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TRUMP-ERA TERRORISM DESIGNATED SANCTIONS VIOLATE INTERNATIONAL HUMAN RIGHTS NORMS PROTECTING LIFE, HEALTH, AND SECURITY *by Shannon Jackenthal**

INTRODUCTION

In the waning days of the Trump administration, the U.S. Department of State designated Cuba as a State Sponsor of Terrorism.¹ The designation is accompanied by a widespread sanctions program that broadens the financial restrictions in place against the country, threatening to further strain an already-fraught Cuban economy.²

The international community has increasingly recognized the threat that unilateral coercive sanctions pose to civilians. In 2014, the United Nations General Assembly (UNGA) passed a resolution dictating the appointment of a Special Rapporteur on the negative impact of unilateral coercive measures on the enjoy-

ment of human rights with a broad mandate to study the impact of these measures.³ The UNGA expressed alarm at the “disproportionate and indiscriminate human costs of unilateral sanctions and their negative effects on the civilian population[s].”⁴

The new sanctions directly implicate the concerns expressed by the UN. The systematic destruction wrought by unilateral coercive sanctions constitutes a violation of international human rights law enshrined in the International Covenant on Civil and Political Rights (ICCPR) and established by the normative framework under the Charter of the UN by threatening Cubans’ rights to life, health, and economic security.⁵ Sanctions serve as an impediment to Cubans receiving critical supplies that might ultimately save lives. While the sanctions will negatively impact the Cuban population—particularly in light of the ongoing COVID-19 pandemic—the Biden administration has indicated that while it is reviewing the designation, a shift in Cuban policy is not a “top priorit[y],” despite a purported commitment to centering human rights in U.S. foreign policy.⁶ Given the serious human rights implications, the Biden administration should rescind Cuba’s designation and leverage the opportunity to reevaluate its unilateral sanctions against Cuba.

I. BACKGROUND

The State Sponsors of Terrorism list consists of states determined by the U.S. Secretary of State to provide substantial support for international terrorism. These states are, thus, designated pursuant to the National

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¹ *State Sponsors of Terrorism*, U.S. DEP’T OF STATE, <https://www.state.gov/state-sponsors-of-terrorism> (last visited Nov. 15, 2021) [hereinafter *State Sponsors of Terrorism*].

² *Id.*

³ G.A. Res. 27/21, ¶¶ 22-23 (Oct. 3, 2014).

⁴ *Id.*

⁵ *US Sanctions Violate Human Rights and International Code of Conduct*, UN expert says, U.N. HUM. RTS. OFF. HIGH COMM’R, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24566> (last visited Nov. 15, 2021).

⁶ Matt Spetalnick et al., *Biden Reviewing Trump’s Listing of Cuba as a Terrorism Sponsor—White House*, REUTERS (Mar. 9, 2021, 2:34 PM), <https://www.reuters.com/article/us-usa-biden-cuba/biden-reviewing-trumps-listing-of-cuba-as-terrorism-sponsor-white-house-idUSKBN2B12IV>.

Defense Authorization Act, the Arms Export Control Act, and the Foreign Assistance Act.⁷ The designation results in far-reaching limits on the provision of economic and humanitarian assistance, a ban on defense sales, controls on “dual use” items, and other financial restrictions.⁸

Observers widely assessed Cuba’s designation as political rather than responsive to any credible terrorism concerns.⁹ This is supported by the administration’s basis for the designation: the Department of State arguably relied on a “technicality” related to Cuba’s sheltering of Colombian nationals and its refusal to extradite 1970s-era civil rights activists sought by the United States.¹⁰ Rather than using the sanctions to legitimately combat terrorism and terror financing, as noted by NBC News, “[t]he misuse of the terrorism designation is generally understood to be a *political handout* to Cuban-American hard-liners” for voting for Trump in Florida.¹¹ This designation, therefore, is demonstrably divorced from decreasing state support of terrorism.

The sanctions associated with the terrorism designation threaten significant harm to Cuba’s economy. Following the designation, Cubans expressed concern that it will “make it harder to put food on the table and shoes on their children’s feet.”¹²

⁷ See *State Sponsors of Terrorism*, *supra* note 1.

⁸ See *id.* Dual use items can be used for both civilian and military purposes.

⁹ Sébastien Roblin, *Biden Undermined on Cuba, Iran by Last-Minute Pompeo Terror Designations*, NBC NEWS (Jan. 13, 2021, 5:56 PM), <https://www.nbcnews.com/think/opinion/biden-undermined-cuba-iran-last-minute-pompeo-terror-designations-ncna1254191>.

¹⁰ *Id.*

¹¹ *Id.* (emphasis added).

¹² Portia Siegelbaum, *Cubans Fear Impact of U.S. Terror Designation, But See ‘Glimmer of Hope’ with Biden*, CBS NEWS (Jan. 13, 2021, 6:58 AM), <https://www.cbsnews.com/news/cuba-sponsor-of-terrorism-us-trump-designation-cubans-worry-hope-in-biden/>.

Most remittances from the United States to relatives in Cuba will be barred.¹³ The UN Special Rapporteur on unilateral coercive measures signed on to a letter to the U.S. government citing concerns regarding sanctions against Cuba during the COVID-19 pandemic, noting that U.S. restrictions have “effectively prevented” Cuba from protecting its population from COVID-19.¹⁴

The international community has widely denounced the existing embargo against Cuba; the latest UN resolution condemning it included 187 states voting in favor, three against, and two abstentions.¹⁵ The Cuban Foreign Minister emphasized the “incalculable humanitarian damages” the embargo causes, characterizing it as a “flagrant, massive[,] and systematic violation of human rights.”¹⁶ The designation’s clearly delineated political motivation related to Trump’s voting base in Florida provides an opportunity to reexamine U.S. policy on unilateral coercive measures writ large.

II. LEGAL ANALYSIS

Unilateral coercive sanctions have been defined by the UN Human Rights Council as measures imposed “to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights with a view to securing some specific change in its policy.”¹⁷ The U.S. designation of Cuba is aimed at inducing Cuba to extradite individuals who sought

¹³ Matthew Lee & Joshua Goodman, *Trump Hits Cuba with New Terrorism Sanctions in Waning Days*, ASSOCIATED PRESS (Jan. 11, 2021), <https://apnews.com/article/joe-biden-mike-pompeo-cuba-venezuela-foreign-policy-41ddf75b0c13d290cd539d90e6227b0a>.

¹⁴ Letter from the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights et al. to the Government of the United States of America, U.N. Doc. UA USA 8/2020 (Apr. 21, 2020) [hereinafter “Letter to U.S. Government”].

¹⁵ *Cuba: UN Members Overwhelmingly Support End of US Embargo, as Brazil Backs Washington*, UN NEWS (Nov. 7, 2019), <https://news.un.org/en/story/2019/11/1050891>.

¹⁶ *Id.*

¹⁷ *Mandate of the Special Rapporteur*, U.N. HUM. RTS. OFF. HIGH COMM’R, <https://www.ohchr.org/EN/Issues/UCM/Pages/Mandate.aspx> (last visited Nov. 15, 2021).

refuge from the United States in the civil rights era and certain Colombian nationals.¹⁸ This point is illustrated directly in the Trump administration's press release on the designation, which cited to several U.S. nationals residing in Cuba, including Joanne Chesimard who allegedly "execut[ed] [a] New Jersey State Trooper in 1973."¹⁹

Human rights obligations under international law are typically applied to states with respect to the territory over which they exercise jurisdiction.²⁰ However, the United States has an obligation to safeguard the rights of Cubans affected by its unilateral coercive measures under the UN Charter and customary international law.

The UN Charter calls for all states "to promote universal respect for and observance of human rights."²¹ It also calls for all states to take action to protect fundamental freedoms without distinction.²² According to the UN Human Rights Council, this provision is "flexible" and provides an avenue to assess the impact that unilateral coercive measures have on human rights.²³ States are bound to further the aims of the UN Charter and to protect human rights as customary international law or as general principles of law, neither of which are territorially limited.²⁴ Scholars have suggested that the restriction

on unilateral coercive measures is an emergent rule of customary international law, demonstrated by the UN's strong, repeated condemnation of these measures.²⁵

Given the impact that existing sanctions have had on Cubans and the anticipated economic effects of the most recent sanctions, several fundamental human rights are implicated, including the right to life, the right to health, and the right to economic development, particularly in the context of COVID-19. As noted by the UN Special Rapporteur on unilateral coercive measures, "[a]cts prohibiting or otherwise impeding humanitarian services violate State's obligation to respect the right to life . . . [a]ny death that may be linked to such prohibition would constitute an arbitrary deprivation of life."²⁶ While imposing the sanctions violates the state's obligation to respect the right to life, any death linked to the sanctions as a result of restrictions on obtaining food or medicine from U.S.-based sources—a likely scenario based on the wide reach of the sanctions—would constitute an arbitrary deprivation of life.²⁷

Unilateral sanctions violate not only international law prohibiting such action under the UN Charter, but because of the significant socioeconomic impact that these decisions have on the civilian population on the ground,²⁸ the sanctions also violate the right to health,²⁹ the right to life, and a right to economic development³⁰ under a framework that includes the UN Charter and the ICCPR. First, Article 55 of the UN Charter demands promoting "conditions of economic and social progress and development" and

¹⁸ See Lee & Goodman, *supra* note 13 (noting that Cuba had previously been designated as a state sponsor of terror before its removal during the Obama administration).

¹⁹ *U.S. Announces Designation of Cuba as a State Sponsor of Terrorism*, U.S. DEP'T OF STATE (JAN. 11, 2021), <https://2017-2021.state.gov/u-s-announces-designation-of-cuba-as-a-state-sponsor-of-terrorism/index.html>.

²⁰ See, e.g., International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171, Art. 2(1) [hereinafter ICCPR] ("Each State Party . . . undertakes to respect and ensure all individuals *within its territory and subject to its jurisdiction* the rights recognized in the present Covenant . . .") (emphasis added).

²¹ U.N. Charter, art. 1, ¶ 3.

²² *Id.*

²³ Rep. of the Human Rights Council, at 17-18, U.N. Doc. A/HRC/AC/13/CRP.2 (2014).

²⁴ Olivier De Schutter, *A Human Rights Approach to Trade and Investment Policies*, CONFRONTING THE GLOB. FOOD CHALLENGE (Nov. 2008).

²⁵ Idriss Jazairy, *Unilateral Economic Sanctions, International Law, and Human Rights*, 33 ETHICS & INT'L AFFS. 291, 294 (2019).

²⁶ Letter to U.S. Government, *supra* note 14.

²⁷ Siegelbaum, *supra* note 12.

²⁸ Stephen P. Marks, *Economic Sanctions as Human Rights Violations: Reconciling Political and Public Health Imperatives*, 89 AM. J. PUB. HEALTH 1509, 1510 (1999).

²⁹ Alena Douhan, *Why Sanctions Should Be a Key Issue in this US Election*, NEW HUMANITARIAN (Oct. 22, 2020), <https://www.thenewhumanitarian.org/opinion/2020/10/22/sanctions-human-rights-united-states-impact>.

³⁰ U.N. Charter, art. 55(a)-(b).

“solutions of international economic, social, health, and related problems.”³¹ The sanctions regime associated with the Trump administration’s designation includes significant limits on foreign assistance, controls on “dual use” items, and other financial restrictions.³² While the embargo already adversely affects the Cuban people, the additional measures threaten to further destabilize the island’s economy in the midst of the COVID-19 pandemic.³³ The sanctions ultimately contribute to the severe food and medicine shortages that force many into poverty and prevent effective healthcare.³⁴

Additionally, the ICCPR secures the “inherent right to life for every human being.”³⁵ The ICCPR has a direct jurisdictional element; however, given the United States’ affirmative and global obligation to advance human rights under the UN Charter, reference to U.S. duties under this Convention is appropriate. The Trump administration sanctions threaten to disrupt the economic situation in Cuba even further, directly implicating the rights to life, health, and economic development.³⁶

The protections enshrined in international law guarantee Cubans these rights. Given the difficulty of distributing humanitarian goods due to U.S. sanctions, the global pandemic compounds these concerns.³⁷ Beyond the food and medicine shortages in the country, the sanctions will exacerbate the situation by dissuading potential investors or partners who could provide assistance to Cubans at this crucial time, given the severe penalties attached to violating the sanctions and the heightened risk of entering Cuba’s market.³⁸ Thus, the United States is

running afoul of its obligations under the international human rights framework. The economic impact of the new sanctions regime will inevitably lead to discrete violations of Cubans’ human rights.

III. CONCLUSION

The unilateral use of coercive measures—including Cuba’s designation as a state sponsor of terror that is accompanied by additional extensive sanctions adversely impacting civilians—violates the rights to life, health, and economic security enshrined in several international conventions and affirmatively imposed upon the United States through binding international law. The Biden administration should prioritize reassessing these sanctions to ensure that the United States complies with its human rights obligations.

³¹ *Id.*

³² *State Sponsors of Terrorism*, *supra* note 1.

³³ See Siegelbaum, *supra* note 12 (describing Cubans’ fears about the impact of the sanctions).

³⁴ *Unilateral sanctions impinge on right to development—UN experts*, U.N. HUM. RTS. OFF. HIGH COMM’R (Aug. 11, 2021), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=27373&LangID=E>.

³⁵ ICCPR, art. 6.

³⁶ Siegelbaum, *supra* note 12.

³⁷ Letter to U.S. Government, *supra* note 14.

³⁸ Siegelbaum, *supra* note 12.