

SIDE EVENT

IMPACT OF UCMs ON THE RIGHT TO DEVELOPMENT

AND IMPLEMENTATION OF SUSTAINABLE DEVELOPMENT GOALS

Room XXII - Palais des Nations, Geneva

28 March 2023, from 12:00 to 13:00h

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Thank you very much Professor Douhan for this kind invitation to share my thoughts on this important topic of the impacts of UCMs on the right to development and the implementation of the SDGs. In my intervention today, I will focus generally on the principles of international law rather than specific country situations, with the caveat that specific facts also matter.

At the outset, let me say that UCMs on their own generally constitute a violation of international law, particularly the Charter of the United Nations. The UN Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the GA in 1970, which is an authoritative interpretation by States themselves of their own obligations under the Charter, clearly stipulates that “no State may use or encourage the use of economic, political or any other type of measure to coerce another State in order to obtain from it the subordination of the exercise of its sovereign right”. UCMs also generally violate the right of peoples to self-determination, including self-determined development, proclaimed in articles 1 of the ICCPR and the ICESCR.

The only circumstance where UCMs are permitted against States in international law are when they can be justified as countermeasures, but there are important qualifications that are relevant to our discussion today. As the Articles on Responsibility of States for Internationally Wrongful Acts adopted by the ILC stipulate, an injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its international legal obligations. In other words, countermeasures are not meant to be a punishment. They also stipulate that to be justified as legal, such countermeasures must not be permanent, must comply with the requirements of proportionality and necessity, and most importantly, must not affect obligations for the protection of fundamental human rights. In other words, UCMs that have the effect of violating fundamental human rights of human beings and peoples in the targeted country, including the right to development, cannot be justified as countermeasures. The possibility of such adverse impacts on human rights significantly rises when UCMs are blanketly imposed against an entire country. UCMs are often imposed under the pretext that the government in power is violating human rights of its own citizens. However, such UCMs can be self-defeating if their blanket imposition results in violations of the human rights of the very same populations who are sought to be protected through them.

It is for this reason that the Vienna Declaration called upon all States “to refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that [...] 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 right of everyone to a standard of living adequate for their health and wellbeing including food and medical care, housing and the necessary social services”.

This then brings me to the clear and tangible adverse impact on the realization of the right to development that UCMs can have. As the latest resolution adopted by the UNGA on 15 December 2022 acknowledges, UCMs constitute a major obstacle to the realization of the right to development and to the implementation of the 2030 Agenda. That same resolution stipulates that States “reject all attempts to introduce UCMs, and urges the Human Rights Council to take fully into account the negative impact of those measures, including through the enactment and extraterritorial application of national laws that are not in conformity with international law, in its task concerning the implementation of the right to development”. It further “calls upon all States to avoid the unilateral imposition of economic coercive measures and the extraterritorial application of national laws that run counter to the principles of free trade and hamper the development of developing countries”.

There is a very robust rationale behind the recognition of this linkage. The 1986 Declaration on the RtD describes development as a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom. Article 1 of the 1986 Declaration stipulates that the right to development, as an inalienable human right of every human person and all peoples, entitles them to three things: the right to participate in, contribute to, and enjoy economic, social, cultural and political development. And this development must be self-determined development and must be such in which all human rights and fundamental freedoms can be fully realized. UCMs fundamentally violate these basic human rights precisely because they are *coercive measures* that immediately obliterate the possibility of human beings and peoples in the targeted countries to self-determine their development priorities, actively, freely and meaningfully participate in their own development, contribute to the process, and to enjoy the fruits thereof. UCMs can exacerbate inequalities and further marginalize the most vulnerable sections of societies. Professor Douhan’s reports have amply demonstrated the debilitating effect that UCMs have had on basic rights such as food, clothing, housing, medicines, social protections, among others, including during the COVID-19 pandemic.

The 1986 Declaration also recognizes that all States have an obligation not to adopt national measures that violate extraterritorially the right to development of human beings and peoples elsewhere. It also stipulates that States are under a duty to cooperate with each other to eliminate existing obstacles and not create new obstacles to the realization of the right to development, and to instead take positive steps to ensure its realization. UCMs therefore can constitute a direct violation of these obligations.

In this regard, I may make a reference to the current draft convention on the right to development which identifies important principles related to UCMs based on an acknowledgement that they constitute a major obstacle to the realization of the RtD. Draft

article 10 deals with the general obligation of States to respect the RtD and stipulates that States Parties shall refrain from conduct, whether expressed through law, policy or practice, that: impairs the ability of another State to comply with that State's obligations with regard to the right to development, or coerces such other State to breach its obligations with regard to the right to development. There is also a stand-alone provision on coercive measures which stipulates that "The use or encouragement of the use of economic or political measures, or any other type of measure, to coerce a State in order to obtain from it the subordination of the exercise of its sovereign rights in violation of the principles of the sovereign equality of States, the freedom of consent of States or applicable international law constitutes a violation of the right to development". This language is directly borrowed from the 1970 Friendly Relations Declaration that I referred to earlier.

Let me make two final points in this regard. Increasingly, the practice of UCMs has been accompanied with secondary sanctions and overcompliance. Under the fear of not violating UCMs and subjecting themselves to prosecution, various stakeholders such as banks or corporations end up adopting even stricter measures than what the UCMs themselves require. Such overcompliance obviously worsens the adverse impact on human rights, including the right to development, manifold. It especially affects access to essential goods and services. This is a serious matter and must be addressed.

Secondly, there has been a clear rise in individualized sanctions against persons or entities in the targeted States – what are called as targeted or smart sanctions. I must confess that within the Expert Mechanism on the RtD, although there is no dispute on the illegality of general blanket sanctions, there are different views on the legality of such targeted sanctions as a matter of a general principle of international law. Facts may differ on a case-by-case basis but as a general principle, there are different views on their legality. However, evidence shows that targeted sanctions have generally been made applicable in conjunction with blanket sanctions. On their own as well, there are important considerations that become relevant to addressing the legality of targeted sanctions. By design, such targeted sanctions are not undertaken pursuant to due process. It is also not clear whether they necessarily avoid violations of human rights of those who are not even the targets of the sanctions. For instance, a targeted sanction aimed at an individual but applied against a corporation owned by that individual, can have debilitating impacts on the employees or communities that rely on the corporation for their survival needs.

To conclude, there is no doubt that UCMs, in whichever form, can and mostly do have a detrimental effect on the right to development and all other human rights. I have not been able to address the adverse impacts on the implementation of the 2030 Agenda but I am sure Professor Douhan will elaborate on this in her study.