Statement by the Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas

*to the*

Expert workshop on the proposals of the Special Rapporteur on unilateral coercive measures

3 June 2017

In my 2013 report to the General Assembly (A/68/284), I identified unilateralism as a significant obstacle to a democratic and equitable international order and unilateral coercive measures as a threat to the realization of human rights, given the harm these measures cause to the world’s most vulnerable populations.[[1]](#footnote-1)

By restricting access to necessary medicines, food and essential goods and by degrading vital infrastructure, coercive measures—both multilateral and unilateral—have been shown to adversely impact the enjoyment of the rights to life, health, education, food, clean water and an adequate standard of living of individuals and groups.[[2]](#footnote-2) In addition, particular harms suffered by historically marginalized persons, such as women, children and persons with disabilities, have raised the concerns of human rights and humanitarian actors.[[3]](#footnote-3)

Unilateral coercive measures which flout States’ international human rights obligations are a serious attack on the international order as they contravene international law and the purposes of the Charter.[[4]](#footnote-4) By undermining the very norms which ground the multi-lateral system, including respect for state sovereignty, free trade and inter-state friendly relations, unilateral measures violate international treaties and United Nations resolutions and contribute to system incoherence[[5]](#footnote-5). Further, the embargo against Cuba can be taken as a specific example of the adverse impact of unilateral coercive measures on the enjoyment of human rights. Moreover, the contributory nature of unilateral coercive measures in ongoing human rights situations brought before the Human Rights Council—such as supplies of weapons to armed groups, the blockage of Gaza and targeted killings of non-state actors[[6]](#footnote-6)—demonstrates the threats these measures pose to the maintenance of international peace and security.

I am concerned that, in practice, the imposition of unilateral coercive measures runs contrary to foundational human rights principles which are prerequisites to achieving a democratic and equitable international order, including fair representation, international cooperation and accountability. A culture of human rights also encompasses the necessity of international solidarity. Sanctions regimes constitute a flagrant example of absence of solidarity with the millions of human beings who have to endure the consequences of the sanctions. As outlined in a 2000 Report to the Sub-Commission on the Promotion and Protection of Human Rights, the underlying theory that coercive measures like sanctions bring about change by inspiring grassroots democratic pressure has not held true. Rather, at the expense of already disadvantaged communities, such measures are often instrumentalized by national elites to strengthen anti-democratic policies.[[7]](#footnote-7) They are also employed by international power players to solidify already privileged positions on the world stage.[[8]](#footnote-8)

Already in 2000, Professor Marc Bossuyt reported to the Sub-Commission on the Promotion and Protection of Human Rights on the adverse consequences of economic sanctions on the enjoyment of human rights (see E/CN.4/Sub.2/2000/33), suggesting that, to avoid adverse consequences, such measures should always be limited in time, should not affect the innocent population, especially the most vulnerable, should not aggravate imbalances in income distribution, nor generate illegal and unethical business practices. Moreover, all sanctions regimes should be periodically monitored and terminated when it becomes apparent that they do not serve any purpose other than to “punish” a given State without thereby enabling any political change that will enhance the enjoyment of human rights. Experience shows that such “punishment” has frequently led to targeted politicians digging their heels even deeper and being even less inclined to dialogue and reform.

Several prominent stakeholders, including the mandate of the Special Rapporteur on unilateral coercive measures, have also called for States to assess the human rights harms caused by unilateral coercive measures.[[9]](#footnote-9) This can be done through the individual complaints procedures established pursuant to several human rights treaties, as well as through the communication procedures of the Human Rights Council’s Special Procedures. The treaty bodies also have an under-utilized inter-State complaints procedure, which should be engaged and in some cases could facilitate negotiation and friendly settlement (e.g. Art. 41 ICCPR). Sanctions should also be tested in the context of the Universal Periodic Review of the Human Rights Council. [[10]](#footnote-10)

As stated above, sanctions regimes constitute unlawful interference with free trade and are incompatible with numerous provisions of GATT and WTO agreements as well as free trade agreements.  States may consider challenging unilateral sanctions regimes pursuant to the contentious jurisdiction of the International Court of Justice.  Individual investors, businesses and transnational corporations may consider invoking pertinent provisions of free trade agreements before domestic courts and before international arbitral tribunals, the World Bank’s International Center for Settlement of Investment Disputes, or before the WTO dispute settlement panels. It is indeed an anomaly that investors and transnational corporations that have suffered considerable losses as a result of sanctions regimes, have failed to challenge them, whereas they do challenge the exercise of legitimate regulatory measures by States in the fields of labour, environmental and health protection.[[11]](#footnote-11)

Moreover, the General Assembly should consider formulating pertinent legal questions to be submitted to the International Court of Justice for advisory opinions under article 96 UN Charter, including the legality of sanctions in the light of the Purposes and Principles of the United Nations and article 103 of the UN Charter, the supremacy clause. Another legal question would concern the illegality of extra-territorial application of national legislation, its adverse impacts on the sovereign equality of States, and the level of reparation due for the unlawful imposition of sanctions regimes.

Further, beyond the condemnation of sanctions regimes by the Non-Aligned movement[[12]](#footnote-12) and CELAC[[13]](#footnote-13) and multiplying calls for States to refrain from implementing such measures, such as that rightfully made by the General Assembly last year in response to the Cuba embargo,[[14]](#footnote-14) it is essential that reparations be paid to those deprived of their rights as a consequence of such measures. There is clear evidence that the embargo against Cuba has directly led to the deaths of many persons as a result of lack of medicines and the impossibility to import medical equipment or replacement parts.[[15]](#footnote-15)

I welcome the initiatives put forward by the Special Rapporteur on unilateral coercive measures to address human rights violations committed as a result of unilateral coercive measures. In this context, I would like to reiterate once again that sanctions should only be considered as an *ultima ratio*, which should be subject to periodic review and terminated as soon as possible, bearing in mind that thousands of innocent persons have suffered and are suffering because embargoes prevent goods, medical equipment or manufacturing supplies from reaching a particular country. Ending the impunity on the part of the States that impose sanctions will contribute to an environment consistent with article 28 of the Universal Declaration of Human Rights and advance humanity towards a more peaceful, democratic and equitable international order.

Thank you.

1. http://www.un.org/Docs/journal/asp/ws.asp?m=A/68/284 [↑](#footnote-ref-1)
2. See, e.g., General Comment No. 8 of the Committee on Economic, Social and Cultural Rights, E/C.12/1997/8; Sub-Commission on the Promotion and Protection of Human Rights, *The adverse consequences of economic sanctions on the enjoyment of human rights*, E/CN.4/Sub.2/2000/33, paras. 63-67, 79-82, 91-94. [↑](#footnote-ref-2)
3. See Office of the High Commissioner for Human Rights, *Thematic study on the impact of unilateral coercive measures on the enjoyment of human rights, including recommendations on actions aimed at ending such measures*, A/HRC/19/33, para. 36; E/CN.4/Sub.2/2000/33, para. 94; A/68/284 para. 45 [↑](#footnote-ref-3)
4. Notably, Charter of the United Nations, arts. 39, 41; Vienna Declaration and Programme of Action; International Covenant on Economic and Social Rights, arts. 11-13; International Covenant on Civil and Political Rights, art. 6. [↑](#footnote-ref-4)
5. General Assembly Resoution 2625, “Friendly Relations Resolution”. [↑](#footnote-ref-5)
6. See A/68/284, para. 42 [↑](#footnote-ref-6)
7. See E/CN.4/Sub.2/2000/33, paras. 48-51. [↑](#footnote-ref-7)
8. See John Pilger, *The New Rulers of the World* (London 2003). [↑](#footnote-ref-8)
9. See E/C.12/1997/8, paras. 12-14; A/HRC/19/33, para.. 38; A/68/284 report, para. 42. [↑](#footnote-ref-9)
10. A/68/284, para. 43. [↑](#footnote-ref-10)
11. See reports A/HRC/30/44, A/HRC/33/40 and A/70/285) where the lack of legitimacy of ISDS tribunals and their obstruction of the rule of law is discussed. It shocks the conscience that transnational corporations challenge the refusal of a permit to mine in an ecologically sensitive area, but fail to challenge the imposition of unilateral sanctions which interfere far more with existing contracts and established trade relations). [↑](#footnote-ref-11)
12. https://libya360.wordpress.com/2016/09/19/final-declaration-of-the-xvii-summit-of-the-non-aligned-movement-nam/

    http://www.humanrightsvoices.org/site/developments/?d=13519

    http://www.nam.gov.za/media/030227e.htm [↑](#footnote-ref-12)
13. https://peoplesdemocracy.in/2015/0517\_pd/summit-americas-us-recognises-new-realities [↑](#footnote-ref-13)
14. Resolution adopted by the General Assembly on 26 October 2016: Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba, A/RES/71/5. [↑](#footnote-ref-14)
15. https://www.amnestyusa.org/pdfs/amr250072009eng.pdf

    https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1380757/

    http://medicc.org/ns/documents/The\_impact\_of\_the\_U.S.\_Embargo\_on\_Health\_&\_Nutrition\_in\_Cuba.pdf [↑](#footnote-ref-15)