Unilateral coercive measures are illegal and counter-productive

They destabilize the States and force them to retrench instead of opening-up

*by Alfred de Zayas**

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Ed. This analysis was presented by the author on 22 September during an expert conference conducted as a side event to the 48th Session of the UN Human Rights Council in Geneva, held from 13 September to 8 October 2021. Among the experts Professor Dr. Alena Douhan, the current UN Special Rapporteur on Unilateral coercive measures, made a presentation based on her report to the Human Rights Council 2021

The theory and practice of "Unilateral coercive measures" (UCM) is characterized by fake news, fake law, false flags, and double-standards. As far as the legal basis for the imposition of sanctions, only those imposed by the Security Council under article 41 of the UN Charter can be termed legal.

Moreover, numerous UN studies, including the 2000 Report of the Sub-Commission on the Promotion and Protection of Human Rights and the 2012 Thematic Report by High Commissioner Navi Pillay[1] demand the lifting of UCM's because of their adverse human rights impacts.

The 29 resolutions of the General Assembly concerning the US embargo against Cuba make it clear that such sanctions contravene core principles of the UN Charter and other principles, including I quote "the sovereign equality of States, non-intervention and non-interference in their internal affairs and freedom of international trade and navigation".[2]

The General Assembly has repeatedly condemned UCM's as contrary to international law and incompatible with the right to development, I quote "such measures constitute a flagrant violation of the principles of international law as set forth in the Charter, as well as the basic principles of the multilateral trading system".[3]

Similarly, the *Human Rights Council* has condemned UCM's, most recently in resolution 46/5 of 23 Mach 2021, which inter alia underlines that "under no circumstances should people be deprived of their basic means of survival" and expressing "grave concern that the laws, regulations and decisions imposing unilateral measures have an extraterritorial effect not only on targeted countries but also on third countries, in contravention of the basic principles of international law".[4]

Notwithstanding their illegality, UCM's continue to be imposed by powerful States in total impunity. It is time to refer this matter to the *International Court of Justice* to obtain an advisory opinion declaring their incompatibility with the UN Charter and fixing the responsibility of States to make reparation to the victims. Moreover, to the extent that UCMs have caused the deaths of tens of thousands of human beings, the issue must be examined by the *International Criminal Court* under the rubric "crimes against humanity". (Article 7 of the Statute of Rome).

The same legal concerns apply to the concepts of humanitarian intervention and the so-called "doctrine" of *Responsibility to Protect* (R2P), which are accompanied by evidence-free accusations, hyperbole and intellectual dishonesty. We witness this every day in the pronouncements of some governments in the Security Council, General Assembly and Human Rights Council, as well as the propaganda disseminated by the media.

The purpose of UCM's and R2P is the same – to destabilize the targeted country by asphyxiating its economy, generating chaos and misery so as to induce "regime change" and the installation

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of illegitimate puppet governments. This may be called the imposition of fake-democracy by means of the corruption of values such as human dignity and human rights. We can justly call this an egregious political scam.

While it can be argued that embargoes on the import and export of weapons are legitimate and often necessary, because they aim to deescalate conflicts and give a chance to peace negotiations, UCM's aimed at "regime change" contravene the sovereignty of States, the right of self-determination and the right of development. Moreover, UCM's constitute a threat to the peace and stability of the world within the language of article 39 of the Charter.

Experience shows that economic sanctions adversely impact the human rights of entire populations and constitute a form of "collective punishment". Sanctions regimes that disrupt asphyxiate the economies of the targeted countries result in unemployment, hunger, disease, despair, emigration, and suicide. To the extent that such sanctions are "indiscriminate", they are tantamount to a form of "terrorism", which by definition entails indiscriminate killing, just as land mines, cluster bombs and the use of cancer-producing depleted uranium weapons.

According to the theory advanced by its proponents, UCM's are supposed to "persuade" the targeted countries to change their policies. As the pundits like to predict, sanctions should lead to such public discontent that the population will arise in anger against their governments or lead to a coup d'état. Although the purpose of the sanctions is precisely to cause chaos, a national emergency, a volatile situation with unpredictable consequences, the political narrative that attempts to justify the sanctions incongruently invokes human rights and humanitarian principles as their true purpose.

The question arises whether human rights can be served by UCM's? Is there any empirical evidence showing that countries subjected to sanctions have improved their human rights records? Experience shows that when a country is at war – any kind of war – it usually derogates from civil and political rights. Similarly, when a country is enduring non-conventional hybrid warfare and is subjected to economic sanctions and financial blockades, the result is not an expansion of human rights, but exactly the opposite. When sanctions trigger economic and social crises, governments routinely impose extraordinary measures and justify them because of the "national emergency". Accordingly, as in classical war situations, when a country is subject to a siege, it closes ranks in an attempt to reestablish stability through the temporary restriction of certain civil and political rights.

Article 4 of the *International Covenant on Civil and Political Rights* does envisage the possibility that governments may impose certain temporary restrictions, e.g. the derogation from Art. 9 (detention), Art. 14 (fair trial proceedings), Art. 19 (freedom of expression), Art. 21 (freedom of peaceful assembly), Art. 25 (periodic elections).

NO ONE wants such derogations, but every state's priority is survival, defending its sovereignty and identity. International law recognizes that governments have a certain margin of discretion in determining the level of threat to the survival of the state posed by sanctions, paramilitary activities, sabotage.

Thus, instead of facilitating the improvement of the human rights situation, economic sanctions often result in emergency domestic legislation that aim at safeguarding vital interests. In such cases sanctions reveal themselves as counter-productive, as a lose-lose proposition. Similarly, the overused practice of "naming and shaming" has revealed itself as ineffective. What has been effective in the past is quiet diplomacy, dialogue, compromise.

If the international community wants to help a country improve its human rights performance, it should endeavour to eliminate the threats that make governments retrench instead of opening-up. By now it should be obvious that sabre rattling, sanctions and blockades are not conducive to positive change. Precisely because they aggravate the situation and disrupt the proper functioning of state institutions, they actually weaken the rule of law and lead to retrogression in human rights terms.

In the light of the continuing threats by some politicians against countries subjected to sanctions, it would seem that an old French adage has application:

Cet animal est très méchant:
lorsqu'on l'attaque, il se défend.
(This animal is very nasty:
when you attack it, it defends itself.)

The bottom line is that unilateral coercive measures are contrary to international law, incompat-

ible with the UN Charter, and that an attempt to "legitimize" them by invoking human rights or the pseudo-doctrine of "Responsibility to protect" is a disgraceful weaponization of values. The Human Rights Council must not lend itself to such scams.

[1] A/HRC/19/33

[2] *https://www.refworld.org/publisher,UNGA,RESOLUTION,,3b00f21147,0.html*

[3] *https://www.refworld.org/publisher,UNGA,RESOLUTION,,47c6b1dd2,0.html*

[4] *https://undocs.org/A/HRC/RES/46/5*