Mandates of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; the Special Rapporteur on the right to food; the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; the Independent expert on the promotion of a democratic and equitable international order and the Independent Expert on human rights and international solidarity

Ref.: AL USA 31/2023
(Please use this reference in your reply)

6 February 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; Special Rapporteur on the right to food; Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; Independent expert on the promotion of a democratic and equitable international order and Independent Expert on human rights and international solidarity, pursuant to Human Rights Council resolutions 52/13, 49/13, 52/17, 54/4 and 53/5.

We would like to bring to the attention of your Excellency's Government information we have received concerning **the negative impact on human rights of sanctions imposed by the United States of America as a result of its designation of certain countries as States Sponsors of Terrorism (SST)** under domestic legal authority granted initially by the Arms Export Control Act, section 40; the Foreign Assistance Act, section 620A, and subsequently continued by National Defense Authorization Act for Fiscal Year 2019, section 1754(c); as well as by paragraph 1605A of USC title 28, part IV, chapter 97; and other U.S. laws that trigger specific sanctions when a country is listed as an SST. The consequent sanctions raise serious rule-of-law and human rights concerns.

An SST designation is contingent on a determination by the Secretary of State that a country repeatedly provides support for acts of international terrorism. The resulting sanctions are imposed through presidential executive orders that assert the existence of national emergencies, about which Special Procedures mandate holders have previously expressed concerns to your Excellency's Government in view of the significant harm to human rights that derive from this practice[1], and lately referred to the inadmissibility of such practice in other relevant communications mentioned further below. At present, four countries – the Republic of Cuba, the Democratic People's Republic of Korea (DPR Korea), the Islamic Republic of Iran and the Syrian Arab Republic – are listed by the U.S. Government as states sponsors of terrorism. Other countries that have been on the list at one time or another include the Republic of Iraq, the former Socialist People's Libyan Arab Jamahiriya (currently, State of Libya), the Republic of the Sudan and the former People's Republic of Southern Yemen.

SST designations include prohibitions on exports of U.S. arms as well as restrictions on exports of dual-use items. Exports of U.S. agricultural commodities,

[1] OL USA 5/2021, 29 January 2021.

medicine and medical devices to any country listed as an SST other than DPR Korea and Syria are also subject to restrictions.[2] Other sanctions against countries listed as states sponsors of terrorism include more complex visa requirements that impede travel by their nationals, financial restrictions such as the blocking of banking transactions, prohibitions on various forms of U.S. Government financial and technical assistance, the withholding of U.S. Government funds from organizations that provide assistance to a listed country, the withholding of U.S. Government assistance to other states that provide aid to that country, and a requirement that the U.S. oppose loans to the country by multilateral financial institutions.[3]

It is also necessary to note that the SST qualification, especially taken in conjunction with other unilateral sanctions determined by your Excellency's Government, may introduce an additional layer of uncertainty and fear, as it may also be used for the enforcement of broader financial, economic and other restrictions, including the targeting of assets of State institutions, such as Central Bank foreign assets, which are essential for the exercise of sovereign power including the conduct of independent economic and trade relations in accordance with the US Foreign Immunities Act of 1976[4]. We wish to remind your Excellency's Government of the international principle of sovereign equality of States and the very nature of State immunity, which shall guide States' actions that have effects beyond their jurisdiction.

As we describe in more detail below, there is a high risk that a number of human rights can be negatively affected by the restrictions and prohibitions which are triggered by SST designations, and which are included in the provisions of the relevant pieces of U.S. legislation. This adverse impact may be partly the result of restrictions and prohibitions themselves and/or partly because such restrictions and prohibitions generate compliance risks and costs that lead to over-compliance, that is disengagement from otherwise permissible or exempted activities involving the designated state and its institutions and entities. Moreover, secondary sanctions may be applied against parties in third countries that interact with a designated state in ways that are prohibited by the sanctions against it, thus further exacerbating the designated state's isolation and causing additional harm to the lives and well-being of its population.

Following a thorough review of the four main legislative Acts that designate the States Sponsors of Terrorism, we wish to express our concern over their wordings as well as their repercussions on the enjoyment of human rights.

(i) The definition of "State Sponsor of Terrorism"

Before exploring each of the legislative Acts, we firstly wish to draw the attention of your Excellency's Government to the questionable status of the very process of the designation of any state as a 'sponsor of terrorism.' It should be reiterated that the designation itself goes against the fundamental international law principles, such as the principle of sovereign equality of States, prohibition to intervene into the domestic affairs of states and principle of peaceful settlement of international disputes, which constitute universally recognized peremptory norms of international law. Therefore, under the general principle of *par in parem non habet* no state may have

2 Trade Sanctions Reform and Export Enhancement Act of 2000, §7205(a)(1-2).
3 International Financial Institutions Act, §1621.
4 28 USC Ch. 97: JURISDICTIONAL IMMUNITIES OF FOREIGN STATES, paras. 1605A-1605B

jurisdiction over another state or its behaviour, and therefore no designation as an SST is allowed under international law.

The very notion of immunities of States, their officials and State property have functional nature under customary international law to enable states and state officials to perform their duties on behalf of the states as identified by the International Court of Justice in its Arrest warrant case[5] and *Germany v. Italy*[6] judgements, and property to be used for public purposes, as explained by the International Law Commission in the commentary to art. 3, 6, 19 of the Draft articles on the jurisdictional immunity of states and state property 1991[7]. The above principles determine the framework of relations among States and highlight the absolute inadmissibility of the SST designation. The process of designation of states as SST is also in violation of international relations standards and is arbitrary in its nature.

As far as the specific provisions of the above-mentioned legislative Acts is concerned, the Foreign Assistance Act (FAA) of 1961 was the first to determine the prohibition of financial assistance "under this Act, the Food for Peace Act, the Peace Corps Act or the Export-Import Act of 1945 to any country if the Secretary of State determines that the government of that country has repeatedly provided support for acts of international terrorism." However, the FAA does not define any of the criteria for such designation, i.e. how frequent is "repeatedly," what is considered as "providing support", and most importantly, what "international terrorism" would be consisted of and how such information shall be verified. Moreover, the document does not identify any independent investigation commission or any other means of peaceful settlement of international disputes. Also, it does not provide for the submission of the case for consideration by the UN Security Council, as the international body to act in response to a threat to international peace and security, given that support to international terrorism may be considered as a threat of such nature.

The lack of international law grounds that could explain the designation of a state as a sponsor of terrorism is of utmost concern, especially when considered in combination with the inexistence of a provision allowing the concerned state to challenge such a designation, and in the absence of submission of the case to the international dispute settlement mechanisms, as mentioned above. It allows us to conclude that the designation of a state as a sponsor of terrorism by the Secretary of State can be considered as arbitrary, in addition to its being in violation of the fundamental principles of international law by which the U.S. is bound.

Furthermore, we would like to bring to the attention of your Excellency's Government our concerns regarding section 40 of the Arms Export Control Act (AECA). Although it provides a more detailed definition of what acts would be included within the "acts of international terrorism," the arbitrary character of the designation by the Secretary of State is maintained, since, on the one hand the list of acts included as "acts of international terrorism" is not exhaustive and on the other the Act expressly recognises that the concerned acts are "all activities that the Secretary determines wilfully aid or abet (…)." Once again, such interpretations and grounds for designation

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5 Arrest Warrant of 1I April2000 (Democratic Republic of the Congo v. Belgium), Judgment, I.C.J. Reports 2002, p. 3, paras. 53-55

6 Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), Judgment, I.C.J. Reports 2012, p. 99

7 https://legal.un.org/ilc/texts/instruments/english/commentaries/4_1_1991.pdf

counter existing international law principles and standards, rendering the eventual designation a unilateral coercive measure, and thus illegal and unlawful under international law.

Lastly, both paragraph 1605A of USC title 28, part IV, chapter 97 and the National Defense Authorization Act for Fiscal Year 2019, section 1754(c) make reference to the same language already used in the previous legislations. They replicate the unclear and overly broad terms already examined above, imposing specific prohibitions against the government of a country which has "repeatedly provided support for acts of international terrorism," as determined by the Secretary of State.

In view of the above, it is a matter of concern that the U.S. laws a) provide for qualification of states as sponsors of terrorism in violation of peremptory norms of international law, b) does not intend to submit any cases, which might entail accusations of terrorism, to seek peaceful settlement of international disputes or to be considered by the UN Security Council under art. 39 of the UN Charter, c) establish the designation process at the national level without any grounds, especially without defining international terrorism, or a clear procedure for making the determination , and d) instead allow for a wide discretion on the part of the Secretary of State. This renders the process vulnerable to arbitrary interpretations and contingent upon domestic politics and other considerations, and not based on international law and the United States' international law obligations.

Beyond the principled international law perspective highlighted above, it is important to refer to additional procedural inconsistencies, which themselves exacerbate the arbitrariness of such designations. In particular, once SST restrictions and prohibitions are in place, they can hardly be reversed, unless certain specific conditions are met and procedures followed. The above-mentioned pieces of U.S. legislation seem to offer two paths towards rescinding a country's SST designation. One is for the President to certify to Congress that there has been a "fundamental change" in the country's leadership or policies, namely that it no longer supports acts of international terrorism and that it has provided assurances that it will not do so in the future.[8] The other is for the President to certify to Congress that the country has not supported international terrorism for six months and that it has provided assurances that it will not do so in the future.[9] The second path opens the possibility for Congress to block the rescission within 45 days[10], with the possibility that the final assessment may be contingent upon political considerations and power-balances within the U.S. Congress. Once again, this approach raises concerns about the prohibition to unilaterally exercise jurisdiction over other states and their behaviour. This may lead to situations where associated sanctions and restrictions may remain in force without regard to whether or not the country actually supports international terrorism.

We note with alarm that the imposed sanctions can actually stay in effect far longer than their intended purpose, as there is no legal requirement for the President to initiate the process of rescinding a country's SST status. Indeed, documents produced

[8] Export Controls Act of 2018, section 1754(c)(4)(A)(i-iii); Arms Export Control Act, section 40(f)(1)(A)(i-iii); Foreign Assistance Act of 1961, section 620A(c)(1)(A-C).

[9] Export Controls Act of 2018, section 1754(c)(4)(B)(i-ii); Arms Export Control Act, section 40(f)(1)(B)(i-ii); Foreign Assistance Act of 1961, section 620A(c)(2)(A-B).

[10] Arms Export Control Act, section 40(f)(2)(A-B).

by the Department of State over several decades show that the United States sometimes keeps countries designated as states sponsors of terrorism for lengthy periods during which it does *not* consider them to be supporting international terrorism. As an example, Cuba's status as a state sponsor of terrorism was maintained in 1997 "(a)lthough there [was] no evidence to indicate that Cuba sponsored any international terrorist activity in 1997."[11] Similarly, Sudan retained its designation as an SST in 2005 despite U.S. authorities being "generally pleased with the Government of Sudan's cooperation on counter-terrorism"[12] at the time. In 2016, the State Department noted that "countering terrorism is today a national security priority for Sudan, and Sudan is a cooperative partner of the United States on counterterrorism, despite its continued presence on the State Sponsors of Terrorism List."[13]

To summarize, we are gravely concerned that a) sanctions associated with the unilateral qualification of countries as states sponsors of terrorism, in addition to being a violation of the fundamental principles of international law, can violate a broad range of human rights in the listed countries; b) the process of making and rescinding such designations by the United States allows for inconsistency and arbitrariness in imposing its sanctions; and c) this results in U.S. sanctions being maintained and rights being violated in countries that do not support international terrorism.

As will be explored below, the legislative acts that regulate SSTs are subject to arbitrary interpretation, which has devastating impacts on the political and economic aspects of the states determined to be SST. They also have dire structural consequences for the enjoyment of human rights of those affected by the SST status.

(ii) The impact of the SST status on the enjoyment of human rights

As mentioned above, the Financial Assistance Act (FAA) forbids any kind of financial assistance to the SST. Specifically, the FAA is the only one of the four main U.S. legislative Acts that establishes a waiver for its prohibitions for humanitarian reasons. However, such a waiver is only determined by the President, on a case-by-case analysis, without any public objective criteria. The excessive discretion and imprecise language allow for arbitrariness in the determination of the scenarios of waivers. Additionally, the FAA prohibits financial assistance to the SST, even for humanitarian purposes, under economic support programs, within the context of peacekeeping operations and of antiterrorism assistance, as well as under the Export-Import Bank Act. This means that the designated country (SST) cannot, for example, be provided with bank guarantees, insurance, extensions of credit rates and other conditions available for the financing of imports of goods and services, even on humanitarian grounds.

We are, thus, concerned about the consequences of the above-mentioned arbitrary designation of a state as sponsor of terrorism and of the prohibition of any kind of financial assistance to the SST, even for humanitarian purposes. These FAA provisions further exacerbate the political and economic isolation of the SST and of its

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11 U.S. Department of State, "Patterns of Global Terrorism: 1997: Overview of State-Sponsored Terrorism," https://1997-2001.state.gov/global/terrorism/1997Report/sponsored.html

12 U.S. Department of State, "Congressional Budget Justification: Foreign Operations," Fiscal Year 2007, p. 322, https://2009-2017.state.gov/documents/organization/60641.pdf

13 U.S. Department of State, Country Reports on Terrorism 2016, https://www.state.gov/reports/country-reports-on-terrorism-2016/

businesses, which themselves are excluded from economic support programs and financial aid from U.S. banks and other agencies, and may also result in over-compliance by third-country individuals or entities who may become reluctant to engage with the SST for fear of civil or criminal liability under U.S. law.

Financial sanctions arising from SST designations by your Excellency's Government may deepen economic crises in listed countries, further harming the rights of their populations to a decent standard of living, enshrined in article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and cripple their right to development, as noted in article 6(3) of General Assembly Resolution 41/128 (1986). By impeding transactions and other banking activities, the sanctions prevent individuals from accessing foreign assets, violating the article 17(2) of the Universal Declaration on Human Rights (UDHR) prohibiting the arbitrary deprivation of property; and as a form of punishment they also breach the obligation in article 14 of the International Covenant on Civil and Political Rights (ICCPR) to ensure the protection of due process rights. Additionally, the right to freedom of movement, guaranteed by article 12 of the ICCPR, can be harmed when your Excellency's Government imposes tighter visa rules as part of SST-related sanctions.

Freezing or transferring funds of Central banks as well as other similar assets prevents countries from the possibility to use financial resources for humanitarian purposes even under the monitoring of the United Nations, as it has reportedly occurred even during the COVID-19 pandemic and has been referred to in previous communications[14].

Considering the prohibition of financial assistance under the Food for Peace Act, also established by the FAA, the SST is excluded from the U.S. programme that aims to "use its agricultural productivity to enhance food security in the developing world," including in times of emergency, through 'the sale of agricultural commodities to developing countries and private entities for dollars on credit terms, or for local currencies' and the provision of "agricultural commodities to meet emergency food needs under this subchapter through governments and public or private agencies, including intergovernmental organizations such as the World Food Program and other multilateral organizations, in such manner and on such terms and conditions as the Administrator determines appropriate to respond to the emergency". The prohibition established under the FAA concerning the SST has a severe impact on the right to adequate food, enshrined in article 11 (1) of the ICESCR. We wish to recall that States shall take positive action to guarantee this right, in line with their international obligations, and shall refrain from using food and other essential goods as means of pressure to inter alia force change in other states' behaviour.

Moreover, section 40 of the Arms Export Control Act (AECA) determines the transactions prohibited between the U.S. government or any U.S. person, as defined in the Act, on the one hand, and the SST, on the other. The AECA prohibits, among other transactions, 'exporting or otherwise providing, directly or indirectly, any munitions item', 'providing credits, guarantees, or other financial assistance under this act or the FAA with respect to the acquisition of any munitions item', 'providing any license or

[14] JAL USA 6/2022

other approval for any export or other transfer of any munitions item' or 'facilitating the acquisition of any munitions item.'

In this regard, the AECA refers to "munitions items" as defined by the U.S. Munitions List, which contains 21 categories of munition items and many dual-use items, such as for example protection masks and biological agents useful for vaccines. Not only is the list overarching, but the wording of the Act is also extensively broad, forbidding "providing, directly or indirectly" the items concerned to the SST. The impreciseness regarding the type of transactions that could trigger such a provision, attached to the criminal penalty entailing a fine of no more than $1,000,000 and up to 20 years imprisonment for each violation, may lead to instances of over-compliance. As mentioned above, such behaviour is driven by the perceived and actual reputational and legal risks related to the penalties raised above, with individuals and organizations obliged to self-restrain, often beyond what is legally or contractually required.

Against this background, the enjoyment of human rights can be negatively affected by the sanctions resulting from the qualification of a state as a sponsor of terrorism by your Excellency's Government. Especially taking note of the over-compliance with the prohibition of transactions involving dual-use items, we are gravely concerned about the right to health, and by extension the right to life, as unilateral sanctions are known to interfere with the supply of goods and services necessary for ensuring the health of individuals in targeted countries. Article 25(1) of the Universal Declaration of Human Rights (UDHR) and article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) oblige all countries to protect the right to health, which the ICESCR defines as "the highest attainable standard of physical and mental health." Alongside the right to health, article 3 of the UDHR and article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) require states to protect the right to life, which can be severely impacted by the concrete effects of the FAA and the AECA, coupled with the possible enforcement of other sanctions regulations. Several communications issued by Special Procedures mandate holders have shown the catastrophic effects of U.S. imposed financial and other restrictions, as well as over-compliance with them on the delivery of essential goods, including medicine and medical equipment.[15] .

Additionally, we express our serious concern over the broad scope of the AECA. As established by the Act, the aforementioned prohibitions are applicable to activities by the U.S. government and also by U.S. persons. Against this background, a U.S. person includes (*i*) U.S. citizens and permanent residents, (*ii*) any business having its principle place of business within the U.S. territory or organized under US law, (*iii*) any other person with respect to that person's actions while in the U.S., (*iv*) any person "that is otherwise subject to the jurisdiction of the Unites States, with respect to that persons' actions while outside the United States." The consequence of this overly broad definition is the extraterritorial application of the AECA and of the prohibitions it contains.

In this context, under the auspices of the AECA, the prohibitions established therein are applicable to any person somehow subject to the jurisdiction of the U.S.,

[15] See communications by the Special Rapporteur, Nos. AL USA 25/2022; AL USA 19/2022; AL USA 13/2022; AL USA 23/2021. Available at: spcommreports.ohchr.org/TmSearch/Mandates?m=263

such through bilateral agreements with jurisdiction clauses that establish the U.S. as the competent jurisdiction for disputes, or through the use of the U.S. Dollar currency or U.S. intermediary banks in commercial transactions. Concerned parties are thus exposed to complex system of regulatory and other considerations with regarding the real extent of U.S. jurisdiction, facing the risk of being liable for breaching the AECA in dealing with a SST. Such a scenario may also result in over-compliance.

Furthermore, in line with the broad scope described above, the Act also determines that the transactions concerned are forbidden not only between 'U.S. persons' and the government of the SST, but also between "U.S. persons" and "any individual, group, or other person within a country" and "any recipient which is not the government of or a person in a country described [as a SST] if the United States person has reason to know that the "munitions item" will be made available to any country described [as a SST]." The unclear and vague wording of the AECA opens the door for possible arbitrary interpretations and, once again, may exacerbate over-compliance. This further deepens the economic isolation of the SST, triggering the chilling effect on businesses and other actors who prefer to avoid any relationships with an SST.

This chilling effect also stems from the provisions of section 1754 (c) of the National Defense Authorization Act for Fiscal Year 2019 (NDAA). This Act determines that, on behalf of the President, the Secretary, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Energy, and the heads of other Federal agencies, shall establish and maintain a list of controlled items, for which a commerce license will be required for their export, reexport or in-country transfer to a country designated as a SST. It must be highlighted that section 1754 of the NDAA enables multiple actors – which are not objectively and publicly established – to maintain a list of controlled items, without providing, once again, the criteria through which this determination will be made or the means to challenge such a determination. Once again, this may result in arbitrary interpretation and application of this Act.

Related to the provisions in the AECA and the NDAA, according to your Excellency's Government,[16] even in direct commercial sales, in which neither the U.S. military nor the U.S. government is directly involved in the sale or acquisition, if the articles or services in question constitute defense articles or defense services, as defined by the U.S. Munitions List and the ITAR International Traffic in Arms Regulations (ITAR), the State Department must authorize the transaction through a license or other form of approval. While we recognise every state's autonomy to regulate international trade through their territory, these provisions establish requirements for every private actor that wishes to engage in a commercial transaction of any of the multiple items within the U.S. Munitions List, including dual-use items, with possible risk of considerable penalties in case of alleged violations. The combination of these provisions and requirements contributes to over-compliance and the economic and political isolation of the countries designated as sponsors of terrorism.

Lastly, we wish to draw the attention of your Excellency's Government to the controversial provisions in paragraph 1605A of USC title 28, part IV, chapter 97, which may have serious implications not only for the enjoyment of human rights, but

[16] https://2017-2021.state.gov/foreign-military-sales-process-and-policy/

also for the application of the international law principle of sovereign immunity within the U.S. According to this piece of legislation, "[a] foreign state shall not be immune from the jurisdiction of courts of the United States [in any case] in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency." The text determines that U.S. courts shall hear a claim under this section if "the foreign state was designated as a state sponsor of terrorism at the time the act described in paragraph (1) occurred, or was so designated as a result of such act, and, subject to subclause (II), either remains so designated when the claim is filed under this section or was so designated within the 6-month period before the claim is filed under this section."

As a result of the text, being designated as a state sponsor of terrorism enables U.S. citizens and other agents to seek monetary reparations for the actions aforementioned, resulting in the potential block of assets of the SST in the U.S. In addition to the chilling effect of this possible penalty, it is a serious breach of the customary international law principle of sovereign State immunity, and the principle of sovereign equality of States. The principle, which has been enforced and reiterated by the International Court of Justice in its *Germany v. Italy* judgement, determines that States are entitled to immunity from jurisdiction in foreign courts for acts performed in the exercise of their sovereign authority, known as *acta iure imperii*[17]. As per the ICJ's understanding, which was reinforced recently by the European Court of Human Rights,[18] there is not a discernible trend in State practice, or in court decisions, towards greater exceptions to the rule of immunity for cases of crimes under international law. Thus, we express grave concern over the further breach of current international law standards by your Excellency's Government, especially within a context of the designation of SSTs, which also goes against the principle of sovereignty of States. Once more, this piece of U.S. legislation exacerbates the international and diplomatic isolation of the SSTs, which is already gravely affected following the application of the FAA, the AECA and the NDAA.

Moreover, the qualification of SST as such, within the context of its multifaceted consequences and the inherent violation of international law, may be used as a pretext for the freezing and confiscation of assets of State institutions, including of Central Banks. The SST designation, hence, further exacerbates the chilling effect against the SST and its all-encompassing isolation, even in emergency situations and in contexts of humanitarian crises.

In particular, with regards to the latter and the impact of unilateral coercive measures on the effective delivery of humanitarian assistance, Special Procedures mandate holders have addressed to your Excellency's Government several communications describing the specific challenges and highlight the inefficiency and

[17] Council of Europe, Public International Law and Treaty Office Division, State Immunity under International Law and Current Challenges, 2017. Available at 16807724e9 (coe.int)

[18] Al-Adsani v. The United Kingdom, 35763/97, Council of Europe: European Court of Human Rights, 21 November 2001, available at: https://www.refworld.org/cases,ECHR,3fe6c7b54.html [accessed 20 October 2023] and JONES AND OTHERS v. THE UNITED KINGDOM (Applications nos. 34356/06 and 40528/06), 14 January 2014.

inefficacy of existing humanitarian carve-outs in the context of enforcement of unilateral sanctions and consequent over-compliance (see for example letters AL USA 25/2023, OL USA 7/2023, AL USA 5/2023, AL USA 25/2022, AL USA 21/2022). Regrettably, and despite this constructive approach, your Excellency's Government has not provided with any response or clarification to the specific issues and questions raised through these communications.

Furthermore, it important to mention that reports on countries which have been removed from the SST list have indicated how this removal has enabled them to access global financial systems, undertake debt relief and access loans, as well as benefit from development funding, all of which constitute fundamental parameters for the socio-economic uplift and the progressive realisation of their peoples' human rights, in particular economic, social and cultural rights. They have also stressed the creation of an enabling environment for humanitarian actors, both international and local, to perform their life-saving work without fear of potential repercussions, including civil or criminal liability for engaging with the concerned countries. Maintaining a country in the SST list automatically raises the risk levels for all stakeholders, including humanitarian actors, who wish to operate in or engage with the listed country, with catastrophic effects on the lives and human rights of general populations.

By way of conclusion, we wish to reiterate that the SST designation violates fundamental principles of international law, namely the principle of sovereignty of states, principle of non-intervention in the domestic affairs of states, principle of peaceful settlement of international disputes and undermines the authority of the UN Security Council as the only institution entitled under the Charter of the United Nations to qualify a situation as a breach of peace or threat to peace.

In addition, the process through which the designation is made is unclear, non-transparent and the four legislative Acts that regulate it share the common trait of lack of clarity, vagueness and impreciseness. These characteristics exacerbate the humanitarian impacts of the unilateral designation of the SST as such and add another layer of uncertainty and fear for the stakeholders to engage with the SST, resulting in over-compliance, including among banks and business community, which often play a critical role in the effective and timely delivery of humanitarian goods, including food, medicine, medical equipment and other relevant supplies.

As it is our responsibility, under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please, explain what international legal ground for qualification of states as sponsoring terrorism is used by Your Excellency's Government and how you justify such qualification within the framework of the fundamental principles of international law and unique competences of the UN Security Council.

2. Please, provide information on any coordination of Your Excellency's Government with the UN Security Council concerning qualification of states as sponsoring terrorism in a view of its unique authority, as well as about any authorization of the latter for such qualification.

3. Please, explain, how the criteria used by Your Excellency's Government for the qualification of states as sponsoring terrorism are related to those established internationally by the UN Security Council or measures requested to be taken in accordance with the UN Global Counterterrorism strategy, including those aimed to promote and protect human rights, solidarity, cooperation and development as the means aimed to eliminate conditions conducive to terrorism?

4. Please, explain, what are the grounds for withdrawal of immunities of the property of states qualified as sponsoring terrorism by your Excellency's Government and their transfer / possibility of transfer to other bank account/s and the use without the consent of the interested Government, that prevents the latter from using its property to meet humanitarian needs of its population even under the UN monitoring as reflected in the previous communications, in a view of the absolute functional nature of state immunities?

5. Please, provide information about measures taken to ensure that the humanitarian needs of people in the countries qualified as SST are meet, especially in a view of the impediments of delivery of basic critical goods (including food, medicine, medical equipment, water, electricity and energy supply chains) due to unilateral sanctions, secondary sanctions and zero-risk policies?

6. Please, inform, what steps have been taken by Your Excellency's Government to settle disputes with states considered to be qualified as sponsoring terrorism, by peaceful means in accordance with fundamental principles of international law?

While awaiting a reply, we respectfully urge your Excellency's Government to fully comply with all aspects of the UDHR, the ICESCR and the ICCPR to prevent any negative impact on the human rights of persons subject to U.S. sanctions triggered by the qualification of a state as an SST; and to use competent international bodies (UN Security Council, other UN counter-terrorism and suppression of trans-boundary crimes bodies, international courts and other international fora) to avail itself of the existing mechanisms of public international law and thereby avoid any perceived need to act unilaterally in such matters.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website after 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We may publicly express our concerns about this issue in the future as it is a matter that should warrant careful attention. We also deem that the wider public should be informed about the human rights implications of these allegations. Any press release or public expression of concern on our part on this issue will indicate that we have been in contact with your Excellency's Government to bring it to your attention and seek clarification.

Please be informed that a copy of this letter has also been sent to the Governments of Cuba, Democratic People's Republic of Korea, Iran and Syria, being the four countries currently designated as SSTs and listed on the U.S. Department of State's dedicated webpage (https://www.state.gov/state-sponsors-of-terrorism/).

Please accept, Excellency, the assurances of our highest consideration.

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

Michael Fakhri
Special Rapporteur on the right to food

Attiya Waris
Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Livingstone Sewanyana
Independent expert on the promotion of a democratic and equitable international order

Cecilia M. Bailliet
Independent Expert on human rights and international solidarity

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to the relevant international norms and standards that are applicable to the issues brought forth by the application of the analyzed legislations.

Resolution 27/21 of the Human Rights Council and consequent resolutions expresses grave concern about 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. It also expresses concern for the disproportionate and indiscriminate human costs of unilateral sanctions and their negative effects on the civilian population, in particular women and children. We also wish to recall operative paragraph 1 of the same resolution which "[C]alls upon all States to stop adopting, maintaining or implementing unilateral coercive measures not in accordance with international law, international humanitarian law, the Charter of the United Nations and the norms and principles governing peaceful relations among States, in particular those of a coercive nature with extraterritorial effects, which create obstacles to trade relations among States, thus impeding the full realization of the rights set forth in the Universal Declaration of Human Rights and other international human rights instruments, in particular the right of individuals and peoples to development."

We also refer to the fundamental principles of international law including principles of sovereign equality of states, implying inter alia prohibition to exercise jurisdiction over other states and respect to the absolute functional immunity of states; principle of non-intervention into the domestic affairs of states, principle of peaceful settlement of international disputes, principle of promotion and protection of human rights as set forth in the Charter of the United Nations, Declaration on Principles of International law Concerning Friendly Relations between states of 1970, Helsinki final act of 1975.

The extraterritorial effect of unilateral coercive measures has been noted in relevant resolutions of the Human Rights Council and the General Assembly, such as UNGA Res. 51/103, as impeding the full realization of the rights set forth in the Universal Declaration of Human Rights and other international human rights instruments.

As for the human rights law, we refer to the Bill of rights and other treaty and customary norms of international human rights law. In particular, in respect to the right to life, article 6 of the International Covenant on Civil and Political Rights (ICCPR), provides for the positive obligation to ensure access to the basic conditions necessary to sustain life (CCPR general comment no. 6, para. 5; CCPR general comment no. 36, para. 21) and requires special measures to protect persons in vulnerable situations whose lives are particularly endangered by specific threats (CCPR, general comment no. 36, para. 23). Measures, including the obstruction of humanitarian assistance, and of access to basic and life-saving goods and services such as food, health, electricity and safe water and sanitation run counter to the right to life (CCPR/C/ISR/CO/4,

para. 12; A/73/314, para. 27). We wish to recall that any deaths attributable to such measures amount to an arbitrary deprivation of life (A/73/314, para. 13).

The United States have signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1977, constituting a mean of authentication, and expressing the willingness of the state to continue the treaty-making process. While acknowledging that your Excellency's Government is not a party to the ICESCR, we note however, that provisions of this international treaty constitute part of international customary norms and thus are binding for all states.

On another note, the International Covenant on Economic, Social and Cultural Rights (ICESCR) enshrines "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (art. 12(1)). General Comment No. 14 (2000) of the CESCR, which states that the agreed interpretation of the right to health includes, inter alia, the availability and the physical accessibility of goods necessary to ensure this right (paras 12(a, b)), with these goods being "medically appropriate and of good quality" (para 12(d)). We also refer to paragraph 50 of the same General Comment no. 14 which notes that violations of the right to health can include "the denial of access to health facilities, goods and services to particular individuals or groups". Moreover, deterioration of one's health condition as well as growing physical and psychological suffering due to the unavailability of adequate and appropriate medical treatment may have adverse effects on the enjoyment of other human rights including the right to education, the right to work, human dignity, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement (CESCR, General comment no. 14, E/C.12/2000/4, para. 3).

Article 1 of ICESCR states that all peoples have the right to freely determine their political status and freely pursue their economic, social and cultural development by virtue of the right to self-determination. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of their own means of subsistence. Article 11(1) of ICESCR recognizes the right of everyone to an adequate standard of living for themself and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. This Article must be read in conjunction with article 2(2), which further enshrines the obligation to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Thus, article 11 of ICESCR recognizes the fundamental right of everyone to be free from hunger and calls on States to consider, individually and through international co-operation, the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

The ICESCR further requires States to "take appropriate steps to ensure the realization of this right" and the Committee on Economic Social and Cultural Rights has defined the corresponding obligations of States to respect, protect and fulfil the right to food in its general comment no. 12. In interpreting article 11, the Committee stressed that the core content of the right to adequate food refers to the possibilities either for

feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing, and market systems (para. 12). It entails both economic and physical accessibility of food, as well as the sustainability of food access for both present and future generations (para. 7).

We would further like to bring your Government's attention to general comment no. 8 of the Committee on Economic, Social and Cultural Rights on the relationship between economic sanctions and respect for economic, social and cultural rights where the Committee considers that the provisions of the Covenant, virtually all of which are also reflected in a range of other human rights treaties as well as the Universal Declaration of Human Rights, cannot be considered to be inoperative, or in any way inapplicable, solely because a decision has been taken that considerations of international peace and security warrant the imposition of sanctions. It has been observed that although this General Comment seems to apply to sanctions adopted by the Security Council, it applies equally to unilateral coercive measures (A/HRC/28/74, para. 15).

Furthermore, recalling its position stated in the aforementioned general comment 8, in its general comment no. 12, the Committee on Economic, Social and Cultural Rights calls on States to refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other countries.

Moreover, the Vienna Declaration and Programme of Action calls upon States to refrain from any unilateral measures not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among states and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food.

Additionally, regarding the right to enjoy one's property, we refer to article 14 of the ICCPR for its pertinence to the blockage of property and related financial transactions, and to article 17(2) of the Universal Declaration of Human Rights, which states that "No one shall be arbitrarily deprived of his property."

UN Global Counter-terrorism strategy acknowledges that the "absence of public order, national […] discrimination, political isolation, socio-economic marginalization" constitute conditions conducive to the expansion of terrorism (part. I). In the resolution 77/298 of 22.06.2023 on the Eighth review of the Global counter-terrorism strategy the General Assembly refers to the obligation of states "to eradicate poverty, to promote sustained economic growth, sustainable development, global prosperity, good governance, human rights and fundamental freedoms for all and the rule of law, […] to increase understanding of human dignity", involve youth in education, sport and development programs, to prevent their involvement into terrorism activity (preamble, para. 19). The General Assembly also requests all state to ensure that their counter-terrorism activity takes place in accordance with international law and human rights law and that "counter-terrorism legislation and measures do not impede humanitarian and medical activities or engagement with all relevant actors" (para. 113).

In light of the above-mentioned impacts, we reiterate the international human rights standards that unilateral coercive measures shall not impact, as enshrined in all relevant international instruments.