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**Unilateral Coercive Measures as an Obstacle to the Realization of the
Right to Development**

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The Declaration on the Right to Development was adopted 3 years before the collapse of the Berlin Wall. Yet it already referred in article 7 to a « peace dividend » as a result of the resources released by effective disarmament measures to be used for development purposes particularly in developing countries. The East-West conflict then ended but no peace dividend was allocated to accelerate development. Instead the world witnessed a spectacular increase in unilateral coercive measures which had the opposite effect.

Twenty eight years later, in 2014, one full third of humanity was living in countries targeted by some such unilateral restrictive measures. This is in addition to sanctions adopted by the Security Council under Chapter 7 of the Charter. The accumulation of evidence on the adverse human rights impacts of such measures finally led the Human Rights Council at its 27th session in September of that year to create my mandate.

The relationship between the Declaration on the Right to Development and the HRC and GA Resolutions has at times been questioned. The assumption was that R2D is an entitlement of individuals towards their own state while the problematique of UCMs deals with relations between States which ultimately has no place in human rights. In fact, the argument goes, there is no mention in the Declaration on the Right to Development, of unilateral coercive measures.

It is correct that UCMs, as we call them for short, are not mentioned as such in the Declaration although the broader concept of self-determination is strongly reaffirmed. The declaration however emphasizes in Article 3 (2) the need for « full respect for principles of international law concerning friendly relations and cooperation among States ». This refers to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, enshrined in resolution 2625 (XXV) adopted by the General Assembly in October 1970 and which stipulates that :

“No State may use or encourage the use of economic, political or any other type of measure to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind”.

The Charter of Economic Rights and Duties of States of December 1974 adopted by General Assembly resolution 3281/ XXIX includes similar language in its article 39.

While it is also correct that Article 2 of the Declaration on R2D stipulates that the human person is the central subject of development, Article 3 (3) asserts that “States have a duty to co-operate with each other in ensuring development and eliminating obstacles to development”. So it is clearly not only a domestic policy issue.

Likewise, recent resolutions on the right to development such as resolution HRC/33/14 of October 2016 recognize the international responsibilities of States to create conditions favourable to the realization of the right to development. This means at least removing the obstacles to achieving this right. Yet these resolutions do not even mention the

need to remove the main exogenous obstacles to the R2 which are caused by unilateral coercive measures. So the elephant in the room has been lost sight of.

This omission must be put right.

All States and all individuals have the prerogative of accessing to equal development opportunities. UCMs are intended by their very nature to constrict access of targeted States and individuals to resources. They thus undermine the attainment of equal opportunities. If this is so, can such measures ever be legitimate?

The Security Council closely monitors the human rights impact of its sanctions which are legitimate as they flow from the Charter. It has *inter alia* given up resorting to comprehensive sanctions and replaced them where necessary by targeted measures whose human right impact is closely monitored. As for UCMs, there is no similar systematic review and adjustment process across the board. Targeted countries or individuals targeted by the Council can appeal to an Ombudsperson only for the Al-Qaida Sanctions Committee. Only the European Court of Justice has a right to review UCMs on form only and not on substance, i.e. however acute their impact may be on the right to development. There is no equivalent appeals procedure in the United States.

The 2030 Agenda for Sustainable Development is ambiguous in its prohibition of such measures. It stipulates that : « States are strongly urged to refrain from promulgating and applying any unilateral economic and financial or trade measures not in accordance with international law and the Charter of the United Nations that impede the full achievement of economic and social development, particularly in developing countries».

The EU that applies restrictive measures to many target countries also asserts in its policy guidelines¹ that “*The introduction and implementation of restrictive measures must always be in accordance with international law*”. How that congruence is to be determined is not exempt of ambiguity

The same ambiguity is maintained in many if not most UN Human Rights Council resolution such as for instance, resolution 30/2, *Human Rights and Unilateral Coercive Measures*, of 1 October 2015 which stipulates in O.P. 1 : “*Calls upon all States to stop adopting, maintaining or implementing unilateral coercive measures **not in accordance with international law, international humanitarian law, the Charter of the United Nations ...thus impeding...in particular the right to development***”.

In common parlance, this implies that there are some « good » UCMs which do not interfere with the right to development and some « bad » ones that are an obstacle to the enjoyment of this right and that should be avoided. The texts say the line between « good » and « bad » UCMs can be drawn by reference to international law or international human rights law.

However the former does not readily provide criteria for establishing such a distinction. It just recognizes that UCMs applied through denial of the right to development

¹ *Guidelines on implementation and evaluation of restrictive measures (sanction) in the framework of the EU Common Foreign and Security Policy*, of 15 June 2012, paragraph 9.

are illegitimate if they are intended at promoting the interests of the source country or group of countries. What about such measures as are proclaimed to put an end to human rights violations in a target country but that carry with them denials of basic components of the right to development thus making the human rights situation worse and not better in the said country?

As for humanitarian law it asserts that, regardless of its alleged legitimacy, any UCM which *de facto* gravely undermines the basic human rights of ordinary people become thereby illegitimate.

The developing countries, and in particular the NAM, consider that the texts calling on States to stop adopting, maintaining or implementing such measures **not in accordance with international law** » etc., should be read as meaning that States should stop adopting, maintaining or implementing **all** such measures **because they are by their very nature contrary to** international law, international humanitarian law, the Charter of the United Nations etc..

Such an interpretation while subject to challenge in terms of syntax, would be politically corroborated by the UN Declaration on Friendly Relations and Cooperation between States as well as by the Charter on Economic Rights and Duties that I have referred to earlier. It would also be in line with HRC resolution 24/14, p.p. 4 which states that : « Unilateral coercive measures and legislation are contrary to international law, international human rights law, the Charter and norms and principles governing peaceful relations among States ».

As can be inferred from this discussion, linguistic ambiguities are not due to flaws in reasoning but to search of compromise on words despite disagreement on substance between source and target countries.

Yet while we discuss these linguistic niceties, people are dying from the impact of the denial of some of their basic entitlements in terms of their right to development.

Thus I witnessed in the Sudan the plight of ordinary people who could not ensure their basic right to food because imports of inputs for agricultural production were denied by long standing UCMs. Likewise cancer patients could not get radiation treatment in time because of the lack of spare parts or of cobalt for the GE machines providing such treatment. Likewise, the Sudan was one of the rare countries where people were still dying from diabetes because of the unavailability of insulin. The humanitarian exception clauses where available were of little significance as the country had been excluded from SWIFT, the international financial clearance system which makes payment for imports possible. Nor could safe drinking water continue to be available for the population in parts of Khartoum for lack of imported chemicals to purify water supplies.

Our mandate was able through quiet diplomacy to first obtain the establishment in March 2016 of a UN office procurement mechanism with acceptance of related financial transfers by the source country for essential drugs. Later the mandate's action resulted in the total lifting of UCMs targeting Sudan by January 2017. This could not have been achieved without the close cooperation between this mandate and the Independent Expert on the Sudan, Mr. Aristide Nononsi. A special expression of gratitude is also due to the US Mission in

Geneva, led by H.E. Keith Harper and his team which contributed so much to make this happy outcome possible.

Commitment to consensus building by all was a key ingredient of success.

Let us therefore concentrate, as we address the adverse human rights impact of UCMs on the right to development, on the issues where there is consensus recognition that joint international action is needed as suggested by the eminent Chair-Rapporteur of the Working Group on the Right to Development, H.E.Zamir Akram:

- Ending poverty and hunger
- Ensuring healthy lives
- Providing inclusive and equitable quality education, and I would add, education for equal citizenship rights
- Achieving gender equality

Leaving aside for the moment the debate on whether all or some UCMs are contrary to international law, human rights law, the UN Charter etc., I suggest that under the discussion of R2D, the international community recognizes that priority consideration should be given to stopping the adoption, maintenance or implementation of all UCMs that could undermine these four basic entitlements which are key components of the right to development.

ENDS.