

# “The only legal sanctions are those imposed by the Security Council”

## UN Charter, UN Credibility and unlawful UCMs

by Alfred de Zayas,\* Geneva



Alfred de Zayas  
(Photo ma)

(CH-S) On 25 March 2024, Russia has convened a meeting “under the Arria formula” on the impact of “Unilateral Coercive Measures” (UCMs) on the global fight against terrorism.

Individual members of the UN Security Council have the option of convening an in-

formal meeting on important topics in accordance with the Arria formula. It owes its name to the Venezuelan ambassador Diego Arria, who initiated this type of meeting for the first time in 1992.

In addition to the members of the Security Council, all other UN members, permanent observers, UN institutions, civil society organisations and the media can take part in such meetings.

The aim of this UN meeting was to critically examine the impact of “unilateral coercive measures” on exacerbating insecurity, fostering resentment, radicalisation and hostility among affected population groups and hindering international cooperation to combat terrorism and extremism: The UN participants and experts present were invited to address the impact of UCMs on sovereignty, international law, stability as well as human rights in speeches.

The UN Assembly also invited UNHCHR Special Rapporteurs Alena Douhan and Alfred de Zayas to the session on 25 March 2024 to make special speeches on the topic via a video conference link.

We document the full speech by Alfred de Zayas below.

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Excellencies, distinguished delegates,

The unlawfulness of “Unilateral coercive measures” (UCM) imposed by certain countries against other States, businesses and individuals has been documented in United Nations studies going back to the seminal report issued in the year 2000 by the *Subcommission on the Promotion and Protection of Human Rights*,<sup>1</sup> the 2012 report of High Commissioner *Navi Pillay*,<sup>2</sup> and General Comment Nr. 8 of the Committee on Economic Social and Cultural Rights.<sup>3</sup>

Dozens of General Assembly Resolutions, most recently of 19 December 2023,<sup>4</sup> resolutions of the Human Rights Council, most recently of 11 October 2023,<sup>5</sup> identify the specific violations of international law inherent in UCMs and the threat they pose to international peace and security. These resolutions, adopted with ample majorities, urge all states to lift UCMs. Thirty-one GA resolutions condemn the US embargo against Cuba, most recently on 2 November 2023.<sup>6</sup>

Notwithstanding the clear will of the *global majority* that UCMs be abolished, a number of States violate these resolutions with impunity and continue imposing coercive measures with unlawful domestic and extra-territorial effects. Circumvention of these unlawful UCMs is subject to draconian penalties. This coercion-based international order usurps the functions of the United Nations and undermines its authority and credibility.

It is important to recognize that the semblance of law is not law, that not every executive order is legitimate or deserves to be obeyed, as we know from Sophocles *Antigone*<sup>7</sup> and saw confirmed in the judgment of the Third Nuremberg Trial, the *Judges’ Trial*.<sup>8</sup>

Many Nazi laws were “laws”, but in name only. They were dictates that violated the essence of justice. So too European and US laws on slavery and the slave trade, the laws imposed by colonial powers, and the laws of Apartheid.

Indeed, when laws do not serve justice but rather geopolitical domination, they subvert the

rule of law itself, and what we call civilization.<sup>9</sup> Far from bending to such unlawful measures, all civilized persons have a duty to resist them.

*Civilization* demands that States, individuals and enterprises resist the hijacking of the administration of justice, the instrumentalization of law for power and *injustice*, including through unlawful UCMs.

It is documented that UCMs engender gross violations of human rights, including the right to life, food, health, water and sanitation. UCMs have impeded prompt and effective action against pandemics like Covid-19, have aggravated outbreaks of cholera, polio, tuberculosis, hindered life-saving cancer treatment and are responsible for hundreds of thousands of deaths worldwide.<sup>10</sup>

We are witnessing *retrogression* in the respect owed to international law and human dignity. Government lawyers should be advising their governments how best to comply with international treaties and norms, and not how to find loopholes and weasel out of international obligations.

Notwithstanding the lethal impacts of UCMs, government lawyers in some countries downplay them in an attempt to mislead democratic audiences into believing that UCMs serve legitimate purposes. It is profoundly cynical to invoke human rights in an attempt to justify measures that demonstrably violate the rights of the most vulnerable.

Victims and victimizers are here reversed. The practise of UCMs manifests how legal concepts and language have been corrupted, how human rights are being weaponized to destroy human rights. Cognitive dissonance becomes the new normal. No, the narrative of a purported good end is false. The geopolitical end does not justify the criminal means.

*The diagnosis is clear:*

UCMs generate humanitarian crises, legal and social chaos, leaving victims without effective access to justice and without remedies. UCMs are incompatible with the noble principles of the UN Charter<sup>11</sup> and the Constitutions of many UN agencies including UNESCO and WHO.

Let us therefore escape from the *epistemology trap*, and stop referring to UCMs as “sanctions”. The only legal sanctions are those imposed by this *Security Council*. Everything else constitutes the unlawful use of force in contra-

vention of the letter and spirit of the UN Charter, in particular article 2, paragraph 4.

Moreover, the word “sanctions” implies that the State imposing them has the moral or legal authority to do so. This is not the case as exposed by UN Special Rapporteurs Dr. *Idriss Jazairy*, Dr. *Alena Douhan*, Dr. *Michael Fakhri* and others.

I will not further elaborate on our diagnosis but prefer now to formulate pragmatic proposals how to rescue the international order and how to give recourse and remedy to the victims.

Bearing in mind that some States persist in applying UCMs to about a third of the population of the planet, and that hitherto they have done this with impunity, I propose that:

1. UN Agencies like ILO, UNDP, UNEP, UNESCO, UNICEF, WHO henceforth collect, quantify and evaluate the harm caused by UCMs. Impact assessments should be widely publicized.
2. An international observatory should be established to document the impacts of UCMs. This observatory or “UCM Watch” should function under the UN Human Rights Council and be serviced by OHCHR, which should keep a database and establish a monitoring mechanism.
3. The General Assembly should invoke article 96 of the UN Charter referring the legal questions associated with UCMs to the ICJ for an advisory opinion on their illegality and the level of compensation to be paid to the victims. The ICJ should also consider whether the humanitarian crises and thousands of deaths caused by UCMs constitute “crimes against humanity” for purposes of Article 7 of the Statute of Rome.
4. Pursuant to article 9 of the 1948 Genocide Convention,<sup>12</sup> States parties should refer the ICJ the question whether the deliberate creation of conditions that in effect destroy in whole or in part a group plausibly constitutes genocide. The requirement of “intent” can be inferred from the foreseeability of the deaths resulting from UCMs. The ICJ judgement in *Bosnia v. Serbia* imposes an obligation to prevent.<sup>13</sup>
5. The Inter-state complaints procedures of several UN treaty bodies should be engaged. Article 41 of the International Covenant on Civil and Political Rights grants jurisdiction to the Human Rights Committee to examine inter-state complaints concerning grave violations of human rights, including the right to life. In the absence of reservations to this article, the competence of the Human Rights Committee is *prima facie* established. The Optional Protocol to the International Covenant on Eco-

conomic Social and Cultural Rights would also provide for inter-state complaints pursuant to Article 10.<sup>14</sup>

6. The laws of many countries impose a civic obligation to help persons in grave danger to life. These laws are sometimes referred to as *duty of rescue laws*.<sup>15</sup> Undoubtedly UCMs entail a grave danger to life, and States should ensure that individuals and businesses under their jurisdiction abide by such duty to help laws and do not become *complicit* in UCM crimes.
7. States should exercise diplomatic protection on behalf of individuals and businesses penalized by States that impose UCMs.

### Excellencies

If we want that international institutions, tribunals and other mechanisms function properly, we must ensure that all parties recommit to the Purposes and Principles of the United Nations. We must escape the *epistemology trap* and reject the attempt to camouflage UCMs as “sanctions”, reject the unethical demand for “compliance” with what are in reality *totalitarian* commands that violate the sovereign equality of States and the self-determination of peoples.

I invite all here present to rediscover the spirituality of the *Universal Declaration of Human Rights* and ensure that the authority and credibility of the United Nations is strengthened by observance of UN resolutions, and not subverted by *complicity* in tolerating UCMs, which in a very real sense manifest a *rebellion* against the UN Charter and entail *crimes against humanity*. I urge you to work constructively at cooperation and reconciliation in this common planet of ours.

I thank you for your attention.

<sup>1</sup> E/CN.4/Sub2/2000/33, <https://digitallibrary.un.org/record/422860>

<sup>2</sup> A/HRC/19/33, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F19%2F33&Language=E&DeviceType=Desktop&LangRequested=False>

<sup>3</sup> E/C.12/1997/8

<sup>4</sup> <https://www.un.org/en/ga/78/resolutions.shtml>

<sup>5</sup> <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session54/res-dec-stat>

<sup>6</sup> <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F78%2F7&Language=E&DeviceType=Desktop&LangRequested=False>. Res. 78/7

<sup>7</sup> <https://classics.mit.edu/Sophocles/antigone.html>

<sup>8</sup> <https://www.archives.gov/files/research/captured-german-records/microfilm/m889.pdf>

<sup>9</sup> <https://iihl.org/the-laws-of-humanity/>  
<https://www.icrc.org/en/doc/assets/files/other/irrc-844-coupland.pdf>

[https://link.springer.com/chapter/10.1007/978-94-6265-299-6\\_3](https://link.springer.com/chapter/10.1007/978-94-6265-299-6_3)

Jeffrey Sachs, *The Price of Civilization*, Random House, New York 2011.

<sup>10</sup> <https://cepr.net/images/stories/reports/venezuela-sanctions-2019-04.pdf>

<sup>11</sup> See also the 25 *Principles of International Order*, published as Chapter 2 of A. de Zayas, *Building a Just World Order*, Clarity Press, 2021.

<sup>12</sup> It is not possible to submit case against the US under article 9, because of US submitted a reservation against article 9 when ratifying the Convention in 1992. But it is possible to submit cases against Canada, UK, France, Germany, and all other countries imposing UCMs and causing suffering and death in countries like Cuba, Nicaragua, Syria, Venezuela, Zimbabwe, etc.

<sup>13</sup> <https://icj-cij.org/case/91>

<sup>14</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-international-covenant-economic-social-and>

<sup>15</sup> <https://www.thelaw.com/law/good-samaritan-laws-the-duty-to-help-or-rescue-someone.218/>