

Annex I

Public

**Referral pursuant to Article 14 of the
Rome Statute to the Prosecutor of the
International Criminal Court by the
Bolivarian Republic of Venezuela with
respect to Unilateral Coercive Measures**

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Executive Summary

In accordance with Article 14 of the Rome Statute, the Bolivarian Republic of Venezuela refers to the Prosecutor of the International Criminal Court the situation of the Unilateral Coercive Measures that have been imposed upon it, primarily by the United States of America which cause a negative impact on the people in Venezuela. Such measures contravene international law that protects States from foreign intervention in their internal affairs. They have caused enormous hardship for the people of Venezuela. They have contributed to very significant increases in mortality of children and adults, and negatively affected a range of other human rights, including the right to food, to medical care and to education, thus causing, in turn, a migration phenomenon from the country which is induced and unusual in a country that, traditionally, has been a great immigration haven. They have provoked large-scale migration from the country. Such unilateral coercive measures of unprecedented scale constitute a widespread or systematic attack upon a civilian population. They are properly described by sub-paragraphs of Article 7(1) of the Rome Statute and thereby amount to crimes against humanity.

United Nations human rights bodies and institutions, including the Human Rights Council and its Special Procedures, have recognized the negative effects of the unilateral coercive measures on the civilian population of Venezuela. In July 2019, she reported to the Human Rights Council that ‘the effects of these sanctions seem to be affecting the State's ability to provide basic health service to the population’.

This submission also summarizes conclusions reached by highly reputed scholars about the consequences that unilateral coercive measures have had with respect to access to food, health care, access to water and education for the civilian population. The children in the civilian population have suffered particularly from the situation; the consequences of malnutrition and limited access to education may have long-term effects of serious proportions. A study by Mark Weisbrot and Jeffrey Sachs provides statistical evidence that sanctions amount to ‘a death sentence for tens of thousands of Venezuelans’.

The United Nations General Assembly has declared that ‘unilateral coercive measures and legislation are contrary to international law, international humanitarian law, the Charter of the

United Nations and the norms and principles governing peaceful relations among States'. Only the United Nations Security Council can lawfully impose coercive measures and it has not done so in the case of Venezuela, The General Assembly has described such measures as 'tools for political or economic pressure against any country, in particular against developing countries', denouncing in particular 'the negative effects of those measures on the realization of all the human rights of vast sectors of their populations, in particular children, women, the elderly and persons with disabilities'.

Because Venezuela is a State Party to the Rome Statute, Article 12(2)(a) confers it with jurisdiction over the territory of Venezuela. Although the unilateral coercive measures may be imposed outside the territory of Venezuela, they are directed at and produce effects upon the territory of Venezuela. So-called 'effects' jurisdiction was actually developed by the courts of the United States of America and is recognized in many legal systems. It has been viewed favourably by international judges and is likely to grow in significance because of such phenomena as cyber-attacks and cyber-warfare.

Crimes against humanity as set out in Article 7 of the Rome Statute consist of a number of punishable acts perpetrated pursuant to a widespread or systematic attack on a civilian population. The submission demonstrates the possibility of charges for a number of specific acts. For example, the crime against humanity of extermination may be perpetrated through 'intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population'. There is evidence that senior officials of the United States of America are not only well aware of the consequences of the sanctions on the civilian population, especially the children, but that they deliberately inflict them in order to destabilize the current government, generate social unrest, and fulfil their professed goal of 'regime change'.

Referral pursuant to Article 14 of the Rome Statute to the Prosecutor of the International Criminal Court by the Bolivarian Republic of Venezuela with respect to Unilateral Coercive Measures

1. Introduction

1. This communication to the Office of the Prosecutor concerns the unilateral coercive measures mainly dictated by the government of the United States of America whose effects negatively impact the Bolivarian Republic of Venezuela. These measures, dictated in contravention of international law that protects States from foreign intervention in their internal affairs, have caused enormous hardship for the people of Venezuela. They have contributed to very significant increases in mortality of children and adults, and have negatively affected a range of other human rights, including the right to food, to medical care and to education. They have provoked an unusual large-scale migration from the country. This submission explains that such unilateral coercive measures constitute a widespread or systematic attack upon a civilian population. They are properly described by sub-paragraphs of Article 7(1) of the Rome Statute and thereby amount to crimes against humanity.

2. The Bolivarian Republic of Venezuela is a State Party to the Rome Statute, having signed the Statute on 14 October 1998¹ and ratified it on 7 June 2000.² Consequently, the Rome Statute is in force with respect to Venezuela since the treaty itself entered into force on 1 July 2002. It bears recalling that Venezuela has long been a supporter of international criminal justice. It was one of two Latin American nations to ratify the London Agreement of 8 August 1945, that formed the legal basis of the International Military Tribunal, something that is acknowledged in the final judgment of the Tribunal.³ Venezuela also played an important role in the drafting of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

¹ C.N.525.1998.TREATIES-5.

² C.N.361.2000.TREATIES-11.

³ *United States et al. v. Göring et al.*, Judgment, (1947) 1 IMT 171, at p. 171.

2. Contextual Background

3. Venezuela has been an independent republic since 1810. Simon Bolívar led the struggle for independence from the Spanish colonial empire of five nations of Latin America, including Venezuela. Today, Venezuela has an area of around 1 million km² of continental territory and a population of approximately 32 million inhabitants⁴ made up by descendants of several ethnic backgrounds, including native aborigines, descendants of Spaniards and Africans who gradually became a syncretic population. It also welcomed large migration flows during the twentieth century. Currently, the population is mostly made up by young people with a birth rate of 2.1.⁵ The social law model (since 1961) has evolved over the last two decades (since 1999) into a deepened social democracy under the rule of one of the world's most democratic Constitutions with more guaranteed rights (1999 Constitution of the Bolivarian Republic of Venezuela.)

4. In the years prior to 2015, Venezuela had a GDP of \$ 250 billion⁶ and a per capita GDP well above the average of \$ 10,000 per person which fell to \$ 2,500 in 2019.

5. Since the 1930s, its economy engaged in the production of oil. Over time, Venezuela grew into one of the world's most important oil-based economies.⁷ In 2002, Venezuelan hydrocarbon reserves were certified as the world's largest.⁸ Gradually, the control of this activity was taken over by the Venezuelan State.

6. Under the leadership of Hugo Chavez, who was elected President in 1999, Venezuela adopted a new constitution and endeavoured to use the oil revenues in order to improve the social conditions of its civilian population. In 2002 year, there was a bloody coup attempt against President Hugo Chavez. It was followed, in late 2002, by a boycott paralysing the oil industry for almost one year. However, despite the systematic and organised harassment

⁴ 32,219,521 inhabitants as at 2019 as per projection made by the 2011 National Census, Instituto Nacional de Estadísticas (National Statistics Institute.)

⁵ As per projection of the 2011 National Census, Instituto Nacional de Estadísticas (National Statistics Institute.)

⁶ Dropped to 70 billion in 2019 See

https://www.imf.org/external/datamapper/NGDPD@WEO/OEMDC/ADVEC/WEO_WORLD/VEN

⁷ PDVSA, Segunda petrolera más grande del mundo, EFE News Agency, 12 December 1994

<https://www.eltiempo.com/archivo/documento/MAM-263571>.

⁸ The largest oil reserves in the world with 303.2 billion barrels (17.9% of world's total reserves) <https://eu.usatoday.com/story/money/2019/05/22/largest-oil-reserves-in-world-15-countries-that-control-the-worlds-oil/39497945/>

exercised since 2000 against the new constitutional model, during the first decade of the twenty-first century, Venezuela showed robust data in terms of increases in human development through a solid social investment, to the detriment of the huge profits of transnational oil companies.

7. This progress was evident until 2013, manifested in the elimination of illiteracy, the 2013 Food and Agriculture Organization award for compliance with food goals,⁹ increases in healthcare indicators¹⁰, a housing development programme that built over 3 million homes¹¹. universal free school and university education that included the broadest social groups, culture and sports, social protection, vaccinations and access to healthcare, information and communication technology, transportation and diversification of industries.

8. Following the death of Hugo Chavez in 2013 and new elections, the political stability of Venezuela has been subjected to violent attacks, especially in early 2014, with street riots (*guarimbas*). Such actions coincided with the contraction of the price of oil, a product whose sales represented the main source of Gross Domestic Product. Venezuelan revenues rely 70% on the sale of its hydrocarbons basket.

9. A new stage of harassment of Venezuela by the United States began in 2015, with a decree by President Obama declaring Venezuela an unusual and extraordinary threat to the national security and foreign policy of the United States. The decree, in the form of an Executive Order, imposed a set of unilateral coercive measures aimed at coercing Venezuela. The results have transcended the choking of the Venezuelan economy and have translated into huge violations of the human rights of the civilian population of Venezuela. Since then, and in a more accentuated manner under the Trump administration, the unilateral coercive measures have been increased and intensified to the extent of totally strangling the economy

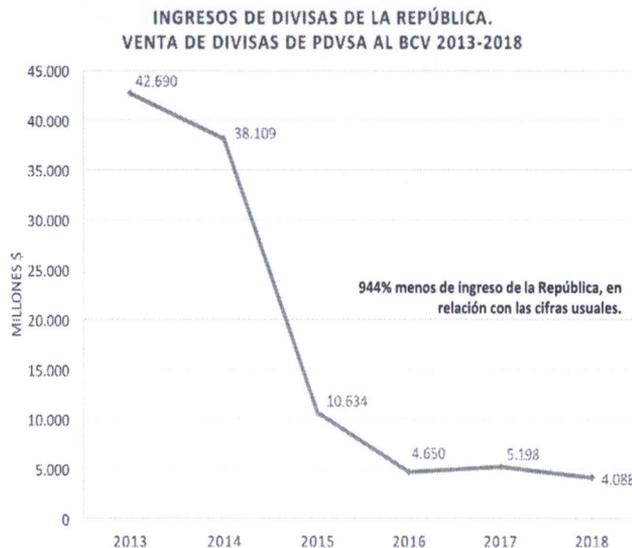
⁹ FAO Award to Venezuela. <http://www.fao.org/americas/noticias/ver/es/c/23015>

¹⁰ As per indicators contributed by the INE (Spanish acronym for National Statistics Institute), life expectancy rose to 75 years in 2018 whereas in 1998 was 72 years.

¹¹ According to official figures of the National Statistics Institute (2020), quality homes have been built at a "pace of construction that surpass 1,200% higher than the whole preceding historical period known as IV Republic. In the last 20 years 3,661,800 homes have been built. The Great Housing Mission alone has built 3,068,608 homes."

and the finances of the country¹². In January 2019 the US administration stopped recognising the government of President Maduro and has tried to impose a government of its choice.

10. The aggressiveness of the unilateral coercive measures has led to a dramatic reduction of the income of the Republic. The income by reason of oil has reduced over 16 times, dropping



from around 42 billion dollars in 2013 to values close to 4 billion dollars in 2018. Additionally, the effects of the economic and financial blockade have further cut the lines of external credit and increased five times the import costs as a result of the logistical and commercial restrictions to “free trade”.

11. Furthermore, the foreign exchange speculation and the external pressure

on macroeconomic variables have brought about losses for the country amounting to over 116 billion dollars – a contraction of the productive economic activity. The attacks on the legal tender has a correlation in the inflation of over 90%, which is weaponized to negatively impact the democratization of the access to goods and services. The international reserves have had to be used for food and for healthcare in the country and to face the destabilization of macroeconomic variables, thus reducing its value in more than two thirds.¹³

¹² As noted by S&P Global Platts, quoted by Banca y Negocio magazine: *From the oil exports that Petróleos de Venezuela (Pdvsa) has planned for the rest of August, only 43,000 barrels/day are safeguarded from the effects of the recent sanctions imposed by the United States on the government of Nicolás Maduro, including, among others, penalties for companies and governments transacting business with state entities of that country. According to a report by the specialised agency **S&P Global Platts**, such volume represents barely 6% of the expected total of external sales of crude oil which amount to 680,000 barrels/day. The aforesaid 43,000 b/d go to Nynas, a Sweden-based oil company where Pdvsa holds stock in partnership with Neste Oil, which has a license to operate with the Venezuelan state-owned oil company valid thru October 23. The highest volumes to be exported are earmarked for China and Russia as payment of liabilities. An analyst quoted by the agency says that everything depends on how willing the Donald Trump administration is to sanction Chinese and Russian companies because of Venezuela, but, at any rate, Pdvsa would have to offer considerable discounts and even sell at loss to export.* <http://www.bancaynegocios.com/solo-6-de-las-exportaciones-petroleras-libres-de-sanciones-en-agosto/>. see also <https://www.spglobal.com/platts/en/market-insights/latest-news/oil/080719-what-impact-will-new-us-sanctions-have-on-venezuelas-august-crude-exports>

¹³ Ministerio del Poder Popular para la Planificación (People’s Power Ministry for Planning) & INE Informe 2020.

12. The multiform attack of the unilateral coercive measures have impacted all aspects of the socio-economic life and have massively lessened a wide range of human rights. Underlying what might seem to be an economic attack, a war is waged that includes the reduction of income, the manipulation of the currency and foreign exchange and the international finance that affect the country, the international smear campaign against the prestige of the country, the dramatic reduction of non-oil imports which decreased almost 77 times since the beginning of the war on the economy, prioritizing food and medicines.¹⁴

13. A deliberate goal, despite all the cover-up efforts, has been to impact the nutrition and health, and in general, attack the well-being of the inhabitants of Venezuela. The State at a high cost has prevented famine and the quadruplication of the effects which would have occurred had there been no social policies to contain them. However, the current impact and, far more serious, the impact on the future, on the nutrition and health indicators which are clearly observed in the impact on vaccinations or in the mother and child related indexes of morbidity and mortality, as well as other harmful effects on the public utilities and services and on rights such as the access to drink water are added to the unusual unleashing of an induced acute migration phenomenon of people seeking better conditions of living. All this gives a sign about the perversity and harmfulness of the unilateral coercive measures. The administrative records of the country show an unusual migratory movement associated to economic reasons from 2015-2019 of 1,203,237 people .

14. The Preamble of the Rome Statute of the International Criminal Court '[r]eaffirm[s] the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations'. Furthermore, the Preamble , '[e]mphasiz[es] in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict or in the internal affairs of any State'.

15. The United States of America has systematically exerted its influence in inflicting pain and suffering on the civilian population of Venezuela so as to attain an explicit purpose which is forbidden by public international law, namely the change of regime in another State.

¹⁴ Ibid.

To facilitate its actions, the United States, along with other regional partners, has polluted international public opinion with ‘fake news’, fabrications and pretexts in order to isolate Venezuela and shelter its unlawful objectives with impunity. The information presented here explains the suffering and serious human damage to the life, integrity and other rights of the civilian population of Venezuela resulting directly from the actions of the United States of America.

3. The Situation in Venezuela

16. Unilateral coercive measures have had serious consequences in Venezuela, creating difficulties in delivery of food, medicines, education, drink water and electricity and resulting in serious impacts upon the human rights of the country’s civilian population. They are a lethal and masked tool which is a component of a multiform attack which combines external and internal factors against the constitutional model of the Venezuelan State in order to suppress it and achieve through illegal and criminal means its demolition, including the forced change of its government. In his recent address of the State of the Union, President Donald Trump said that the Venezuelan government would be smashed and broken. The contribution that unilateral coercive measures have made in terms of increased mortality and other consequences has been recognised by various organs of the United Nations, including the Human Rights Council and its special procedures.

3.1. The Human Rights Council

17. At its 42nd session, in September 2019, the Human Rights Council adopted a resolution entitled ‘Strengthening cooperation and technical assistance in the field of human rights in the Bolivarian Republic of Venezuela’.¹⁵ Preambular paragraph 6 of the resolution read: ‘Recognizing that unilateral coercive measures are exacerbating further the effects of the economic crisis, and thus the humanitarian situation,...’ Operative paragraph 8 states: ‘Expresses its concern at the imposition of extraterritorial unilateral coercive measures on the Bolivarian Republic of Venezuela, which have exacerbated further the effects of the economic crisis, and thus the humanitarian situation of the Venezuelan people, as stated by the High Commissioner when presenting her report to the Human Rights Council at its forty-first session (...)’.

¹⁵ Strengthening cooperation and technical assistance in the field of human rights in the Bolivarian Republic of Venezuela, A/HRC/RES/42/4.

During that session, the Human Rights Council received information contributed by the United Nations High Commissioner for Human Rights in connection with the unilateral coercive measures adopted by the government of the United States of America in August 2019.

18. The High Commissioner linked the context of the socio-economic crisis in Venezuela with ‘the potentially severe impact on human rights of the new sanctions imposed by the Government of the United States of America. Despite the exceptions contemplated in these latest sanctions in the area of humanitarian assistance, over-compliance of the financial sector, the reduction of public revenues, and the decrease in oil production is already having a serious impact on social programmes and the population in general¹⁶. All of this is contributing to the worsening of the humanitarian situation and the exodus of Venezuelans from the country.’¹⁷

3.2. Special Procedures of the Human Rights Council

19. The relationship between Venezuela’s hard induced economic crisis, humanitarian needs and the unilateral coercive measures that have been dictated by the United States and other countries within its sphere of influence has also been addressed by the Special Procedures of the United Nations Human Rights Council.

20. The Council’s Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas, visited Venezuela in August 2018. He reported that he made inquiries with the Government and the opposition about the impact of measures adopted by several States aimed directly and indirectly at affecting the functioning of the

¹⁶ Francisco Rodríguez, a renowned economist opposing the Constitutional government of Venezuela, also recognizes in an article, dated July 11, 2019, in the New York Times: “*The 2017 sanctions barred foreign partners from funding companies in the country’s oil sector and froze the refinancing of the country’s debt. My research shows that after the first round of economic sanctions, Venezuelan oil output suffered a collapse worse than that ever undergone by any oil-producing economy not facing a war or oil strike. The economy lost an estimated \$17 billion a year as a result. Operations that were not affected — like joint ventures with Chinese or Russian companies — saw production grow or stabilize even as the rest of the oil industry was collapsing. (...) Things will only get worse with this year’s oil embargo. Based on the historical experience of other countries that have faced similar situations (such as Iraq, Iran and Libya), the recent round of oil sanctions could cause an additional loss of \$10 billion a year for the already decimated oil industry — equivalent to more than two-thirds of the country’s imports last year.*” (Available in <https://www.nytimes.com/2019/07/10/opinion/venezuela-sanctions.html>).

¹⁷ Human Rights Council, 42nd Session, Statement by Michelle Bachelet, UN High Commissioner for Human Rights, 9 September 2019.

Venezuelan economy.¹⁸ The Independent Expert referred to ‘non-conventional economic wars’ waged against Venezuela, amongst other States, ‘in order to make their economies fail, facilitate regime change and impose a neo-liberal socioeconomic model’.¹⁹ The Independent Expert explained that ‘[w]hile arms sales embargoes may be justifiable against some countries, especially to facilitate dialogue and peacemaking, economic sanctions that hurt innocent populations contravene the spirit and letter of the Charter of the United Nations’.²⁰ The Independent Expert asserted that ‘economic sanctions demonstrably cause death, aggravate economic crises, disrupt the production and distribution of food and medicine, constitute a push factor generating emigration, and lead to violations of human rights. The refusal of Colombia to deliver anti-malaria medicine that had been ordered to combat an outbreak in November 2017, as well as the absence of condemnation from the international community, entails joint responsibility for the aggravation of the crisis.’²¹

21. The Independent Expert drew particular attention to the effects of sanctions imposed by the United States as well as unilateral measures by Canada and the European Union, saying these ‘directly and indirectly aggravated the shortages in medicines such as insulin and anti-retroviral drugs. To the extent that economic sanctions have caused delays in distribution and thus contributed to many deaths, sanctions contravene the human rights obligations of the countries imposing them.’²² He continued:

Modern-day economic sanctions and blockades are comparable with medieval sieges of towns with the intention of forcing them to surrender. Twenty-first century sanctions attempt to bring not just a town, but sovereign countries to their knees. A difference, perhaps, is that twenty-first century sanctions are accompanied by the manipulation of public opinion through ‘fake news’, aggressive public relations and a pseudo-human rights rhetoric so as to give the impression that a human rights ‘end’ justifies the criminal means. There is not only a horizontal juridical world order governed by the Charter of the United Nations and principles of sovereign equality, but also a vertical world order reflecting the hierarchy of a geopolitical system that links dominant States with the rest of the world according to military and economic power. It is the latter, geopolitical system that generates geopolitical crimes, hitherto in total impunity. It is reported that the United States is currently training foreign lawyers in how to draft legislation to impose further sanctions on the Bolivarian Republic of Venezuela in an effort to asphyxiate Venezuelan State institutions.²³

¹⁸ Report of the Independent Expert on the promotion of a democratic and equitable international order on his mission to the Bolivarian Republic of Venezuela and Ecuador, A/HRC/39/47/Add.1, para. 27.

¹⁹ *Ibid.*, Para. 29.

²⁰ *Ibid.*, para. 34.

²¹ *Ibid.*, para. 35 (internal references omitted).

²² *Ibid.*, para. 36.

²³ *Ibid.*, para. 37 (internal reference omitted).

22. The Independent Expert concluded his report on the situation in Venezuela by referring to ‘the lethal outcomes of economic wars and sanctions regimes’.²⁴

23. The negative human rights consequences of unilateral coercive measures in Venezuela have also been addressed by the Human Rights Council’s Special Rapporteur on the negative impact of unilateral coercive measures, Idriss Jazairy.

24. In January 2019, the Rapporteur reacted to the imposition of sanctions by the United States saying such measures could lead to starvation and medical shortages, and that they were not the answer to the crisis in Venezuela. The Special Rapporteur said that ‘[e]conomic sanctions are effectively compounding the grave crisis affecting the Venezuelan economy, adding to the damage caused by hyperinflation and the fall in oil prices. This is a time when compassion should be expressed for the long-suffering people of Venezuela by promoting, not curtailing, access to food and medicine.’²⁵ ‘I am especially concerned to hear reports that these sanctions are aimed at changing the government of Venezuela’, he said. ‘Coercion, whether military or economic, must never be used to seek a change in government in a sovereign state. The use of sanctions by outside powers to overthrow an elected government is in violation of all norms of international law. I call upon the international community to engage in constructive dialogue with Venezuela to find solutions to the very real challenges being faced.’²⁶

25. On July 15th, 2019, said Special Rapporteur presented to the United Nations General Assembly his Report on negative impact of unilateral coercive measures on the enjoyment of human rights (74-165) where he points out: (...) *the sanctions imposed on the Bolivarian Republic of Venezuela fit the definition of collective punishment of the civilian population, as described both in the Geneva Convention relating to the protection of victims of international armed conflicts of 1949 and the Hague Convention with Respect to the Laws and Customs of War on Land of 1899, to which the targeting State is a signatory, and violate other relevant rules of international law.*²⁷

²⁴ Ibid., para. 72.

²⁵ ‘Venezuela sanctions harm human rights of innocent people, UN expert warns’, Press release issued by the UN Office of the High Commissioner for Human Rights, 31 January 2019.

²⁶ Ibid.

²⁷ Seventy-fourth session, Item 72 (b) of the preliminary list, Pp. 10/15

3.3. Academic Expert Studies

26. The human suffering created by the unilateral coercive measures dictated by the United States government as well as others has been comprehensively studied in a report by Mark Weisbrot, who is Co-Director of the Washington-based Center for Economic and Policy Research (CEPR), and Jeffrey Sachs, Professor of Economics and Director of the Center for Sustainable Development at Columbia University.

27. The report, entitled *Economic Sanctions as Collective Punishment: The Case of Venezuela*,²⁸ focusses on sanctions imposed by the United States in August 2017 that restricted trading in Venezuelan bonds on United States markets and thereby hampered the Venezuelan government's ability to raise money.²⁹ When the August 2017 measures were imposed by the Trump Administration, the *New York Times* reported that the measures 'could increase the likelihood of a Venezuelan default on its debts at the end of the year', pointing out that 'stopped short of prohibiting imports of Venezuelan crude oil to American refineries, which would almost certainly be a crippling step'. The *New York Times* cited financial analysts who spoke of 'problems raising money to pay interest on its onerous debts while paying for food imports'.³⁰ The *New York Times* quoted White House Press Secretary Sarah Huckabee Sanders: 'These measures are carefully calibrated to deny the Maduro dictatorship a critical source of financing to maintain its illegitimate rule, protect the United States financial system from complicity in Venezuela's corruption and in the impoverishment of the Venezuelan people, and allow for humanitarian assistance.'³¹

28. According to Weisbrot and Sachs, '[i]t soon became clear that the sanctions imposed by this executive order — as well as other measures taken by the Trump administration — would have most of their impact not on the government but on the general population of Venezuela. The sanctions reduced the public's caloric intake, increased disease and mortality (for both adults and infants), and displaced millions of Venezuelans who fled the country as a

²⁸ Mark Weisbrot and Jeffrey Sachs, *Economic Sanctions as Collective Punishment: The Case of Venezuela*, Washington: Centre for Economic Policy and Research, April 2019.

²⁹ Executive Order 13808 of August 24, 2017, Imposing Additional Sanctions With Respect to the Situation in Venezuela, *Federal Register*, Vol. 82, No. 166, 29 August 2017.

³⁰ Clifford Kraus, 'White House Raises Pressure on Venezuela With New Financial Sanctions', *New York Times*, 25 August 2017.

³¹ *Ibid.*

result of the worsening economic depression and hyperinflation. The sanctions exacerbated Venezuela's economic crisis and made it nearly impossible to stabilize the economy, contributing further to excess deaths. All of these impacts disproportionately harmed the poorest and most vulnerable Venezuelans.³²

29. The Report by Weisbrot and Sachs explains that the coercive measures 'prohibited the Venezuelan government from borrowing in US financial markets. This prevented the government from restructuring its foreign debt, because any debt restructuring requires the issuance of new bonds in exchange for the existing debt. Thus, these sanctions prevented the economy from recovering from a deep recession which had already taken a large toll on the population, which along with the economy was more vulnerable to these sanctions and the ones that followed as a result of the economic crisis.'³³ The August 2017 sanctions had an enormous impact upon oil exports from Venezuela, drastically altering its ability to obtain foreign exchange that is necessary 'to import medicine, food, medical equipment, spare parts and equipment needed for electricity generation, water systems, or transportation, is received by the Venezuelan economy through the government's revenue from the export of oil. Thus, any sanctions that reduce export earnings, and therefore government revenue, thereby reduce the imports of these essential and, in many cases, life-saving goods.'³⁴

30. Even more severe and destructive sanctions were instituted in January 2019.³⁵ Subsequent recognition of a parallel government in Venezuela by the United States 'created a whole new set of financial and trade sanctions that are even more constricting than the executive orders themselves. Statements from the [Trump] administration indicated that the purpose of the sanctions was to provoke a military rebellion to topple the government'.³⁶

31. Moreover, President Trump successfully pressured other governments not to purchase oil from Venezuela. The Weisbrot and Sachs Report gives India as an example.³⁷ It cites an account published by Reuters dated 28 March 2019 that "[t]he United States has instructed

³² Mark Weisbrot and Jeffrey Sachs, *Economic Sanctions as Collective Punishment: The Case of Venezuela*, Washington: Centre for Economic Policy and Research, April 2019, p. 6.

³³ *Ibid.*, p. 1.

³⁴ *Ibid.*, p. 2.

³⁵ Executive Order 13857 of January 25, 2019, Taking Additional Steps To Address the National Emergency With Respect to Venezuela, *Federal Register*, Vol. 84, No. 20, 30 January 2019.

³⁶ Mark Weisbrot and Jeffrey Sachs, *Economic Sanctions as Collective Punishment: The Case of Venezuela*, Washington: Centre for Economic Policy and Research, April 2019, p. 6.

³⁷ *Ibid.*, p. 2.

oil trading houses and refiners around the world to further cut dealing with Venezuela or face sanctions themselves, even if the trades are not prohibited by published US sanctions...’ According to Weisbrot and Sachs, ‘[t]hese threats are effective because the US government can sanction foreign financial institutions who do not comply with its demands’.³⁸ Weisbrot and Sachs explain:

As a result of these and other efforts Venezuela’s oil production declined by 130,000 barrels per day from January to February. In the six months prior, it was declining by an average of 20,500 barrels per day. Then in March it fell another 289,000 barrels per day, for a total of 431,000 barrels per day. This is an economically devastating 36.4 percent plunge in oil production just since the January sanctions. This drop, if maintained over the next year, would cut another \$6.8 billion from Venezuela’s available foreign exchange earnings. This is about 21 percent of export earnings from 2018. However, oil export revenues in 2019 are projected to fall by a cataclysmic and unprecedented 67.2 percent from 2018, as a result of the impact of tightening sanctions. The January sanctions also froze many billions of dollars of Venezuelan assets that could have been sold in order to maintain essential and life-saving imports, or to stabilize the economy. These included most of the government’s \$9 billion in reserves that are in gold; trade credits worth an estimated \$3.4 billion; and CITGO, with estimated net assets of \$5.2 billion.³⁹

32. According to Weisbrot and Sachs, the unilateral coercive measures deprive Venezuela of many billions of dollars of foreign exchange that are necessary for imports of medicine, food, and other essential and life-saving goods. They impact upon shortages of electricity by limiting the country’s access to diesel fuel, necessary for backup thermal generators. The humanitarian impact of the unilateral coercive measures is devastating. According to data quoted by Weisbrot and Sachs there was a 31 percent increase in general mortality from 2017 to 2018. According to Weisbrot and Sachs, this would imply an increase of more than 40,000 deaths.⁴⁰

More than 300,000 people were estimated to be at risk because of lack of access to medicines or treatment. This includes an estimated 80,000 people with HIV who have not had antiretroviral treatment since 2017, 16,000 people who need dialysis, 16,000 people with cancer, and 4 million with diabetes and hypertension (many of whom cannot obtain insulin or cardiovascular medicine).

These numbers by themselves virtually guarantee that the current sanctions, which are much more severe than those implemented before this year, are a death sentence for tens of thousands of Venezuelans. This is especially true if the projected 67 percent drop in oil revenue materializes in 2019.

The accelerating economic collapse that current sanctions have locked in assure further impacts on health, and premature deaths. For example, the increasing collapse of export revenue — and therefore imports — has also created massive public health problems in the areas of water and sanitation. The electricity crisis has also impacted hospitals and health care.

³⁸ Ibid., p. 3.

³⁹ Ibid., p. 3.

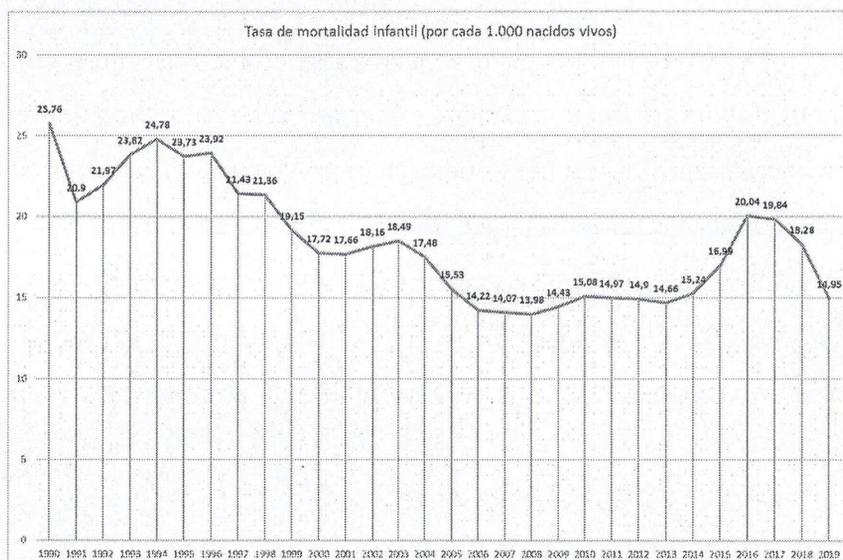
⁴⁰ Ibid., p. 15

Food imports have dropped sharply along with overall imports; in 2018 they were estimated at just \$2.46 billion, as compared with \$11.2 billion in 2013. They can be expected to plummet further in 2019, along with imports generally, contributing to malnutrition and stunting in children.⁴¹

3.4. Impact Upon Human Rights

33. The unilateral coercive measures are responsible for serious impacts upon the fundamental human rights of the civilian population of Venezuela. These include consequences with respect to the rights of the child, the right to food, the right to health, the right to education and the right to water.

34. As a result of the unilateral coercive measures the mortality rate of children grew from 14.66 deaths per 100,000 live births in 2013 to 20.04 deaths per 100,000 live births in 2016.

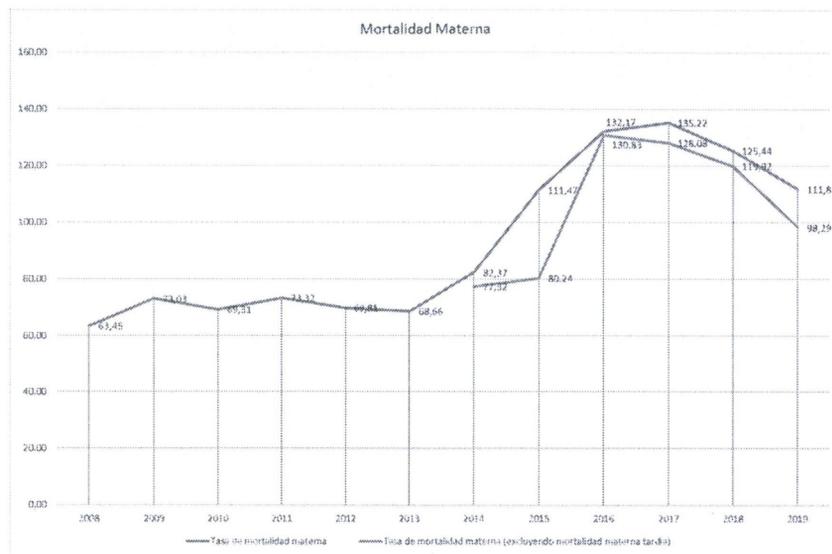


35. Additionally, the sanctions have violated the right to health not only of the children of Venezuela but also the civilian population generally. Deaths of kidney patients have been recorded due to shortages in medicines and supplies necessary for dialysis since 2017. Due to the shortage of supplies, the only two centres in the country with the capacity to conduct bone marrow transplants are facing serious operational problems. In Italy, patients assisted under the PDVSA bone marrow transplant programme awaited their surgeries due to the arbitrary freezing of funds as a result of the application of unilateral coercive measures. The

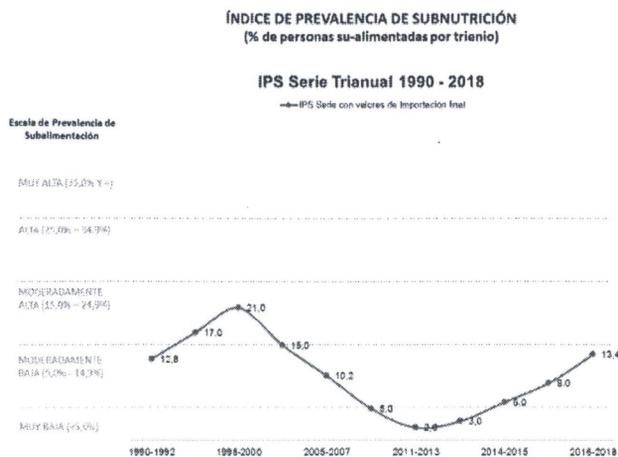
⁴¹ Ibid., p. 4.

same situation is faced by children who were under medical care in Argentina for liver diseases through a PDVSA health care programme.

36. The maternal mortality rate rose likewise from 68.66 in 2013 to 135.22 in 2017.



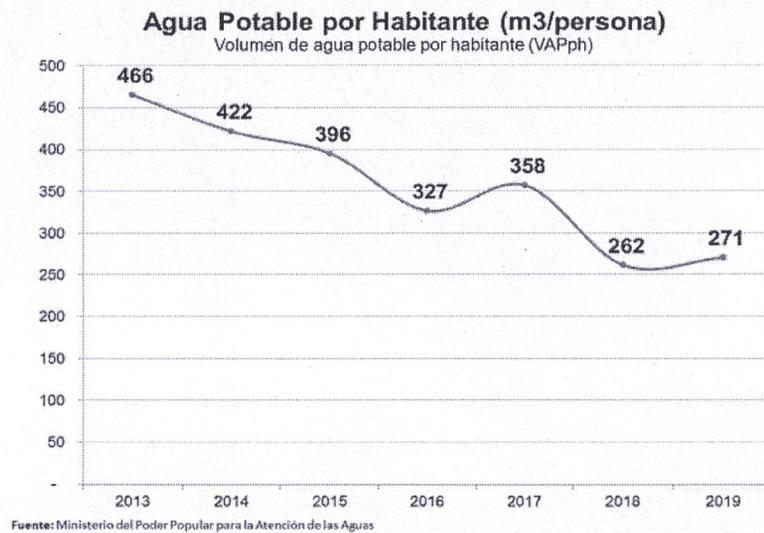
37. The unilateral coercive measures have successfully and directly impacted the right to food of the people in Venezuela. Noticeably, as part of the aggression, the undernourishment prevalence index is highly sensitive to imports and to the domestic production of food. Even though the unilateral coercive measures failed to increase the indicator around 40 points, the critical condition level, the preceding value shifted from a low level to a moderately low level, rising from 2.0% in 2013 to 13.4% in 2018.



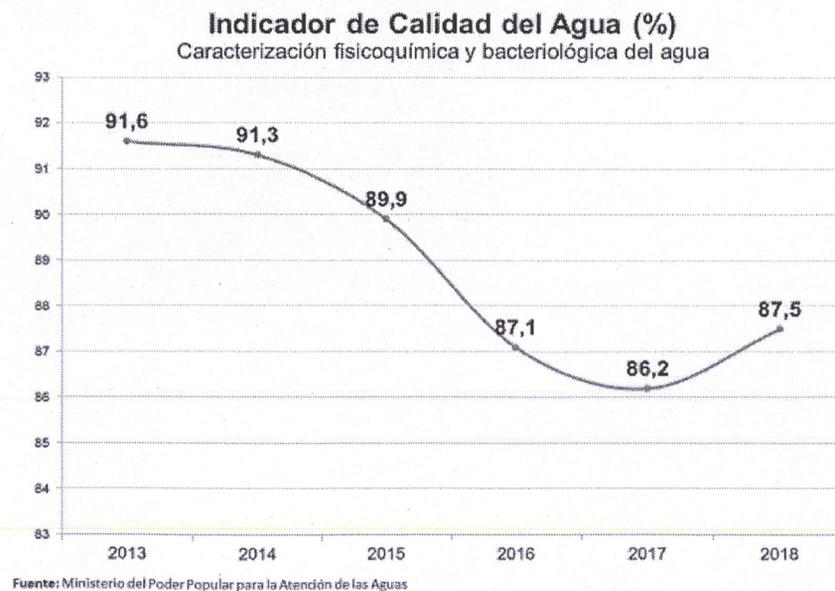
38. The economic aggression has negatively impacted the availability of spare parts and procurement for utilities as well as it has increased their price as a result of the economic persecution. Further, attacks have been perpetrated on the national power grid which have impacted the human rights of the people, thus requiring additional investments by the Executive Branch of Government.

39. As a result, the volume of water per inhabitant dropped from 466 m³ in 2013 to 263 in 2018. The water quality index shrunk from 91.6 in 2013 to 86.2 in 2017.

Drink Waer per Inhabitant (m³/person)



Water Quality Index (%)



4. Illegality of Unilateral Coercive Measures

40. The preamble to the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations ('Friendly Relations Declaration') '[r]ecall[s] the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State'.⁴² The Vienna Declaration and Programme of Action of 1993 calls upon all States 'to refrain from any unilateral measures not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among states and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights and in international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing and the necessary social services'.⁴³

41. In principle, for sanctions to be lawful they must be imposed by a competent international organ, and they must be justified as a response to a breach of an international obligation having serious consequences for the international community as a whole.⁴⁴ The only international organ authorised to impose sanctions by the Charter of the United Nations is the Security Council.⁴⁵ Of course, even sanctions that are lawfully imposed by the Security Council may have devastating impacts upon the protection of human rights. The unilateral coercive measures targeted at the destruction of the Venezuelan economy have not been adopted or approved by the United Nations Security Council.

42. A report of the Human Rights Council Advisory Committee has proposed a working definition of the term 'unilateral coercive measures': 'the use of economic, trade or other measures taken by a State, group of States or international organisations acting autonomously to compel a change of policy of another State or to pressure individuals, groups or entities in

⁴² Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, UN Doc. A/RES/2625 (XXV), Annex, PP 9.

⁴³ A/CONF.157/23, para. 31.

⁴⁴ Alain Pellet and Alina Miron, 'Sanctions', in Rüdiger Wolfram, ed., *The Max Encyclopedia of Public International Law*, Vol. IX, Oxford: Oxford University Press, 2012, pp. 1-15.

⁴⁵ Charter of the United Nations, art. 41.

targeted states to influence a course of action without the authorisation of the Security Council'.⁴⁶

43. Unilateral coercive measures have been frequently condemned by the United Nations General Assembly. Most recently, in 2017, a resolution of the General Assembly affirmed that 'unilateral coercive measures and legislation are contrary to international law, international humanitarian law, the Charter of the United Nations and the norms and principles governing peaceful relations among States'.⁴⁷ The General Assembly resolution condemned the imposition and enforcement of such measures, describing them as 'tools for political or economic pressure against any country, in particular against developing countries, adopted with a view to preventing those countries from exercising their right to decide, of their own free will, their own political, economic and social systems, and because of the negative effects of those measures on the realization of all the human rights of vast sectors of their populations, in particular children, women, the elderly and persons with disabilities'.⁴⁸ The General Assembly affirmed that 'essential goods such as food and medicines should not be used as tools for political coercion and that under no circumstances should people be deprived of their own means of subsistence and development'.⁴⁹

44. The devastating humanitarian consequences of unilateral coercive measures have long been a concern of international human rights law. On 3 October 2014, the United Nations Human Rights Council adopted a resolution condemning unilateral coercive measures. The preamble of the resolution affirmed that 'unilateral coercive measures and legislation are contrary to international law, international humanitarian law, the Charter and the norms and principles governing peaceful relations among States'.⁵⁰ The Council reaffirmed that 'no State may use or encourage the use of any type of measure, including but not limited to economic or political measures, to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any

⁴⁶ Research-based progress report of the Human Rights Council Advisory Committee containing recommendations on mechanisms to assess the negative impact of unilateral coercive measures on the enjoyment of human rights and to promote accountability, UN Doc. a/ HRC/28/74, para. 9.

⁴⁷ Human rights and unilateral coercive measures, A/RES/71/193, PP4. For previous resolutions to the same effect, see A/RES/70/184 Human Rights Council decision 18/120 of 30 September 2011 and resolutions 24/14 of 27 September 2013, 27/21 of 26 September 2014 and 30/2 of 1 October 2015

⁴⁸ Human rights and unilateral coercive measures, A/RES/71/193, OP 6.

⁴⁹ Ibid., OP 8.

⁵⁰ Human rights and unilateral coercive measures, A/HRC/RES/27/21, PP 4. See also Human rights and unilateral coercive measures, A/HRC/RES/36/10; Human Rights Council decision 18/120 of 30 September 2011; A/HRC/RES/24/14; A/HRC/RES/30/2.

kind'.⁵¹ Moreover, 'unilateral coercive measures in the form of economic sanctions can have far-reaching implications for the human rights of the general population of targeted States, disproportionately affecting the poor and the most vulnerable classes'.⁵²

45. Special Rapporteur Idriss Jazairy has pointed out in relation to the unilateral coercive measures as follows:

"(...) comprehensive unilateral economic sanctions regimes which are intended to apply extraterritorially, that is, to coerce third parties not involved in the dispute to refrain from having economic or financial dealings with the targeted State (so-called "secondary sanctions"), and the effects of which are almost equivalent to those of a blockade on a foreign country, obviously qualify as economic warfare (A/HRC/39/54, paras. 24–29).¹ In connection with that argument, it is worth noting that in recent months "economic warfare" has been used increasingly, in different forms, sometimes arguably more benign than actual, and labelled as "trade war", even against commercial partners and allies of the targeting State. It may be that one of the factors driving such renewed large -scale recourse to economic coercion is the assumption that "trade wars are good and easy to win"⁵³

46. The Human Rights Council declared that it was '[d]eeply disturbed by 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 that it was '[a]larmed by 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'.⁵⁴

47. At the request of the Human Rights Council, a study of unilateral coercive measures was prepared by the Advisory Committee, which is its principal expert group. In a report issued in 2015, the Advisory Committee wrote that '[t]here is general consensus that unilateral coercive measures, particularly those that are comprehensive in nature and manifested in the form of trade embargoes and restrictions on financial and investments flows between sender and target States, may have a serious impact on the enjoyment of human rights by the civilian population in targeted and non-targeted States alike. This is so because economic sanctions in general, including unilateral coercive measures, irrespective of their declared intent (such as preventing gross violations of human rights in targeted States), usually translate into a severe impact on the population at large, and in particular vulnerable

⁵¹ Human rights and unilateral coercive measures, A/HRC/RES/27/21, PP 7.

⁵² Ibid., PP 8.

⁵³ Negative impact of unilateral coercive measures on the enjoyment of human rights, Seventy-fourth session, Item 72 (b) of the preliminary list, A/74/165. Pag 5/15.

⁵⁴ Human rights and unilateral coercive measures, A/HRC/RES/27/21, PP 15-16.

groups in the society who become the true victims of such sanction rather than the States or Governments they are supposed to target'.⁵⁵

48. Special Rapporteur Idriss Jazairy notes in his report to the UN General Assembly as follows:

15. From a human rights perspective, economic sanctions having practical effects closely comparable to those of a wartime blockade raise a number of concerns. These may entail restrictions on the enjoyment by the targeted population of a range of human rights, including the right to food, health and freedom of movement, and on economic and social rights in general (A/71/364, para. 28, and A/HRC/31/44, para. 4).⁵⁶

49. One of the most authoritative studies of the matter was undertaken in 2000 by Prof. Marc Bossuyt for the United Nations Sub-Commission on the Promotion and Protection of Human Rights. According to Marc Bossuyt, '[t]he most important implication of international law, especially human rights and humanitarian law, for sanctions is that the right to impose sanctions is not unlimited'.⁵⁷ Prof. Bossuyt's report placed great reliance on Article 1 of the Charter of the United Nations, observing that sanctions or other measures undertaken to maintain international peace and security must be 'effective' and must be 'in conformity with the principles of justice and international law'. Furthermore, according to Prof. Bossuyt, '[t]he United Nations' purpose of promoting and encouraging respect for human rights set out in Article 1, paragraph 3, necessarily limits sanctions... Sanctions, therefore, must not result in undue hardships for the people of a country'.⁵⁸ According to Prof. Bossuyt, sanctions must not be unjust and that they should not 'violate principles of international law stemming from sources "outside" the Charter'.⁵⁹ Such sources include human rights instruments such as the Universal Declaration of Human Rights and treaties that may have been ratified by the States concerned.⁶⁰

⁵⁵ Research-based progress report of the Human Rights Council Advisory Committee containing recommendations on mechanisms to assess the negative impact of unilateral coercive measures on the enjoyment of human rights and to promote accountability, UN Doc. a/HRC/28/74, para. 15.

⁵⁶ Negative impact of unilateral coercive measures on the enjoyment of human rights, Seventy-fourth session, Item 72 (b) of the preliminary list, A/74/165. Pag 7/15.

⁵⁷ The adverse consequences of economic sanctions on the enjoyment of human rights Working paper prepared by Mr. Marc Bossuyt, UN Doc. E/CN.4/Sub.2/2000/33, para. 18.

⁵⁸ *Ibid.*, para. 26.

⁵⁹ *Ibid.*, para. 24.

⁶⁰ *Ibid.*, para. 26.

50. It is often, perhaps even generally, the case that sanctions are in fact directed at the people of a country rather than at the State or the Government as such. According to Marc Bossuyt, '[t]he "theory" behind economic sanctions is that economic pressure on civilians will translate into pressure on the Government for change. This "theory" is bankrupt both legally and practically, as more and more evidence testifies to the inefficacy of comprehensive economic sanctions as a coercive tool. The traditional calculation of balancing civilian suffering against the desired political effects is giving way to the realisation that the efficacy of a sanctions regime is in inverse proportion to its impact on civilians.'⁶¹

51. Pointing to the Bossuyt study and to other materials prepared within the United Nations human rights system, the Advisory Committee of the Human Rights Council said '[t]hese studies clearly indicated the likely and actual negative impact of unilateral coercive measures on the civilian population, particularly on vulnerable groups, including women, children, the infirm and older persons, as well as the poor, caused by the deprivation of access to basic services, such as life-saving equipment and medication, food, educational equipment and the loss of jobs. They also pointed out that long-term unilateral coercive measures have a more severe negative impact on the economic, social and cultural rights of the affected population enshrined in the core human rights instruments, such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.'⁶²

52. That unilateral coercive measures are *intended* to have impacts upon individuals and groups within Venezuela, and thereby *coerce* political changes within the country is not only self-evident but it is also quite openly acknowledged by the United States. When it announces unilateral coercive measures, the United States Government explains that 'sanctions are intended to bring about a positive change of behaviour'. In the case of measures directed against individuals, the United States government has said that such coercive measures may be removed with respect to persons 'who take concrete and meaningful actions to restore democratic order, refuse to take part in human rights abuses, speak out against abuses committed by the illegitimate former Maduro regime [sic], and combat corruption in

⁶¹ Ibid., para. 48.

⁶² See A/HRC/27/32.

Venezuela'.⁶³ In the case of measures that impact upon the civilian population as a whole, the message is clear. If it denies support to the current Government, the civilian population will be rewarded with food, medicine and higher wages. On the other hand, should it support the Government, it will be punished.

5. Territorial Jurisdiction under the Rome Statute

53. In the absence of a Security Council resolution or declaration pursuant to Article 12(3) of the Statute, the exercise of jurisdiction of the Court is governed by Article 12(2). The unilateral coercive measures adopted by the Government of the United States of America, and related measures adopted by institutions and agencies under its influence or control, appear to have been imposed outside the territory of Venezuela but with the evident purpose of having effects within the territory of Venezuela. There can be no doubt that the unilateral coercive measures have been intended to produce, and have in fact produced, their effects upon the territory of Venezuela. They cannot have had any other purpose. Obviously, this discussion of territorial jurisdiction is unnecessary to the extent that unilateral coercive measures directed at Venezuela's people and its territory have been taken on the territory of States Parties to the Rome Statute or by their nationals. This is the case for some of the unilateral coercive measures, but not the most important ones, as they are the work of the Government of the United States.

54. The Rome Statute authorizes the Court to exercise jurisdiction over acts perpetrated on the territory of a State party. The Rome Statute does not explicitly address the form of territorial jurisdiction commonly referred to as 'effects jurisdiction'. To the argument that jurisdiction based upon effects ought not to be viewed as a form of territorial jurisdiction at all, the United States Court of Appeals (DC Circuit) has provided the following answer: 'The territorial effects doctrine is not an extraterritorial assertion of jurisdiction. Jurisdiction exists only when significant effects were intended within the prescribing territory.'⁶⁴

55. Whether the Court could exercise jurisdiction based upon territory because of acts perpetrated outside the territory of a State party (and by non-nationals of a State party) to the extent that such acts were directed at producing effects on the State party and did in fact do

⁶³ Treasury Further Targets Entities and Vessels Moving Venezuelan Oil to Cuba, 24 September 2019.

⁶⁴ *Laker Airways Ltd. v. Sabena*, 731 F.2d 909, 923 (DC Circuit 1984).

so does not appear to have been addressed during the drafting of the Rome Statute, at least not according to the published record. The issue has rarely emerged since the activities of the Court began although this can be explained by the focus of the Court on situations of non-international armed conflict and on election-related violence, where only the acts of the State party or those of non-State actors within its territory were concerned.

56. In the report on the preliminary examination of the situation in the Republic of Korea, the Office of the Prosecutor considered circumstances where acts perpetrated outside the territory of the Republic of Korea that were directed at its territory could fall within the jurisdiction of the Court. These acts consisted of the sinking of a South Korean warship in the Yellow Sea and the shelling of Yeonpyeong Island, in 2010. The acts were perpetrated by the armed forces of the Democratic People's Republic of Korea. The attack on Yeonpyeong Island, which is the sovereign territory of the Republic of Korea, consisted of bombardment by artillery. It resulted in the killing of four people and the injury of 66 people, many of them civilians, and the destruction of military and civilian facilities.⁶⁵ In its report on the preliminary examination, the Office of the Prosecutor wrote: 'The attack on Yeonpyeong Island was launched from the Democratic People's Republic of Korea and it is therefore likely that the perpetrators were DPRK nationals. The DPRK is not a state party. However, because the territorial requirement has been met, the Court may exercise its jurisdiction over the perpetrators.'⁶⁶ The Office explained that 'the conduct of firing shells onto Yeonpyeong Island is conduct occurring on the territory of a State Party. It is not possible to separate the conduct of firing from the conduct of hitting the targeted area; this would create an artificial distinction when the acts are one and the same. Therefore, the territorial requirement of Article 12(2)(a) is satisfied.'⁶⁷ In support of its position on territorial jurisdiction, the Office of the Prosecutor provided the following reference: 'See also Harvard Research in International Law, 'Draft Convention on Jurisdiction with Respect to Crime,' American Journal of International Law, vol. 29 (Supp. 1935) 435, at 445: "A crime is committed "in whole within the territory when every essential constituent element is consummated within the territory"; it is committed "in part within the territory" when any essential constituent element is consummated there. If it is committed either "in whole or in part" within the

⁶⁵ Office of the Prosecutor, Situation in the Republic of Korea Article 5 Report, June 2014, paras. 6, 33 and 34.

⁶⁶ Office of the Prosecutor, Situation in the Republic of Korea Article 5 Report, June 2014, para. 8.

⁶⁷ Office of the Prosecutor, Situation in the Republic of Korea Article 5 Report, June 2014, para. 39 (internal reference omitted).

territory, there is territorial jurisdiction”; and Code de procedure pénale (France) Article 693 which grants jurisdiction over the entire offence if one of the elements occurs in France.’⁶⁸

57. The issue returned to the Office of the Prosecutor in the application concerning the situation of the Rohingya in Myanmar and in Bangladesh. There the Office referred to the notion of ‘objective territorial jurisdiction’. The application made a distinction between ‘objective territorial jurisdiction’ and ‘effects jurisdiction’, although without suggesting that it did not consider the latter to be comprised within the scope of Article 12(2). The request stated: ‘It is well known that, as a matter of public international law, States may exercise jurisdiction based on various principles, including territoriality (in various forms), personality (active and passive) and, according to some, the ‘effects’ doctrine. This request is concerned only with the principle of territoriality, and does not rely on the “effects” doctrine.’⁶⁹

58. The Pre-Trial Chamber accepted the reasoning of the Office of the Prosecutor with regard to jurisdiction but may also have gone further, at least implicitly. Without expressly describing a basis for jurisdiction as ‘effects’, a Pre-Trial Chamber appears to have contemplated such circumstances in its opinion on Myanmar issued at the request of the Prosecutor. In paragraph 77, it explained that the Court might prosecute the crime of persecution given that ‘following their deportation, members of the Rohingya people allegedly live in appalling conditions in Bangladesh and that the authorities of Myanmar supposedly impede their return to Myanmar’. In other words, acts perpetrated in Myanmar, namely the refusal of the authorities to permit the return of Rohingya refugees, have allegedly produced effects on the territory of Bangladesh that may be characterized as persecution. It spoke of ‘appalling conditions’ and ‘deplorable conditions’ experienced by Rohingya refugees inside Bangladesh, attributing this to the acts of the authorities of Myanmar rather than those of Bangladesh.⁷⁰ The Court can exercise jurisdiction over the territory of Bangladesh, by virtue of its ratification of the Rome Statute, but not over the territory of Myanmar. In other words, the Pre-Trial Chamber appears to have contemplated a situation of ‘effects jurisdiction’.

⁶⁸ Office of the Prosecutor, Situation in the Republic of Korea Article 5 Report, June 2014, para. 39, fn. 17.

⁶⁹ *Application under Regulation 46(3)* (ICC-RoC46(3)-01/18), Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute, 9 April 2018, para. 31.

⁷⁰ *Request under Regulation 46(3) of the Regulations of the Court* (ICC-RoC46(3)-01/18), Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”, 6 September 2018, para. 77.

59. In the discussion of territorial jurisdiction in its application concerning Myanmar and Bangladesh, the Office of the Prosecutor placed considerable emphasis on evolving State practice. It gave several examples of national legislation where so-called objective territorial jurisdiction is recognised.⁷¹ Some of these included national legislation providing for ‘effects’ jurisdiction. The application argued that some States ‘may be moving away from formalistic analyses of where particular legal elements of a crime took place, and instead looking more broadly at the nature, causes, and consequences of the crime on its facts to determine if exercising jurisdiction is appropriate’.⁷² The application was concerned with the very specific case of deportation, but the reasoning employed by the Office of the Prosecutor was of more general import.

60. As in the case of objective territorial jurisdiction, considerable evidence can be found of an emerging State practice favouring exercise of jurisdiction where the effects are felt on the territory of a State. Venezuela is one of a growing number of States to incorporate ‘effects’ jurisdiction within its criminal justice system.⁷³ In the *Arrest Warrant* case, judges Higgins, Kooijmans and Buergenthal of the International Court of Justice spoke favourable of the ‘contemporary trend’ towards the adoption of ‘effects’ jurisdiction.⁷⁴ In the decision on authorization to conduct an investigation into the situation in Myanmar/Bangladesh, the Pre-trial Chamber wrote:

Customary international law does not prevent States from asserting jurisdiction over acts that took place outside their territory on the basis of the territoriality principle. A brief survey of State practice reveals that States have developed different concepts for a variety of situations that enables domestic prosecuting authorities to assert territorial jurisdiction in transboundary criminal matters, such as:

...

(v) the effects doctrine, according to which the State may assert territorial jurisdiction if the crime takes place outside the State territory but produces effects within the territory of the State.⁷⁵

⁷¹ *Application under Regulation 46(3)* (ICC-RoC46(3)-01/18), Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute, 9 April 2018, para. 40.

⁷² *Ibid.*, para. 42.

⁷³ Organic Procedural Criminal Code, Art. 58, last paragraph. Effect Jurisdiction.

⁷⁴ *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, *I.C.J. Reports* 2002, p. 3, Separate Opinion of Judges Higgins, Kooijmans and Buergenthal, para. 47.

⁷⁵ *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar*, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, 14 November 2019, para. 57. This is accompanied by the following reference: ‘The origins of this concept are reported to lie in the case of *United States v Aluminium Company of America (ALCOA) et al*, 148 F.2d 416 (2nd Cir., 12 March 1945). It is noted however that the concept was developed mainly in the field of antitrust and competition law.’

61. The application of the ‘effects’ approach to territorial jurisdiction in anti-trust prosecutions has been developed in some detail in the academic literature, notably in the study by Michail Vagias. His book *The Territorial Jurisdiction of the International Criminal Court* devotes a chapter to ‘The effects doctrine’.⁷⁶ In the conclusion of his chapter, Vagias notes that although an understanding of territorial jurisdiction that includes effects ‘may be historically controversial’, it can ‘no longer be seen as a call for judicial activism. It is but one of many extensive interpretations of territorial jurisdiction adopted in State practice...’⁷⁷ In support of the growing recognition of effects jurisdiction, Vagias examines prosecutions under anti-trust legislation, beginning with the landmark decision of the American courts in the *Nippon Paper* case. Discussing a lack of precedent for effects jurisdiction in criminal anti-trust cases, the Court of Appeals for the First Circuit said ‘there is a first time for everything’.⁷⁸ The Court cited an old ruling by Oliver Wendell Holmes, speaking for the entire US Supreme Court: ‘Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a State in punishing the cause of the harm as if he had been present at the effect, if the State should succeed in getting him within its power.’⁷⁹ The Court of Appeals said that ‘[i]t is not much of a stretch to apply this same principle internationally, especially in a shrinking world’.⁸⁰

62. Vagias points out that although the *Nippon Paper* ruling provoked controversy, it was ‘widely considered as an unsurprising development, given the internationalisation of business and the development of US antitrust law’.⁸¹ He concludes that there is ‘certain support’ for the effects doctrine, relying upon another learned commentator in stating that ‘[t]he anti-cartel laws of most countries have jurisdiction to prosecute foreign defendants, usually when it can be demonstrated that cartel activity taking place in one jurisdiction has had an effect on the market of another’.⁸² The attention Vagias gives to anti-trust prosecutions, where the central issue is the impact of acts perpetrated in one State upon the integrity of the economy

⁷⁶ Michail Vagias, *The Territorial Jurisdiction of the International Criminal Court*, Cambridge: Cambridge University Press, 2014, pp. 162-208.

⁷⁷ *Ibid.*, p. 207.

⁷⁸ *United States v. Nippon Paper Industries Co. Ltd.*, 109 F.3d 1, 6 (1997).

⁷⁹ *Strassheim v. Daily*, 221 US 280, 285, 31 S.Ct. 558, 560, 55 L.Ed. 735 (1911) (Holmes, J.)

⁸⁰ *United States v. Nippon Paper Industries Co. Ltd.*, 109 F.3d 1, 6 (1997).

⁸¹ Michail Vagias, *The Territorial Jurisdiction of the International Criminal Court*, Cambridge: Cambridge University Press, 2014, p. 180.

⁸² *Ibid.*, p. 181, citing Michael O’Kane, *The Law of Criminal Cartels: Practice and Procedure*, Oxford: Oxford University Press, 2009, p. 288.

of another State, seems particularly *a propos* in the present case, which concerns deliberate attempts to undermine and destroy the economy of Venezuela.

63. Many examples of ‘effects’ present themselves in the application of the ‘conduct of hostilities’ provisions of Article 8(2)(b). For example, some notion of territorial jurisdiction by effects is essential for the proper application of Article 8(2)(b)(i), ‘Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities’. Otherwise, bombardment of civilian objects would entirely escape the Court’s jurisdiction if undertaken from ships or aircraft outside the territorial limits of the State against which the attack is directed. This would seem to be the understanding of the Office of the Prosecutor, given its comments on jurisdiction in the report on the *Situation in the Republic of Korea*, cited above. The war crime of ‘Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions’, set out in 8(2)(b)(xxv), could be perpetrated entirely from outside the territorial boundaries of the State against which it is directed.

64. Technological developments whose impact may not yet be fully understood suggest that an understanding of territorial jurisdiction and effects will continue to evolve. An example is provided by so-called cyberwarfare. The prohibition on the use of force to settle international disputes has not prevented some States from undertaking measures whose aggressive intent is the same even if the measures taken do not involve resort to arms in the traditional sense, doing indirectly what the law prevents them from doing directly.

65. Viewed from the perspective of Article 8 of the Rome Statute, it seems evident that acts perpetrated on the territory of one State destined to destroy life or property on the territory of another State, such as cyberwarfare, will constitute an important component of international armed conflict. An enormous limitation would be imposed upon the scope of Article 8 were it to exclude from the jurisdiction of the Court acts that are initiated or perpetrated in the physical sense on the territory of a non-party State by non-nationals of a State party even if they are intended to produce their effects and do in fact produce them on the territory of a State party. Growing attention is being given to cyberattacks by experts in international humanitarian law,⁸³ although this has generally been limited to acts perpetrated in association with the law of armed conflict. Nevertheless, the academic literature about cyberattacks has distinguished between traditional armed conflict and other circumstances, with international humanitarian law or the law of armed conflict only applying to the former. It has acknowledged the possibility of drastic disruption of the civilian infrastructure that may occur in peacetime

⁸³ Michael N. Schmitt, *Tallinn Manual on the International Law Applicable to Cyber Warfare*, New York: Cambridge University Press, 2013.

as well as during armed conflict.⁸⁴

66. The very nature of cyberspace seems to elude traditional concepts of territorial jurisdiction. If artillery bombardment of a Korean island from the territory of a non-party State falls within the jurisdiction of the Court, why shouldn't a cyberattack directed at the telecommunications or power infrastructure of a State not be treated in the same way? An approach rooted in effects jurisdiction will be imperative if an effective approach to responsibility for unlawful acts of cyberwarfare is to be developed. What about crimes of incitement? Can perpetrators who incite racist hate crimes and even genocide enjoy immunity from the jurisdiction of the International Criminal Court to the extent that they disseminate their materials from a platform that is outside the territorial jurisdiction of a State party, even to the extent that their acts are plainly directed to the territory of a State party?

67. Similar issues apply in the case of genocide and crimes against humanity, even if these two categories of crimes have traditionally been largely focused upon the acts of a State directed against its own civilian population and on its own territory, conducted in peacetime and without the involvement or intervention of a third State. But why couldn't the punishable act of direct and public incitement to commit genocide set out in Art. 25(3)(e) be perpetrated on the territory of a third State yet with the intent of its effects being felt entirely on the territory of another State? The same can be said of 'Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part', an act that in some circumstances would be analogous to the war crime of starvation. The international dimension of genocide was highlighted by the International Court of Justice when it ruled that Serbia had breached its obligation to prevent genocide in Bosnia and Herzegovina.⁸⁵ Of course, the issue there was not the scope of territorial jurisdiction, but the case illustrates the significance of acts (and omissions) by one State that may produce effects on the territory of another State in the context of international atrocity crimes. The drafters of the Rome Statute decided not to entrench the principle of universality of jurisdiction. Yet the decision to opt for a narrower jurisdictional regime was a political compromise rather than any rejection of the principle. The crimes within the jurisdiction of the International Criminal Court are crimes of universal concern. They are often associated with the *erga omnes* and *jus*

⁸⁴ C. Droegge, 'Get off my cloud: cyber warfare, international humanitarian law, and the protection of civilians', (2012) 94 *International Review of the Red Cross* 533, pp. 538-539.

⁸⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, para. 438.

cogens principles. This also compels a broad understanding of territorial jurisdiction, one that can assist the Court in promoting its goals. It should be recalled that the US Court of Appeals, in the *Nissan Paper* judgment, justified its resort to effects jurisdiction on the basis of a ‘shrinking world’.⁸⁶

68. Recently, a Pre-Trial Chamber of the International Criminal Court referred to universal jurisdiction in its understanding of a broad scope of territorial jurisdiction. Responding to the Prosecutor’s request, it ‘highlighted’ the fact that ‘Myanmar is party to different international treaties that require it to take measures to establish its jurisdiction over certain offences, *inter alia*, in cases where the alleged offender is present in its territory, irrespective of the location of the commission of the alleged offence or the nationality of the alleged offender’.⁸⁷ Significantly, the Chamber was not attempting to premise jurisdiction on the principle of universality. Rather, it was justifying an extensive approach to territorial jurisdiction that was inspired and underpinned by the concept of universal jurisdiction. The same reasoning should equally to adoption of an effects-based understanding of territorial jurisdiction.

69. For all of these reasons, it would be devastating were the Office of the Prosecutor to decline to conduct a preliminary examination into the situation of unilateral coercive measures on the basis of a lack of territorial jurisdiction. This would entrench a narrow view of jurisdiction with unforeseen negative impacts upon the Court over the long term. The *Situation in Venezuela* provides an excellent illustration of the need to apply an effects-based analysis of territorial jurisdiction because of the unquestionable role of the unilateral coercive measures in provoking and aggravating the country’s economic crisis. Absent consideration of this element, any consideration of the application of the Rome Statute will inevitably be one-sided, distorted and inconsistent with the principles of impartial justice that underpin the legitimacy of the International Criminal Court.

6. Crimes Against Humanity

⁸⁶ *United States v. Nippon Paper Industries Co. Ltd.*, 109 F.3d 1, 6 (1997).

⁸⁷ *Request under Regulation 46(3) of the Regulations of the Court* (ICC-RoC46(3)-01/18), Decision on the ‘Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute’, 6 September 2018, para. 67.

70. The International Criminal Court has yet to address a case where crimes against humanity were alleged to have been committed by persons associated with the policy of one State that were perpetrated on the territory of another State and against its civilian population. The absence of recent precedent on this issue can be explained by the focus on non-international armed conflict by international criminal law tribunals in the modern period. The post-Second World War prosecutions addressed crimes against humanity perpetrated outside the territories of Germany and Japan, but these were occupied territories. But there is no reason why the acts of a third State directed against the civilian population of another State that it does not actually occupy or directly control cannot constitute crimes against humanity. Indeed, it would seem that the cross-border dimension strengthens and reinforces the claim that certain acts constitute crimes against humanity. Egon Schwelb, one of the first commentators on the subject of crimes against humanity, wrote: ‘A crime against humanity is an offence against certain general principles of law which, in certain circumstances, become the concern of the international community, *namely if it has repercussions reaching across international frontiers...*’⁸⁸ In his separate opinion in the *Kenya authorisation decision*, Judge Hans-Peter Kaul cited German language sources that highlight this international dimension of crimes against humanity. He referred to Ernst-Joachim Lampe who considered that ‘the rationale of crimes against humanity’ comprised the protection of human rights of the individual ‘(1) in the protection of human rights of the individual because the person belongs to humanity and therefore possesses dignity and (2) the procedural guarantee of their protection against State arbitrariness *beyond national boundaries*’.⁸⁹ He also referred to G. Manske who argued that ‘the occurrence of crimes against humanity calls into question the existence of the international legal order, of which the individual is part. In targeting a civilian, the perpetrator targets the entire group the victim civilian is representing. Targeting the entire group means to abrogate the rights of such group in its entirety *which may transcend State boundaries*.’⁹⁰

⁸⁸ Egon Schwelb, ‘Crimes Against Humanity’, (1946) 23 *British Yearbook of International Law* 178, at p. 195 (emphasis added).

⁸⁹ Ernst-Joachim Lampe, ‘Verbrechen gegen die Menschlichkeit’, in H.J. Hirsch, J. Wolter and U. Brauns, eds., *Festschrift für Günter Kohlmann zum 70. Geburtstag*, Verlag Dr. O. Schmidt, 2003, p. 147, cited in *Situation in the Republic of Kenya* (ICC-01/09), Dissenting Opinion of Judge Hans-Peter Kaul, 31 March 2010, para. 58, fn. 62 (emphasis added).

⁹⁰ G. Manske, *Verbrechen gegen die Menschlichkeit als Verbrechen an der Menschheit*, Duncker & Humblot, 2003, pp. 273-365, cited in *Situation in the Republic of Kenya* (ICC-01/09), Dissenting Opinion of Judge Hans-Peter Kaul, 31 March 2010, para. 58, fn. 62 (emphasis added).

71. That the imposition by one State upon the civilian population of another of economic policies that result in shortages of food and medicine and increases in morbidity and mortality was denounced by the International Military Tribunal. Convicting Hans Franck, who was the Governor General of the General Government (occupied Poland), of crimes against humanity as well as war crimes, the Tribunal wrote:

The economic demands made on the General Government were far in excess of the needs of the army of occupation, and were out of all proportion to the resources of the country. The food raised in Poland was shipped to Germany on such a wide scale that the rations of the population of the occupied territories were reduced to the starvation level, and epidemics were widespread. Some steps were taken to provide for the feeding of the agricultural workers who were used to raise the crops, but the requirements of the rest of the population were disregarded. It is undoubtedly true, as argued by counsel for the defence, that some suffering in the General Government was inevitable as a result of the ravages of war and the economic confusion resulting there from. But the suffering was increased by a planned policy of economic exploitation.⁹¹

72. Admittedly, wartime Poland was a situation of belligerent occupation. But there is nothing in the definition of crimes against humanity, whether in Article 7 of the Rome Statute or under customary international law, that excludes the possibility that the policies of one State constitute an attack on a civilian population other than its own even when it does not exercise control over the territory. Were such a narrow construction of the definition to be adopted, it would lead to an absurd result. That crimes against humanity can be committed by non-State actors is well accepted in the caselaw of the International Criminal Court, even when such non-State actors do not control territory in a State. If the policy of an 'organisation', as the term is understood in Article 7(2)(a), can constitute an element of crimes against humanity, surely a 'third State' that does not control the territory of another State but that has a policy to attack the civilian population of that other State can also perpetrate crimes against humanity.

73. In principle, then, there is no reason why unilateral coercive measures taken by the United States, and by its agents and representatives, as well as by other States and non-State entities, that are directed against Venezuela cannot be examined within the framework of Article 7 of the Rome Statute.

6.1. Contextual elements (art. 7(1)(a) and 2(a))

⁹¹ *United States et al. v. Göring et al.*, Judgment, (1947) 1 IMT 171, at p. 297.

74. Article 7(1)(a) of the Rome Statute requires that a crime against humanity be ‘committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’. Article 7(2)(a) declares that “‘Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack’.

6.1.1. An attack

75. The term ‘attack’ is used in Article 8 (war crimes) as well as in Article 7. That the term ‘attack’ does not have the same meaning in Article 7 as it does in Article 8 is not controversial. Elements of Crimes make clear that Article 7 need not involve a ‘military attack’.⁹² The ‘attack’ contemplated by Article 7 of the Rome Statute may involve any mistreatment of a civilian population, including non-violent attacks.⁹³

76. Unilateral coercive measures constitute a form of warfare, albeit one that does not involve resort to arms. According to resolutions adopted by both the United Nations General Assembly and the United Nations Human Rights Council, ‘[u]nilateral coercive measures and legislation are contrary to international law, international humanitarian law, the Charter and the norms and principles governing peaceful relations among States’.⁹⁴ Although many of the specific acts of crimes against humanity involve physical violence, such offences as persecution and apartheid, for example, may be perpetrated as a result of legislation and government policy that does not involve physical violence. The crime against humanity of extermination, defined in Article 7(1)(b) of the Statute as well as in the Elements of Crimes, may be perpetrated ‘by inflicting conditions of life calculated to bring about the destruction of part of a population’. The Elements of Crimes specify that ‘[t]he infliction of such conditions could include the deprivation of access to food and medicine’.⁹⁵

77. The United Nations Commission of Inquiry on North Korea considered that ‘decisions and policies violating the right to food, which were applied for the purposes of sustaining the present political system, in full awareness that such decisions would exacerbate starvation and related deaths of much of the population’ amounted to crimes against humanity.⁹⁶

⁹² Elements of Crimes, Crimes Against Humanity, Introduction, para. 3. Also: *Prosecutor v. Katanga* (ICC-01/04-01/07), Judgment pursuant to article 74 of the Statute, 7 March 2014, para. 1101.

⁹³ *Prosecutor v. Vasiljević* (IT-98-32-T), Judgment, 29 November 2002, paras. 29, 30; *Prosecutor v. Kunarac et al.* (IT-96-23/1-A), Judgment, 12 June 2002, para. 86; *Prosecutor v. Rutaganda* (ICTR-96-3-T), Judgment and Sentence, 6 December 1999, para. 70; *Prosecutor v. Musema* (ICTR-96-13-T), Judgment and Sentence, 27 January 2000, para. 205; *Prosecutor v. Semanza* (ICTR-97-20-T), Judgment and Sentence, 15 May 2003, para. 327.

⁹⁴ Human rights and unilateral coercive measures, A/RES/67/110, PP 4; Human rights and unilateral coercive measures, A/HRC/RES/24/14, PP 4.

⁹⁵ Elements of Crimes, Crimes against Humanity, fn. 9.

⁹⁶ Report of the commission of inquiry on human rights in the Democratic People’s Republic of Korea, UN Doc. A/HRC/25/63, para. 78; Report of the detailed findings of the commission of inquiry on human rights in the Democratic People’s Republic of Korea, UN Doc. A/HRC/25/CRP.1, paras. 1115-1137.

6.1.2. Widespread or systematic

78. According to Article 7(1) of the Rome Statute, the attack on the civilian population must be widespread or systematic. The unilateral coercive measures are broad in scope and protracted over time and space. This element of crimes against humanity does not seem to raise any difficulties and will not be further developed in this submission. Additional comments can be provided should this be deemed useful to the Office of the Prosecutor.

6.1.3. Any civilian population

79. The ‘attack’ of the United States is directed at the civilian population of Venezuela. The term ‘civilian population’ has sometimes been distinguished in the case law with reference to the classic categorization of the law of armed conflict between civilians and combatants, but this is obviously not relevant to the present case because there is no armed conflict. Everyone targeted by the unilateral coercive measures is a civilian.

80. In its 2019 Report, the International Law Commission, citing case law of the International Criminal Court, said that ‘the word “any” indicates that “civilian population” is to have a wide definition and hence should be interpreted broadly’.⁹⁷ It added that an attack ‘can be committed against any civilians, “regardless of their nationality, ethnicity or other distinguishing feature”, and can be committed against either nationals or foreigners’.⁹⁸

81. It might be argued that sanctions are directed against a relatively limited number of specific individuals, and that consequently they do not fall within the ambit of ‘civilian population’ as this term is used in Article 7(1). For example, the Canadian regulations apply to:

2. A person whose name is listed in the schedule is a person who is in Venezuela, or is a national of Venezuela who does not ordinarily reside in Canada, and in respect of whom the Governor in Council, on the recommendation of the Minister, is satisfied that there are reasonable grounds to believe is

⁹⁷ Report of the International Law Commission Seventy-first session, (29 April–7 June and 8 July–9 August 2019), A/74/10, p. 35, citing *Prosecutor v. Ruto et al.* (ICC-01/09-01/11), Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, para. 164.

⁹⁸ *Ibid.*, citing *Prosecutor v. Katanga et al.* (ICC-01/04-01/07), Decision on the Confirmation of the Charges, 30 September 2008, para. 399; *Prosecutor v. Tadić* (IT-94-1-T), Opinion and Judgment, 7 May 1997, para. 635; *Prosecutor v. Katanga et al.* (ICC-01/04-01/07), Judgment, 7 March 2014, para. 1103; *Prosecutor v. Bemba* (ICC-01/05-01/08), Judgment pursuant to Article 74 of the Statute, 21 March 2016, para. 155.

- (a) a person engaged in activities that directly or indirectly undermine the security, stability or integrity of democratic institutions of Venezuela;
- (b) a current or former senior official in the Government of Venezuela;
- (c) a current or former member of the Constituent National Assembly of Venezuela;
- (d) an associate or family member of a person referred to in paragraphs (a), (b) or (c);
- (e) an entity owned, held or controlled, directly or indirectly, by a person referred to in paragraphs (a), (b), (c) or (d) or acting on behalf of or at the direction of a person referred to in paragraphs (a), (b), (c) or (d); or
- (f) a senior official of an entity referred to in paragraph (e).⁹⁹

82. On the other hand, recent legislation adopted by the United States applies to assets of Venezuela in a general sense and not necessarily to those of individuals: ‘Section 1. (a) All property and interests in property of the Government of Venezuela that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.’ In any event, even those measures that are ostensibly directed against specific individuals are, because of their breadth and the lengthy list of names of individuals, in substance measures that impact on the economy of the country as a whole.

83. It would be a mistake to assess the purpose and intent of the unilateral coercive measures solely on the basis of official statements by the governments that impose them. Their propaganda often consists of sugar-coated messages about promoting democracy and human rights. The real intent is more sinister, and needs to be determined in light of historic patterns. For example, the United States has long coveted the economic wealth of Venezuela. In their Report, Weisbrot and Sachs quote President Trump speaking about Venezuela: ‘That’s the country we should be going to war with. They have all that oil and they’re right on our back door.’¹⁰⁰ They also refer to John Bolton, the erstwhile National Security Advisor, stating: ‘We’re in conversation with major American companies now. ... It will make a big difference to the United States economically if we could have American oil companies really invest in and produce the oil capabilities in Venezuela.’¹⁰¹ However, many of such statements actually reveal their deliberate intention, like Mike Pompeo’s remarks in April 2019:

⁹⁹ Special Economic Measures (Venezuela) Regulations, SOR/2017-204, s. 2.

¹⁰⁰ Mark Weisbrot and Jeffrey Sachs, *Economic Sanctions as Collective Punishment: The Case of Venezuela*, Washington: Centre for Economic Policy and Research, April 2019, p. 18, citing Andrew McCabe, *The Threat: How the FBI Protects America in the Age of Terror and Trump*. New York: St. Martin's Press, 2019.

¹⁰¹ Mark Weisbrot and Jeffrey Sachs, *Economic Sanctions as Collective Punishment: The Case of Venezuela*, Washington: Centre for Economic Policy and Research, April 2019, p. 18, citing W.J. Hennigan, ‘Inside John Bolton’s Month-Long P.R. Campaign Against Venezuela’s Government’, *Time*, 30 January 2019.

“Literally, within a handful days of the recognition that the crisis, the humanitarian element of the crisis in Venezuela had spiralled, it had spiked, it had been difficult; this has been years in the making but in taking a step change in the wrong direction we were able to move not only food and medicine but water. We were able to mobilize airlift from our military C.17s and I flew to Cucuta, Colombia, and to take it to the border (...).” “These sanctions are never something we do with glee and we do them only as a means to try to achieve an outcome that’s good for... uh.. the United States and ... uh.. and for the world.” [Transcription from Q/A Session in Texas]

https://www.youtube.com/watch?v=WLHxeS_8Xxk&t=57s

84. The United States has sought to dominate and exploit the entire continent, and especially the countries of Latin America, since the early nineteenth century. It has a long history of using unlawful measures, sometimes economic and sometimes military,¹⁰² directed at controlling politically the governments of the continent and ensuring that the perspectives taken by such governments reflect the goals and perspectives of the United States rather than those of the people. It would be implausible to think that the United States has suddenly been transformed into a neutral philanthropist, benignly and selflessly obsessed with the welfare of the people of Latin America.

85. Sometimes, American officials have been quite transparent in indicating that the unilateral coercive measures are in fact directed at the economy of the country, with the goal of promoting political instability and the ultimate goal which is ‘regime change’. That the acute and intensive socio-economic crisis in Venezuela, mainly caused by them, is not only a consequence of the unilateral coercive measures but the actual purpose of the State policy can be seen in this telling exchange with the US Secretary of State, Mike Pompeo, and an Associated Press reporter that took place on 11 March 2019:

Matthew Lee (AP): Are you satisfied with the pace of the momentum behind Guaidó and his leadership?

MIKE POMPEO: Well, we wish things could go faster, but I’m very confident that the tide is moving in the direction of the Venezuelan people and will continue to do so. It doesn’t take much for you to see what’s really going on there. The circle is tightening, the humanitarian crisis is increasing by the hour. I talked with our senior person on the ground there in Venezuela last night, at 7:00 or 8:00 last night. You can see the increasing pain and suffering that the Venezuelan people are suffering from.¹⁰³

86. That unilateral coercive measures may have as their objective the coercion of the civilian population as a whole may be seen in resolutions of the United Nations General Assembly

¹⁰² See, for example, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. Merits, Judgment. *I.C.J. Reports 1986*, p. 14.

¹⁰³ The Real News Network. 2019 “Pompeo: Sanctions Increase ‘Pain and Suffering’ in Venezuela (Pt 2/2).” April 10. <https://therealnews.com/stories/pompeo-sanctions-increase-pain-and-suffering-in-venezuela-pt-2-2>), cited in Mark Weisbrot and Jeffrey Sachs, *Economic Sanctions as Collective Punishment: The Case of Venezuela*, Washington: Centre for Economic Policy and Research, April 2019, p. 18.

condemning ‘the continuing unilateral application and enforcement by certain Powers of unilateral coercive measures’ and ‘reject[ing] those measures, with all their extraterritorial effects, as being tools for political or economic pressure against any country, in particular against developing countries, adopted with a view to preventing those countries from exercising their right to decide, of their own free will, their own political, economic and social systems...’¹⁰⁴

87. Although the unilateral coercive measures may be viewed as an attack on Venezuela’s civilian population as a whole, a strong case may also be made that the unilateral coercive measures are directed at the civilian population that is supportive of the current Government of Venezuela. The infliction of economic hardship in various forms may be intended to induce that population to change its political orientation. Case law of the International Criminal Court has recognized that the civilian population under attack may be defined by its perceived political affiliation.¹⁰⁵ There is no need to show that the entire population of a geographic entity was targeted by the attack, as long as it is not directed against ‘a limited and randomly selected number of individuals’.¹⁰⁶ Nevertheless, the object of the attack must be a civilian ‘population’, rather than a limited and randomly selected number of individuals.¹⁰⁷ A judgment of the International Criminal Tribunal for Rwanda says the ‘civilian population’ requirement is ‘intended to imply crimes of a collective nature and thus excludes single or isolated acts’.¹⁰⁸ As the International Law Commission has explained, ‘the Prosecutor must establish that the attack was directed against more than just a limited group of individuals’.¹⁰⁹

¹⁰⁴ Human rights and unilateral coercive measures, A/RES/67/170, PP5.

¹⁰⁵ *Prosecutor v. Ruto et al.* (ICC-01/09-01/11), Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, para. 164.

¹⁰⁶ *Prosecutor v. Bemba* (ICC-01/05-01/08), Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, para. 77. Also: *Situation in the Republic of Côte d’Ivoire* (ICC-02/11), Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire, 3 October 2011, para. 32; *Prosecutor v. Katanga* (ICC-01/04-01/07), Judgment pursuant to article 74 of the Statute, 7 March 2014, para. 1105.

¹⁰⁷ *Prosecutor v. Katanga* (ICC-01/04-01/07), Judgment pursuant to article 74 of the Statute, 7 March 2014, para. 1105; *Situation in the Republic of Côte d’Ivoire* (ICC-02/11), Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire, 3 October 2011, para. 32.

¹⁰⁸ *Prosecutor v. Bagilishema* (ICTR-95-1A-T), Judgment, 7 June 2001, para. 80.

¹⁰⁹ Report of the International Law Commission Seventy-first session, (29 April–7 June and 8 July–9 August 2019), A/74/10, p. 36.

6.1.4. State or organizational policy

88. According to Article 7(2)(a) of the Rome Statute, the attack on the civilian population must be pursuant to a State or organizational policy. The unilateral coercive measures are taken by States and implemented by them as well as by large organizations, principally commercial corporations. This element of crimes against humanity does not seem to raise any difficulties and will not be further developed in this submission. Additional comments can be provided should this be deemed useful to the Office of the Prosecutor.

6.2. Punishable acts

6.2.1. Murder (art. 7(1)(a))

89. There is no definition of murder in Article 7(2) of the Rome Statute. The Elements of Crimes for the crime against humanity of murder state: ‘The perpetrator killed one or more persons.’ The word ‘killed’ is supplemented by a footnote: ‘The term “killed” is interchangeable with the term “caused death”. This footnote applies to all elements which use either of these concepts.’¹¹⁰ According to the Trial Chamber, in *Bemba*, ‘[t]he Prosecution must prove beyond reasonable doubt that a perpetrator killed or caused the death of one or more persons’.¹¹¹ Murder may be committed either by act or by omission.¹¹² Case law of the International Criminal Court has specified that it is not necessary for the Prosecution to prove the specific identity of the victim¹¹³ or the perpetrator.¹¹⁴

90. In the present situation, significant increases in mortality rates have been recorded in Venezuela (see above, paras. 17, 21, 24 and 27). Children, in particular, have been victims (see above, paras. 24 and 25). There is a reasonable basis to believe that the deaths were a consequence of deprivation of access to medicines and medical equipment, and that this was attributable at least in part to the deliberate attempts to disrupt and destroy the economy of Venezuela. There is therefore a reasonable basis to believe that the crime against humanity of murder was perpetrated by those who imposed and enforced the unilateral coercive measures.

¹¹⁰ Elements of Crimes, Crimes Against Humanity, art. 7(1)(a), para. 1.

¹¹¹ *Prosecutor v. Bemba* (ICC-01/05-01/08), Judgment pursuant to Article 74 of the Statute, 21 March 2016, para. 87.

¹¹² *Ibid.*, para. 132; *Prosecutor v. Katanga et al.* (ICC-01/04-01/07), Decision on the Confirmation of the Charges, 30 September 2008, para. 287

¹¹³ *Prosecutor v. Bemba* (ICC-01/05-01/08), Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, paras. 138-139; *Prosecutor v. Bemba* (ICC-01/05-01/08), Judgment pursuant to Article 74 of the Statute, 21 March 2016, para. 88.

¹¹⁴ *Prosecutor v. Bemba* (ICC-01/05-01/08), Judgment pursuant to Article 74 of the Statute, 21 March 2016, para. 87. Also: *Prosecutor v. Blaškić* (IT-95-14-A) Judgment, 29 July 2004, para. 217.

6.2.2. Extermination (Art. 7(1)(b) and Art. 7(2)(b))

91. According to Article 7(2)(b) of the Rome Statute, “‘Extermination’ includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population.’ The Elements of Crimes develop this concept: ‘The perpetrator killed one or more persons, including by inflicting conditions of life calculated to bring about the destruction of part of a population.’ They add, in footnotes, that ‘[t]he conduct could be committed by different methods of killing, either directly or indirectly’ and that ‘[t]he infliction of such conditions could include the deprivation of access to food and medicine’. Case law of the Court has described the crime against humanity of extermination as ‘a mass killing of members of a civilian population’.¹¹⁵ It is similar to the crime against humanity of murder, except that the killing takes place on a large scale.¹¹⁶

92. Speaking to the Security Council in June 2009, Prosecutor Moreno-Ocampo said:

Under paragraph 2(b) of article 7 of the Rome Statute, extermination includes ‘the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population’. That provision mirrors those of article 6 of the Statute, on genocide, which establishes that causing serious bodily or mental harm to members of a group and deliberately inflicting on that group conditions of life calculated to bring about its physical destruction, in whole or in part, can constitute genocide. The only difference between extermination and genocide is the latter’s requirement that an intention to eliminate a specific group be demonstrated, in this case the Fur, Massalit and Zaghawa. Extermination has been happening since at least 2004, and it is happening today. Extermination is happening, with 2.5 million victims so far. Extermination is happening before the eyes of the international community.¹¹⁷

93. Case law of the *ad hoc* tribunals has held that extermination may consist of ‘acts committed with the intention of bringing about the death of a large number of victims either directly, such as by killing the victim with a firearm, or less directly, by creating conditions provoking the victim’s death’.¹¹⁸ Accordingly, ‘for the crime of extermination to be

¹¹⁵ *Prosecutor v. Bashir* (ICC-02/05-01/09), Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, para. 96. See also the warrants of arrest in the Uganda situation.

¹¹⁶ *Prosecutor v. Ntakirutimana et al.* (ICTR-96-10-A and ICTR-96-17-A), Judgment, 13 December 2004, para. 542; *Prosecutor v. Brđanin* (IT-99-36-T), Judgment, 1 September 2004, para. 388.

¹¹⁷ UN Doc S/PV.6135, p. 3.

¹¹⁸ *Prosecutor v. Krstić* (IT-98-33-T), Judgment, 2 August 2001, para. 499. Also: *Prosecutor v. Rutaganda* (ICTR-96-3-T), Judgment and Sentence, 6 December 1999, paras. 83–4; *Prosecutor v. Musema* (ICTR-96-13-T), Judgment and Sentence, 27 January 2000, para. 218; *Prosecutor v. Ntakirutimana et al.* (ICTR-96-10 & ICTR-96-17-T), Judgment, 21 February 2003, paras. 812–3; *Prosecutor v. Kayishema et al.* (ICTR-95-1-T), Judgment and Sentence, 21 May 1999, para. 144; *Prosecutor v. Niyitegeka* (ICTR-96-14-T), Judgment and

established, in addition to the general requirements for a crime against humanity, there must be evidence that a particular population was targeted and that its members were killed or otherwise subjected to conditions of life calculated to bring about the destruction of a numerically significant part of the population'.¹¹⁹ According to a Trial Chamber of the Rwanda Tribunal, '[t]he scale of the killing required for extermination must be substantial. Responsibility for a single or a limited number of killings is insufficient.'¹²⁰ The Prosecutor is not required to furnish a precise list of victims in order to establish commission of the crime.¹²¹

94. In the present situation, significant increases in mortality rates have been recorded in Venezuela. Children, in particular, have been victims. There is a reasonable basis to believe that the deaths were a consequence of deprivation of access to food, medicines and medical equipment, and that this was attributable at least in part to the deliberate attempts to disrupt and destroy the economy of Venezuela. Under the circumstances, those who imposed the measures knew that death on a large scale was a likely consequence. There is therefore a reasonable basis to believe that the crime against humanity of extermination as well as of murder was perpetrated by those who imposed and enforced the unilateral coercive measures.¹²²

Sentence, 16 May 2003, para. 450.

¹¹⁹ *Prosecutor v. Krstić* (IT-98-33-T), Judgment, 2 August 2001, para. 503.

¹²⁰ *Prosecutor v. Semanza* (ICTR-97-20-T), Judgment and Sentence, 15 May 2003, para. 340.

¹²¹ *Prosecutor v. Ntakirutimana et al.* (ICTR-96-10-A and ICTR-96-17-A), Judgment, 13 December 2004, paras. 518, 521.

¹²² Records in media and official sources show many statements about the serious damage caused against Venezuela's civil population by the UCMs. For example:

State Department says sanctions against Venezuela are 'absolutely working'

BY JIM WYSS / JANUARY 29, 2018 05:10 PM

U.S. Secretary of State Rex Tillerson speaks at the Warsaw Ghetto Uprising 1943 memorial to mark International Holocaust Remembrance Day, in Warsaw, Poland, Saturday, Jan. 27, 2018. He begins a five-nation tour of Latin America and the Caribbean on Thursday

CZAREK SOKOLOWSKI AP

BOGOTA, COLOMBIA

The United States' use of sanctions to punish Venezuelan officials and strangle the economy is "absolutely working" and will remain a prime strategy for trying to force democratic change in the South American country, senior U.S. State Department officials said Monday.

Speaking to reporters about the Latin America trip of U.S. Secretary of State Rex Tillerson that starts Thursday, the officials said they are beginning to see results of the plan, which has slapped sanctions on more than 50 current and former officials and bars U.S. financial institutions from dealing with Venezuelan debt.

6.2.3. Deportation (Art. 7(1)(d) and Art. 7(2)(d))

95. The crime against humanity of ‘deportation’ is set out in Article 7(1)(d) of the Rome Statute. It is defined, in Article 7(2)(d), as ‘forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law’. The Elements of Crimes provide further specification: ‘The term “forcibly” is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.’ According to the latest United Nations figures, during the economic crisis in Venezuela more than 4.3 million people have left the country.¹²³

96. The Report of the Office of the High Commissioner for Human Rights to the Human Rights Council explains that ‘[v]iolations of the rights to food and health are the primary drivers [of migration]. Many seek protection of their right to life with dignity. Other drivers are violence and insecurity, the collapse of basic services, and the deterioration of the education system. For women, additional drivers include lack of access to pre and post-natal care, and insufficient protection mechanisms from domestic violence.’¹²⁴

97. Forcible transfer refers to a situation where the individual has no free or ‘genuine’ choice to remain in the territory.¹²⁵ Thus, the trier of fact ‘must consequently consider the prevailing situation and atmosphere, as well as all relevant circumstances, including in particular the victims’ vulnerability, when assessing whether the displaced victims had a genuine choice to remain or leave and thus whether the resultant displacement was unlawful’.¹²⁶ Even where those displaced may have wished, or even requested, being

“The financial sanctions that we have placed on the Venezuelan government [have] forced it to begin to default” on its sovereign debts, one official said on background. “And what we are seeing, because of the bad choices of the [President Nicolás] Maduro regime, is the total economic collapse in Venezuela.”

<https://www.miamiherald.com/news/nation-world/world/americas/venezuela/article197273904.html>

¹²³ UN Office for the Coordination of Humanitarian Affairs, Briefing to the Security Council on the humanitarian situation in Venezuela, New York, 10 April 2019.

¹²⁴ Report of the United Nations High Commissioner for Human Rights on the situation of Human rights in the Bolivarian Republic of Venezuela, UN Doc. A/HRC/41/18, para. 70.

¹²⁵ *Prosecutor v. Brđanin* (IT-99-36-T), Judgment, 1 September 2004, para. 543; *Prosecutor v. Krnojelac* (IT-97-25-A), Judgment, 17 September 2003, para. 229.

¹²⁶ *Prosecutor v. Blagojević* (IT-02-60-T) Judgment, 17 January 2005, para. 596.

removed, they may have been denied a genuine choice.¹²⁷ In *Muthuara et al.*, a Pre-Trial Chamber confirmed charges of forcible displacement on the basis of evidence showing destruction of homes in residential areas, brutal killings and injuries, rapes, and public announcements to the effect that ‘all Luos must leave’. According to the Chamber, this amounted to coercion.¹²⁸ In *Bashir*, Pre-Trial Chamber I concluded there were reasonable grounds to believe that ‘hundreds of thousands of civilians belonging primarily to the Fur, Masalit and Zaghawa groups were subject, throughout the Darfur region, to acts of forcible transfer’.¹²⁹ In her application for authorization to investigate the *Situation in Georgia*, the Prosecutor invoked the displacement of the majority of the ethnic Georgian population in South Ossetia.¹³⁰

98. The legislative provisions as well as the case law provide confirmation of an intent to criminalise a range of measures to the extent that they are directed at coercing individuals into leaving their homes and migrating, whether it be within the borders of their country or outside it. In this respect, reference should be made to the words ‘such as’ that precede the enumeration of acts of coercion in the Elements of Crimes. According to a Pre-Trial Chamber of the Court, a literal interpretation of the wording leads to the conclusion that deportation or forcible transfer of population is an ‘open-conduct crime’.¹³¹ As the Pre-Trial Chamber said in the Bangladesh/Myanmar decision on jurisdiction, ‘in the context of the allegations contained in the Request, various types of conduct may, if established to the relevant threshold, qualify as “expulsion or other coercive acts” for the purposes of the crime against humanity of deportation, including *deprivation of fundamental rights*, killing, sexual violence, torture, enforced disappearance, destruction and looting’.¹³²

99. This broad approach to coercive acts is endorsed in the Prosecutor’s application in the *Situation in Bangladesh and Myanmar*. It refers to a range of coercive acts directed against

¹²⁷ *Prosecutor v. Krnojelac* (IT-97-25-A), Judgment, 17 September 2003, para. 229; *Prosecutor v. Blagojević* (IT-02-60-T) Judgment, 17 January 2005, para. 596.

¹²⁸ *Prosecutor v. Muthaura et al.* (ICC-01/09-02/11), Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, para. 244.

¹²⁹ *Prosecutor v. Bashir* (ICC-02/05-01/09), Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, para. 100.

¹³⁰ *Situation in Georgia* (ICC-01/15), Request for authorization of an investigation pursuant to article 15, 13 October 2015, para. 270.

¹³¹ *Prosecutor v. Ruto et al.* (ICC-01/09-01/11), Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, para. 244.

¹³² *Request under Regulation 46(3) of the Regulations of the Court* (ICC-RoC46(3)-01/18), Decision on the ‘Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute’, para. 61 (emphasis added).

making the conditions within the country intolerable. These were not necessarily acts of ‘deportation’ as such, at least not in the sense that this was meant at Nuremberg, where persons were arrested, detained, placed on trains, and taken across an international border, and where they were subsequently exterminated or forced to work in conditions of slavery. Rather, in Myanmar much of the ‘deportation’, at least according to the submission of the Office of the Prosecutor,¹³³ was the predictable consequence of the imposition of intolerable living conditions. As the International Criminal Tribunal for the former Yugoslavia explained, the prohibition ‘aims at safeguarding the right and aspiration of individuals to live in their communities and homes without outside interference’.¹³⁴

100. There is considerable evidence of massive population flows of individuals from Venezuela that have been provoked by the deterioration of the economy, the decline in availability of essential public services, shortages of food and medicines. There is a reasonable basis to believe that unilateral coercive measures contributed to these massive population flows, and that those who imposed the measures knew that the population flows would be a consequence of them. There is therefore a reasonable basis to believe that the crime against humanity of deportation was perpetrated by those who imposed and enforced the unilateral coercive measures.

6.2.4. Persecution (Art. 7(1)(h) and 7(2)(g))

101. The crime against humanity of persecution is defined as ‘the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity’. The Elements of Crimes require that the perpetrator ‘targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such’, and that the targeting ‘was based on political, racial, national, ethnic, cultural, religious, gender as defined in Article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law’. Several of these categories may be applicable to the attacks, in the form of unilateral coercive measures, that have been directed at the civilian population of Venezuela, most notably ‘political’ and ‘national’.

¹³³ *Application under Regulation 46(3)* (ICC-RoC46(3)-01/18), Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute, 9 April 2018, para. 9.

¹³⁴ *Prosecutor v. Krnojelac* (IT-97-25-A), Judgment, 17 September 2003, para. 218.

102. To the extent that the purpose of the attacks is to destroy the country's economy and thereby to promote 'regime change', the adjective 'political' seems especially appropriate. Issuing arrest warrants in *Gaddafi et al.*, a Pre-Trial Chamber referred to 'inhuman acts that severely deprived the civilian population of its fundamental rights were inflicted on it because of its opposition to Gaddafi's regime. The civilians were targeted only on the basis of their political opposition (whether actual or perceived) to Muammar Gaddafi and his regime'.¹³⁵ But the unilateral coercive measures are also directed against the Venezuelan civilian population and not against any other civilian population. To that extent, they were targeted at national grounds. Issuing arrest warrants for persecution in the *Situation in Darfur, Sudan*, Pre-Trial Chamber I accepted the Prosecutor's submission that 'Sudanese Armed Forces and the Militia/Janjaweed launched attacks against specific localities believing that they were predominantly inhabited by the Fur population'.¹³⁶

103. The crime against humanity of persecution has sometimes been described as belonging to 'the same *genus* as genocide'.¹³⁷ According to a Trial Chamber of the International Criminal Tribunal for the former Yugoslavia, 'from the viewpoint of *mens rea*, genocide is an extreme and most inhuman form of persecution. To put it differently, when persecution escalates to the extreme form of wilful and deliberate acts designed to destroy a group or part of a group, it can be held that such persecution amounts to genocide'.¹³⁸ The same link between persecution and genocide was acknowledged by the International Court of Justice.¹³⁹ Were the unilateral coercive measures directed at destroying the people of Venezuela, there can be little doubt that they would be deemed genocidal. On that basis alone, it seems reasonable to envisage them as falling under 'national' grounds. Similar reasoning applies to the issue of the discriminatory intent. By their very nature, the unilateral coercive measures are discriminatory. They are directed against the civilian population of Venezuela and nobody else. For example, case law of the International Criminal Tribunal for the former Yugoslavia has held that 'an attack "conducted against only the non-Serb portion of the

¹³⁵ *Situation in the Libyan Arab Jamahiriya* (ICC-01/11), Decision on the 'Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi', 27 June 2011, para. 65.

¹³⁶ *Prosecutor v. Harun et al.* (ICC-02/05-01/07), Decision on the Prosecution Application under Article 58(7) of the Statute, 27 April 2007, para. 74.

¹³⁷ *Prosecutor v. Kvočka et al.* (IT-98-30/1-A), Judgment, 28 February 2005, para. 636.

¹³⁸ *Ibid.*

¹³⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, para. 188.

population because they were non-Serbs” was indicative of the necessary discriminatory intent’.¹⁴⁰

104. Article 7(2)(g) of the Rome Statute speaks of ‘the deprivation of fundamental rights contrary to international law’. The idea is repeated in the Elements of Crimes: ‘The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.’¹⁴¹ The imposition of unilateral coercive measures amounts to ‘deprivation of fundamental rights contrary to international law’. This has been developed above in some detail (see paras. 33 *et seq.*), with relevant references to resolutions of the General Assembly and the Human Rights Council as well as to other sources of international law such as documents of the United Nations special procedures and studies by United Nations expert bodies. In a very general sense, the imposition of unilateral coercive measures is incompatible with Article 28 of the Universal Declaration of Human Rights: ‘Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.’ Moreover, they are clearly contrary to the Charter of the Organization of American States and Resolution AG2625, 10/24/1970:

OAS Charter:

Article 19

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements.

Article 20

No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind.¹⁴²

Resolution 2625, 1970

The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter

No State or group of States has the right to intervene directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from It advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive,

¹⁴⁰ *Prosecutor v. Kvočka et al.* (IT-98-30/1-T), Judgment, 2 November 2001, para. 195.

¹⁴¹ Elements of Crimes, Article 7(1)(h), para. 1.

¹⁴² Charter of the Organization of American States, (1952) 119 UNTS 47.

terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.¹⁴³

105. The right of peoples to self-determination is a fundamental human right that is violated by unilateral coercive measures. The Charter of the United Nations in Art. 1(2) states that one of its main purposes is “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”.¹⁴⁴ This right is affirmed in common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.¹⁴⁵ Judge Yusuf of the International Court of Justice has pointed out that the right of self-determination ‘acquired renewed significance following its consecration in the two covenants on human rights of 1966...’¹⁴⁶

106. In the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States of 24 October 1970,¹⁴⁷ the contents of the right of political self-determination -- and, in particular, the ways in which it can be applied -- were further advanced. In the development of the economic aspect of the right of self-determination, an essential contribution was made by the Declaration of 1 May 1974 on the Establishment of a New International Economic Order¹⁴⁸ and the Charter of Economic Rights and Duties of States.¹⁴⁹ The special significance and universal recognition of the right of self-determination has led to the qualification of this right as a norm of general international law, often even as *jus cogens* in the sense of Art. 53 of the Vienna Convention on the Law of Treaties.¹⁵⁰ In the Commentary on the Draft Articles on State Responsibility, the International Law Commission identified it as a peremptory norm of international law in the sense of Art. 53 of

¹⁴³ A/RES/2625 (XXV) 24 October 1970. 2626 (XXV). Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations

¹⁴⁴ See also Articles 55, 73 and 76 of the Charter of the United Nations.

¹⁴⁵ International Covenant on Civil and Political Rights, (1976) 999 UNTS 171, Art. 1; International Covenant on Economic, Social and Cultural Rights, (1976) 993 UNTS 3, Art. 1.

¹⁴⁶ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 403, Separate Opinion of Judge Yusuf, § 8. See also the reference to Art. 1 of the Covenant in *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 25 February 2019, § 154.

¹⁴⁷ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, A/RES/2625(XXV).

¹⁴⁸ Declaration on the Establishment of a New Economic Order, A/RES/3201(S-VI).

¹⁴⁹ Charter of Economic Rights and Duties of States, A/RES/3281(XXIX).

¹⁵⁰ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 25 February 2019, Separate Opinion of Judge Cançado Trindade, §§ 120-201; *ibid.*, Joint Declaration of Judges Cançado Trindade and Robinson; *ibid.*, Separate Opinion of Judge Robinson; James Crawford, *Brownlie's Principles of Public International Law*, 8th ed., Oxford: OUP, 2012, pp. 646-647.

the Vienna Convention.¹⁵¹ The International Court of Justice, has described the right of self-determination as being a right *erga omnes*.¹⁵²

107. Many other fundamental human rights enshrined in international law are violated by the imposition of unilateral coercive measures. Such measures impact very directly on such core human rights as the right to life,¹⁵³ the right to food,¹⁵⁴ the right to work,¹⁵⁵ the right to health and medical care¹⁵⁶ and the right to education¹⁵⁷. They have terrible consequences for a range of human rights of the child.¹⁵⁸ They also extend to the right to property, set out in the Universal Declaration of Human Rights.¹⁵⁹ In *Ntaganda*, a Pre-Trial Chamber pointed to severe deprivation of several fundamental rights including the right to property.¹⁶⁰

108. In the application for authorisation to begin an investigation in the *Situation in Georgia*, the Prosecutor referred to ‘the right to private property’ as the basis for a charge of persecution, noting the destruction of 5,000 homes of ethnic Georgians.¹⁶¹ According to the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia, whether property crimes may amount to persecution will depend upon ‘the nature and extent of the destruction’,¹⁶² and on the type of property involved.¹⁶³ In words that were subsequently endorsed by the Appeals Chamber, it noted that ‘the comprehensive destruction of homes and

¹⁵¹ International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, A/CN.4/SER.A/2001/Add.1 (Part 2), § 85.

¹⁵² *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 102, § 29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, § 88.

¹⁵³ Universal Declaration of Human Rights, A/RES/217A (III), Art. 3; International Covenant on Civil and Political Rights, (1976) 999 UNTS 171, Art. 6.

¹⁵⁴ Universal Declaration of Human Rights, A/RES/217A (III), Art. 25(1); International Covenant on Economic, Social and Cultural Rights, (1976) 993 UNTS 3, Art. 11.

¹⁵⁵ Universal Declaration of Human Rights, A/RES/217A (III), Art. 23(1); International Covenant on Economic, Social and Cultural Rights, (1976) 993 UNTS 3, Art. 6.

¹⁵⁶ Universal Declaration of Human Rights, A/RES/217A (III), Art. 25(1); International Covenant on Economic, Social and Cultural Rights, (1976) 993 UNTS 3, Art. 11.

¹⁵⁷ Universal Declaration of Human Rights, A/RES/217A (III), Art. 26; International Covenant on Economic, Social and Cultural Rights, (1976) 993 UNTS 3, Art. 14.

¹⁵⁸ Universal Declaration of Human Rights, A/RES/217A (III), Art. 25(2); International Covenant on Civil and Political Rights, (1976) 999 UNTS 171, Art. 24; International Covenant on Economic, Social and Cultural Rights, (1976) 993 UNTS 3, Art. 10(2); Convention on the Rights of the Child, (1990) 1577 UNTS 3.

¹⁵⁹ Universal Declaration of Human Rights, A/RES/217A (III), Art. 17.

¹⁶⁰ *Prosecutor v. Ntaganda* (ICC-01/04-02/06), Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, 9 June 2014, para. 58.

¹⁶¹ *Situation in Georgia* (ICC-01/15), Request for authorization of an investigation pursuant to article 15, 13 October 2015, para. 272.

¹⁶² *Prosecutor v. Kordić et al.* (IT-95-14/2-A), Judgment, 17 December 2004, para. 108; *Prosecutor v. Blaškić* (IT-95-14-A), Judgment, 29 July 2004, para. 149.

¹⁶³ *Prosecutor v. Blaškić* (IT-95-14-A), Judgment, 29 July 2004, para. 146, citing with approval *Prosecutor v. Kupreškić et al.* (IT-95-16-T), Judgment, 14 January 2000.

property’ amounting to ‘a destruction of the livelihood of a certain population’ would meet the definition of persecutions.¹⁶⁴

6.2.5. Other inhumane acts (Art. 7(1)(k))

109. Article 7(1)(k) of the *Rome Statute* extends crimes against humanity to ‘other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental or physical health’. There is no supplementary definition in Article 7(2). The Elements of Crimes add: ‘It is understood that “character” refers to the nature and gravity of the act.’¹⁶⁵ Furthermore, they require that the perpetrator ‘inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act’.¹⁶⁶

110. A Pre-Trial Chamber of the International Criminal Court has described ‘other inhumane acts as a residual category within the system of Article 7(1) of the Statute’.¹⁶⁷ The residual nature of the provision is manifested in decisions of the Court.¹⁶⁸ At the *ad hoc* tribunals, ‘other inhumane acts’ was deemed ‘a residual category, as it was felt undesirable for this category to be exhaustively enumerated. An exhaustive categorization would merely create opportunities for evasion of the letter of the prohibition.’¹⁶⁹

111. Reference has already been made earlier in this submission to the statement of the Pre-Trial Chamber about prosecution for the crime against humanity of ‘other inhumane acts’ in Bangladesh.¹⁷⁰ The Chamber volunteered the suggestion that the ‘appalling conditions’ experienced by victims of deportation in Bangladesh might constitute the crime against humanity of ‘other inhumane acts’.

¹⁶⁴ *Prosecutor v. Kupreškić et al.* (IT-95-16-T), Judgment, 14 January 2000, para. 631; *Prosecutor v. Blaškić* (IT-95-14-A), Judgment, 29 July 2004, para. 146.

¹⁶⁵ Elements of Crimes, Crimes Against Humanity, Article 7(1)(k), fn. 30.

¹⁶⁶ *Ibid.*, para. 2.

¹⁶⁷ *Prosecutor v. Muthaura et al.* (ICC-01/09-02/11), Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, para. 269.

¹⁶⁸ *Prosecutor v. Mbarushimana* (ICC-01/04-01/10), Decision on the confirmation of charges, 16 December 2011, paras. 127, 152, 155; *Prosecutor v. Muthaura et al.* (ICC-01/09-02/11), Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, paras. 270, 280; *Situation in the Republic of Côte d’Ivoire* (ICC-02/11), Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire, 3 October 2011, para. 86; *Prosecutor v. Blé Goudé* (ICC-02/11-02/11), Decision on the confirmation of charges against Charles Blé Goudé, 11 December 2014, para. 121.

¹⁶⁹ *Prosecutor v. Kupreškić et al.* (IT-95-16-T), Judgment, 14 January 2000, para. 563; *Prosecutor v. Stakić* (IT-97-24-A), Judgment, 22 March 2006, para. 315; *Prosecutor v. Brima* (SCSL-2004-16-A), Judgment, 3 March 2008, para. 198.

¹⁷⁰ *Request under Regulation 46(3) of the Regulations of the Court* (ICC-RoC46(3)-01/18), Decision on the ‘Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute’, 6 September 2018, para. 77.

112. The *Situation in Venezuela* is somewhat different because far from impeding the return of Venezuelans, the Government of the country is making serious efforts to encourage this. Nevertheless, those who continue to attack the economy of Venezuela in the form of unilateral coercive measures not only create great distress for the civilian population inside the country but they also impede their return.

113. Venezuela implemented a programme called The Return to Homeland Mission (*Misión Vuelta a la Patria*) aimed at helping Venezuelan citizens who are abroad to get back home with the State endeavouring to guarantee their well-being. Such programme includes air transportation from the territories of other countries to Venezuela. The transportation of these citizens, especially Venezuelans returning to the Homeland was being carried out by CONVIASA (Spanish acronym for *Consorcio Venezolano de Industrias Aeronáuticas y Servicios Aéreos S.A.*) airline. On February 7th, 2020 the United States administration, using unilateral coercive measures in concordance with Executive Order N° 13884 of August 5th, 2019, has blocked the utilization of almost the whole fleet of airplanes of the company, thus rendering materially impossible to comply with the programme which was being developed on permanent basis. Therefore, a considerable amount of Venezuelans abroad has been negatively impacted.

114. Likewise, *Conviasa* airline also performs ambulance services for cases of people who need to be transported between different countries for purposes of receiving medical treatments, i.e., the aforementioned measures impact the health of Venezuelans who require to travel to other regions to receive the necessary medic care without incurring in considerable costs for the individual and household economy of every Venezuelan citizen requiring such care. As a result of the measure imposed by the United States administration, such programme has been seriously affected in an inconvenient manner and to the detriment of that large amount of Venezuelans requiring that assistance. For this reason, this measure is a direct effect impacting the collective and diffuse rights of the Venezuelan population as it is unfairly and unjustly punished by wilful actions undertaken by U.S. officials.

115. In this connection, obstacles to repatriation may be created using force, or the threat of it, as is alleged in the case of Myanmar, but also by knowingly and intentionally contributing to conditions within Venezuela that will have the effect of discouraging repatriation. As the

Pre-Trial Chamber explained, ‘preventing a person from returning to his or her own country causes ‘great suffering, or serious injury [...] to mental [...] health’. In this manner, the anguish of persons uprooted from their own homes and forced to leave their country is deepened. It renders the victims’ future even more uncertain and compels them to continue living in deplorable conditions.’¹⁷¹

7. Admissibility issues

116. Even at the stage of preliminary examination, the Prosecutor must consider the two main facets of admissibility, complementarity and gravity. With respect to complementarity, there is really nothing to discuss. Imposition of unilateral coercive measures by Presidential decree is obviously not a crime within the United States. As for Venezuela, Because the perpetrators of the alleged punishable acts are not within its territory, it is not in a position to deal with them. In any event, Venezuela may concede that it is not prosecuting those responsible for the unilateral coercive measures. However, the other dimension of admissibility, namely whether the alleged crimes may not be of sufficient gravity, requires some attention.

117. Prosecution of such acts under the heading of crimes against humanity appears to be unique in the annals of international criminal law. However, to the extent that the elements of crimes against humanity are present, it should be recognised that the civilian population of Venezuela is hardly alone as a victim of such measures. The civilian populations of many other countries also suffer, to a greater or lesser degree, from these measures imposed by wealthy and powerful States, as the resolutions of the General Assembly and the Human Rights Council, as well as the mandate holders of special procedures, make clear. They attack the sovereignty of States and violate the right of peoples to self-determination, which recognized under international law as a norm of *jus cogens*. Other features of the acts also seem relevant to the assessment of gravity, including significant loss of life and widespread violations and abuses of fundamental economic social and cultural rights, including the right to health, the right to food, the right to water, the right to education. All human rights are

¹⁷¹ *Request under Regulation 46(3) of the Regulations of the Court (ICC-RoC46(3)-01/18)*, Decision on the ‘Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute’, 6 September 2018, para. 77.

indivisible. Violations of economic and social rights may be every bit as grave as violations of civil and political rights.

118. Although the unilateral coercive measures do not appear to be subsumed within the scope of Article 8*bis* of the Rome Statute, they nevertheless constitute a form of aggression and a violation of the Charter of the United Nations. Here, preambular paragraph 7 of the Rome Statute should be recalled: ‘Reaffirming the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations...’ Article 1(2) of the Charter of the United Nations identifies, as one of the Purposes of the United Nations: ‘To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.’ While the imposition of unilateral coercive measures may not involve resort to armed force, it runs counter to the achievement of friendly relations among nations, it tramples on the principles of equal rights and self-determination of peoples and it can hardly be conducive to the strengthening of world peace. Both President Trump and Secretary of State Pompeo have made threats to use armed force against Venezuela should unilateral coercive measures be inadequate to achieve their aims. ‘The president has been crystal clear and incredibly consistent – military action is possible. If that’s what’s required, that’s what the United States will do’, Pompeo stated in May 2019.¹⁷² The fact that the United States has associated the imposition of unilateral coercive measures with the possible use of armed force confirms the close relationship between aggressive economic warfare and military force, and this underscores the gravity of the situation. Action by the Office of the Prosecutor could contribute to deterrence of such threats to world peace.

119. It is relevant to refer to the general conclusion at which Special Rapporteur Jazairy arrives in his Report to the United Nations General Assembly on July 15th, 2019, as he draws the attention to the unilateral coercive measures and their effects on the civil population: “*The phrase “never again” has been used to galvanize the international community around the idea that total war, global war, has no place in civilized society. The Special Rapporteur believes the time has come to say the same about the use of unilateral sanctions, at least for*

¹⁷² Deirdre Shesgreen and David Jackson, “‘Military Action is Possible in Venezuela’, Secretary of State Mike Pompeo Says”, *USA Today*, 1 May 2019; Lara Seligman, ‘U.S. Mulls Military Options in Venezuela’, *Foreign Policy*, 3 May 2019.

the purpose of achieving political objectives and regime change. For unilateral sanctions are no longer an alternative to war; they are becoming a preamble thereto, or may amount to war by another name: they kill."¹⁷³

8. Conclusions

120. In its Policy Paper on Case Selection and Prioritisation, the Office of the Prosecutor said it would 'pay particular attention to crimes that have been traditionally under-prosecuted, such as crimes against or affecting children'.¹⁷⁴ This perspective was reinforced in its Policy Paper on Children which stated that the Office 'pays particular attention to information received on crimes against or affecting children'.¹⁷⁵ Furthermore, 'the Office will regard crimes against or affecting children as particularly grave, given the commitment made to children in the Statute, and the fact that children enjoy special recognition and protection under international law'.¹⁷⁶

121. Likewise, the Policy Paper said that '[i]n light of the mandate of the Office and the object and purpose of the Statute, there is a strong presumption that investigations and prosecutions of crimes against or affecting children are in the interests of justice'.¹⁷⁷

122. In its latest Strategic Plan, the Office stated that it 'pays particular attention to children and victims of SGBC, in order, inter alia, to stress the seriousness of these forms of victimisation, which frequently are overlooked and underestimated. Children, for instance, can be affected by crimes in various ways: as victims including through the inability to receive education or ((medical) care), as witnesses, or even as perpetrators. The Office will continue with this particular focus, including by ensuring the implementation of its policies and by evaluating their effectiveness.'¹⁷⁸ The children of Venezuela, and their families, surely hope that these are not empty words.

123. The focus of the Office of the Prosecutor on children is entirely consistent with the resolution of the Human Rights Council expressing 'grave concern that, in some countries,

¹⁷³ Seventy-fourth session, Item 72 (b) of the preliminary list, Pp. 15/15

¹⁷⁴ Office of the Prosecutor, Policy Paper on Case Selection and Prioritisation, 15 September 2016, para. 46.

¹⁷⁵ Office of the Prosecutor, Policy on Children, November 2016, para. 53.

¹⁷⁶ Ibid., para. 56.

¹⁷⁷ Ibid., para. 59.

¹⁷⁸ Office of the Prosecutor, Strategic Plan | 2019 – 2021, para. 35.

the situation of children is adversely affected by unilateral coercive measures not in accordance with international law and the Charter that create obstacles to trade relations among States, impede the full realization of social and economic development and hinder the well-being of the population in the affected countries, with particular consequences for women, children, including adolescents, the elderly and persons with disabilities'.¹⁷⁹ The terrible consequences of the unilateral coercive measures on the children of Venezuela, in terms of mortality, nutrition, health and education, have been documented above. They were and are well-known to those who have imposed the unilateral coercive measures as well as those who implement them.

¹⁷⁹ Human rights and unilateral coercive measures, A/HRC/RES/24/14, OP 4.