ATHENA

CRITICAL INQUIRIES IN LAW, PHILOSOPHY AND GLOBALIZATION

The Evolving Qualification of Unilateral Coercive Measures: A Historical and Doctrinal Study

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ABSTRACT

Unilateral coercive measures are deeply rooted in the history of statehood, yet their legal qualification continues to evolve. In a factually unequal international order, the governments of core countries continue to apply such measures as a foreign policy tool in driving peripheral countries to submission despite human rights concerns and a growing consensus on the illegality of their conduct. As most legal scholars struggle to define what constitutes a unilateral coercive measure, the conditions that beget coercive measures and the historical progress that led to today's predominant views are largely overlooked. Thus, this article is the fruit of a historical and doctrinal study of unilateral coercive measures and their qualification, as it aims to provide an insight as to what lies ahead in light of the historical precedent and the current progress in the field of public international law, human rights law and international criminal law.

Keywords: coercion, non-intervention, state sovereignty, responsibility of states, crimes against humanity

ATHENA
Volume 2.1/2022, pp.204-253
Articles
ISSN 2724-6299 (Online)
https://doi.org/10.6092/issn.2724-6299/13760

Since the inception of the earliest forms of the political concept that we call a "state", hegemonic powers have been resorting to coercive measures to force weaker states (or proto-states) to change their policies or socio-economic systems, effectively preventing them from exercising full sovereignty. These coercive measures have typically consisted of trade sanctions or overarching embargoes, which were often backed with the use of force or the threat of war as sanctioning parties had little regard for the civilian population suffering from the repercussions of their sanctions. In fact, the suffering of the ordinary citizen has always been a weapon in the hands of the sanctioning state, which seeks to use the desperation of the affected masses to drive their government to submission. Thus, in assessing coercive measures, the principles of public international law *in stricto sensu* go hand in hand with human rights, and modern legal scholars often treat the question as to the legality of unilateral coercive measures from both perspectives.

The reader will notice the slight difference in the terminology when referring to modern coercive measures, namely the addition of the adjective "unilateral". Per their nature, all coercive measures used to be unilateral until the foundation of the United Nations, which conceived a body that can legally adopt coercive measures in order to "maintain or restore international peace and security"[1] – namely, the UN Security Council. Hence, by "unilateral coercive measures" we mean, *in prima facie*, coercive measures which are adopted by states against other states without the consent of the UN Security Council. In practice, however, the Special Procedures mechanism of the UN Human Rights Council has also come to treat the coercive measures applied by a supranational organisation (namely, the European Union) within the broader context of "unilateral coercive measures".[2] As the reader will infer

[1] As per Articles 39 and 41 of the UN Charter.
[2] In the words of the current UN Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Ms. Alena Douhan, unilateral coercive sanctions can be applied by "states" or "groups of states" "in the form of international organisations". In other words, while Douhan (like Jazairy before her) is careful not to come

ISSN 2724-6299 (Online)
https://doi.org/10.6092/issn.2724-6299/13760

from the reports cited in this article, the concept of "unilateral coercive measures" is ultimately to be interpreted as coercive measures applied by the subjects of international law independently from the UN Security Council.

Another question which may arise in view of the modern colloquial usage of the term is "why are economic sanctions referred to as unilateral coercive measures?" and vice versa. This is by no means a matter of coincidence, as the most prominent examples of unilateral coercive measures in recent history consist of ruthless economic sanctions amounting to blockades. Case in point, the United States trade embargo against Cuba brought numerous health crises upon the people of the socialist island nation after the enactment of the 1992 Torricelli Act, which was (in the words of Congressman Robert Torricelli) meant to "wreak havoc upon that island" (Franklin, 1994) after the dissolution of the Soviet Union and the COMECON. Indeed, by effectively inhibiting the vessels registered in third states from travelling to US ports after docking in Cuba, the Clinton administration also prevented Cuba from importing petroleum, feed for livestock, fertilisers, pesticides and cooking oil, which caused a nationwide nutrition problem that became the main catalyst of a neuropathy epidemic leading to a total of 50,863 cases by 14 January 1994 (Román, 1994, 5). This, of course, pales before the numbers reached during the COVID-19 pandemic when Cuba developed its own vaccines and encountered yet another obstacle caused by US sanctions: a lack of syringes due to not being able to receive imports by sea (Whitney Jr., 2021).[3]

However, not every form of unilateral coercive sanctions is as comprehensive as the US trade embargo (or *bloqueo*) against Cuba. In fact, since the dawn of (neo-liberal) globalisation, the quantity of unilateral coercive measures increased as the scope of these measures began to vary.

The non-comprehensive unilateral coercive measures have been colloquially referred to as "targeted sanctions" which, in turn, have also

to a decisive conclusion as to whether international/supranational organisations can apply unilateral coercive measures, the sanctions applied by the European Union are nonetheless assessed in the same category as unilateral coercive measures (applied by states).
[3] The issue was eventually solved with donations.

ISSN 2724-6299 (Online)
https://doi.org/10.6092/issn.2724-6299/13760

varied in scope and implementation. Those targeted sanctions with arguably the broadest scope, i.e., sectoral sanctions, have been deemed to have an impact akin to comprehensive measures, especially in the case of US sectoral sanctions against Venezuela (which target the gold, oil and financial sectors of the Latin American country) and the trade sanctions imposed by the European Union against the Syrian Arab Republic (which have mainly involved the oil sector). On the other hand, some unilateral coercive measures have had a more prominent political character, such as the travel restrictions imposed on alleged human rights abusers under the 2012 Magnitsky Act (US).

Alas, despite the obvious fact that unilateral coercive measures have been around for centuries and have shaped international politics especially since the early 1990s, there has not been a consensus on their definition. It is possible to cite three main reasons as to why this has been the case: To begin with, sanctioning states have used different names and alibis to justify the measures they adopt, arguably due to the growing opposition to the concept of "unilateral coercive measures" at the UN General Assembly (hereinafter "UNGA" or "General Assembly"). Second, in a similar vein, the terms "autonomous sanctions", "economic sanctions", "unilateral sanctions" and "unilateral coercive measures" have been used "loosely and interchangeably" in academic works (Barber, 2021, 4). Finally, as mentioned above, the variety of adopted measures made it hard for legal scholars to classify them. This has been a particularly crucial matter since the International Seminar on Unilateral Coercive Measures held in Vienna in 2019 and Venezuela's referral to the International Criminal Court in 2020 as on both occasions, diplomats and legal scholars alike have discussed whether comprehensive and sectoral unilateral coercive measures constitute crimes against humanity as per Article 7 of the Rome Statute. Furthermore, even though the works of the two UN Special Rapporteurs on the negative impact of unilateral coercive measures on the enjoyment of human rights have duly focused on this matter, two questions remain largely unanswered: What are the material reasons that

ISSN 2724-6299 (Online)
https://doi.org/10.6092/issn.2724-6299/13760

enable the adoption of unilateral coercive measures and what can be expected in terms of their qualification in the near future?

Thus, this article approaches the question of defining unilateral coercive measures by assessing the evolution of their legal qualification in light of the economic and (geo)political conditions that conceive them. Therefore, in the first place, it provides a historical analysis of coercive measures implemented prior to the foundation of the UN and deduces the common conditions and characteristics of coercive measures. Subsequently, it dwells on how unilateral coercive measures were viewed after the foundation of the UN, with particular emphasis on the "Era of Decolonisation" and the "Era of Globalisation" following the dissolution of the socialist camp in Eastern Europe. Finally, it focuses on the contributions of human rights law to the qualification of unilateral coercive measures with particular emphasis on the UN human rights mechanism. Consequently, this article makes use of historical analysis and doctrinal study in terms of methodology and submits that governments should take heed of the fact that the evolution of the qualification of unilateral coercive measures is leading to a categorical prohibition, which calls for their immediate termination.

1. A History of Coercive Measures

Coercive measures have been an instrument used by hegemonic political forces against their weaker adversaries and allies since the inception of statehood at both ends of the Eurasian continent. In Europe, the earliest examples of note in the context of economic sanctions[4] (Watson, 2004, 24) were adopted in the prelude to the Peloponnesian War (431–404 BC) when Athens, one of the mightiest city-states of the era, decided to apply a series of

[4] There are records which indicate that retaliatory action was taken by the city of Aegina against Athens when the former seized the ships of the latter in retaliation for Athens' alleged kidnapping of Aeginian citizens. Jazairy argues that this also constitutes an example for coercive measures; however, due to the "tit-for-tat" nature of the controversy, it is hard to agree with this interpretation. (A/HRC/30/45)

ISSN 2724-6299 (Online)
https://doi.org/10.6092/issn.2724-6299/13760

commercial sanctions against the weaker city-state of Megara as a "retaliation" for the alleged kidnapping of Aspasia's maids and the "desecration" of the *Hiera Orgas* (the meadow of Demeter) by the citizens of Megara. These sanctions, which were dubbed "the Megarian Decree", consisted of the exclusion of Megarian citizens from the markets controlled (either directly or indirectly) by Athens. In other words, Megarians were effectively prevented from trading in the Aegean and beyond, as the so-called "Athenian Empire" (consisting of Athens alongside its allies and tributaries) extended from the Peloponnese in the south to Byzantium in the north (Buckley, 2010, 206). Most historians agree[5] that the sanctions applied by Athens "strangled" the Megarian economy (Watson, 2004, 24) and solidified the impoverished city-state's alliance with another major power of the region, namely Sparta, which demanded that Athenians lift the sanctions on the Megarians. The unsurprising rejection of this demand is widely considered as one of the key moments that led to the Peloponnesian War (Buckley, 2010, 299), which saw the decisive defeat of the Athens-led Delian League at the hands of the Persian-backed Peloponnesian League led by Sparta and the establishment of an oligarchy in Athens.

It would be wrong to assume that it was only the so-called "cradle of Western civilisation" that experienced such a contradiction with hegemonic powers trying to dictate their policy on weaker forces. Indeed, ancient China also saw the rise of regional hegemons who set the rules of commerce and interstate relations in the Spring and Autumn Period and the era of the Warring States that followed. As a matter of fact, the Spring and Autumn Period was marked by the rise of the so-called "Five Hegemons" (五霸) who led the other monarchs of the "Middle Kingdom" in safeguarding their common interests in the fields of commerce and security. However, there was one key difference between Chinese hegemons and their Greek counterparts

[5] With the notable exception of Geoffrey Ernest Maurice de Sainte Croix FBA, who argued that the Athenian sanctions on Megara would have barely affected the latter's citizens as trade in the Peloponnese was largely conducted through non-citizen middlemen and merchants (Balot; Forsdyke; Foster, 2017).

ISSN 2724-6299 (Online)
https://doi.org/10.6092/issn.2724-6299/13760

of the same time period: While the ancient Greeks (such as the rulers of Athens and Sparta) sought to rise above the other regional powers through the assertion of their authority, the "Five Hegemons" of ancient China opted for a more "diplomatic" approach and aimed to "set up a new order for an interstate community that was to be guarded by consensus rather than authority" (Loewe and Shaughnessy, 1999, 557).

Nonetheless, from Medieval times onward, there has been greater convergence among various forms of economic hegemony across the greater continent. In Medieval Italy, for instance, the hegemony of the "most serene" maritime republics of Genoa and Venice allowed them to use economic sanctions as a tool in coercing other city-states. An example of this policy was the Venetian threat of blockade against Ancona in mid-13th century, which forced the latter to eventually accept the *Rialto*[6] (in 1264) as the only place where the merchants of Ancona could exchange goods (Lane, 1973, 63). Venice resorted to the same policy when dealing with famine-stricken Bologna in 1273, as it sought to punish the latter for receiving supplies from Ravenna independently from Venice. The combination of the lack of food and the hardship caused by Venetian sanctions eventually forced Bologna to capitulate, which allowed Venice to re-impose a quota on the goods that Bologna could receive from Ravenna (Lane, 1973, 59).

On a larger scale, following the Third Council of the Lateran in 1179, the Holy See tried to prevent Roman Catholic kingdoms from exporting goods and ships to Islamic realms (Summerlin, 2019, 192), in addition to trying to compel the adherents of other churches to abide by the same embargo (Baldwin, 1970, 267). However, even before these sanctions were deemed null with the rise of Protestantism (Stantchev, 2014, 87), major powers were able to circumvent the conditions imposed by the Papacy. An example in that regard was the early regime of capitulations between the Ottoman Empire and the Republic of Genoa (Bulunur, 2009, 5). The source of this regime, i.e., the

[6] The wholesale market in the city of Venice where Venetians would act as middlemen for both Italian and foreign merchants.

ISSN 2724-6299 (Online)
https://doi.org/10.6092/issn.2724-6299/13760

Ahidâme of 1453 was significant for a variety of reasons: Politically, it demonstrated that Ottoman diplomacy was flexible enough to forego the fact that the defence of Constantinople was *de facto* led by a Genovese *condottiere*, focusing instead on the benefits that could be gained by winning over the affluent Genovese community in Galata. Similarly, the readiness of the Genovese to engage in commerce with the Ottomans showed that the Papal decree had almost no effect on the diplomatic and commercial relations of Catholic Christian realms. On a more general note, this served as a demonstration of how the implementation of coercive measures required a position of *material* hegemon - be it military or economic. Correlatively, the fact that a major commercial power of the Mediterranean, which nominally adhered to the Roman Catholic Church, could effectively ignore the *dicta* of the *pontifex maximus* served to prove that only *material* hegemons could use religion as an alibi in applying coercive measures.

In spite of the earlier example set by the "Five Hegemons", this norm was also valid in 16th century East Asia. Indeed, even though the reigning Ming Dynasty officially adopted a policy of "non-interference" in the affairs of the "barbarian" states that surrounded it, this policy depended on whether said "barbarian" states were willing to become the Ming's tributaries (Hazlett, 1999, 11). In the case of Japan, the third *shōgun*[7] of the relatively weak Ashikaga Shogunate, Ashikaga Yoshimitsu, had accepted the status of tributary to the Ming, which allowed Japanese merchants to access the biggest market of the region (Toyoda, 1969, 29). Thus, when Japan ushered in the *Sengoku* era leading to the rise of the so-called "Three Great Unifiers",[8] the island nation was paying tribute to the hegemonic power to its west in order to engage in trade with the realms in its immediate vicinity.

However, this tributary regime established between the two realms was

[7] Much like the evolution of the word *imperator* in Europe, the literal meaning of the word *shōgun* (将軍) was "commander" or "army commander". However, since the foundation of the first shogunate by Minamoto no Yoritomo, it became the hereditary title of the military dictator of Japan who effectively ruled in the emperor's stead.
[8] Oda Nobunaga, Toyotomi Hideyoshi and the founder of the Tokugawa Shogunate, Tokugawa Ieyasu.

ISSN 2724-6299 (Online)
https://doi.org/10.6092/issn.2724-6299/13760

not meant to last forever as the second Great Unifier of Japan, Toyotomi Hideyoshi decided to follow his former master Oda Nobunaga's dream and invade China. From the offset, this ambitious campaign met a major geographical obstacle, namely Joseon Korea, which refused to grant safe passage to Toyotomi samurai as the Joseon Dynasty was a tributary of the Ming. Consequently, the war-hardened Japanese launched a brutal invasion of Korea, to which the Great Ming initially responded by adopting economic sanctions against the Toyotomi regime (Yuan Jiadong, 2013, 136). Later, Ming forces were also involved in the Korean counterattack against the invading samurai and the Japanese were eventually driven back. Nonetheless, the economic sanctions continued until the downfall of the Ming, and the newly established Tokugawa Shogunate in Japan tried to circumvent these already obsolete measures through Satsuma control over the Ryukyu Islands (Hazlett, 1999, 62) and by seeking to engage in trade with the remnants of the Ming Dynasty in southern China (Xing, 2016, 111). Thus, it was proven yet again that once a realm lost its regional hegemony, the implementation of coercive measures became untenable.

Moving to the rise of financial capitalism and modern imperialism in the same geographical context, one can view the so-called "gunboat diplomacy" applied by the United States against the Tokugawa Shogunate in the prelude to the Boshin War as a form of coercive measures. As a matter of fact, the hardly peaceful tactics adopted by the young imperialists of the "New World" aiming to coerce the Japanese to open their ports to North Americans consisted not only of an overt threat of aggression (Beasley, 2002, 5) but also an assault on Japanese economic sovereignty with the invasion of what would be Japanese territorial waters under modern international law of the sea (Beasley, 1972, 89). Similarly, the economic sanctions imposed on the Qing Dynasty by the British Empire following the Opium Wars did not merely consist of the forced importation of British opium as per the Treaty of Nanjing: The imposition of unequal exchange in the tea market and the outflow of silver also helped cripple Chinese production (Yuan Yao, 2021),

ISSN 2724-6299 (Online)
https://doi.org/10.6092/issn.2724-6299/13760

and this was done to make Chinese economy entirely dependent on Western capital. Coupled with the concession of Chinese ports to Western imperialist powers, the economic conditions foisted on the Qing and the people of China were nothing short of brutal, as the country became a semi-colony whose economy was run by foreigners while the commoners were compelled to oppose a corrupt monarchy and European meddling by resorting to armed struggle.

Even though the economic sanctions imposed by Western colonialists on Asian realms drew a particularly grim picture, it was the application of similar sanctions in the Americas that gave birth to popular legal doctrines which brought us closer to modern views on unilateral coercive measures. In point of fact, one of the most popular examples in that context, namely the Venezuelan naval blockade of 1902-1903 directly influenced the Drago Doctrine, which in turn built on the premise established by the Calvo Doctrine.[9]

Before going over the blockade of Venezuela, however, one ought to mention a tragicomical expression of European imperialism in Central America, namely in the young Mexican Republic. After replacing the Mexican Empire between 1823 and 1824, the Mexican Republic had been facing internal strife since its inception (Costeloe, 2002, 59) and the leaders of the centralist government (established by Santa Anna in 1835) had immediately found themselves under a heavy financial burden after seizing power from the federalists, as the constant state of civil war had greatly hindered the country's productivity (Costeloe, 2002, 127). European imperialists, as well as the emerging power that was the United States of America thus sought to seize upon the chance to further their privileges in their commercial relations with Mexico. In the case of the United States, this

[9] Named after Carlos Calvo and inspired by Calvo's magnum opus *Derecho internacional teórico y práctico de Europa y América*, the Calvo Doctrine provided that foreign nations could not claim jurisdiction in cases involving their citizens engaging in economic activity in another country so long as their citizens did not exhaust all domestic remedies in the host country. The Drago Doctrine later built on this premise and upheld the principle that creditor states could not resort to aggression for the purpose of claiming public debt.

ISSN 2724-6299 (Online)
https://doi.org/10.6092/issn.2724-6299/13760

opportunism came in the shape of supporting Texan separatists (MacDonald, 2012, 260), whereas France demanded reparations for the alleged looting of the shop of a French pastry chef in Tacubaya. Aside from questions related strictly to the legality of the claim, the amount demanded by France in its reparation claim was roughly six hundred times the worth of the pastry shop (Casas, 2013). The Mexican government refused to treat French demands, which led to the so-called "Pastry War".

This brief armed conflict between an impoverished former colony and a colonial empire was initiated with an act of aggression by the French fleet which aimed to impose a blockade on all Mexican ports on the Gulf of Mexico from Yucatan to the Rio Grande. Additionally, the French fleet that was tasked with imposing the blockade proceeded to bombard the Mexican citadel of San Juan de Ulúa near the city of Veracruz and, to make matters worse for the Mexicans, US-backed Texan separatists moved to impede Mexican smugglers who were trying to circumvent the blockade (MacDonald, 2012, 262). As a result, despite putting up a tough resistance, the Mexican government was forced to capitulate to French demands and pay 3 million francs in damages (Casas, 2013). Furthermore, France and the US forced Mexico to give further privileges to French merchants and investors as a "substitute" for war indemnities. This regime of subservience which initially arose from coercive measures continued until the end of the second French intervention in Mexico, when the Mexicans were finally able to vanquish the French imperialists (Velázquez Flores, 2007, 117).

The aforementioned blockade of Venezuela, on the other hand, was realised within a more "familiar" framework from a modern point of view: Case in point, the controversy between Venezuela and Western powers was rooted in Venezuela's public debt and the decision of the then president, Cipriano Castro, to halt the payments related to foreign debt. Although the defiant stance of President Castro was an irritation to a number of Western governments, it was the Second Reich that contemplated pursuing a more aggressive policy against the Latin American country as it sought to further

ISSN 2724-6299 (Online)
https://doi.org/10.6092/issn.2724-6299/13760

the privileges enjoyed by the many German investors in Venezuela (Forbes, 1978, 317). As British and Italian capitalists also desired to join the fray (Mitchell, 1996, 195), the governments of Germany, Italy and the British Empire eventually decided to send their fleets to blockade Venezuelan ports. Initially, President Castro thought that the US would interfere in favour of Venezuela, on the basis of the Monroe Doctrine. However, the administration of Theodore Roosevelt interpreted the Doctrine strictly, arguing that it did not consist of a categorical opposition to European intervention in the Americas, and that "if any South American State misbehaved towards any European country", the Europeans would have the right to "spank it" (Kaplan, 1998, 16).

After experiencing European success against Venezuela, however, the Theodor Roosevelt administration had a change of heart and decided to threaten the German and Italian fleets surrounding Venezuela (Hill, 2008, 110). Consequently, the US convinced both the creditors and Venezuela to resolve their conflict "peacefully". As a result, the parties stipulated the Washington Protocols, according to which Venezuela was obliged to pay roughly 27,000 US dollars as war indemnities to the "creditor states" (Tipioğlu and Weisbrode, 2013, 16). However, the European powers responsible for the blockade did not find the Accords sufficient, as they pushed for preferential treatment in the payment of their claims. This resulted in a litigation before the Permanent Court of Arbitration in The Hague, which did not end well for Venezuela. Indeed, in the assessment of the case, the Court made an assumption regarding the intentions of the parties prior to the stipulation of the accords and held:

> In permitting the other powers that had claims against Venezuela to adhere to the stipulations of the protocol of February 13, 1903, the blockading powers could evidently not have intended to renounce either their acquired rights or their actual privileged position. (Hamilton, 1999, 37)

ISSN 2724-6299 (Online)
https://doi.org/10.6092/issn.2724-6299/13760

The Court then took a step further and interpreted Venezuela's perceived lack of opposition to the privileges of blockading states as tacit approval of the privileges in question and construed the expression "all claims" (from the related clause of the Accords) exclusively as "claims of the blockading states". Hence, the Court unanimously ruled that blockading powers were entitled to preferential treatment and that other European powers could benefit from the pre-existing regime (Hamilton, 1999, 37). Although this was a satisfactory outcome for the Europeans, the US was far from pleased as the judgment of the Permanent Court of Arbitration could potentially pave the way for *direct* European interventions in the "backyard" of the US. Consequently, the administration of Theodore Roosevelt made an important addition to the Monroe Doctrine: the Roosevelt Corollary, which provided that the US would be entitled to do the "dirty work" of European creditors instead of letting them gain a foothold in the Americas (Maass, 2009, 383).

The coercive measures adopted against eastern Asians and Latin Americans by Western powers were, therefore, quite similar in essence. Over in the Middle East and Eastern Europe, however, there was a *sui generis* regime based on unilateral concessions made by the Ottoman Empire. As previously mentioned, these concessions, dubbed "capitulations", were initially designed to establish commercial relations with Catholic Christian realms in spite of Papal sanctions. However, as the power of the Empire waned and the "Sublime State" came to be known as the "sick man of Europe", its formerly weaker adversaries began to use coercive measures in order to gain further privileges by means of capitulations (or unequal treaties) without giving the Ottomans anything in return. This created an imbalance in the relations between the Ottomans and European realms which gradually transformed the Ottoman Empire into a semi-colony with Europeans dictating its economic and financial policies through coercive measures, unequal treaties, and capitulations.

Perhaps the most prominent example of this state of affairs is the 1839 Anglo-Ottoman Treaty or the Treaty of Baltalimanı. The treaty itself was the

ISSN 2724-6299 (Online)
https://doi.org/10.6092/issn.2724-6299/13760

result of the British Empire benefitting from the turmoil within the Ottoman Empire, as one of the "founding fathers" of Egypt, the Albanian viceroy Mehmet Ali Pasha of Kavala was, at the time, leading a successful rebellion against the Sultan. The reformist Sultan Mahmut II therefore pleaded for British and Russian aid – which is when the British Empire dictated its conditions. Indeed, the Treaty of 1839 compelled the Ottoman government to dissolve all state monopolies, allow British subjects to have full access to Ottoman markets, lift all internal customs for British goods, and punish all officials who did not permit British subjects to trade freely or prevented the free passage of British vessels. This created a regime that was not merely "unequal" in the sense that Ottoman subjects did not enjoy similar rights in Britain, but they were discriminated against at home as well in that, unlike British subjects, Ottoman traders had to pay internal customs when goods were transferred from land to sea and vice versa (Çeştepe and Güven, 2016).

As a consequence of the continuation of capitulations and the ratification of unequal treaties like the aforementioned Treaty of Baltalimanı, the Ottoman economy became entirely dependent on Western capital and its lack of productivity, eventually resulting in an exhaustive public debt. Hence, the creditor powers contemplated a domestic institution through which they could effectively impose their sanctions – and the Ottoman government had no chance but to comply. Thus, the *Düyûn-u Umumiye* or the Ottoman Public Debt Administration was founded during the despotic reign of Abdülhamit II. One of the many functions of this *sui generis* institution was structuring the public debt according to the demands of the creditor states (Gürsoy, 1984, 20). In a way, the praxis of the *Düyûn-u Umumiye* "internalised" the purpose and instruments of unilateral coercive measures, as it imposed economic sanctions on the decrepit Empire while bypassing the necessity to legislate for the purpose of enforcing coercive measures. Hence, the representatives of a creditor state could, for instance, seize a given percentage of yearly Ottoman revenue by lodging a complaint with the *Düyûn-u Umumiye*, unless the Ottomans fully paid their debt (Gürsoy, 1984, 21). This mechanism, along

ISSN 2724-6299 (Online)
https://doi.org/10.6092/issn.2724-6299/13760

with the persistence of capitulations which effectively prevented Ottoman manufacturers and merchants to compete with their European counterparts and allowed European powers to apply their own laws in Ottoman territory[10] (Ünal Özkorkut, 2004), drew the ire of a new generation of Turkish jurists who studied law in Europe.

One such jurist was a young Mahmut Esat Bozkurt, who condemned the capitulations and European powers' debt collection mechanism in his PhD thesis titled *Du régime des capitulations ottomanes* (1919), arguing that capitulations (including those arising from unequal treaties) were "unilateral concessions wrongly treated as treaties" for the purpose of "creating two distinct categories of norms of international law: One category for 'civilised' nations and an opposite category for 'uncivilised' ones." (Bozkurt, 1940, 1) In view of Bozkurt's later works and his submission in defence of (the Republic of) Turkey in the *Lotus* case (Türkiye Barolar Birliği, 2008, 121), it is possible to surmise that he was also adamant in opposing economic sanctions *in stricto sensu* as well as other forms of interferences with state sovereignty such as denying a state's right to jurisdiction.

Aside from the coercive measures used against the Ottomans to further the privileges stemming from capitulations and unequal treaties, some historians[11] also mention the British-French-Russian joint blockade (1827) against the Ottomans as an equivalent to "coercive measures", even though the aim of the blockading powers was to prevent the Ottomans from (militarily) suppressing the Greek Revolution. Clearly, this is a problematic assumption, as the naval engagement took place in the context of an ongoing armed conflict where the blockading powers had already sided with the Greek revolutionaries. Therefore, the joint blockade of 1827 can also be viewed as

[10] The extraterritorial application (Arıkan, 1995) of the laws of European powers did not only consist of the resolution of commercial disputes between Ottoman subjects and Europeans by "mixed courts" which applied European norms: Indeed, with a judicial reform introduced in 1847, the Sublime Porte also allowed the institution of "mixed criminal courts" which were composed of an equal number of Ottoman judges and European judges (Ünal Özkorkut, 2014).
[11] Among others, Lance Davis and Stanley Engerman (2003, 188).

ISSN 2724-6299 (Online)
https://doi.org/10.6092/issn.2724-6299/13760

an extension of the armed conflict, rather than an isolated attempt to forcefully change Ottoman policy.

Having addressed the Ottoman experience with coercive measures, three key points can be deduced from the general framework of historical coercive measures as observed in the previous passages:

- Effective coercive measures have always required the material hegemony of the sanctioning state. This is crucial in understanding why, in today's world, unilateral coercive measures are a concern for peripheral countries and not for those in the core.
- Even though they became more frequent and "Eurocentric" with modern colonisation and the evolution of capitalism, coercive measures are not strictly related to these phenomena.
- The main difference between earlier forms of economic sanctions and today's unilateral coercive measures is that, in the former case, sanctions were typically backed by the threat of aggression. This was a necessity in most cases since banking systems and industrial sectors were not intertwined, and hegemonic powers could not adopt effective coercive measures without resorting to the use of force prior to the advent of financial capitalism. Furthermore, before ushering in the "Era of Globalisation", international relations were designed according to the characteristics of a multipolar world whereas the international order that was established in the 1990s has allowed a group of countries to *unilaterally* determine the direction of world economy and, of course, international relations.

As the contrast between the past and present becomes more evident as one delves into the 20th century, the next section will observe the qualification of unilateral coercive measures after the adoption of the UN Charter with particular focus on the point of view of peripheral countries and the transition from the "Era of Decolonisation" to the "Era of Globalisation".

ISSN 2724-6299 (Online)
https://doi.org/10.6092/issn.2724-6299/13760

2. Unilateral Coercive Measures After the Formation of the UN

It is well-known that the prohibition of the use of force was an emerging principle of international law even before the drafting of the UN Charter. However, it was not as clear cut as it is currently enshrined in Article 2(4) of the UN's founding text. To give a prominent example: Even though Articles 12 and 13 of the Covenant of the League of Nations provided that Member States would submit any matter of controversy to arbitration, the following provisions did not make any reference to "the use of force". Instead, the drafters preferred the term "act of war" which could be met with, among other things, economic sanctions by all States Parties as per Article 16. However, as history attests, these measures were merely theoretical in the lack of an international body to enforce them. Similarly, the States Parties to the Kellogg-Briand Pact condemned "the recourse to war" and seemingly accepted the view that war should be renounced as "an instrument of national policy" in international relations – only to renege on their agreement soon after. Furthermore, neither text provided a clear definition of two key terms (i.e., "war" and "use of force"), as belligerent states continued to resort to acts of aggression.

It follows that the UN Charter was a solid step in the right direction for a democratic and equitable international order as it distinctly set out the general principle as to the prohibition of the use of force (including exceptions thereof) and the principle of non-intervention *in addition to* introducing an "enforcer" of the norms of international law in the shape of the Security Council. Consequently, it can be surmised that both the eschewal from the use of force in imposing economic sanctions and the creation of a body that can legally adopt coercive measures led to the inception of modern *unilateral* coercive measures – i.e., coercive measures which are taken *without* the consent of the Security Council and typically exclude an overt use of military force.

The progress achieved with the adoption of the UN Charter was thus

ISSN 2724-6299 (Online)
https://doi.org/10.6092/issn.2724-6299/13760

followed by the so-called "Era of Decolonisation", which saw the newly independent states in Africa and the Americas push for further recognition of their economic sovereignty at the General Assembly with the diplomatic aid of socialist states (Hendrich, 2018, 70). As several of these UNGA Resolutions touched on the question of unilateral coercive measures, it is necessary to briefly go over them.

One of the earliest General Assembly resolutions to condemn unilateral coercive measures as a violation of the principle of non-intervention was the 1965 "Declaration on the Inadmissibility of Intervention in the Domestic Affairs and the Protection of their Independence and Sovereignty" (A/RES/2131). Despite its brevity, the Declaration made an important distinction between the use of force and coercive measures, and declared that both forms of intervention were contrary to international law. Furthermore, the drafters made it clear that former colonisers' reliance on coercive measures for the purpose of shaping the social and economic policies of their former colonies could pose a "threat to peace", thereby setting a pattern for later resolutions.

Subsequently, the diplomats and scholars of peripheral countries began to push for an UNGA resolution that would enshrine full economic sovereignty as a principle. This resulted in the adoption of the "Declaration on the Establishment of a New International Economic Order" (A/RES/S-6/3201) at the at the 2229th Plenary Meeting of the UNGA in 1974. Despite being a relatively brief resolution, the Declaration aimed to "close the gap" between the countries in the centre of capital and the periphery of capital, thereby ushering in a more equitable distribution of wealth on a global scale. To that end, the drafters of the Declaration emphasised the "permanent sovereignty of every State over its natural resources and all economic activities" while stressing that the "interdependence" of the constituents of the world community required that humankind exercise the "right to development" in parity and harmony. In that respect, the drafters viewed unilateral coercive measures as a violation of this "inalienable right" and demanded that the

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https://doi.org/10.6092/issn.2724-6299/13760

nations aggrieved by unilateral coercive measures (and neo-colonialism) be assisted by the international community.

Later that year, this revolutionary Declaration paved the way for the more ambitious (and comprehensive) Charter of Economic Rights and Duties of States (A/RES/29/3281). Adopted at the 29th Session of the UNGA, the Charter of Economic Rights and Duties of States contained three maxims that shed light on how unilateral coercive measures should be viewed within the context of public international law. The first of these was befittingly enshrined in Article 1:

> Every State has the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or any form of threat whatsoever.

Looking at the wording of the provision through a 21st century lens, one can easily see how it stands in contrast to the more recent developments in international law and politics. As pointed out by De Zayas (A/HRC/39/47/Add.1), one of the main purposes of unilateral coercive measures in today's world is to force peripheral countries to adopt a neo-liberal model. However, back in the 1960's and 1970's, a maxim like the one put forward in Article 1 did not sound utopian, as newly independent states and socialist states held significant influence in the General Assembly (Hendrich, 2018, 57). This was a reflection of the waning of *de iure* Western sovereignty in the periphery of capital, which was brilliantly defined by historian Geoffrey Barraclough in 1967:

> When the twentieth century opened, European power in Asia and Africa stood at its zenith; no nation, it seemed, could withstand the superiority of European arms and commerce. Sixty years later, only the vestiges of European domination remained. […] Never before in the whole of human history had so revolutionary a reversal occurred with such rapidity. (Barraclough, 1967, 153)

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https://doi.org/10.6092/issn.2724-6299/13760

It was therefore inevitable that this "revolutionary reversal" would impact public international law vis-à-vis international politics. It was a time of upheaval against the former colonial masters and the formerly colonised aspired to prevent history from repeating itself. To that end, they sought to eliminate the means through which the colonisers had achieved their dominant status and curb the economic imbalance between the core and the periphery. This determination was particularly prominent in Article 16.1 of the Charter of Economic Rights and Duties of States, which labelled coercive measures as an instrument of, *inter alia*, neo-colonialism and considered them a hindrance to development:

> It is the right and duty of all States, individually and collectively, to eliminate colonialism, *apartheid*, racial discrimination, neo-colonialism and all forms of foreign aggression, occupation and domination, and the economic and social consequences thereof, as a prerequisite for development. States that practice such coercive policies are economically responsible to the countries, territories and peoples affected for the restitution and full compensation for the exploitation and depletion of, and damages to, the natural and all other resources of those countries, territories and peoples. It is the duty of all States to extend assistance to them.

Thus, it is obvious that the states in favour of the Charter of Economic Rights and Duties of States regarded unilateral coercive measures as a violation of the principle of non-intervention, which called for reparations to the aggrieved state. The drafters further clarified this point in Article 32 of the Charter, which mirrored one of the principles enshrined in the previously adopted UNGA Resolution 2625 of 1970, or the "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States" (A/RES/2625). In point of fact, the latter text established that:

> No State may use or encourage the use of economic political or any other type of measures to coerce another State in order to obtain from

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https://doi.org/10.6092/issn.2724-6299/13760

> it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind.

This crystal-clear statement was then framed in the context of relations between core countries and peripheral countries. In other words, former colonisers' eschewal from resorting to unilateral coercive measures was viewed by the drafters of the Declaration as a precondition for the realisation of peaceful relations among nations. The more crucial aspect of the text, however, was the fact that the principles enshrined therein were described as "basic principles of international law" and that all States should "be guided by these principles in their international conduct and […] develop their mutual relations on the basis of the strict observance of these principles". Consequently, this approach was adopted by the drafters of the aforementioned Charter of Economic Rights and Duties of States, who even envisaged a mechanism that would assess whether these principles had been observed by UN Member States once every five UNGA sessions. Alas, this mechanism did not come to fruition.

Nonetheless, in 1981, the General Assembly further consolidated the link between unilateral coercive measures and peaceful relations among nations in the "Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States". Per its title, the Declaration framed the question of unilateral coercive measures in the context of public international law and asserted:

> The duty of a State, in the conduct of its international relations in the economic, social, technical and trade fields, to refrain from measures which would constitute interference or intervention in the internal or external affairs of another State, thus preventing it from determining freely its political, economic and social development; this includes, inter alia, the duty of a State not to use its external economic assistance programme or adopt any multilateral or unilateral economic reprisal or blockade and to prevent the use of transnational

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https://doi.org/10.6092/issn.2724-6299/13760

> and multinational corporations under its jurisdiction and control as instruments of political pressure or coercion against another State, in violation of the Charter of the United Nations.

This paragraph was then followed by a reference to one of the most common alibis for the adoption of unilateral coercive measures:

> The duty of a State to refrain from the exploitation and the distortion of human rights issues as a means of interference in the internal affairs of States, of exerting pressure on other States or creating distrust and disorder within and among States or groups of States […]

It would be wrong to assume that such an affirmation was a mere premonition, as it coincided with the foundation of Helsinki Watch with a generous donation by the Ford Foundation (Doder, 1979). Indeed, to this day, the final iteration of Helsinki Watch, i.e., Human Rights Watch opposes a categorical rejection of unilateral coercive measures,[12] arguing that targeted sanctions can be used to force states to comply with their human rights obligations.

Aside from the far-sightedness of the drafters of the Declaration, it is worth noting that the resolution had passed with 120 votes in favour versus 22 votes against, thereby showing yet again that the vast majority of UN Member States viewed unilateral coercive measures as a violation of the principles of non-intervention and state sovereignty, and were aware of how human rights could be weaponised against peripheral countries.

Outside the UN framework, unilateral coercive measures have also been referenced in the founding treaty of the Organisation of American States (OAS). Indeed, as the reader will notice, Article 20 of the Charter of the OAS bore a striking resemblance to Article 32 of the Charter on Economic Rights

[12] One of the co-founders and former Executive Director of Human Rights Watch, Aryeh Neier goes as far as to speak in favour of comprehensive unilateral coercive measures against China and Myanmar while criticising the comprehensive sanctions against Cuba for essentially consolidating the "communist orthodoxy" (Neier, 2021).

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and Duties of States:

> No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind.

Quite noticeably, this provision does contain a historical irony: Even though it may seem reasonable that the continent which conceived the Calvo Doctrine and the Drago Doctrine would recognise the devastating effects of unilateral coercive measures, the two states that have had to sever their ties with the OAS due to political pressure are the ones that have been hit with the most severe economic sanctions by the US.[13]

Be that as it may, in view of the foregoing, one can infer that in the "Era of Decolonisation", the majority of UN Member States categorically viewed unilateral coercive measures as a violation of the norms and principles of public international law. Nonetheless, their revolutionary steps towards a more just division of the world's wealth were deemed to be binding, insofar as they possessed a dubious normative value.[14] Moreover, the destructive impact of *perestroika* policies[15] on the COMECON effectively allowed OECD countries to autonomously determine the direction of the world economy from late-1980's onward, which left peripheral countries with less options in pursuing the right to development. This was followed by what liberal economist John Harold Williamson referred to as the "Washington

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[13] Namely Cuba and Venezuela.

[14] It is important to take into account the position that the International Court of Justice (ICJ) adopted in its *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons* in 1996; that is, "the evidence of a rule or emergence of an *opinio juris*" stemming from an UNGA resolution can be determined via an assessment of its content and the number of Member States that voted in favour of the resolution. In other words, even though UNGA resolutions are soft low "by default", they can be deemed binding if they represent the inception of a norm of international law or an *opinio juris* – which is apparently left to the discretion of the International Court of Justice.

[15] While *perestroika*'s failed attempt at "overstretching and overheating" socialist economies is cited by some scholars (Bideleux; Jeffries, 1998, 580) as one of the key reasons as to why the USSR's COMECON reforms failed, one ought to mention that the liberalisation of trade with the European Community per the conditions set by the latter was also significant, in light of the number of former COMECON members that later joined the European Union.

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Consensus" in 1989; that is, a set of pro-capital policies (such as privatisation of public enterprises, deregulation, strict fiscal policy aimed at avoiding large deficits relative to gross national product, market-determined interest rates and liberalisation of foreign direct investment) promoted by Washington-based international organisations like the International Monetary Fund and the World Bank Group in treating the economies of peripheral countries (Williamson, 1990, 7). To make conditions even more favourable for core countries, the multinational trade negotiations held in Uruguay between 1986 and 1993 with the goal of pushing forward a neo-liberal globalisation and founding the World Trade Organisation resulted in the TRIPS Agreement, which imposed the Western intellectual property norms on the rest of the world thereby causing, among other things, higher prices for medicine in impoverished countries dealing with health crises. Notably, this led to a dispute between left-leaning governments of peripheral countries and the governments of core countries, which resulted in the latter resorting to unilateral coercive measures in order to force the former to abide by the new status quo (Bombach, 2001, 274).

In short, the new international economic order that emerged from the defeat of "real socialism"[16] in Eastern Europe made peripheral countries more vulnerable to unilateral coercive measures as not abiding by the new norms dictated by the victorious capitalist powers meant isolation and poverty. This was especially true for those unilateral coercive measures that effectively prevented third parties from engaging in commerce with sanctioned states. Thus, some scholars dubbed the 1990's as "the era of sanctions" (Douhan, 2017, 67) as not only did such measures become more frequent, but they also became more variable with the introduction of different forms of targeted sanctions in addition to the "comprehensive sanctions" already in use. Indeed, the advocates of the former argued that such sanctions were not harmful to the general populace (like comprehensive sanctions) as they allegedly

[16] For the purpose of this article, "real socialism" refers to "existing socialism" in its earlier phases.

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targeted powerful individuals who were accused of human rights violations.[17]

Despite this predicament, the 1990's and early 2000's also saw the evolution of human rights arguments against unilateral coercive measures. In this connection, the most important text was arguably the Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights in 1993. The approach of the drafters of the Declaration to the question of unilateral coercive measures was largely centred around the exercise of two essential rights, namely the right to food and the right to healthcare:

> The World Conference on Human Rights calls upon States to refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights and international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing and the necessary social services. The World Conference on Human Rights affirms that food should not be used as a tool for political pressure. (para 31)

The significance of the views of the drafters was two-fold: On the one hand, it signified a departure from the categorical approach expressed in the ambitious UNGA Resolutions of the 1970's in that it was implied that there could be unilateral coercive measures compatible with the norms of international law. Consequently, the matter was not treated strictly as a question of non-intervention and sovereignty. On the other hand, it was underscored that unilateral coercive measures can constitute a violation of the right to food and the right to healthcare, which are essential for the subsistence of every human being. In fact, as the reader will observe in the following pages, this is the basis on which modern scholars of international law built

[17] See the "Guidelines on implementation and evaluation of restrictive measures" of the Council of the European Union, paras. 13–24.

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https://doi.org/10.6092/issn.2724-6299/13760

their argument as to how unilateral coercive measures may constitute crimes against humanity.

A more contested text adopted in the same decade was the UNGA Resolution 51/103 of 1996 "on unilateral coercive measures and human rights." (A/RES/51/103) In essence, the Resolution repeated the principles that had been established in the 1970's in light of the newer developments in the field of international human rights law and stressed the link between the exercise of peoples' right to self-determination and the right to development in peripheral countries. Nonetheless, despite the positive outcome of the voting at the General Assembly, the Resolution was far from unanimous with 47 Member States voting against it (as opposed to 53 Member States voting in favour). On the other hand, the drafters of the Resolution did succeed in conferring with the Commissioner on Human Rights regarding the compatibility of unilateral coercive measures with international law, and the points they raised were later picked up by the Human Rights Council.

Finally, it is necessary to recall that, since 1992, the General Assembly has repeatedly condemned the blockade imposed on Cuba by the United States. Even though the subject matter of related resolutions specifically concerns the unilateral coercive measures adopted against the socialist island nation, the fact that the last resolution (dated 23 June 2021, A/75/L.97) passed with 184 votes in favour hint at the emergence of an *opinio iuris* regarding the illegality of comprehensive unilateral coercive measures like the *bloqueo*. As will be observed in the following sections, this trend is in line with the developments in the field of international human rights law.

Before delving further into the debate within the framework of the UN human rights mechanism and modern legal doctrine, it is important to emphasise the main points that can be drawn from the evolution of unilateral coercive measures in the 20th century:

- The adoption of the UN Charter was an important step towards preventing hegemonic powers from resorting to the use of force in enforcing their economic sanctions.

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https://doi.org/10.6092/issn.2724-6299/13760

- The UNGA Resolutions adopted during the "Era of Decolonisation" drew attention to the apparent contradiction between unilateral coercive measures and the norms of international law. The focal point, in that regard, was centred around the notion of sovereign rights.
- The defeat of "real socialism" in Eastern Europe and the advent of neo-liberal globalisation made unilateral coercive measures a more frequently applied policy by the governments of core countries. Correlatively, the unilateral coercive measures implemented from that point onwards varied in scope and nature.
- The new opposition to unilateral coercive measures came from human rights scholars, who argued that such measures hindered the enjoyment of vital economic and social rights.

As can be inferred from this summary of the history of unilateral coercive measures following the foundation of the UN, the lack of a universally accepted definition and the "geopolitical" conflict as to the legality of unilateral coercive measures left human rights scholars with a big gap to fill. Therefore, it is essential to observe the debate on unilateral coercive measures within the UN human rights mechanism and the works of the two Special Rapporteurs on the negative impact of unilateral coercive measures on the enjoyment of human rights.

3. Unilateral Coercive Measures and the UN Human Rights Mechanism

Prior to the introduction of the UN Human Rights Council and the shaping of the new UN human rights mechanism, unilateral coercive measures were referenced in several resolutions of the Human Rights Commission. However, these resolutions only briefly touched on the contradictions between unilateral coercive measures and international law and refrained from condemning them *tout court*. Nonetheless, it is worth noting that the two earliest resolutions (E/CN.4/RES/1994/47; E/CN.4/RES/1995/45) of the

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https://doi.org/10.6092/issn.2724-6299/13760

Human Rights Commission on the topic of unilateral coercive measures (adopted in 1994 and 1995) stated that the Commission denounced:

> […] the fact that some countries using their predominant position in the world economy continue to intensify the adoption of unilateral coercive measures against developing countries which are in clear contradiction with international law, such as trade restrictions, blockades, embargoes, freezing of assets, with the purpose of preventing those countries from exercising their right fully to determine their political, economic or social system.

The first resolutions within the framework of the Human Rights Council also noted this trend among the representatives of core countries. In point of fact, in the first Resolution of the Council regarding the question of unilateral coercive measures (i.e., Resolution 6/7), the Council condemned "the continued unilateral application and enforcement by certain powers of such measures as tools of political or economic pressure against any country, particularly against developing countries." Much like the resolutions of the Human Rights Commission, this early resolution of the Human Rights Council framed this "abuse of power" as an infringement of the right to development. This argument was later picked up in the more detailed Resolution on "the Promotion and Protection of All Human Rights, Civil, Political, Economic, Social Rights, Including the Right to Development" (A/HRC/10/24), in which the Council stressed that unilateral coercive measures "ran counter to the principles of free trade and hampered the development of developing countries". Nonetheless, the Human Rights Council did not view unilateral coercive measures as a "mere" violation of public international law with human rights ramifications, but also "stressed" in every early resolution that unilateral coercive measures were also contrary to international humanitarian law – an idea which was supported by the Non-Aligned Movement.

As a matter of fact, despite adopting a more "moderate" approach

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https://doi.org/10.6092/issn.2724-6299/13760

compared to the UNGA resolutions hitherto observed, the Human Rights Council always took into account the latest declarations of the Non-Aligned Movement in formulating its resolutions. This was, by all means, an appreciably constructive approach by the Human Rights Council as the Non-Aligned Movement has been, a decidedly anti-colonial association of peripheral countries since its inception. Indeed, the purpose of the Movement (as set out by former Cuban President Fidel Castro in the Havana Declaration of 1979) is to guarantee, *inter alia*, the “national independence, sovereignty, territorial integrity and security” of Member States in face of “imperialism, colonialism, neo-colonialism, racism, and all forms of foreign aggression, occupation, domination, interference or hegemony”. Thus, as further demonstrated in the following passages, the consistent efforts of the Non-Aligned Movement have been one of the key reasons why unilateral coercive measures have been on the agenda of the human rights community, which has also benefitted from the contributions of Non-Aligned countries.

Case in point, one such contribution was Resolution 15/24 (A/HRC/RES/15/24), proposed by Egyptian diplomats in 2010 on behalf of the Non-Aligned Movement. While the Resolution maintained the moderate tone of its predecessors, it was persistent in upholding the principles enshrined in some of the UNGA resolutions assessed in this article, such as the “Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States” and the “Charter of Economic Rights and Duties of States”. Furthermore, Egyptian diplomats emphasised the impact of the implementation of unilateral coercive measures in the digital space, as they called on all nations to refrain from extending their sanctions to the “information society”. Finally, the Resolution repeated the points that previously been raised in the “Resolution on the Promotion and Protection of All Human Rights, Civil, Political, Economic, Social Rights, Including the Right to Development” and dwelt on how unilateral coercive measures hindered the exercise of the right to development instead of providing a comprehensive legal definition of such measures.

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https://doi.org/10.6092/issn.2724-6299/13760

These initial resolutions were then followed by the thematic study of the former High Commissioner for Human Rights, Dr. Navi Pillay (A/HRC/19/33). Submitted in 2012, the study did not aim to provide a conclusive and far-reaching definition of unilateral coercive measures within the framework of public international law. Instead, the former High Commissioner concentrated on the impact of different kinds of unilateral coercive measures on the enjoyment of human rights. Briefly put, the report had three key shortcomings: i) it viewed unilateral coercive measures as a solely economic phenomenon; ii) targeted sanctions against individuals were assessed exclusively on the basis of civil rights and; iii) due to the limited scope of the study, the legality of unilateral coercive measures was addressed in a vague manner. However, in this author's view, Dr. Pillay's references to civil rights in the context of individual sanctions were quite accurate, in that she unerringly emphasised that coercive measures targeting individuals could potentially infringe the targeted individuals' right to a fair trial, insofar as sanctioned individuals would have "inadequate possibilities to challenge" the charges against them.

Two years after the thematic study of the former High Commissioner of Human Rights, the Human Rights Council took the first big step in creating the mandate of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights. The step in question was Resolution no. 27/21 (A/HRC/RES/27/21) and, much like the thematic study of Dr. Pillay, the Resolution referenced the position of the of the Non-Aligned Movement in assessing the nature of unilateral coercive measures. Particularly, in the preamble of the Resolution, the Human Rights Council "recalled" that the Non-Aligned Countries had decided:

> […] to refrain from recognizing, adopting or implementing extraterritorial or unilateral coercive measures or laws, including unilateral economic sanctions, other intimidating measures and arbitrary travel restrictions, that seek to exert pressure on non-aligned countries – threatening their sovereignty and independence,

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https://doi.org/10.6092/issn.2724-6299/13760

> and their freedom of trade and investment – and to prevent them from exercising their right to decide, by their own free will, their own political, economic and social systems, where such measures or laws constitute flagrant violations of the Charter, international law, the multilateral trading system as well as the norms and principles governing friendly relations among States, and in this regard oppose and condemn these measures or laws and their continued application […]

On its face, one can surmise from this statement that the position of the Non-Aligned Movement moved closer to the anti-colonial trend of the 1960's and 1970's as, once again, the representatives of peripheral countries advocated a categorical approach to unilateral coercive measures. In other words, they reiterated the bold view that unilateral coercive measures would categorically constitute a violation of the norms of international law. For its part, the Human Rights Council did take heed of peripheral theses; however, ultimately it emulated the views expressed in the Vienna Declaration and Programme of Action. Case in point, in paragraph 1 of the Resolution, the Council implied that there could be unilateral coercive measures compatible with the norms of international law. Conversely, in paragraph 2, it was stressed that *comprehensive* unilateral coercive measures would *ipso facto* violate state sovereignty and the principle of non-intervention. Furthermore, the Council argued that those unilateral coercive measures which "disproportionately" affect "the poor and the most vulnerable classes" and deprive these vulnerable individuals of "essential goods" like food and medicine would, in any case, constitute an infringement of absolute rights. Indeed, as far as food and medicine were concerned, the Council categorically stated:

> […] essential goods, such as food and medicines, should not be used as tools for political coercion and that under no circumstances should people be deprived of their own means of subsistence and

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https://doi.org/10.6092/issn.2724-6299/13760

development […]

Nevertheless, one burning question persisted: "What kind of unilateral coercive measures would *not* contradict the norms of international law?" One can see that the drafters of the Resolution sought the answer in the category of targeted sanctions, while comprehensive unilateral coercive measures were, in any case, considered illegal. However, due to the diplomatic essence of decision making in the UN human rights mechanism, one ought to take the global political divide into account. In fact, on the one hand, there is the consistent position of the United States, which is based on the premise that the adoption of unilateral coercive measures is a matter of sovereign rights (Hofer, 2017, 26). This position is tacitly approved by the European Union[18] – albeit with the recognition of an exception, in that the supranational organisation does not deny the fact that the extraterritorial element of unilateral coercive measures (or "restrictive measures" in EU terminology) can be incompatible with international law. One can argue, in that regard, that the European Union struggles to "practice what it preaches" but, in spite of this, there is a certain degree of theoretical compatibility between the European position and the "Third World" position espoused by (among others) the Non-Aligned Movement and Group 77. Indeed, as previously observed, the representatives of peripheral countries have maintained their opposition to unilateral coercive measures on diverse premises ranging from arguments rooted in public international law to those stemming from international human rights law (or both). Consequently, the human rights mechanism has seemingly tried to appease these three political positions while trying to come up with a definition of unilateral coercive measures.

Having previously worked under the roof of the UN on the enjoyment of

[18] One should recall that the European Union does formally comply with its "no comprehensive unilateral coercive measures" policy. Nonetheless, the EU's policy on not complying with other states' comprehensive unilateral coercive measures is "underapplied" as European entities seldom answer for complying with US sanctions, even though the EU does have a mechanism (as per Regulation 2271/96 of the Council of the European Union) meant to provide an effective remedy to European companies affected by unilateral coercive sanctions.

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https://doi.org/10.6092/issn.2724-6299/13760

economic and social rights in peripheral countries, the former Special Rapporteur on the negative impact of unilateral coercive measures, Dr. Idriss Jazairy, was not immune to such political concerns. Moreover, due to the ongoing debate on the normative value of UNGA and Human Rights Council resolutions, he was careful in formulating his arguments against such a widespread policy. Nonetheless, five key features of his reports have greatly contributed to the study of unilateral coercive measures from a "Third World" perspective.

First and foremost, it ought to be mentioned that according to Jazairy, sanctioning states could be held responsible for the violation of the principles enshrined in the core international human rights instruments of the UN regardless of whether the targeted country was under their effective jurisdiction. The crux of this theory had previously been defined by the likes of Olivier De Schutter (2008), however Jazairy applied this principle in the specific case of unilateral coercive measures. In that respect, the former Special Rapporteur urged UN treaty bodies to adopt a more pro-active stance, since widely ratified human rights instruments would not be bound by the jurisdictional obstacles of national courts.

Second, Jazairy was able to rigorously address the concept of "coercion" as defined under Article 18 of the International Law Commission's (hereinafter ILC) Draft Articles on the Responsibility of States for Internationally Wrongful Acts (2001) and apply it in the context of unilateral coercive measures. In that respect, Jazairy noted that the ILC's definition of "coercion"[19] did not exclude "serious economic pressure, provided that it is such as to deprive the coerced State of any possibility of conforming with the obligation breached". Instead of merely repeating this theory, however, Jazairy opted to argue that there should be a clearer affirmation of unilateral

[19] "A State which coerces another State to commit an act is internationally responsible for that act if:
(a) the act would, but for the coercion, be an internationally wrongful act of the coerced State; and
(b) the coercing State does so with knowledge of the circumstances of the act."

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coercive measures as extraterritorial sanctions which consist of "an unlawful assertion of jurisdiction by the targeting State, […] contrary to international law". On this premise, Jazairy forged a link between extraterritorial sanctions and the human rights obligations of states, arguing that targeted states as well as third states which have commercial and financial relations with targeted states may not be able to fulfil their obligations stemming from human rights treaties due to the impact of extraterritorial sanctions. Furthermore, with what could be described as an accurate foresight, Jazairy suggested that the International Criminal Court could also play a role to that end (A/72/370) which, as demonstrated in the following pages, can indeed be the case in the near future due to the diligence of Venezuelan diplomacy.

Third, Jazairy duly treated the question as to whether comprehensive unilateral coercive measures could be deemed a violation of customary international law. While his emphasis on this question was already prominent in his earlier reports, from 2017 onward he began to (openly) infer from the hitherto observed resolutions of the UNGA that there is a growing consensus on the illegality of unilateral coercive measures, which could hint at an emerging norm of customary international law. This proposition was, of course, criticised by scholars who espoused more "positivist" views on the concept of "coercion" (Hofer, 2017, 1), although it did touch on a crucial matter of fact: As the reader will recall, every year more and more UN Member States vote in favour of the resolution condemning the US *bloqueo* against Cuba and in 2021, only two Member States (namely the US and Israel) voted against and three Member States abstained. This shows that, at the very least, there is in fact a quasi-universal consensus on the contradiction between comprehensive sanctions and the norms of international law, which may eventually give rise to a norm of customary international law per the formation of an *opinio juris*. (A/HRC/30/45)

Jazairy should also be commended for pointing out that the line between targeted sanctions and comprehensive ones can be blurry at times. One example he provided in that respect was the series of targeted sanctions

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adopted against the Syrian Arab Republic in the context of an oil embargo which not only had an effect similar to that of comprehensive sanctions but also helped "boost the capabilities of extremist Jihadist forces" when the European Union decided to lift the sanctions with regard to those areas controlled by Islamist rebels (A/HRC/42/46).

Last but not least, one ought to mention Jazairy's observations as to how the financial and commercial sanctions applied by potent states can also impact third states and effectively annul the humanitarian exemption. In that respect, Jazairy cites the so-called "undue compliance" of firms based in the European Union in abiding by the comprehensive sanctions imposed by the United States against Iran which, according to Jazairy, had not fulfilled their obligations in delivering humanitarian goods to Iran out of fear stemming from US sanctions (A/HRC/42/46).

These key points should also be read in light of their direct influence on the resolutions of the Human Rights Council. For instance, Jazairy's insistence on an effective remedy for individuals whose human rights have been violated as a result of unilateral coercive measures can also be seen in Resolution 34/13 (A/HRC/34/L.14) of the Council which called for the institution of an independent body within the framework of the UN human rights mechanism dedicated to the claims of the victims of unilateral coercive measures. It can be further observed that, since the creation of the mandate of the Special Rapporteur, the Human Rights Council has repeatedly called on States to take administrative or legislative measures to counteract the adoption and application of unilateral coercive measures.

Up until this point, unilateral coercive measures had been discussed in the context of recurrent violations of human rights related to either basic needs or civil liberties: The right to food, the right to healthcare, freedom to receive and impart information (vis-à-vis access to the Internet) and the right to a fair trial to name a few. However, it is safe to state that the COVID-19 pandemic has exacerbated these pre-existing human rights issues connected to unilateral coercive measures, especially in the field of economic and social rights. This

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global calamity has coincided with the mandate of the current Special Rapporteur, Dr. Alena Douhan, whose works duly explore both the definition of unilateral coercive measures and the human rights issues surrounding the praxis of their adoption to the detriment of peripheral countries.

4. Special Rapporteur Douhan and the COVID-19 Pandemic

Having been appointed by the Human Rights Council in March 2020, Dr. Douhan dedicated her first public statement as Special Rapporteur to the humanitarian crisis generated by unilateral coercive measures with the advent of the COVID-19 pandemic. More specifically, she called on the international community to "to take immediate measures to lift, or at least suspend, all sanctions until our common threat is eliminated" and demanded that "all Governments that use sanctions as foreign-relation tools […] immediately withdraw measures aimed at establishing trade barriers, and ban tariffs, quotas, non-tariff measures, including those which prevent financing the purchase of medicine, medical equipment, food, other essential goods". She later complemented this statement with a human rights guidance in which she repeated her previous call and stressed that unilateral sanctions should at least be reduced to "allow sanctioned states to ensure the effective protection of their population from COVID-19, to repair their economy and to guarantee the well-being of their people in the aftermath of the pandemic." (Douhan, 2021)

It is important take into account that, in Dr. Douhan's view, the illegality of comprehensive and sectoral unilateral coercive measures in the context of public international law has already been established as per the resolutions of the Human Rights Council and the General Assembly. Therefore, she infers that the human rights issues caused by unilateral coercive measures only aggravate the violation of international law. This approach is reminiscent of Dr. Jazairy's views, given the role attributed to "sources of soft law" like Human Rights Council or General Assembly resolutions. Nonetheless, from

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a theoretical standpoint, Dr. Douhan believes that the question lies in the definition of unilateral coercive measures rather than their illegality, as "customary international law provides for the possibility of unfriendly acts that do not violate international law" which usually take the shape of proportionate countermeasures adopted as a retaliation against internationally wrongful acts and treaty obligations. In addition, Dr. Douhan takes heed of the increasing variety in types of unilateral coercive measures, especially as far as targeted sanctions are concerned: In fact, she attempts to distinguish sanctions against individuals (which call into question the right to a fair trial) and sectoral sanctions (such as the ones applied against Venezuela by the US or against Russia by the European Union) as she argues that the latter "reportedly develop in such a way as to lead to consequences […] that are analogous to the consequences of comprehensive economic sanctions." (Douhan, 2021) Dr. Douhan also notes the relevance and growing importance of "cybersanctions": Indeed, due to obstacles caused by unilateral coercive measures, public officials and common netizens from Cuba, the Democratic People's Republic of Korea, Iran and the Syrian Arab Republic have been deprived of the opportunity to purchase essential goods via e-commerce and to conduct online educational activities due to lack of access to platforms like Zoom – given the fact that such platforms are either directly prescribed in the service agreements or prescribed by US legislation.

In short, one can infer that the research that Dr. Douhan conducted in her capacity as the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights had two aims: Defining unilateral coercive measures (theoretical) and assessing their ramifications for the enjoyment of human rights in a pandemic-ridden world (practical). It is in this light that her most recent report (dated 8 July 2021) should be assessed.

In prima facie, compared to the reports of Dr. Jazairy, Dr. Douhan's reports focus more on "overcompliance" and have a novel approach in assessing "cybersanctions". With regard to the former, Dr. Douhan views

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overcompliance as a direct result of the extraterritorial element of unilateral coercive measures (as evidenced by Oxfam International) and notes that the companies in the financial sector are the ones that are most prone to “overcomply” with comprehensive and sectoral US sanctions. This is largely due to the interconnected nature of the banking sector and the fact that banks which provide international financial services do business with the US. It follows that their activities also imply compliance with US law and therefore such companies have the tendency not to take risks with sanctioned countries – even when the services in question do not involve the US. In practice, Dr. Douhan observed that humanitarian organisations have also had their bank accounts frozen due to their activities in countries sanctioned by the US, and that some organisations could not pay the salaries of their employees in the field (A/HRC/48/59).

As far as “cybersanctions” are concerned, Dr. Douhan builds on the arguments that she had laid out in her preliminary “roadmap” report (A/HRC/45/7): She points out that the lack of access to video conference applications (due to US sanctions) did not only deprive students and other netizens of an effective means of communication during the pandemic, it also (initially) prevented the diplomats and other public officials of sanctioned countries from attending UN sessions. Furthermore, in the case of the Syrian Arab Republic, US and EU sanctions prevented the government in Damascus from importing software for CT scanners and ventilators (i.e., essential means for the treatment of COVID-19) which were only produced in the US at the time when the report was deposited (A/HRC/48/59).

Finally, with regard to the theoretical question as to the definition of unilateral coercive measures, Dr. Douhan affirms that the sanctioning states and supranational organisations use different names to refer to unilateral coercive measures and tend to frame them as a means of enhancing (or enforcing) democracy or human rights in the sanctioned country. Behind this alibi, however, lies one of the “five purposes of sanctions” set out by Francesco Giumelli (Giumelli, 2016, 40) “compliance, subversion,

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deterrence, international symbolism, […] domestic symbolism". Nonetheless, despite the apparent ambiguity stemming from various denominations and practices, Dr. Douhan succeeds in providing a list of the characteristics of unilateral coercive measures based on the submissions of UN Member States. These characteristics include:
- Involving activity or the threat of activity;
- Being adopted by a single state, a group of states, a supranational organisation or an international organisation (excluding the United Nations);
- Being taken by hegemonic powers;
- Being taken without the authorisation of the Security Council;
- Being aimed at changing a policy of the targeted state, or to impose a regime change;
- Being allegedly motivated by human rights concerns or aimed at eliminating perceived threats to peace;
- Exerting pressure or coercion or targets (which may be economic, political, financial or judicial), freezing the assets of central banks or people of political importance;
- Making use of the financial, trade, technological and other advantages of the sanctioning party;
- Satisfying the interests of the sanctioning party;
- Failing to respect the right to self-determination of the target country, while limiting its economic capacity and violating the human rights of its inhabitants;
- Violating the sanctioning party's international obligations towards other states and international organizations;
- Falling outside the realm of permissible "unfriendly" acts under customary international law and countermeasures as part of State responsibility;
- Interfering in other states' internal and external affairs, and infringing their inalienable rights to choose and develop political, economic and cultural systems of their own will, thus violating the principles of sovereign equality and non-interference;

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- Violating the principles of international law;
- Being aimed at obtaining the subordination of the exercise of a state's sovereign rights.

Considering the foregoing, the value of Dr. Douhan's contribution to literature cannot be overstated. In the view of the author of this article, this is the closest any scholar has got to providing a precise and all-encompassing definition of unilateral coercive measures, as this report fills in most of the gaps left by previous scholars. On a practical level, however, the report can be viewed as a missed opportunity, in that the negative impact of the *bloqueo* on the development of Cuban COVID-19 vaccines and the aggravation of the Venezuelan financial crisis in midst of the pandemic due to US sanctions could have been emphasised more thoroughly. Indeed, it would be naïve to assume that US governments which have continuously applied unilateral coercive measures with respect to (*inter alia*) Cuba and Venezuela were not aware of the human rights ramifications of their policies, especially as far as the right to food and the right to healthcare are concerned. It is therefore auspicious that recent developments in the field of international criminal law and related legal doctrine shed further light on this aspect of unilateral coercive measures.

5. Venezuela's Referral to the International Criminal Court and the Views of De Zayas and Schabas

On 13 February 2020, the Government of the Bolivarian Republic of Venezuela submitted a referral to the Office of the Prosecutor of the International Criminal Court (hereinafter "ICC") requesting an investigation on the impact of unilateral coercive measures adopted by the United States officials against Venezuela and alleging that the measures in question constitute a crime against humanity. On 17 February 2020, the Prosecutor released a statement confirming that she had received the referral and that she would be initiating preliminary examinations on the questions raised in the

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referral.

The referral itself follows a simple yet well-constructed logical nexus. First, it is established that the unilateral coercive measures adopted by the United States officials against Venezuela have greatly reduced the Latin American country's income in addition to greatly limiting its access to diesel fuel (which effectively disabled backup generators amid a massive electric shortage), hampering its ability to raise money and purchase essential goods (by blocking Venezuela's access to financial markets) and preventing other nations (such as India) from purchasing oil from Venezuela. The financial and economic impact of the unilateral economic sanctions is then connected to the human rights ramifications: In this context, it is demonstrated that the financial and economic impact of US sanctions directly caused the increase in the maternal mortality rate and the mortality rate of children, the drastic decrease in the volume of water per inhabitant as well as the reliance of the undernourishment prevalence index on imported food. This scheme is ultimately linked to the Rome Statute on the grounds that US sanctions are "*intended* (sic) to have impacts upon individuals and groups (i.e., civilians) within Venezuela, and thereby *coerce* political changes (sic) in the country." From a normative standpoint, Venezuela argues that this violation by the United States constitutes "a widespread or systematic attack against a civilian population" as per Article 7 of the Rome Statute, in that "unilateral coercive measures constitute a form of warfare, albeit one that does not involve resort (sic) to arms" and that, under international criminal law, an "attack" may consist of "inflicting conditions of life calculated to bring about the destruction of a part of the population" (ICC-01/20-4-AnxI).

In formulating their arguments, one crucial point of reference for Venezuelan jurists was Professor Alfred Maurice De Zayas. As the former UN Independent Expert "for the promotion of a democratic and equitable international order", Professor De Zayas had previously visited Venezuela during the right-wing protests against the government of Nicolás Maduro in 2018. Aside from acting as a mediator (alongside former Spanish Prime

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Minister José Luis Rodríguez Zapatero) between the rightists and the Venezuelan government, Professor De Zayas also conducted field research regarding the impact of US sanctions and the foreign policy of the Trump administration on the crisis in the Latin American country. In his report regarding the visit, Professor De Zayas referred to "non-conventional economic wars against Chile, Cuba, Nicaragua, the Syrian Arab Republic and the Bolivarian Republic of Venezuela" aimed at "making their economies fall, facilitating regime change and imposing a neo-liberal economic model" (A/HRC/39/47/Add.1). On a more general note, De Zayas argued:

> Modern-day economic sanctions and blockades are comparable with medieval sieges of towns with the intention of forcing them to surrender. Twenty-first century sanctions attempt to bring not just a town, but sovereign countries to their knees. A difference, perhaps, is that twenty-first century sanctions are accompanied by the manipulation of public opinion through "fake news", aggressive public relations and a pseudo-human rights rhetoric so as to give the impression that a human rights "end" justifies the criminal means. There is not only a horizontal juridical world order governed by the Charter of the United Nations and principles of sovereign equality, but also a vertical world order reflecting the hierarchy of a geopolitical system that links dominant States with the rest of the world according to military and economic power. It is the latter, geopolitical system that generates geopolitical crimes, hitherto in total impunity. (A/HRC/39/47/Add.1)

Thus, despite not using the terminology of international criminal law, Professor De Zayas approached the question from a "natural law" perspective, referring to the de facto inequality among states which is exploited by the stronger few as they implement devastating measures which drive the civilians of peripheral countries to desperation, so that the weaker majority would be forced to comply with the unequal status quo in international relations. In other words, even though Professor De Zayas had

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made an important contribution in terms of establishing the fact that comprehensive and sectoral sanctions *ipso facto* violate the norms of public international law and international human rights law, there still was a visible gap in literature with regard to the link between unilateral coercive measures and international criminal law. Nevertheless, this gap was eventually filled in by an expert in the field of international criminal law, Professor William Schabas, in the speech he made at the International Seminar on Unilateral Coercive Measures held in Vienna on 27 June 2019.

Indeed, in his discourse, Professor Schabas duly emphasised that "sanctions resulting in starvation and disease might amount to crimes against humanity falling under the headings of murder, persecution and other inhumane acts" and that "although the Rome Statute declares that the crimes within the jurisdiction of the Court are to be interpreted strictly, in practice judges have given the definitions of crimes, including that of crimes against humanity, a broad and purposive construction" (Schabas, 2019, 51). In this connection, Schabas referred to former Special Rapporteur Idriss Jazairy's statement on Venezuela, in which Dr. Jazairy had stressed that US sanctions against Venezuela could lead to starvation and medical shortages (Jazairy, 2019). Therefore, despite not stating it in clear terms, Schabas inferred that US sanctions against Venezuela could be considered a crime against humanity under the Rome Statute.

Admittedly, in light of the foregoing, one may not be able to definitively state that there is a consensus on whether unilateral coercive measures constitute crimes against humanity. In that regard, the decisions of the Prosecutor and Pre-Trial Chamber of the ICC will clearly play a large role. Furthermore, if the Prosecutor and the Pre-Trial Chamber were to act on this referral by Venezuela, two questions would have to be answered: Which US officials can be charged with such a crime against humanity and, from a practical point of view, will the US (which is not a party to the Rome Statute) ever allow the Prosecutor to run an investigation against US citizens in US territory? The answer to the second question seems quite evident from a

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political point of view but that should not *ipso facto* preclude the Prosecutor and the Pre-Trial Chamber from addressing the first question. In that respect, it must be pointed out that, despite the strong points raised in the referral, Venezuelan officials did not take the opportunity to accuse specific US officials – which makes the Prosecutor's job more difficult. It may therefore be up to leading scholars like De Zayas and Schabas to address the particular question concerning the criminal liability of individuals for the implementation of unilateral coercive measures, especially since the matter has largely been omitted in legal doctrine.

In this author's point of view, the Prosecutor and the Pre-Trial Chamber would have to reach a compromise even if they were to accept the view that the unilateral coercive measures applied against Venezuela constitute crimes against humanity, as seeking to charge every component of the Trump administration (and the successive Biden administration) would be an exercise in futility. However, the mere recognition of unilateral coercive measures applied against Venezuela as a crime against humanity would be ground-breaking and would further strengthen the case for state responsibility even if the ICC were ultimately to fail in bringing US officials to justice.

6. Concluding Remarks

Over the course of centuries, the practice and theory surrounding unilateral coercive measures have progressively evolved from unfettered economic sanctions backed by the use of force to a quasi-consensus on the illegality of comprehensive and sectoral sanctions on the basis of their conflict with the principle of non-intervention and state sovereignty. The historical milestones of this evolution were the adoption of the UN Charter, the subsequent period of decolonisation and the treatment of unilateral coercive measures within the framework of international human rights law – especially after the establishment of the mandate of the Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights.

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In fact, as observed in this article, even the sanctions adopted against individuals have been criticised at times by human rights scholars working under the roof of the UN, on the grounds that such measures would infringe sanctioned individuals' right to a fair trial.

However, one has to keep in mind that the human rights aspect of the debate on unilateral coercive measures largely relates to economic and social rights such as the right to food and the right to healthcare. This is also the basis on which legal scholars (and the Venezuelan Government) have argued that unilateral coercive measures can be defined as crimes against humanity, as hegemonic powers knowingly deprive the citizens of peripheral countries of their means of subsistence so that their governments would comply with the international order designed by core countries. On the other hand, notwithstanding this recent inclination in legal doctrine, it is still not possible to infer that unilateral coercive measures categorically constitute crimes against humanity – which nevertheless does not mean that they will never be regarded as such. After all, it was only a century ago that colonial powers could resort to force without any legal repercussions. Moreover, the contraction of the world economy, the looming issue of the scarcity of resources, the COVID-19 pandemic and the ever-growing income gap between core countries and peripheral countries will inevitably lead legal scholars to further scrutinise the impact of unilateral coercive measures and define them accordingly.

In sum, the definition of unilateral coercive measures under international law continues to evolve and it appears that every step leads to a categorical prohibition of sectoral and comprehensive unilateral coercive measures. States should therefore refrain from resorting to a clear violation of international law if we are to achieve a rules-based international order in which the views and decisions of human rights bodies can bring about concrete change. This is the very least that must be demanded, for as long as there is substantial inequality among nations, the strong will continue to try to coerce the weak and, in the end, the humanitarian burden will fall on the

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shoulders of the impoverished majority.

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ISSN 2724-6299 (Online)
https://doi.org/10.6092/issn.2724-6299/13760