that is hoped to contribute to a better understanding and analysis of the issues at hand for past and future references.

II. Deliberations at the Fifty-Eighth Annual Session of AALCO in 2019

9. While certain AALCO Member States and other non-Member States continue to be at the receiving end of various unilateral coercive sanctions, and due to numerous other factors that have played in, the issue has gained heightened importance in the present-day scenario. Therefore, rightly, the Islamic Republic of Iran urged the AALCO Secretariat, according to the Statutory Rules of AALCO to once again actively consider this topic at the Fifty-Eighth Annual Session, which was held in Dar es Salaam, the United Republic of Tanzania, from 21 to 25 October 2019. At the same time, the United Republic of Tanzania expressed its keen desire to consider the topic, "Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties" – especially so with regards to studying the topic concerning lifting sanctions against the Republic of Zimbabwe. Hence, since the topic is relevant to the current international situation, the topic was included in the agenda of the Fifty-Eighth Annual Session.

10. It is helpful to note some of the pertinent points made by the delegation of the United Republic of Tanzania here: while conceding to the fact that extraterritoriality is an accepted principle of International law, it was stated that the principle has, however, been abused by some States over the years by using force to impose their domestic fancies and will upon other States. Another dimension of the extraterritorial application of domestic laws, it was noted, is the emerging trend of unilateralism used by powerful States under the pretext of humanitarian

intervention to interfere in the domestic affairs of other States. Today, extraterritorial application of national legislations and unilateral acts of States over others are strongly seen to violate Article 2(4) of the UN Charter and other important principles of international law, it was noted.

11. Further, it was observed that the only widely accepted sanctions are those issues by the Security Council under Chapter VII of the UN Charter - more precisely, Article 41 of the Charter. On the other hand, unilateral sanctions are widely criticized as violating the principle of State sovereignty and the rule of law. Accordingly, unilateral sanctions could be considered a challenge to the existing international legal order anchored in the UN Charter, according to which sanctions are to be imposed by the UNSC, following a determination that there is a threat to or a breach of international peace and security. Further, it was urged to lift sanctions imposed on Zimbabwe since 2000, as they are seriously damaging the region's economy. These sanctions that have been in place for close to a decade now can be traced back to the land reforms in Zimbabwe, which officially began in 1980 by signing the Lancaster House Agreement. It was an effort to equitably distribute land between Black subsistence farmers and white Zimbabweans of European ancestry who had economic and political superiority. As the United Kingdom terminated the Agreement, Zimbabwe decided to confiscate white farmers without compensation and a fast track redistribution campaign. Thus, showing alleged human rights abuses, violation of property ownership rights and disrespect for the rule of law, Zimbabwe received a set of sanctions mainly from the United States of America, the United Kingdom, Australia, Canada and the European Union. It was urged that this kind of unilateralism in interfering in the domestic affairs of other States be collectively opposed.

12. The delegation of the Islamic Republic of Iran referred to unilateral sanctions as nothing but 'naked economic terrorism', which deliberately and indiscriminately targets civilians and causes them pain and suffering in the interest of short-sighted political purposes. It was claimed that unilateral sanctions contradict principles of international law enshrined in the United Nations Charter and those principles stated in 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, including principle of sovereign equality of States, non-intervention and duty to cooperation. It was further stated that secondary effects of extraterritorial application of national legislation on third-party States have had negative effects on international cooperation in different areas. It was quoted that the International Court of Justice (hereinafter the ICJ), in its provisional order of 3 October 2018

in the case of Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights[3] reiterated that the United States is obliged, under its international commitments, to remove the obstacles created as a result of its actions and illegal measures following its unilateral withdrawal from the JCPOA, including the impediments which have emerged on the path of Iran's trade in certain domains; and further recognized the damages and irreparable harm that the US has caused to Iran and its international business relations; thus, bearing a clear testament to the illegality of the United States' sanctions against the Iranian people and citizens.

13. It was further noted that the US has illegally and in flagrant violation of international law, confiscated billions of dollars of assets of the people, Government and Central Bank of the Islamic Republic of Iran under the US court's rulings in clear breach of its immunity. In this regard, the Islamic Republic of Iran had instituted proceedings against the United States before the ICJ, following which the Court unanimously found that it has jurisdiction, and this case is now in the merits stage. The delegation of the Islamic Republic of Iran further urged the AALCO Secretariat in furtherance of the previous studies undertaken by the Secretariat, to prepare a special study on the illegality of the extraterritorial application of national laws and in particular, its impacts on third countries.

14. The delegate of the People's Republic of China, while stating his country's view that unilateral sanctions violate the integrity of UN Security Council sanctions and cannot be deemed legal, remained consistent in its position to oppose unilateral sanctions as such because of its threat to international peace, stability and development.

15. The delegations of the Arab Republic of Egypt, the State of Palestine, and the Republic of Indonesia reiterated this position. The delegation of the State of Palestine further noted that this discussion and implications of the impermissibility of unilateral sanctions ought to apply also to the Occupied Palestinian Territory, where the occupying power has imposed collective punishment on the civilian population, through settlement, expropriation of land, the construction of the apartheid wall, forced deportation, piracy on clearing funds, sanctions against prisoners and detainees, collective sanctions and the blockade of the Gaza Strip; and

[3] Islamic Republic of Iran vs. United States of America, Provisional Measures, Order of 3 October 2018, ICJ Reports 2018, p. 623.

has also enacted racist legislation against the civilian population, such as the national law, the Nakba law and the stone-throwers law.

III. AALCO Special Studies

A. AALCO Preliminary Study on "Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties" of 1997

16. The topic 'Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties' was put on the Agenda of AALCO for its Thirty-Sixth Session (Tehran, 1997) – following a reference made by the Islamic Republic of Iran as per Article 4 (c) of the Statutes and sub-Rule 2 of Rule 11 of the Statutory Rules of the Organization.

17. The Government of the Islamic Republic of Iran, while referring to the item, submitted an Explanatory Note that enumerated four major reasons for the inclusion of this item on the agenda of AALCO, namely: (i) that the limits of the exception to the principles of extraterritorial jurisdiction were not well established; (ii) that the practice of States indicates that they oppose the extraterritorial application of national legislation; (iii) that extraterritorial measures violate several principles of international law; and (iv) that extraterritorial measures affect trade and economic cooperation among developing countries. The Explanatory Note had furthermore *inter alia* requested AALCO to carry out an in-depth study concerning the legality of such unilateral measures, taking into consideration the positions and reactions of various governments, including the position of its Member States.

18. Accordingly, a Preliminary Study prepared by the Secretariat was considered at the Thirty-Sixth Session (Teheran, 1997) of AALCO, which pointed out that the claims and counterclaims that arose in the exercise of extraterritorial jurisdiction included the following issues: (i) sovereignty – in particular economic sovereignty – (ii) non-interference in internal affairs of a State; (iii) genuine or substantial link between the State and the activity regulated; (iv) public policy and national interest; (v) lack of agreed prohibitions restricting State's right to extend its jurisdiction; (vi) reciprocity or retaliation; and (vii) promoting respect for rule of law. Notwithstanding the national interests of the enacting State, grave concerns had been expressed on the promulgation and application of national legislation whose extraterritorial aspects affected the sovereignty of other States.

19. The said Study further pointed out that despite various international forums such as the General Assembly of the United Nations, the Group of 77, the Organization of Islamic Conference, the Inter-American Juridical Organization and the European Economic Community time and again expressing grave concerns over the promulgation and application of laws with extraterritorial effects, as they affect sovereignty of other States, the legitimate interests of entities and persons under their jurisdiction and the freedom of trade and navigation – a growing number of other States continue to apply their national laws and regulations on extraterritorial basis. Further, the preliminary study, apart from referring to some recent instances of extraterritorial application of national laws, furnished an overview of the limits imposed by international law on the extraterritorial application of national laws, and *inter alia* spelt out the response of the international community to such actions. The Study also drew attention to the opinion of such bodies, as the Inter-American Juridical Organization, the judicial body of the Organization of American States[4] and the International Chamber of Commerce[5] in the given matter.

20. The Study further demonstrated that the topic touches upon the political, legal, economic and trade aspects of inter-State relations. It recalled that the AALCO Secretariat Study on the 'Elements of Legal Instruments on Friendly and Good Neighbourly Relations between the States of Asia, Africa and the Pacific'[6] had *inter alia* listed 34 norms and principles of international law, conducive to the promotion of friendly and good neighbourly relations. Some of those principles enumerated *inter alia* were: (i) independence and State sovereignty; (ii) territorial integrity and inviolability of frontiers; (iii) legal equality of States; (iv) non-intervention, overt or covert; (v) non-use of force; (vi) peaceful settlement of disputes; (vii) peaceful coexistence; and (viii) mutual cooperation.

21. The Study further pointed out that the Declaration[7] and Programme of Action[8] adopted by the Sixth Special Session of the General Assembly, the Charter of Economic Rights and Duties

[4] For details *see International Legal Materials*, Vol. 35 (1996), p. 1322.
[5] For details *see* Dieter Lange and Gary Borne (eds.), *The Extraterritorial Application of National Laws* (ICC Publishing S.A. 1987).
[6] The Secretariat Study in 'Elements of a Legal Instrument on Friendly and Good Neighbourly Relations Between States of Asia, Africa and the Pacific' was prepared in 1987 and is reprinted in AALCC Combined Reports of the Twenty-sixth to Thirtieth Sessions (New Delhi, 1992), p. 192.
[7] Resolution 3201 of May 1, 1974, Sixth Special Session.
[8] Resolution 3202 of May 1, 1974, Sixth Special Session.

of States, 1974[9], the United Nations Convention on the Law of the Sea, 1982 and several other international instruments retain many of the traditional aspects of sovereignty. These instruments also reaffirmed principles of economic sovereignty whereby rights and interests of States in the permanent sovereignty of their natural resources would be protected.

22. The Study submitted that it may be necessary to delimit the scope of inquiry into the extraterritorial application of national legislation in determining the parameters of the organisation's future work on this item. It asked for consideration to be given to the question as to whether it should be a broad survey of questions of extraterritorial application of municipal legislation examining the relationship and limits between the public and private international law on the one hand, and the interplay between international law and municipal law on the other.

23. It recalled, in this regard, that at the 44th Session of the International Law Commission (1992), the Planning Group of the Enlarged Bureau of the Commission established a working group on the long-term programme of work of the Commission and one of the topics included in the open-selected lists was the Extraterritorial Application of National Legislation. An outline on the topic "Extraterritorial Application of National Legislation" prepared by a Member of the Commission had *inter alia* suggested that "it appears quite clear that a study of the subject of Extraterritorial Application of National Laws by the International Law Commission would be important and timely. There is a vast body of State practice, case law, a national study on international treaties, and a variety of scholarly studies and suggestions. Such a study could be free of any ideological overtones and may be welcomed by States of all persuasions".[10]

24. The Secretariat's Study further proposed that in determining the scope of future work on this subject, the Organization should bear in mind the request of the Government of the Islamic Republic of Iran to carry out a comprehensive study concerning the legality of such unilateral measures, i.e. sanctions imposed against third parties, "taking into consideration the position and reactions of various governments, including the position of its Member States". The Study

[9] Resolution 3281, 29th Session.
[10] 'Extraterritorial Application of National Legislation – Outline by Mr. Pemmaraju Sreenivasa Rao' in Outlines Prepared by Members of the International Law Commission on Selected Topics of International Law, A.CN.4/454 (9 November 1993).

also proposed that in considering future work of the Secretariat on the item, Member States could consider sharing their experiences with the Secretariat on this matter.

B. AALCO Special Study on "Unilateral and Secondary Sanctions: An International Law Perspective" of 2014

25. At the Fifty-First Annual Session of AALCO (Abuja, Nigeria) held in 2012, the AALCO Secretariat was mandated by its Member States to undertake a Special Study on the "legal implications of the application of unilateral sanctions on third parties" vide resolution AALCO/RES/51/S 6. At the Fifty-Second Annual Session held in New Delhi (HQ) in 2013, an abstract of the study was released and thereafter the study was successfully completed and entitled "Unilateral and Secondary Sanctions: An International law Perspective". It was published on 24 February 2014.

26. In order to understand the illegality of extraterritorial application of national legislation: sanctions imposed against third parties, the above-mentioned Study focused on the main violations of international law relevant thereto, namely: (1) Extraterritorial Application of National Legislation and Violation of Principles of the United Nations Charter; and (2) Extraterritorial Application of National Legislation and Violation of Human Rights Obligations.

27. As such, after delineating terms related to the study of extraterritorial application of national legislations like national vs. extraterritorial jurisdiction, primary vs. secondary sanctions, those principles violated by sanctions are enumerated and discussed in detail; principles of sovereign equality and territorial integrity, non-intervention, duty to cooperate and other principles of general international law are elaborated. Furthermore, imposition of financial sanctions and its implications in light of sovereign immunity of certain financial institutions targeted by illegal sanctions, violation of human rights law, e.g. right to self-determination, right to development and associated rights, right to food, right to health and medicine, and finally decisions of, and measures by, the international community, i.e. the UN General Assembly, Group of 77, the Non-Aligned Movement, and AALCO) to tackle the legal challenges caused by unilateral sanctions elaborately discussed.

C. AALCO Special Study on "Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties" of 2021

28. During the Fifty-Eighth Annual Session of AALCO in Dar es Salaam in 2019, the Islamic Republic of Iran and the United Republic of Tanzania proposed the AALCO Secretariat to further work on a special study with a view to delve into the legal aspects of sanctions imposed against third parties in light of the latest developments on the matter.

29. Consequently, a new Special Study was carried out by the Secretariat with a view to covering the latest developments of extraterritorial application of national legislation and sanctions against third parties. In this new study, an overview is given on the principles of international law that need to be observed when applying national legislations extraterritorially and the existing conflict between these and sanctions unilaterally imposed against third parties, that is, secondary sanctions. Besides, legality and legitimacy of economic sanctions in light of the most recent developments within the WTO and IMF frameworks are weighed, and their legal impacts against the backdrop of bilateral economic and financial instruments are discussed. The relevance of the UN endeavour "Human Rights and Unilateral Coercive Measures" is explored and the adverse legal impacts of unilateral sanctions on the right to health are explored in detail. Considering the humanitarian implications liaised with the Covid-19 pandemic, a separate chapter is devoted thereto. Finally, the rising tide of legal warfare waged against illegal unilateral sanctions are delved into, namely blocking statutes enacted by the EU and China, and actions brought in regional and international Courts by those adversely affected by illegal sanctions, such as the case concerning the Alleged Violations of the 1955 Treaty of Amity filed by the Islamic Republic of Iran against the United States of America at the ICJ.

IV. Extraterritorial Application of National Legislation: Critical Issues Affecting Human Rights

30. The term "sanction" implies "negative measures which seek to influence conduct by threatening and, if necessary, imposing penalties for non-conformity with law."[11] It is a matter

[11] M. Doxey, 'International Sanctions: A Framework for Analysis with Special Reference to the UN and South Africa', International Organization Vol. 26 (3), p. 528. See also, K. Alexander, *Economic Sanctions: Law and Public Policy*, Palgrave Macmillan (2009).

of common knowledge under international law that just like the use of force is prohibited with some exceptions under the UN Charter, there is no general prohibition on coercive sanctions under international law. However, sanctions, in certain circumstances, violate international law and entail international responsibility.

31. From an international law perspective, sanctions may be organized and applied under a multilateral framework by States acting in a cooperative manner, under the authority of the UNSC. Sanctions may also be applied by a regional organization against a Member State on the basis of its constitutive act, such as the African Union against its Member State pursuant to its constituent instrument. Alternatively, or sometimes in parallel, sanctions are applied by States on a unilateral basis outside of a UNSC or multilateral mandate. This may be by an individual State, or by a group of States under a common aegis such as the EU against non-Member States. For purposes of legal categorization, this Study will refer to all sanctions undertaken outside of a UNSC or multilateral mandate as unilateral sanctions.

32. Unilateral sanctions are usually imposed by a State that considers them a primary tool of foreign policy with an objective to modify the targeted country's political behaviours. A State imposes these sanctions through the application of its national legislation, which, as stated above, are *prima facie* extraterritorial in nature and against the established principles of jurisdiction under international law. Contrastingly, secondary sanctions prohibit third party States from interacting with the target State when unilateral sanctions become ineffective and there is lack of consensus on imposition of multilateral sanctions. It has been argued that secondary sanctions violate fundamental principles of customary international law that regulate non-forcible countermeasures.

33. The imposition of unilateral sanctions and secondary boycotts that affect nationals of third States are seen as a retrograde step retarding the economic progress of the target State. They pose a serious challenge to the efforts of the international community to establish an equitable multilateral, non-discriminatory, rule-based trading system and challenges the very basis of the primacy of international law.

34. An important and primary source of legal restraint on the imposition of unilateral coercive measures is the fundamental principles that regulate and govern international relations, as enshrined in the UN Charter, as well as the authoritative 1970 Declaration of Friendly Relations

and Cooperation among States. Extraterritorial application of national legislation (unilateral and secondary sanctions, in particular) violates certain core principles of the two foundational instruments, namely, the principle of sovereign equality and territorial integrity, the principle of non-intervention, and duty to cooperate. The principle of non-intervention is a corollary of every State's right to sovereignty, territorial integrity and political independence. This principle is blatantly violated when unilateral and secondary sanctions are imposed against a targeted country because these sanctions are primarily intended to change the political behaviour and the government policies in the target country. The concept of unilateral and secondary sanctions violates the principle of sovereign equality because, more often than not, the purpose of imposing unilateral and secondary sanctions is political rather than a legitimate interest and does not respect the legitimate interests of the targeted country and third State.

35. Also, extraterritorial application of national law may lead to unilateral coercive measures that create fetters to trade ties between States, preventing the complete realization of the rights outlined in the Universal Declaration of Human Rights and other international human rights instruments, in particular, the right of individuals and peoples to development. Extraterritorial effects of any unilateral legislative, administrative and economic measures, policies and practices of a coercive nature are against the development process and the enhancement of human rights in developing countries.

36. In addition, it highlights the possibilities of long-term social problems and humanitarian issues in the targeted States occurring because of unilateral coercive measures. In this regard, the United Nations General Assembly has continually considered the issue through agenda item "Human Rights and Unilateral Coercive Measures", annually from its 51st session. Presently, the Human Rights Council addresses this issue highlighting that unilateral coercive measures continue to be implemented as a form of militarism that tramples on the rights of the subjugated. Extraterritorial application of national legislation (sanctions imposed against third parties) violates a range of human rights.

37. The diverse aspects of unilateral and secondary sanctions remarkably have been addressed by the United Nations. Since the Vienna Declaration and Programme of Action were adopted at the World Conference on Human Rights in 1993, there has been more discourse on the issue at various fora including the UN General Assembly, and the Human Rights Council, which have adopted important instruments. Resolutions adopted by the UN organs expressed the

illegality of the measures and the contradiction between the implementation of human rights enshrined in international instruments and such coercive measures. The UN also pointed out three obligations incumbent upon user, target and third States under international law as follows: " a) not to recognise those measures nor ally them, b) to counteract the extraterritorial application or effects of unilateral coercive measures in this context, and c) to avoid the imposition of such measures."[12]

38. The UN Human Rights Council focused its attention on the issue in 2014 and adopted Resolution 27/21 on Human Rights and Unilateral Coercive Measures recommending a range of action for States while appointing a Special Rapporteur to fulfill his mandate on the topic.

39. The Human Rights Council appointed Mr. Idriss Jazairy of Algeria as the first Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights at its 28th Session. The mandate of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights was created to highlight the significance of multilateralism, mutual respect and solidarity and the peaceful settlement of disputes.[13]

40. The first Special Rapporteur addressed numerous aspects of the subject in various reports. In the Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights dated 30 August 2018, the adverse impact of unilateral sanctions on Qatar, the Syrian Arab Republic and Zimbabwe have been highlighted. In this report, the Rapporteur also made a case for a draft United Nations Declaration and Guidelines on Sanctions and Human Rights. Among the key aspects of the draft declaration was the need to conduct Human Rights Impact Assessment (HRIA) prior to imposing unilateral sanctions. As per the draft, the parties implementing unilateral sanctions are under an obligation to conduct a transparent human rights assessment of the measures envisaged, and to monitor on a regular basis the effects of the implementation of the measures, including as regards adverse effects on human rights. Another significant rule articulated by the Special Rapporteur in the Report was the need to accord "judicial review" for obtaining remedies for unilateral coercive measures. Impacted groups, whether targeted or otherwise and individual and legal persons

[12] See generally, UNGA Res 167/73 UN Doc. A/RES/73/167 (2018); UNGA Res 200/58 (2014); UNHRC Res. 30/02 (2015)
[13] https://www.ohchr.org/EN/Issues/UCM/Pages/Mandate.aspx, accessed on 10 April, 2020.

who have not availed of due process rights should be accorded the right to judicial redress so as to safeguard their human rights. The existence of a right to remedy and a right to a fair trial in international law was highlighted in this regard.

41. Regarding the Islamic Republic of Iran, the Special Rapporteur concluded that the imposition of domestic sanctions legislation on third parties, which almost amounted to a blockade, constitutes economic warfare. It was stated that such blockade is a violation of international humanitarian law and human rights law. Since the criteria identified in international humanitarian law do not apply to peace times, the imposition of unilateral sanctions leads to a paradoxical situation where the protections afforded in conflict situations do not extend in peace times when the actual impact of the blockade may be same or worse.

42. Concerning the withdrawal from the JCPOA by the United States, it was noted that the same amounted to a breach of the Plan of Action, in which a multilateral agreement is enumerating a series of reciprocal commitments, wherein the rule of *pacta sunt servanda* applies.

43. It was also highlighted that the sanctions against Iran imposed by the United States amounts to discrimination on the basis of country of residence or nationality. Such discrimination is violative of Article 26 of the ICCPR and Articles 1 and 2 of the International Convention on the Elimination of All Forms of Racial Discrimination.

44. In a report issued on 26 July 2017 that focused on the right to remedy, including financial compensation, the Special Rapporteur concluded that States do have extraterritorial obligations with respect to sanctions. Human rights treaties impose obligations not only on their own territories but also extraterritorially. A proposal for establishing a compensation commission to provide compensation to victims of unilateral coercive measures was mooted as well.

45. Across the various reports, there is a general view that essential commodities like food, medicines and other fundamental necessities should not be used as tools for political and economic coercion. Such deprivations lead to violations of human rights as recognized in international law having the most significant impact on the most vulnerable sections of society, including women, children and the disabled who need to rely on the State to protect their rights. In addition, unilateral coercive measures have an adverse impact on the work of humanitarian

organizations and other third-party groups by freezing their financial and economic transactions.

46. The crux of the Special Rapporteur's work on the subject identifies the need to firmly push for three non-negotiable imperatives wherever State-sponsored unilateral sanctions are imposed as a fundamental minimum. These include, *firstly*, the need to conduct a Human Rights Impact Assessment (HRIA) by the State imposing the sanctions or by an international organization/international non-governmental organization. This should be a continuous exercise that should extend even after the sanctions regime has been imposed. *Secondly*, the need to provide a judicial forum for redress grievances against human rights violations resulting from unilateral sanctions that may include various human rights forums available under various treaty mechanisms must be ensured. *Thirdly*, the need to strongly provide for humanitarian exemptions when unilateral sanctions regimes are imposed which guarantee access to fundamental necessities of life safeguarding the human rights of the people of the country subject to sanctions. However, despite the push for these three minimum imperatives, the ultimate objective should be the creation of a normative framework that outlaws the use of unilateral sanctions as a coercive measure.

47. The application of unilateral and secondary sanctions, in the form of economic coercion, especially when applied to developing countries, violates the right to development, which has become a "universal and inalienable right and integral part of fundamental human rights" as per the Declaration on the Right to Development (DRTD), 1986[14]. In these contexts, one of the resolutions of UNCHR has expressly mentioned that such "restrictions on trade, blockade, embargoes, and freezing of assets as coercive measure constitute human rights offenses".[15]

[14] Vienna Declaration and Program of Action of June 25, 1993. For more discussion on the violation of the right to development, kindly refer to Chapter 5 of this Study. The origin of the concept of Right to Development was set in the ideological debates of 1960s and 70s. The Non Aligned Movement (NAM) campaigned for the creation of a more just international economic order (the 'New International Economic Order' which is explicitly mentioned in the 1986 Declaration). NAM countries declared development to be a human right and used United Nations mechanisms to try to influence international economic relations and the international human rights system. The Declaration on the Right to Development (DRTD), 1986 places the human person at the centre of development. Development is not defined solely in terms of economic growth, but as a "comprehensive" and multi-faceted "process", with social, cultural, political as well as economic elements (Art. 2 para 1, 4 para 2, and 8 para 1).

[15] Paragraph 4 of the Human Rights Commission Resolution entitled "Human Rights and Unilateral Coercive Measures" dated 4 March 1994 of the UN Commission on Human Rights.

V. Recent Developments

48. Unilateral coercive measures have to be distinguished from measures taken by the UN Security Council under article 41 of the Charter of the United Nations. In general, any unilateral measure and those measures taken domestically or internationally by Member States to enforce Security Council's measures should be in compliance with international law, including international human rights, refugee and humanitarian laws.

49. This topic has been given due attention in the international fora, the UN General Assembly and the Human Rights Council, in the recent past, have adopted important instruments related thereto, some of them pertinent to the present topic.

A. Human Rights and Unilateral Coercive Measures

50. In 2020, the General Assembly adopted resolution A/RES/75/200, stating that coercive measures and legislations are contrary to international law, international humanitarian law, the Charter of the United Nations and the norms and principles governing relations among States. It welcomed the appeal by the Secretary-General on waiving sanctions that undermine the capacity of States to respond to the COVID-19 pandemic in the light of their debilitating impact on the health sector and human rights.[16]

51. In its 2020 session, members of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization expressed concern about a rising tide of unilateralism, debated longstanding questions on the merits and legality of sanctions. It called for the elimination of the use of force, or threat of force in dispute resolution between States.[17]

52. In 2021, the General Assembly adopted the draft resolution A/75/L.97 entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba", reiterating its call upon all States to refrain from promulgating and applying such laws and measures as the United States Helms-Burton Act, in conformity with

[16] A/RES/75/181, 28 December 2020, para.10
[17] https://www.un.org/press/en/2020/l3289.doc.htm

their obligations under the Charter of the United Nations and international law, which, inter alia reaffirm the freedom of trade and navigation.[18]

53. By the terms of the draft, the Assembly urged States that have and continue to apply such laws and measures to take the steps necessary to repeal or invalidate them as soon as possible in accordance with their legal regime. It further requested the Secretary-General to prepare a report on the implementation of the present resolution in the light of the purposes and principles of the Charter of the United Nations and international law and to submit it to the Assembly at its seventy-sixth session.[19]

B. Appointment of Special Rapporteur by the Human Rights Council

54. In March 2020, the Human Rights Council appointed Ms. Alena Douhan as the Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights pursuant to resolutions 27/21 and 36/10.

55, In her first thematic report (A/HRC/45/7) to the Human Rights Council, she stresses that not every unfriendly act or means of applying pressure by a State can be qualified as a unilateral coercive measure. Customary international law provides for the possibility of unfriendly acts that do not violate international law and of proportionate countermeasures in response to the violation of international obligations, as long as they abide by the limitations set out in the draft articles on responsibility of States for internationally wrongful acts.[20]

56. In her first thematic report (A/75/209) to the General Assembly, the Special Rapporteur emphasizes that unilateral sanctions without or beyond Security Council authorization should be assessed for their legality under international law. The impact on human rights, including during emergencies, should be part of such assessments. International cooperation at the bilateral and multilateral levels should be based on the principles of legality and observance of the rule of law in full compliance with obligations arising from the Charter of the United Nations, international humanitarian and human rights law, and other international obligations, especially in the situation of the global challenge created by the pandemic.[21]

[18] A/75/L.97
[19] A/75/L.97 para.3, 4
[20] A/HRC/45/7
[21] A/75/209

57. Under no circumstances, trade in essential humanitarian goods and commodities, such as medicine, antivirals, medical equipment, its component parts and relevant software, and food, may be subject to any form of direct or indirect unilateral economic measure or sanction. Any impediment to such trade or to appropriate contracts, financial transactions, transfers of currency or credit documents and transportation that hamper the ability of States to effectively fight the COVID-19 pandemic and that deprive them of vital medical care and access to clean water and food should be lifted or at least suspended until the threat is eliminated.

58. In this context, the Special Rapporteur urges States, international organizations and other relevant actors to lift, review and minimize the whole scope of unilateral sanctions, to guarantee that neither doctors nor medical research centres are targeted, to ensure that the humanitarian exemptions are effective, efficient and fully adequate with the view to enable sanctioned States to protect their populations in the face of COVID-19, repair their economies and guarantee the well-being of their people in the aftermath of the pandemic.

59. Human Rights Council resolution 27/21 reiterates in that respect that the continuing implementation of unilateral coercive measures entailed "negative implications for the social-humanitarian activities and economic and social development of developing countries, including their extraterritorial effects, thereby creating additional obstacles to the full enjoyment of all human rights by peoples and individuals under the jurisdiction of other States". The same resolution highlighted concerns regarding "the negative impact of unilateral coercive measures on the right to life, the rights to health and medical care, the right to freedom from hunger and the right to an adequate standard of living, food, education, work and housing", and referred to "the disproportionate and indiscriminate human costs of unilateral sanctions and their negative effects on the civilian population, in particular women and children, of targeted States". [22]

VI. Observations and Comments of the AALCO Secretariat

60. Extraterritorial Application of National Legislation (EANL), as it appears, conflicts with the most fundamental norms of international law. The imposition clearly violates the basic

[22] A/HRC/27/L.2

principle of sovereign equality, principle of non-intervention and duty to cooperate as mentioned under the UN Charter. Violation of these principles grossly affect the development and progress, both economically and socially, of the targeted State. The principle of sovereign equality and territorial integrity of a State and principle of non-intervention in the internal affairs of the State are core principles, because through imposing unilateral and secondary sanctions, sanctioning/imposing countries are actually trying to influence the policy making of the governments of such countries. Such sanctions also are directed towards changing the political decision-making or general will of the peoples of the targeted countries to choose their own government.

61. While States enacting EANL have sought to justify their measures as retorsions, they have also characterized their actions as collective countermeasures. A reading of the Articles on Responsibility of States for Internationally Wrongful Acts and its commentaries reveal that in spite of the existence of sporadic practice by a few States, customary international law does not recognize such a right to countermeasures against a State which may even have violated *erga omnes* obligations. The statements delivered by a number of States in the UNGA Sixth Committee also lend credence to the view that international law does not at present recognize a right to collective countermeasures.

62. Many States have also been particular in adopting resolutions and delivering statements calling for the withdrawal of unilateral coercive measures not only because they conflict with the prohibition of non-intervention but also due to their deleterious effect on the realization of fundamental human rights. Towards this end the majority of States from Asia and Africa have been at the forefront to outlaw unilateral coercive measures through UN instruments and seek their enforcement through various forums.