***Check against delivery***



**Statement by**

**IDRISS JAZAIRY**

**SPECIAL RAPPORTEUR ON THE NEGATIVE IMPACT OF UNILATERAL COERCIVE MEASURES ON THE ENJOYMENT OF HUMAN RIGHTS**

70th session of the General Assembly

Third Committee

Item 73 (b)

26 October 2015

New York



Mr Chairman,

Excellencies,

Distinguished Delegates,

I have the honour to present my first report to the General Assembly after my appointment as Special Rapporteur in May this year.

Both my report to the Human Right Council at its 30th session (A/HRC/30/45) and my present report to the General Assembly (A/70/345) had to be handed in respectively before and by mid-August for processing purposes. They are therefore preliminary in nature but complement one another. My report to the HRC focused on the long history of unilateral coercive measures that I will refer to hereafter as “UCMs”, on their conceptual underpinnings and on their legal status. I emphasized therein the necessity to distinguish between sanctions which , by this mandate’s definition apply to the multilateral measures taken by the Security Council under article 41 of the Charter, and UCMs which are measures applied by individual States or groups thereof outside the UN framework.

During our recent interactive dialogue in the Human Rights Council and the discussions of the biennial panel on UCMs held in parallel with the 30th session of the Council, some developed countries, who are the main source of UCMs, recalled that they remained deeply concerned about resolution 27/21 of the HRC. They indicated that they had voted against it because they considered that the resolution dealt with relations between States and not with concrete human rights issues of individuals. On that basis, they felt that HRC was not the right forum to address the issue of the human rights impact of UCMs. The underlying implication is that the multilateral human rights debate calls to account States, whether targeted or not, only for the human rights situation of their domestic population. Does this preclude calling to account source countries of UCMs where such measures have adverse human rights impacts on citizens of targeted States with whose leaders source countries have substantial disagreements? This would leave an unjustified protection gap for innocent civilians. It would further be inconceivable that State acts resulting in human rights violations against their own population, which are prohibited by the International Bill of Human Rights would not be likewise prohibited for States acting outside their own jurisdiction. It would also seem fair to say that what is of concern to the General Assembly and to the Human Rights Council is whether people, especially the most vulnerable , are being deprived of their basic rights regardless of whether it is their own State’s or a foreign State’s action which causes their misery.

Developed source country representatives who spoke at the last session of the HRC also indicated that it was their policy to ascertain that such measures that they decide to take against a particular target would only be resorted to in accordance with international law. Yet several UN texts consider UCMs to be antithetical to international law. Thus, resolution 24/14 of the Human Rights Council, in its preambular paragraph 4 stresses that “unilateral coercive measures and legislation are contrary to international law, international humanitarian law, the Charter and the norms and principles governing peaceful relations among States”. Other UN texts carry some ambiguity in this respect such as the 1993 Vienna Declaration which calls on States to refrain from any unilateral coercive measure “not in accordance with international law or the Charter”. Does this mean that UCMs are intrinsically not in accordance with international law and the Charter or that some are while others are not? In the latter case, we need to agree on which do and which do not so accord.

Many developing country representatives, whether from targeted countries or not, claimed again during the recent Council session that UCMs were in violation of international law and the Charter; and called for their elimination or at least for their gradual phasing-out. Some of these representatives felt that any attempt to mitigate the human right impact of such measures without first apportioning responsibility and reparations would be tantamount to legitimizing these measures. Others supported the position of the present mandate to follow a pragmatic approach and to engage in a dialogue having in view the necessity first and foremost to mitigate the sufferings of innocent citizens as a result of the imposition of UCMs. This approach would be without prejudice to the legal standing of UCMs. As mentioned in resolution 24/21, operative paragraph 22(b), it will include the elaboration of guidelines and the promotion of best and next practices in this regard seeking all along to broaden areas of consensus. The latter approach, however, would have to be predicated on access to more complete information on the current state of UCMs. Attempts to gain a global view of the situation are currently obscured by the absence of standardized global data concerning the full list and contents of UCMs.

This mandate’s report to the HRC tried to provide a framework for discussion of the issue of legality which in my view would deserve further investigation, and I will not revert to it at this time.

The present mandate report to the General Assembly is more action-oriented. It attempts to avoid the political pitfalls of the very contentious aspects of the legal and moral case for or against UCMs. It focuses on their human rights impacts in respect of basic rights such as the right to life, the right to self-determination and the right to development now given recognition in the 2030 Development Agenda that this Assembly has adopted at Summit level at the present session. It also refers to the impact of UCMs on the right to an adequate standard of living, to health and to education. One could also mention other rights such as the right to a fair trial. This is particularly topical as the list of “persons of concern” lengthens. Following the moral leadership of the President of the United States aimed at closing Guantanamo, the international community should refrain from recreating virtual Guantanamos at world level.

Understanding the transmission mechanisms of UCMs will make it possible better to assess their adverse impact on the enjoyment of human rights of innocent people who should not be punished collectively for what source countries consider as wrongful acts by their leaders. Ultimately, the debate on whether specific UCMs are legal or not will be superseded by findings on human rights impacts: If UCMs inflict undue sufferings on the population of a targeted State, then, whatever the legal justification may be, they become clearly illegal and their source countries should be called to account.

As the post-Cold War era has witnessed a significant increase in the recourse to UCMs, it is likely that one third of humanity lives in countries that are currently targeted in one way or another. Apart from the 16 sanctions regimes applied by the Security Council, one can surmise that 37 UCMs are applied by the EU, some 32 by the United States as well as a figure above 20 by each Australia and Canada. These measures may overlap and duplicate one another or Security Council sanctions. As for corporate or individual “persons of concern”, their numbers run into the thousands over and above those listed by the Security Council. There is no way to compare data available on the official websites of source countries as standards used vary and transparency is lacking.

In a first attempt to mitigate the adverse human right impact of UCMs, the present report puts forward nine main recommendations:

Recommendation 1

Restore transparency in UCMs by introducing a consolidated central register at the level of the Security Council or of the UN Secretariat recapitulating all UCMs in force at any particular time. The Secretary-General would be requested to maintain this universal and non-discriminatory register of UCMs according to agreed standards in the same way as does Resolution A/RES/46/36 of 1991 which sets up a register for conventional arms.

Recommendation 2

Set up a group of experts to define with the mandate-holder some assessment parameters for an objective evaluation of the adverse human rights impact of UCMs. This is particularly crucial in complex crises with different source countries targeting simultaneously the same country, possibly on top of Security Council sanctions, making it difficult to distinguish causality from correlation between such a multiplicity of measures and possibly other domestic shortfalls.

Recommendation 3

Though the distinction between comprehensive and targeted measures has often been blurred in practice, a formal decision should be taken by source countries which have not already done so, to follow the Security Council policy in renouncing to resort to comprehensive UCMs.

Recommendation 4

That source countries consult with third countries likely to suffer unintended damage from UCMs against targeted countries to address their concerns, preferably before the imposition of the said measures.

Recommendation 5

In view of the difference in positions between some major sources of UCMs and most UN member States on the claim to extraterritorial application of the former’s UCM legislation in particular against the trade and finance sectors of a targeted State, multilateral consultations should be engaged in appropriate fora to end this practice.

Recommendation 6

 Humanitarian goods officially exempted from UCMs often fail to be accessible by innocent citizens of a targeted country because of the broader impact of UCMs. Therefore, source countries professing to recognize the necessity of humanitarian exemptions might at least consider accepting delivery through UN agency procurement of vital goods to be supplied to targeted countries despite the embargo. An added bonus to this recommendation would be that States who still prohibit humanitarian articles to targeted countries on rare occasions might take the formal decision to put an end this practice.

Recommendation 7

If a regional group of allied countries decides on UCMs targeting a given country, its member States should consider refraining from adding supplementary constraints of their own.

Recommendation 8

Source countries should examine the possibility of introducing in the review of listings of persons “of concern” a quasi-appellate procedure such as the one introduced by the Security Council in its resolutions 1267 (1999) and 1989 (2011) or some other review procedures that would comply with international legal standards.

 Recommendation 9

The Security Council may wish to consider indicating more often in its resolutions based on Article 41 of the Charter whether the logic of its specific sanctions decisions calls for implementation as such by UN member States or whether they are compatible with complementary autonomous measures to be taken by any of the latter against the same target.

In conclusion, I would appeal to all the UN membership to accept to engage in a negotiation on UCMs with the ultimate objective of reducing the sufferings added wantonly on the most vulnerable segments of the population of targeted countries. By their very nature, the deliberations of the Human Rights Council and in this Assembly call States to account for unfulfilled human rights obligations towards rights-holders. Most often the focus is on alleged shortcomings in the fulfilment of obligations by developing States towards their domestic population. And even if they resent it, the States concerned engage. The present mandate is, in that regard, one of few exceptions: it involves asking also developed States to account for alleged shortcomings entailing an adverse human rights impact on people of other nations, as a consequence of actions taken against targeted States outside source country jurisdiction. All States have shown under the Universal Periodic Review in the Council, whether developed or developing, more or less powerful, that they accept to be held to account by the Council for the fulfilment of their human rights obligations and do not take offence. I appeal to all that we carry the same spirit of dialogue and consensus-building into discussions on UCMs for the sake of the poorest and most vulnerable, the *Wretched of the* *Earth* as the great defender of the underdogs and of the dignity of the mind, Ibrahim Omar Fanon, used to call them.

I thank you for your attention.