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By Nan McCurdy

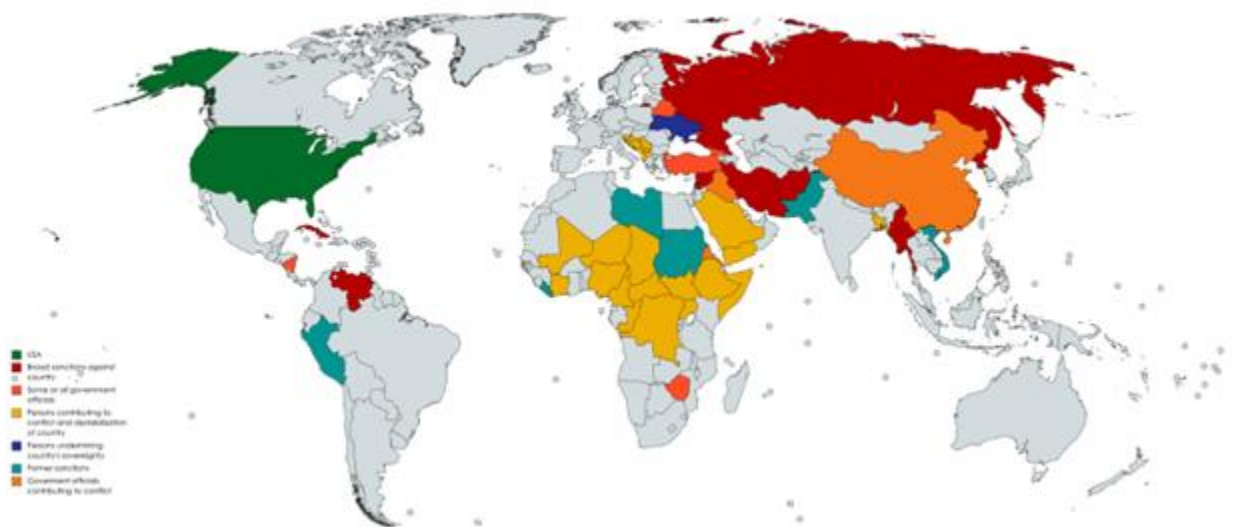
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NicaNotes:

Unilateral Coercive Measures and Human Rights

By Alfred de Zayas

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The map shows countries subjected in some manner to unilateral coercive measures by the United States. Red indicates broad sanctions against the country; red orange, some or all government officials are sanctioned (includes Nicaragua); yellow, “persons contributing to conflict and destabilization of the country” are sanctioned; blue, “persons undermining a country’s sovereignty”; turquoise, indicates former sanctions; and slashed orange means “officials contributing to conflict” are sanctioned. (Creator: Jojoto Rudess)

As a matter of proper terminology, it is best not to use the term “sanctions” too loosely, because the term is judgmental and implies that the entity imposing them has the legal or moral authority to do so. This is the case, for example, when the United Nations imposes certain coercive measures under article 41 of the Charter. By contrast, what politicians and media routinely denominate sanctions are actually “unilateral coercive measures” (UCMs) imposed by a country in pursuance of its geopolitical agenda and lacking any international legitimacy. Such measures actually constitute the “use of

force” within the meaning of Art. 2(4) of the UN Charter, and their purpose is also illegitimate since they entail the unlawful interference in the internal affairs of other States. For decades the General Assembly, the UN Commission on Human Rights and more recently the Human Rights Council have rejected UCMs as contrary to the UN Charter, customary international law, and the principles of freedom of trade and navigation. More than two thirds of the international community reject them.

The “sanctions” currently being imposed by the United States on some thirty countries do not qualify as “retorsion” or “countermeasures” under articles 49/50 of the Code on Responsibility of States adopted by the UN International Law Commission in 2001. Unilateral coercive measures constitute “collective punishment” against innocent persons and contravene the very foundations of the rule of law, the presumption of innocence and the principle of individual responsibility.

The impact of unilateral coercive measures on the enjoyment of economic, social and cultural rights is predictable, demonstrable and measurable. UCMs dislocate the economies of the targeted countries, adversely affecting the standard of living of entire populations, restricting their access to food, water and sanitation, medicines, health services, shelter, education, employment, etc. and making the implementation of the Sustainable Development Goals illusory.

Bearing in mind that human rights are interrelated and interdependent, it is inevitable that violations of the

provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR) will also engender violations of the civil and political rights enunciated in the International Covenant on Civil and Political Rights (ICCPR). UCMs also directly violate civil rights laid down in domestic legislation and numerous other international agreements, and raise issues under the following provisions of the ICCPR:

Art. 1 – The individual and collective right of self-determination of peoples, the right over their natural wealth and resources, the right to property, the right not to be deprived of means of subsistence.

Art. 2 – The right to a remedy

Art. 3 – Women’s rights, since women disproportionately bear the consequences of the dislocations caused by UCMs.

Art. 6 – The right to life. UCMs demonstrably kill.

Art. 7 – The right not to be subjected to cruel and inhuman treatment or punishment.

Art. 12 – Freedom of movement

Art. 14 – Due process of law, the prohibition of collective punishment, the presumption of innocence

Art. 17 – Honor and reputation of persons whose names appear on sanctions lists.

Art. 20 – The prohibition of war propaganda and incitement to hatred. UCMs are routinely accompanied by fake news, fake history, negative stereotypes, hate

speech against China, Cuba, Nicaragua, Syria, Russia, Venezuela, etc. The media campaign of Russophobia and Sinophobia have been crucial in the attempt to render UCMs palatable to a democratic society.

Art. 22 – Freedom of association. Individuals and groups are frequently made to suffer defamation and financial loss just because of their association with persons or countries subjected to UCMs. Even UN sanctions regimes can adversely affect the right of freedom of association.

Art. 24 – Rights of the child. UCMs are a factor in the rise of infant mortality and in the violation of the right to health and physical integrity of children.

Art. 26 – The prohibition of discrimination, in particular when assets are frozen or confiscated in a discriminatory or arbitrary fashion.

The gravity of the impact of unilateral coercive measures cannot be overstated, but the gravest violation of the human rights of individuals and groups is the violation of the right to life. In countries like Cuba, Iran, Nicaragua, Sudan, Syria, and Venezuela, UCMs kill people by making it nearly impossible for the targeted governments to obtain sufficient food, medicines, and replacement parts for medical equipment necessary to prevent deaths. UCMs have caused desperation and consequent suicides, triggering uncontrolled migration flows, sometimes accompanied by tragedy in the seas.

Unilateral coercive measures entail a revolt against fundamental principles of the UN Charter, international law, and international order. Most importantly, it must be finally understood that UCMs are not innocent tools of “soft power”. UCMs kill, just as much as bullets in war. The level of deaths caused by UCMs in some 30 countries over the past decades are sufficient to raise issues under the 1948 Genocide Convention, which stipulates inter alia.

“...genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such:

- (a) Killing members of the group.**
- (b) Causing serious bodily or mental harm to members of the group.**
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part ...”**

Besides the assault on the right to life, UCMs seriously affect the right to property, which is protected in the domestic legislation of most countries. Interestingly enough, the right to property is not specifically protected in the ICCPR, but article 26 ICCPR would be violated if the property were confiscated or frozen in a discriminatory fashion. The right to property is protected *ratione materiae* in the European Convention on Human Rights and Fundamental Freedoms, and in the domestic legislation of most countries. WTO law provides for the protection of private property, the General Agreement on

Tariffs and Trade prohibits restrictions of imports and exports, as well as the freezing of assets and the restriction of international transfers and payments.

Another consequence of unilateral coercive measures is their impact as a “push factor” generating uncontrolled migration movements. In this context it is pertinent to make a distinction between the legal regimes protecting the rights of refugees and migrants. As I learned during my 2017 mission to Venezuela as UN Independent Expert on International Order, the vast majority of the persons who have been constrained to leave Venezuela since 2015 did not do so because of political persecution, but because of the economic crisis brought about by UCMs, because enterprises went bankrupt, people lost their jobs and could not feed their families.

In a more general sense, UCM’s constitute an attack on democracy itself, bearing in mind that UCMs deliberately aim at imposing one country’s economic system on another, thereby violating the right of the targeted nation to choose its own form of government. UCM pressures are incompatible with paragraph 135 of General Assembly Resolution 60/1, which stipulates:

“We reaffirm that democracy is a universal value based on the freely expressed will of people to determine their own political, economic, social, and cultural systems and their full participation in all aspects of their lives. We also reaffirm that while democracies share common features, there is no single model of democracy, that it does not belong to any country or region and reaffirm the

necessity of due respect for sovereignty and the right of self-determination. We stress that democracy, development and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing.”

Purposes and effectiveness of UCMs

Pronouncements by many US government officials since the days of President J.F. Kennedy document the real intent of US coercive legislation and financial blockades. A good explanation of the purpose of UCMs with regard to the Cuban embargo is contained in the statement of the US Deputy Assistant Secretary of State for Latin America Lester Mallory in 1960. He stated:

“The majority of Cubans support Castro ... The only foreseeable means of alienating internal support is through disenchantment and disaffection based on economic dissatisfaction and hardship ... Every possible means should be undertaken promptly to weaken the economic life of Cuba ... A line of action which, while as adroit and inconspicuous as possible, makes the greatest inroads in denying money and supplies to Cuba, to decrease monetary and real wages, to bring about hunger, desperation, and overthrow of Government.”

In other words, the purpose of unilateral coercive measures is to cause suffering in the hope that chaos will lead to violence and “regime change”. Yet, in more than sixty years, the UCMs and financial blockades against Cuba did not succeed in inducing the Cuban population to overthrow their government. The same applies to

Nicaragua, where US coercive measures since the 1980s failed to dislodge the Sandinistas. Ditto in Venezuela, where the economic war since the election of Hugo Chavez in 1998 and the attempted coups in 2002 and 2019 have failed.

Over the past years, a less offensive narrative has been concocted to try to make the geopolitical nature of unilateral coercive measures appear reasonable and acceptable. According to the new apologetics, UCMs are intended to advance “human rights” and “persuade” the targeted governments to change their economic policies and make them more in line with those of the world leader in human rights, namely the United States. In order to make UCMs appear more “palatable” to a democratic electorate, propaganda is deployed to demonize the targeted governments, placing the blame on their “authoritarian” and “corrupt” leaders, who are allegedly guilty of gross violations of human rights and democratic principles.

UCMs are presented as a form of benign pressure aimed at bringing an end to alleged human rights violations. Actually, there is little new in this tactic. Already Tacitus in the first century AD noted that it is human nature to try to blame the victims of our actions. Government propaganda and the echo chambers of the mainstream media are enough to anaesthetize the electorate of democratic countries so that they “accept” the moral legitimacy of UCMs. This kind of demonization of foreign governments includes false accusations of being “sponsors of terrorism” and therefore constitute a threat

to the “national security” of the country imposing the UCMs. This is compounded by a hybrid media war that incites hatred and clearly violates article 20 of the ICCPR.

Human rights restrictions by the targeted State in response to UCMs

As shown above, the purpose of UCMs is to cause chaos, a national emergency, a volatile situation with unpredictable consequences. At the same time, the political narrative continues to invoke human rights and humanitarian principles as their true purpose. However, there is no empirical evidence whatever to prove that countries subjected to UCM have improved their human rights records.

Experience shows that when a country is at war – any kind of war — it usually derogates from some civil and political rights. Similarly, when a country is enduring non-conventional hybrid warfare and is subjected to UCMs and financial blockades, the result is not an expansion of human rights, but exactly the opposite. When UCMs 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 siege, it closes ranks in an attempt to reestablish stability through the temporary restriction of certain civil and political rights.

Article 4 ICCPR envisages 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). While such derogations are undesirable and should be as brief as possible, every state's priority is survival, the defense of its sovereignty and identity. International law recognizes that governments have a certain margin of discretion in determining the existential threats posed by internal or external danger, whether by UCMs, paramilitary activities, subversive propaganda, or sabotage.

Article 4 ICCPR stipulates: "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin."

Scholars have documented how external pressures to destabilize targeted governments have resulted in the adoption of emergency legislation in response. This has been the case in Cuba, Nicaragua, and Venezuela, where the enjoyment of certain civil rights has been restricted in the name of national security. Accordingly, it can be demonstrated that far from facilitating the improvement of the human rights situation in a targeted country, UCMs often result in the enactment or strengthening of restrictive domestic legislation that aim at maintaining

stability and safeguarding vital interests. In such cases UCMs reveal themselves as counter productive.

If the international community wants to help a country improve its human rights performance, it should endeavor to eliminate the threats that make governments retrench instead of opening up. Precisely because UCMs aggravate a country's economic and social 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 UCMs, it would seem that an old French adage applies:

— la bête est très méchante, lorsqu'on l'attaque, elle se défend.

The beast is very nasty — when you attack it, it defends itself.

Another collateral effect of UCMs is that targeted governments frequently use their own propaganda means to bring about a “rallying around the flag” effect, emphasizing national identity and “embattled sovereignty”. North Korean and Iranian leaders have succeeded in appealing to nationalistic feelings among their populations in an attempt to make them accept the government's resilience to sanctions. During my UN mission to Venezuela in November/December 2017, I discovered that the mood in the population, universities and churches was one of being under “siege” by the US, and a majority of those whom I interviewed, including dozens of persons active in the large NGO community,

blamed the US for their misery and not the Maduro government.

The bottom line is that “democracy” cannot be exported and imposed by force, that human rights are not the result of a vertical, top-down enforcement but rather require a horizontal recognition of the dignity of every human being. The exercise of human rights depends on peace, education, mutual respect, and solidarity.

In my own reports to the General Assembly and Human Rights Council, I have proposed that the General Assembly adopt a resolution under article 96 of the UN Charter referring the legal questions around unilateral coercive measures to the International Court of Justice, requesting an advisory opinion on the consequences of the continued imposition and enforcement of UCMs. The ICJ should also estimate the level of compensation due to the victims of these international wrongful acts.