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THE U.S. UNILATERAL COERCIVE MEASURES IMPOSED IN LATIN AMERICA

A study based on the experience of Cuba, Nicaragua, and Venezuela

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Abstract

Since the 1990s, the use of unilateral coercive measures has increased in inter-states relations. However, these coercive strategies are not recent. They have been developed during the Cold War, as a tool of developed countries to influence their negotiations and the settlement of their differences, without the risk of waging a new war. These measures are commonly described as a tool of foreign policy with the objective to coerce another state to obtain the subordination of the exercise of its sovereign rights. However, the definition, scope and legality of these measures remains a grey area of international law. In this regard, this article focuses its analysis on four questions. The first investigates three case studies in the region, which are the U.S. Unilateral Coercive Measures imposed against Cuba, Nicaragua, and Venezuela. These cases were carefully selected for our analysis to show the negative impact of these measures on human rights and the economy of the targeted countries. The second question explores the contributions of Latin American countries to resist and condemn the use of these measures in a regional an international level. The third question explains why Latin America is divided on unilateral coercive measures and the contemporary trends. Finally, the fourth question asses the legal status of these measures from the standpoint of international law.

Résumé

Depuis les années 1990, le recours aux mesures coercitives unilatérales s'est accru dans les relations interétatiques. Cependant, ces stratégies coercitives ne sont pas récentes. Ils ont été développés pendant la période de Guerre froide, comme un outil employé par les pays développés pour influencer leurs négociations et le règlement de leurs différends, sans le risque de déclencher une nouvelle guerre. Ces mesures sont communément décrites comme un outil de politique étrangère ayant pour objectif de contraindre un autre État afin d'obtenir la subordination de l'exercice de ses droits souverains. Cependant, la définition, la portée et la légalité de ces mesures restent une zone grise du droit international. À cet égard, cet article analyse quatre questions. La première étudie trois cas dans la région, à savoir les mesures coercitives unilatérales imposées par les États-Unis contre Cuba, le Nicaragua et le Venezuela. Ces cas ont été soigneusement sélectionnés pour notre analyse afin de montrer l'impact négatif de ces mesures sur les droits de l'homme et l'économie des pays ciblés. La deuxième question explore les contributions des pays de l'Amérique latine pour résister et

condamner l'utilisation de ces mesures au niveau régional et international. La troisième question explique pourquoi l'Amérique latine est divisée autour du sujet des mesures coercitives unilatérales et les tendances contemporaines. Finalement, la quatrième question évalue le statut juridique de ces mesures au regard des règles et principes du droit international en vigueur.

INTRODUCTION

"Unilateral coercive measures not based on international law, also known as 'unilateral sanctions', are an example of double standards and of the imposition by some States of their will on other States"[1].

Joint Declaration on the Promotion of International Law, 2016

In the context of the Cold war (1947-1989)[2], the use of unilateral coercive measures (UCM) in inter-States relations have substitute armed hostilities as a stand-alone policy[3]. Since then, certain States, whether they are global hegemonies, regional leaders, or peripheral actors, tend to protect their security and pursue their national interests by exercising coercion against their adversaries[4]. These acts involve different forms of pressure whereby one State seeks to compel another into behaving in a certain manner.

Despite the rich history of coercion episodes, we start our research after World War II, not only because earlier episodes are less documented, but mainly because after 1945, the Community of Nations adopted the United Nations Charter, a universal document which contains a prohibition to use force in international relations. In front of this restriction, unilateral coercive measures appeared as a "surrogate of war[5]".

In this regard, some authors have qualified coercion as a type of violence[6], others as an act of aggression[7] when this considers the use of force, and its objective is to liquidate an existing State or to reduce this State at the position of a satellite. However, the most common

[1] *Joint Declaration on the Promotion of International Law,* adopted by the Russian Federation and the People's Republic of China, June 25, 2016. Available at the website < https://archive.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2331698>, para. 6.
[2] Claude QUETEL, *Dictionnaire de la Guerre Froide*, Larousse, 2008, p.18.
[3] Gary Clyde HUFBAUER, Jeffrey J. SCHOTT and Kimberly Ann ELLIOT, *Economic Sanctions Reconsidered: History and Current Policy*, Institute for International Economics, Washington DC, 2nd ed. 1990, p. 5.
[4] Mohamed HELAL*, "*On coercion in International Law", *Public Law and Legal Theory Working Paper Series, The Ohio State University, Moritz College of Law*, 2019, Vol. 475, p. 3.
[5] Gary Clyde HUFBAUER, Jeffrey J. SCHOTT and Kimberly Ann ELLIOT, *Op. Cit.,* p. 5.
[6] See the definition of Violence by Max GOUNELLE, *Relations Internationales*, Paris, Dalloz, 7th edition, 2006, p. 60
[7] For a full study of coercion as an "Act of aggression" see 1) Myres S. MCDOUGAL and Florentino FELICIANO, "Legal regulation of resort to international coercion: aggression and self -defense in policy perspective", *The Yale Law Journal,* 1959, Vol. 68, N° 6, pp. 1057-1165; and 2) Tom J. FARER, "Political and Economic coercion in contemporary international law", *American Journal of International Law*, Vol. 79, 1985, pp. 405-413, 411.

definition and the one that this paper will support is, that unilateral coercion can be understood as "a tool of foreign policy" with the objective to coerce another State to obtain the subordination of the exercise of its sovereign rights.

Moreover, coercion can be exercised through forceful or non-forceful means, such as political, diplomatic, economic, military, and more recently, cyber instruments of statecraft[8]. In many cases, States employ a combination of these instruments as a single strategy of coercion that is intended to shape the behavior of their adversaries[9]. In fact, the approach developed by some scholars -which equates coercion with the use of force- is unrealistic from a policy perspective and regarding current State practice[10], in which the "smart" combination of hard and soft powers has become the new strategy of statecraft[11].

For these motives, several States and members of the international community believe that UCM have a lack of legitimacy and legality due to their "unilateral" nature and because they pursue "political objectives", having a negative impact on the enjoyment of human rights, as well as on the realisation of the right to development. However, some States argue that international law will only consider such measures as legitimate and legal if: (a) they are a response to a breach of an international obligation committed by the targeted country[12]; and if (b) the breach of such obligation causes injury on a State or group of States giving them the right to self-defence[13].

The debate on this issue is highly controversial. States do not agree on the legal classification of these measures. However, there are several reasons to consider that the use of "coercion" in international relations has an important place in the current concerns of contemporary international law. This practice has rarely been more prevalent. Currently, there

[8] Karen A. FESTE, *Intervention: Shaping the Global Order*, Greenwood Publishing Group, 2003, p. 304. (She defined intervention as 'using economic leverage, diplomatic techniques, or military means to influence or control target states' policies of governance').
[9] M. HELAL, "On coercion in International Law", (*Op. Cit.),* p. 5.
[10] *Ibidem*.
[11] The idea of distinguishing between "hard power" and "soft power" was first introduced by Joseph NYE more than three decades ago (1990). He generally defines power as "the ability to affect others to get the outcomes one wants" (J. NYE, *Understanding International Conflicts,* Pearson, New York, 7 ed., 2009, p.61). Moreover, he added that hard power as coercive power wielded through inducements or threats. In contrast, soft or persuasive power is based on attraction and emulation and "associated with intangible power resources such as culture, ideology, and institutions" (J. NYE, 2009, p.63).
[12] Article 22, International Law Commission Draft articles on Responsibility of States for Internationally Wrongful Acts, hereafter "ILC Draft Articles on Responsibility of States", *in* ILC Yearbook, *Report of the Commission to the General Assembly on the work of its fifty-third session,* Vol. II, Part 2, 2001, p. 27.
[13] Article 21, ILC Draft Articles on Responsibility of States, 2001.

are 14 ongoing United Nations sanctions[14] and over 40 European Union sanctions regime in force[15], along with various others imposed by States acting unilaterally. Taking those unilateral measures into account, there are currently over 75 States targeted by such measures[16], but the number of countries targeted is less than half this number because Western States tend to have the same target countries. Nevertheless, in the absence of centralised data or reliable statistics, these numbers are at best an estimate. What is concerning about this is that behind this uncertain quantitative data, millions of innocent people are prevented from enjoying their fundamental human rights[17].

STARTING POINTS

The author explores different concepts to provide an understanding of the overall research topic, in the interest of avoiding unnecessary confusion. Firstly, it is important to make a distinction between "unilateral" and "multilateral" coercion. A word of explanation on each of these points is required.

1. The "unilateral" category refers to autonomous or decentralised measures, that is, those imposed by States acting "individually" without any UN Security Council's authorisation[18], which have been condemned by the UN General Assembly for being contrary to international law and for having a negative impact on human rights and the economy of developing States[19].
2. The "multilateral" measures refer to "collective" or "institutional" sanctions imposed by an international or regional organisation on one of its Member States or third countries in response to a threat to international peace and security. In this regard, the mandate to adopt these sanctions is centralised in the UN Security Council, and they are not subject to judicial review[20], because they have a special status, based on their

[14] UN Security Council (UNSC), "Sanctions" available at <https://www.un.org/securitycouncil/sanctions/information>
[15] European Union, "EU Sanctions map" available at <https://sanctionsmap.eu/#/main>
[16] United Nations Human Rights Council (UN HRC), *Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy*, UN Doc. A/HRC/30/45, 10 August 2015, hereafter 'Report of the SR (2015)', p. 15, §51. Also see Jean Marc THOUVENIN, "Sanctions économiques et Droit international", *Droits (Revue française de théorie, de philosophie et de cultures juridiques),* Presses Universitaires de France, *2013,* Vol. 57, p. 165.
[17] UN HRC, Report of the SR (2015), p. 15.
[18] See UN, *Report of the Secretary General on Unilateral economic measures as a means of political and economic coercion against developing countries*, UN Doc. A/68/218, 29 July 2013.
[19] UNGA Res. 69/180, 18 December 2014, Operative Clause 1.
[20] *Ibidem.*

constitutive act. The coercive measures applied by regional organisations under their constituent instruments, such as the European Union (EU), the Organisation of American States (OAS), the League of Arab States (LAS) and the African Union (AU) against their respective Member States, will also be included under this category.

However, the competence of regional organisations to adopt sanctions *ad extra*[21], against non-members, has been questionable. In this sense, the former UN Special Rapporteur, Idriss Jazairy, writes that: "coercive measures from regional groupings of countries or from one of their Member States targeting third countries are considered as unilateral in the sense that they are imposed pursuant to rules at no time endorsed by the targeted country"[22]. In the same line, article 34 of the Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations of 1986 establishes that: "a treaty does not create either obligations or rights for a third State or a third organization without the consent of that State or that organization". From the analysis of this article, it turns out that obligations cannot be imposed *a priori* on third States without their consent. Nevertheless, the practice examined shows that regional organizations have adopted several coercive measures against third countries without authorization from the UNSC or consent of the targeted State[23]. In this regard, some authors consider that conceding to any group of States the right to apply coercive measures merely because they consider the "sanction" as justified makes nonsensical the whole attempt to regulate unilateral coercion[24].

Secondly, it is essential to distinguish between the concept of "unilateral coercive measures" and other related notions, such as "sanctions" and "countermeasures".

1. The term "sanction" has been entirely excluded in the title of this article for the following reason. In international law, it is generally agreed today that the term sanction should be exclusively reserved for those collective coercive measures[25] taken by an

[21] Ana PEYRÓ LLOPIS, *Force, ONU et Organisations régionales. Répartition des responsabilités en matière coercitive*, Édition Bruylant, Belgique, 2012, pp. 88-179.
[22] See the "Report of the SR" (2015) which mentioned that restrictive measures adopted by regional organizations against non-Member States are considered unilateral coercive measures (p. 5, para.15).
[23] See for example, sanctions of the European Union Council imposed to Venezuela since November 2017, available at <https://www.consilium.europa.eu/en/policies/venezuela/>.
[24] Derek W. BOWETT, "International Law and Economic Coercion", *Virginal Journal of International Law*, 1976, Vol. 16, p. 254.
[25] Jorge CARDONA LLORENS, «Universalismo y Regionalismo en el Mantenimiento de la Paz a inicios del Siglo XXI", *XXXVI Cursos de Derecho Internacional, Comité Jurídico Interamericano, Secretaría de Asuntos Jurídicos,* OEA, 2009, p. 53.

international or regional organisation on one of its Member States who do not comply with international obligations, based on the organisation's statutory provisions[26], or on third countries, who commit an act of aggression that threatens international peace and security[27]. This means, in the design of the founders of the United Nations, that the international organization establish a collective international security system, which has a monopoly on coercion in the face of a threat to the peace, a breach of the peace, or an act of aggression[28].

2. The word "countermeasure" is, by definition, an unlawful act in the first instance. However, the wrongfulness of the act is precluded if it constitutes a measure taken exclusively by an injured state against the coercing state in response to a previous internationally wrongful act in order to induce that State to comply with its obligations. As explained on the commentaries of the Draft articles on Responsibility of States for Internationally Wrongful Acts (2001): "Countermeasures may have a coercive character, but as is made clear in article 49, their function is to induce a wrongdoing State to comply with obligations of cessation and reparation towards the State taking the countermeasures, not to coerce that State (…)"[29]. In addition to this, other conditions need to be fulfilled for lawful resort to countermeasures. These include, before taking countermeasures, an injured State shall: (1) call upon the responsible State, in accordance with article 43, to fulfil its obligations; (2) notify the responsible State of any decision to take countermeasures and offer to negotiate, (3) the injured State may take such urgent countermeasures as are necessary to preserve its rights, (4) countermeasures may not be taken, and if already taken must be suspended without delay if: (a) the internationally wrongful act has ceased; and (b) the dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties[30]. Finally, the injured state needs also to respect the "principle of proportionality" in taking measures[31], as well as the prohibition of resorting to measures

[26] Charles LEBEN, *Les sanctions privatives de droits ou de qualité dans les organisations Internationales spécialisées,* Établissement Émile Bruylant, Bruxelles, 1979, pp. 41-45.
[27] Ana PEYRÓ LLOPIS, *Force, ONU et Organisations régionales (Op. Cit),* p. 88.
[28] Jorge CARDONA LLORENS, *Op. Cit.,* p. 57.
[29] See Article 49, para. 2, and commentary, "Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries", in *Yearbook of the International Law Commission*, 2001, vol. II, Part Two, p. 70, § 3, hereafter "Draft articles on Responsibility of States, 2001".
[30] See Article 52, para. 1, 2, 3, and 4, Draft articles on Responsibility of States, 2001.
[31] See Article 51, Draft articles on Responsibility of States, 2001.

that breach certain fundamental obligations, such as obligations for the protection of human rights[32].

For its part, defining "coercion" has been challenging and remains a legal grey area[33], being differently appreciated between fields. For example, in the philosophical sphere, Virginia Held argued that *"*coercion is the activity of getting someone to do something against their will[34]". However, in international law, this expression has not yet been "clearly" defined. By way of illustration, the International Law Commission's (ILC) commentary on Article 18 of the Draft Articles on State Responsibility (DASR), which is about "Coercion of another State", does not outline the legal boundaries of coercion[35]. Instead, the commentaries compare coercion to an event of *force majeure* and define it as a "conduct which forces the will" of the targeted State, "giving it no effective choice but to comply with the wishes of the coercing State"[36]. As well, the ILC, without clarifying what unlawful coercion would be, limits itself to provide two examples of these coercive acts: "a threat or use of force contrary to the UN Charter" and "intervention, i.e., coercive interference in the affairs of another State"[37].

With these considerations in mind, the author agrees that there is still a long way to adopt a universal definition about what constitutes unlawful coercion. However, which is sure is that UCM provide a popular middle road, or as Gary Clyde Hufbauer and others said, "They add teeth to international diplomacy (…)[38]".

Despite the attempts to define coercion, this notion remains uncertain today. Indeed, the few existing works on this subject, are only focused on one of the stages of the notion, which illustrated the profusion of terms, such as: economic coercion, coercive diplomacy, military coercion, or coercion applied by international organisations. The insufficiency of these works is quite easily evident since serious differences emerge. Neither legal doctrine nor ICJ decisions has yet developed a definition generally accepted by the international community regarding

[32] See Article 50, Draft articles on Responsibility of States, 2001.
[33] Tom RUYS, "Sanctions, Retorsions and Countermeasures: Concepts and International Legal Framework", *in* Larissa VAN DEN HERIK (Ed.), *Research Handbook on UN Sanctions and International Law*, Edward Elgar Publishing, 2016, p. 7. Available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2760853>
[34] Virginia HELD, "Coercion and Coercive Offers"*, in* J. Roland Pennock and John W. Chapman (eds.), *Coercion*: *NOMOS XIV*, Aldine-Atherton, Inc., Chicago, 1972, pp. 50-51.
[35] Alexandra HOFER, "The Developed/Developing Divide on Unilateral Coercive Measures: Legitimate enforcement or illegitimate intervention?", *Chinese Journal of International law*, 2017, p. 5.
[36] See Article 18, and commentary, Draft Articles on Responsibility of States, 2001, p. 69, para. 2.
[37] *Ibid*, p. 70 para. 3.
[38] Gary C. HUFBAUER, J. SCHOTT and Kimberly A. ELLIOT, *Economic Sanctions Reconsidered (Op. Cit.),* p. 11.

UCM and their legal status. To this author's knowledge, very little have been writing about the use of unilateral coercion in inter-states relations. This research aims to bring some clarity in this area, providing a study based on the Latin American experience.

For the purpose of this work, the concept of "unilateral coercive measures" will be understood as:

> "A foreign policy tool, used individually by a State or a group of States, without any mandate or prior authorization from an international organisation, in order to intervene in the internal affairs of another State, using a coercive strategy, which may include individual or combined measures, such as political, diplomatic, and economic ones, as well as the moderate use of force and cyber-operations, with the purpose to obtain from the targeted State the modification of its behavior and the subordination of the exercise of its sovereign rights"[39].

It is important to note that this contemporary definition of UCMs allows us to make a distinction with other types of measures. For example, from the author's perspective, although it is true that most of the uses of UCMs have had a political dimension, beyond these political aims, what makes a measure a true "unilateral coercive measure", in addition to the coercive intention behind the action and the coercive means used, is mainly the absence of legal grounds. To clarify this, the difference is that coercive measures taken by a State or a group of States, not based on a previous offense or in the absence of prior authorization from the UNSC, are clearly "unilateral coercive measures", then they would be illegal. On the other hand, unilateral coercive measures can also be taken by an injured State[40] or other than an injured State[41], as

[39] This definition has been developed by the author in her Ph.D. thesis framework. For another definition of unilateral coercive measures, see UN HRC, "Report of the SR" (2015), p. 4, which writes that unilateral coercive measures are: "measures including, but not limited to, economic and political ones, imposed by states or groups of states to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights with a view to securing some specific change in its policy".

[40] See also Article 51, UN Charter, 1945, which establishes: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security".

[41] "(…) third-party countermeasures may operate concurrently with Security Council measures taken in accordance with Chapter VII of the UN Charter", See the analysis of Amanda BILLS, "The Relationship between Third-party Countermeasures and the Security Council's Chapter VII Powers: Enforcing Obligations", *Nordic Journal of International law,* Vol. 89, Brill, Nijhoff, 2020, p.141.

reactions to previous wrongful acts, and then they would qualify as "countermeasures", even before the UNSC can adopt collective measures. However, all the conditions required in Article 52 of the Draft articles on the Responsibility of States (2001) shall be previously used and failed in the implementation, leaving the injured State no other choice but to take countermeasures.

With this brief analysis of terms, this work, firstly, realizes that even when the term "sanction" has been interchangeably used by several authors and the media to refer to both unilateral and multilateral coercion, this is highly questionable. Mainly because UCM cannot be strictly described as "sanctions", not being decided by consent in a collective, centralised, or jurisdictional body of the international community. Secondly, they cannot be considered as "countermeasures" according to the ILC definition reviewed above, because UCM are generally taken at any time, not necessarily in reaction to a previous offense of another State, instead, they seek to influence the perceptions and behaviour of a State in areas that are part of its *domaine réservé.*

For these reasons, this paper supports the approach that the mandate to coerce States with a legal aim should be exclusively centralised in a "single impartial authority" in charge of administrating justice and enforcing law. However, as we all know, the international system is "decentralised" and "anarchic", as well as composed of equal and sovereign actors, which means that there is no superior power above the states to control and regulate the use of these measures[42]. Despite this decentralisation, international law has recognised the competence and authority in coercive matters mainly to the UN Security Council and in a complementary way to regional organisations[43]. As a result, no state has the right to adopt unilateral coercive measures against another state according to its own will and national interests. If this happens, these measures should be legally qualified as "Internationally Wrongful Acts"[44], as we will see in the fourth section of this paper.

In this regard, this research seeks to investigate *What are the Latin American countries currently targeted by the U.S. unilateral coercive measures*? *How Latin America have contributed on the development of an emerging legal framework to resist and condemn the use*

[42] See Raymond ARON, « Qu'est-ce qu'une théorie des relations internationales ? », *Revue française de science politique*, 1967, Vol. 17, n° 5, pp. 837-861.
[43] Ana PEYRÓ LLOPIS, *Force, ONU et Organisations régionales : Répartition des responsabilités en matière coercitive*, Editions Bruylant, Brussels, 2012.
[44] The definition of "Internationally Wrongful Act" has been codified in Article 2 of the *ILC Draft Articles on State Responsibility,* 2001, Annex to UNGA Res. 56/83, Responsibility of States for Internationally Wrongful Acts, 28 January 2002.

of these measures? Why Latin America is divided on unilateral coercive measures? and finally, *What is the legal status of these measures?* To provide an answer to these questions the author, firstly, proceeds to do an empirical review of three cases studies in the region (Cuba, Nicaragua, and Venezuela). By using this approach, the author will show how the U.S. Unilateral Coercive Measures have caused a negative impact on human rights and on the economy of the targeted countries. Secondly, this work explores the efforts made by Latin American countries in a regional and international level to condemn and resist to these measures. This process will show that these denunciations, declarations, and resolutions constitute an undeniable base of an emerging prohibition of UCM. Third, this article examines the contemporary trends and developments in the hemisphere, that clearly show a division between Latin American countries on the use of unilateral coercive measures, as well as the signs that this could change in the near future. Finally, the author asses the legal status of unilateral coercive measures from the standpoint of international law. A study on the legal status of these measures in inter-states relations, require a comprehensive enquiry into the existence and content of any rule prohibiting resort to unilateral coercion in present-day international law. The results presented here seek to demonstrate the need to legally qualify these measures as Internationally Wrongful Acts, from the standpoint of the Law of State Responsibility.

The problems which Latin American states have confronted since their independence have shaped the way of Latin American legal scholars and practitioners approach the theoretical and practical problems of international law[45], conducting Latin American scholarship on the development of an "American consciousness"[46]. A consciousness that has been historically conditioned by oppression and discrimination, and which is presented here for the analysis. This is a perspective that examines the problems in the region, particularly with reference to its historical and cultural process.

Certainly, in the hemisphere, the U.S. have imposed tough UCM against several countries. However, this paper will focus its attention on the case of Cuba, Nicaragua, and Venezuela for being cases still in force. These three targeted countries are currently hanging tough, and inconveniently, each government appears in control of its security apparatus and

[45] Hugo CAMINOS, David W. KENNEDY and George A. ZAPHIRIOU, "The Latin American Contribution to International Law", *Proceedings of the Annual Meeting (American Society of International Law),* Vol. 80, Cambridge University Press, 1986, pp. 157-158.
[46] Alejandro ALVAREZ, "Latin America and International Law", *The American Journal of International Law*, 1909, Vol. 3, No. 2, Cambridge University Press, p. 337.

enjoys domestic political support. Hence, the inefficacy to date of those coercive measures to promote political changes in those territories[47].

In this regard, this work presents a general overview of the US unilateral coercive measures imposed against three Latin American countries: Cuba, Nicaragua, and Venezuela (1). Secondly, it will show the contribution of Latin America in a regional and international level to resist and condemn the use of these measures (2). Third, it will explain some of the reasons why the region is divided on unilateral coercive measures, considering some contemporary trends (3). Finally, it will present an assessment of the legal status of these measures (4).

1. LATIN AMERICAN COUNTRIES TARGETED BY THE U.S. UNILATERAL COERCIVE MEASURES: THREE CASE STUDIES

A brief historical review proved that the role played by Latin American (LA) countries in the field of unilateral coercive measures has been mostly as *targeted states* rather than *coercing states*. This is mainly for two reasons.

On the one hand, the states which use coercion as a tool of its foreign policy are states which have the economic and military resources, according to the historical experience, developed countries. Among the cases we have examined[48], the countries that impose unilateral coercive measures are, for the most part, large nations that pursue an active foreign policy. However, there are instances of neighborhood fights where LA countries have used unilateral coercion as well, such as: Paraguay versus Bolivia in 1932 during the Conflict of Chaco; Bolivia versus Chile over the dispute regarding the access to the Pacific Ocean in the 1870s; Nicaragua versus Costa Rica, which was accused of supporting the *contras* in 1986, among others. But in the main part, coercive measures have been used by big powers, precisely because they have the resources to influence events on a global scale. In this regard, these coercive measures are *a priori* an instrument reserved for developed countries.

On the other hand, LA nationhood defends a set of cultural values based in the opposition to any foreign intervention and the respect for the sovereign equality of states, which

[47] Richard E. FEINBERG, "The uses of sanctions in Foreign Policy: Nicaragua's Elections 2021", *Wilson Center: Latin American program,* 2021, pp. 1-3. Available at <https://www.wilsoncenter.org/publication/uses-sanctions-foreign-policy-nicaraguas-elections-2021>

[48] International cases studied by the author in the framework of her PhD Thesis, such as: UCM imposed by Canada, Switzerland, United Kingdom, United States, and the European Union coercive measures.

represent a legacy of colonial and post-colonial history[49]. In the nineteenth century these principles were embraced to defend the independence of Latin American nations against European dominance. However, since the twentieth century these values were also applied in intraregional relations, mainly against the U.S. interventions.

In this regard, some historical notes to illustrate the European attempts to dominate Latin America at the beginning of the nineteenth century are in order. Firstly, from September 1814 to June 1815, the representatives of Prussia, Austria, and Russia united against Napoleon met in the Congress of Vienna to rebuild Europe, affected by the actions of the French Empire. The purpose of creating this "Holy Alliance" was to intervene to defend monarchical legitimacy and crush any revolutionary movement[50]. In this regard, the coalition prevented revolutionary movements in Italy, Portugal, and Spain, and they were prepared to intervene in LA to help the Kingdom of Spain keep its colonial possessions, which had taken up arms in defense of their independence[51].

Secondly, the threat of an armed intervention by European monarchies in Latin America provoked the emergence of an American movement of resistance. In this regard, former US President, James Monroe set forth the basis of his famous "Monroe Doctrine" during his Message to the U.S. Congress in 1823. According to the jurist, Elihu Root, "This doctrine stipulated that the independent republics of the Americas shall not be recolonised and shall remain free from European intervention"[52]. However, in standing up against European interference in the affairs of American countries, the U.S. did not commit itself to not interfere in these internal affairs. Several authors fully understood and pointed out the essence of the "Monroe doctrine". For example, F. Martens said that the U.S. transformed the well-known phrase: "*America to the Americans*" into "*America to the Yankees"*[53]. Jay Sexton, meanwhile, indicated that "The Monroe Doctrine's non-interventionism did not, of course, apply to the U.S. After it consolidated its dominance over North America, the U.S. expanded its sphere of

[49] James DUNKERLEY, *Studies in the Formation of the Nation state in Latin America*, Institute of Latin American Studies, University of London, 2002.
[50] Michel PERONNET, "L'Europe de la Sainte-Alliance", in PERONNET (ed.), *Le XVIII^e siècle. Des Lumières à la Sainte-Alliance*, Hachette Education, 1998, pp. 322-327.
[51] N. OUCHAKOV, "La compétence interne des États et la non-intervention dans le droit internationale contemporain", *Recueil des Cours de l'Académie de Droit International de La Haye*, Vol. 14, 1974, p. 7.
[52] Elihu ROOT, "The Real Monroe Doctrine", *Annual Meeting of the American Society of International Law,* 1914, Vol. 8, pp. 6-7.
[53] Cited by N. OUCHAKOV, La compétence interne des États, *Op. Cit.,* pp. 9-10.

influence southwards and increasingly intervened in Latin America to protect (…) its commercial interests"[54].

To face this situation, LA countries have contributed to the development of a more favorable international law, particularly the principle of non-intervention, which was adopted in a regional and universal level. However, the recognition of this principle, did not sufficiently protect the continent from interferences as well as the imposition of UCM by developed countries. The first set of unilateral measures imposed in the region were taken by the U.S. against Cuba in 1962, which is the best-known example, followed by Nicaragua which have been also under such a regime since the beginning of the Sandinista era in 1984. No less famous, are the unilateral coercive measures imposed by U.S. against Venezuela since 2014.

This paper recognises the existence of other significant U.S. unilateral coercive measures in the region's history. By our count, the U.S. have engaged in destabilization efforts more than 15 times in the hemisphere, such as operations to overthrow President Jacobo Arbenz in Guatemala in 1953[55]; efforts to depose Rafael Trujillo in the Dominican Republic in 1961[56]; supporting the *coup d'État* against the Brazilian president João Goulart in 1964[57]; covert operations to destabilise the government of Salvador Allende in Chile in 1973[58]; coercive measures against Argentina resulting from the Malvinas Conflict in 1982[59], and the invasion to Panama to overthrow Manuel Noriega in 1989, among others. However, the author is inclined to study in this paper only the three cases mentioned above because the U.S. efforts against Cuba, Nicaragua, and Venezuela stand out as the most intensive, long-lasting in the region, and still in force.

[54] Jay SEXTON, *The Monroe Doctrine: Empire and Nations in Nineteenth Century America*, New York: Hill and Wang, 2011, pp. 199-200.

[55] Stephen G. RABE, *Eisenhower and Latin America: The Foreign Policy of Anticommunism,* Chapel Hill, The University of North Carolina Press, 1988, pp. 42-63. S. Rabe writes "The Eisenhower administration and John Foster Dulles personally were involved in the overthrow of Jacobo Arbenz Guzman's government. The United States accused the Guatemalan president of an alliance with the Soviet Union and was involved in the coup d'état which ousted Guzman from office and opened a long period of repressive dictatorship in that country".

[56] Marcin FATALSKI, "The United States and the Fall of the Trujillo Regime", *The American. Journal of American Studies* 2013, Vol 14, pp. 7-18

[57] W. Michael WEIS, "Cold Warriors and Coup d'États: Postwar Brazilian-American Relations" (Review article), *Luso-Brazilian Review*, 1991, Vol 28, pp. 91-97.

[58] Zakia SHIRAZ, "CIA Intervention in Chile and the Fall of the Allende Government in 1973", *Journal of American Studies*, 2011, Vol 45, pp. 603-613.

[59] Domingo E. ACEVEDO, "The US Measures against Argentina Resulting from the Malvinas Conflict", *The American Journal of International Law,* 1984, Vol. 78, pp. 323-344.

These cases were carefully selected for our analysis because these countries have not succumbed to the decades of U.S. pressure. Additionally, these case studies show how Latin America has been used as a "guinea pig for experimentation"[60] while the U.S. continues expanding the scope, purposes, targets, means, and mechanisms, as well as increasing the statistics of people affected. Exploring the Latin American case is therefore crucial for understanding the use of "unilateral coercive measures" in inter-states relations as a tool of foreign policy. This analysis also shows the injustice these countries face and the necessity to find a solution to condemn the use of UCM.

1.1. The case of extraterritorial measures imposed on Cuba by the United States

The most prominent precedent and the most practicable starting point to consider the nature, the scope, and the impact of unilateral coercive measures is the Cuban Case. The first U.S. measures against Cuba were fully implemented in 1962 when the Kennedy administration banned the importation of all goods and services from the island[61]. The U.S. embargo against Cuba has since been in place for more than six decades and has severely impacted all the economic and social sectors as well as Cuban commercial relations with the world.

A brief history of Cuba and U.S. relations prior to the embargo will be discussed to provide proper context for understanding the initial reason for the embargo. The U.S. consumed most of Cuba's exports in tobacco, sugar, cacao, coffee, fruits, and nuts in the nineteenth century. In turn, Cuba imported meats, manufactured goods, and fuel, among other goods[62]. However, the rise to power of President Fidel Castro in 1959, collided with the U.S. national interests. As a response, the export of goods from the U.S. to Cuba was banned in 1960, and then the Kennedy administration banned the importation of all goods of Cuban origin, in 1962[63].

In the 1990s, the adoption of the Cuban Democracy Act (CDA) in the U.S. Congress, sponsored by Congressman Torricelli, and the Cuban Liberty Act (CLA), also known as the Helms-Burton Act, have resulted in a severe tightening of the embargo, specifically impacting medicines and medical equipment. The exact reasons for the embargo were stated in both Acts,

[60] See a very similar analysis regarding the Palestinian question and the role played by Israel, in Noam CHOMSKY and Ilan PAPPÉ*, On Palestine,* Penguin Books UK, 2015, pp. 6-7.
[61] Tyler FRANCIS and Thomas DUNCAN, "The Cuban Experiment: A 50+ Year Embargo as a Failed Means of Promoting Economic and Political Development", 2016, p. 1, available at < https://ssrn.com/abstract=2773693 >.
[62] *Ibid*, p. 3.
[63] Joy GORDON, "The US Embargo against Cuba and the Diplomatic Challenges to Extraterritoriality", *Fletcher Forum of World Affairs,* 2012, Vol. 36, pp. 63-79.

particularly in Section 6002 (1) of the CDA, which says the embargo intended "to seek a peaceful transition to democracy and a resumption of economic growth in Cuba, through the careful application of sanctions directed at the Castro government and support for the Cuban people"[64].

What is pertaining to note in this case is that the U.S. unilateral coercive measures against Cuba are multifaceted, since they not only involve various types of measures, but also affect different sectors. For instance, these measures prohibit travel, transactions in U.S. currency, trade with U.S. companies, export of medical equipment to treat certain pathologies, export of technologies which impaired the development of Cuba's agricultural and food processing sectors, among others. Additionally, U.S. block Cuba's access to International Financial Institutions, and they also impose restrictions on third countries, as secondary sanctions, that trade with Cuba[65].

The Cuban case brings several lessons. Firstly, the embargo and the additional coercive measures added in the 1990s have devastated the people they were intended to help, as the American Association for World Health (AAWH) reported in 1997: "(…) the US embargo of Cuba has dramatically harmed the health and nutrition of large numbers of ordinary Cuban citizens. As documented by the attached report, it is our expert medical opinion that the US embargo has caused a significant rise in suffering -and even deaths- in Cuba[66]".

The negative impact on human rights of these UCM continue to be documented[67]. For example, the annual report of the UN Secretary-General[68] has become an important platform, highlighting the adverse impact of the U.S. embargo on Cuba, and reaffirming the almost universal call for its end. This report has provided evidence of the consequences of the blockade on the Cuban people[69].

[64] Section 6002 (1), *Cuban Democracy Act*, United States Congress, 1992.
[65] Joy GORDON, "Economic Sanctions as 'Negative Development': The Case of Cuba", *Journal of International Development,* 2015, Vol. 28*,* p. 474.
[66] American Association of World Health (AAWH), *Report on the Impact of the US Embargo on Health and Nutrition in Cuba*, 1997, p. 1.
[67] See UN HRC, *Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights*, UN Doc A/HRC/42/46, July 2019, hereafter 'Report of the SR (2019)', p. 4.
[68] The report is elaborated with contributions of Member States, UN system agencies and other intergovernmental organizations, such as the World Health Organization (WHO) and Food and Agriculture Organization (FAO).
[69] Vicente YU and Adriano TIMOSSI, "Impacts of Unilateral Coercive Measures in Developing Countries: the need to end the US embargo on Cuba", *South Centre: Policy Brief*, Vol. 66, 2019, p. 2.

Secondly, the U.S. embargo has exerted significant losses on the Cuban economy. The government of Cuba reported accumulated losses caused by the embargo amounting more than US$ 933,678,000,000[70]. In the same line, several international organisations reported that the embargo directly impacted all projects of the United Nations Development Programme (UNDP) and other emergency activities[71].

The repeated condemnations by the international community of these UCM against Cuba have gained nearly universal consensus. For example, in 2016, the UN General Assembly resolution on the necessity of ending the U.S. embargo against Cuba, was adopted for the first time ever with 191 votes in favor, none against and only two abstentions (U.S. and Israel)[72]. This resolution was initially tabled in 1992, and since then this was the first time that these two countries decided to vote with abstention, which marked a unique moment in the history of multilateralism[73]. However, this engagement policy by the U.S. with Cuba proved to be short-lived[74]. The adoption in 2017 and 2018 of more UCM by the new U.S. administration, and the reversal of other policies, marked the return to a policy of isolating Cuba with severe impacts on its economy and people[75].

For example, in November 2022, the United Nations General Assembly (UNGA) resolution on the necessity of ending the US embargo against Cuba shows a slight change from the 2016 voting process. In this occasion, 185 States were in favour[76], 2 against (Israel and U.S.), with 2 abstentions (Brazil, Ukraine). In June 2021, the vote was almost the same[77]. The

[70] UNGA, *Report of the Secretary-General. Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba,* UN Doc. A/73/85, 2018, p. 54.
[71] *Ibid*, p. 140. The report states that "The embargo has had a direct impact on all UNDP development projects and emergency activities, both because it increases the transaction costs of obtaining project inputs and because it increases the cost of transporting the imported goods. Finding alternative shipping companies requires additional time and effort. As a result, projects have been affected by significant delays in the purchase and distribution of project inputs, which has had a negative impact on the timely implementation of project activities and results."
[72] UN Press Releases, "As United States, Israel Abstain from Vote for First Time, General Assembly Adopts Annual Resolution Calling for Lifting of United States Embargo on Cuba", (26 October 2016) available at < https://www.un.org/press/en/2016/ga11846.doc.htm>
[73] Vicente YU and Adriano TIMOSSI, "Impacts of Unilateral Coercive Measures", *Op. Cit.,* p. 2.
[74] *Ibidem.*
[75] *Ibidem.*
[76] "Moreover, the real number of member states that would have voted against the blockade is 186. However, Venezuela was unable to do so because its UN voting rights were temporarily suspended, due to Venezuela's inability to pay member fees to the United Nations, ironically because of the illegal U.S. blockade and sanctions against it". See Ben NORTON, "Entire world votes 185 to 2 against blockade of Cuba–U.S. and Israel are rogue states at UN", *MROnline,* 5 November 2020. Available at <https://mronline.org/2022/11/05/entire-world-votes-185-to-2-against-blockade-of-cuba-u-s-and-israel-are-rogue-states-at-un/>
[77] UNGA Res. 75/289, UN Doc. A/RES/75/289, 28 June 2021, p. 2.

only difference was that Colombia's previous right-wing government had abstained, whereas its new left-wing President, Gustavo Petro, opposes the embargo[78]. In the 2022 resolution, the UNGA reiterated its call upon all states "to refrain from promulgating and applying laws and [unilateral coercive] measures (…), in conformity with their obligations under the Charter of the United Nations and international law"[79].

In other words, the Cuban Democracy Act (*Torricelli Act*) and the Cuban Liberty Act (*Helms-Burton Act)* adopted by the U.S., can be cited as a clear example of extraterritorial application, as it threatens to sanction third countries, companies or individuals outside the U.S. territory, trading with the Government of Cuba. In fact, the extraterritoriality of these UCMs applied to Cuba, comes from the application of secondary sanctions outside the U.S. jurisdiction against third States, third State nationals or entities for their trade, cooperation, or association with the Cuban administration (affected by primary sanctions)[80]. As the International Court of Justice has repeatedly pointed out, the exercise of extraterritorial jurisdiction is clearly contrary to international law[81]. The Special Rapporteur, Alena Douhan, also recalls the existence of general consensus on the illegality of the application of extraterritorial measures from the side of legal doctrine and among directly targeted States[82].

Finally, it is difficult to measure the exact impact of these measures on the Cuban economy because Cubans have been very inventive at redirecting resources and have employed other means of compensating for the losses caused by the embargo. Additionally, the embargo's impact is extended when the prohibitions also impose penalties on foreign companies and third countries when trading with Cuba. Furthermore, the effect of the embargo increases when the U.S. hold a monopoly on specific goods or controls access to international financial institutions. In the Cuban case, the embargo has effectively functioned as a "global" coercive measure rather than a "unilateral" one[83].

[78] Ben NORTON, *loc. Cit.*
[79] UNGA Res. 77/7, UN Doc. A/RES/77/7, 28th plenary meeting, 77th session, 8 November 2022, p. 2, § 2.
[80] UN HRC, Report of the SP, 2021, p. 11, § 53.
[81] ICJ, Arrest Warrant of 11 April 2000 (*Democratic Republic of the Congo v. Belgium),* Judgment of 14 February 2002, p. 3.
[82] UN HRC, Report of the SP, 2021, p. 11, § 59.
[83] Joy GORDON, "The U.S. Embargo Against Cuba and the Diplomatic Challenges to Extraterritoriality", *Fletcher Forum of World Affairs*, 2012, Vol. 36, no. 1, pp. 63-79

1.2. The Nicaraguan experience confronting U.S. unilateral coercive measures

In terms of judicial resources, the Nicaraguan case is without hesitation, the most prominent[84]. From 1981 to 1990, the U.S. government was engaged in a "concerted and multifaceted campaign to overthrow the government of Nicaragua"[85]. As part of this campaign, the U.S. implemented a combined strategy of coercion that included several unilateral actions such as mine Nicaraguan ports, conduct military manoeuvres, train, arm, and provide financial and logistical support to the *Contras*[86], cease economic aid, and impose a trade embargo.

In this regard, in April 1984, Nicaragua filed an application instituting proceedings at the International Court of Justice (ICJ) against the U.S., together with a Request for the indication of provisional measures. The application sets forth massive violations on the part of the US of its obligations to Nicaragua by using armed forces against it; by organizing, training, and supporting a mercenary army operating against Nicaragua from military bases in Honduras; by invading Nicaraguan airspace and attacking central economic installations, all in violation of Nicaragua's sovereignty[87].

On 27 June 1986, the ICJ delivered its judgement on the merits. The findings included a rejection of the justification of "collective self-defence" advanced by the U.S., and a statement that the U.S. had violated the obligations imposed by customary international law not to intervene in the affairs of another state, not to use force against another state and not to infringe the sovereignty of another state[88]. In this decision, the ICJ qualified for the first time the term "coercion" as the "fundamental component of an illegal intervention", as follows:

> "(…) Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones. The element of *coercion*, which defines, and indeed forms the very essence of, prohibited intervention, is particularly obvious in the case of an intervention which uses force, either in the direct form of military action,

[84] This situation was brought before the International Court of Justice (ICJ) in 1984. For more information see ICJ, Judgement on Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v United States of America)* 27 June 1986.
[85] William LEOGRANDE, "Making the economy scream: US economic sanctions against Sandinista Nicaragua", *Third World Quarterly*, 1996, Vol 17, No 2, pp. 329-348.
[86] *Contras* is the Spanish term used to designate those who oppose or fight against the Nicaraguan Government of the President Daniel Ortega.
[87] ICJ, *Memorial of Nicaragua. Questions of jurisdiction and/or admissibility,*1984, p. 361.
[88] ICJ, *Nicaragua v. United States of America (Overview of the case),* 1986, available at < https://www.icj-cij.org/en/case/70 >.

or in the indirect form of support for subversive or terrorist armed activities within another state"[89].

Despite the provisional measures and the judgement delivered by the ICJ, the damage has already been done. Nicaragua was suffering a severe recession due to the economic embargo initially imposed by Reagan in 1985 through an Executive Order[90]. Even when the *Contra* war failed to achieve its aim of overthrowing the Sandinista government by military means; economic coercive measures succeeded in devastating the Nicaraguan economy, which brought consequences for the *Sandinistas*[91] in the next elections.

In February 1990, there was a presidential election in Nicaragua. The opposition coalition, headed by Violeta Chamorro, won with a surprising victory. Chamorro took 54.7 per cent of the popular vote for president, to Daniel Ortega's 40.8 per cent[92]. The Bush administration celebrated Chamorro's victory and decided to leave the economic embargo imposed by Reagan and asked the U.S. Congress to provide US$300 million in "economic assistance" for the new right-wing Nicaraguan government[93].

In the same line, the Bush administration started exerting pressure on President Chamorro to abandon the ICJ judgment and the US$17 billion Nicaragua won against the U.S. at the International Court of Justice[94]. In this regard, Nicaragua decided to abandon the case in 1991. The U.S. told the Court that it welcomed the discontinuance and, on 26 September 1991, by order of the ICJ president, the case was removed from the Court's List[95].

As we can observe, when Sandinistas left the power in 1990, the U.S. decided to cease the unilateral coercive measures. However, Daniel Ortega won reelection in 2006 and again in

[89] ICJ, *Nicaragua v. United States of America (Merits),* 1986*,* para 205. (Emphasis added)
[90] U.S., Executive Order No 12513, *Prohibiting trade and certain other transactions involving Nicaragua,* 1985.
[91] "Sandinistas" is the Spanish name given to a member of a left-wing Nicaraguan political organization called the Sandinista National Liberation Front (El Frente Sandinista de Liberación Nacional), which came to power in 1979 after overthrowing the dictator Anastasio Somoza. See *Oxford Languages Dictionary*.
[92] Envío digital, "A vote for Peace-Will it come?" (Envío, Información sobre Nicaragua y Centroamérica, March 1990) available at < https://www.envio.org.ni/articulo/2586>.
[93] Lawrence EAGLEBURGER*, "*US assistance to Panama, Nicaragua', *Current Policy Series,* U.S. Department of State*,* 1990, Vol. 1264, p. 5.
[94] Mark A. UHLIG, "U.S. Urges Nicaragua to Forgive Legal Claim" (The New York Times, 30 September 1990) available at <https://www.nytimes.com/1990/09/30/world/us-urges-nicaragua-to-forgive-legal-claim.html>
[95] ICJ, *Order of the President of the International Court of Justice*, Case concerning Military and Paramilitary Activities in and against Nicaragua, 26 septiembre 1991, available at <https://www.icj-cij.org/en/case/70>

2011 and 2016, and his domestic opponents began the lobby with the U.S. representatives to reimpose coercive measures.

In political terms, 2018 was a challenging year for Nicaragua. A violent attempt to overthrow the Nicaraguan government had occurred when a group of demonstrators, ostensibly financed and supported by external sources, went to the streets demanding Ortega's resignation[96]. In this context, the former U.S. National Security Advisor, John Bolton, said that Nicaragua was part of a "troika of tyranny" in Latin America alongside Cuba and Venezuela. He stated that "Until free, fair, and early elections are held, (…) the Nicaraguan regime, like Venezuela and Cuba, will feel the full weight of America's robust sanctions regime"[97]. Following their threats, that year in November, former President Trump issued an Executive Order[98] blocking all property in the U.S. of persons related to the Government of Nicaragua.

Additionally, in December 2018, the U.S. passed the *Nicaragua Human Rights and Anticorruption Act*[99]. This Act sought to oppose loans at international financial institutions for the Government of Nicaragua. For example, the World Bank (WB), which having praised Nicaragua's use of international funds to relieve poverty and finance projects, suddenly ceased funding Nicaraguan projects in that year. It was until 2020, when the WB tardily helped respond to the Covid-19 pandemic and to the consequences of two hurricanes in Central America which severely affected Nicaragua[100].

In June 2021, President Biden expanded the list of UCM against Nicaragua, adding four individuals who supported President Ortega to the Sanctions list [101]. Later, in November, the U.S. Congress passed the *Reinforcing Nicaragua's Adherence to Conditions for Electoral*

[96] AFP, "La crisis política de Nicaragua desde 2018", (France 24, 8 Novembre 2021) available at <https://www.france24.com/es/minuto-a-minuto/20211108-la-crisis-pol%C3%ADtica-de-nicaragua-desde-2018>

[97] AFP, "US sanctions Nicaraguan first lady over abuses" (France 24, 27 November 2018) available at <https://www.france24.com/en/20181127-us-sanctions-nicaraguan-first-lady-over-abuses>

[98] US Presidential Documents, Executive Order 13851, Blocking Property of Certain Persons Contributing to the Situation in Nicaragua, (US Federal Register, Vol. 83, No. 230, 27 November 2018) available at <https://home.treasury.gov/system/files/126/nicaragua_eo.pdf>

[99] This Act was originally introduced with the title "Nicaraguan Investment Conditionality Act" (NICA Act) in 2017. For more information see US Congress, "Nicaragua Human Rights and Anticorruption Act of 2018", available at <https://www.congress.gov/bill/115th-congress/house-bill/1918/all-info. >

[100] John PERRY, "Sanctions May Impoverish Nicaraguans, but Likely Will Not Change their Vote" (Nacla, 6 August 2021) available at <https://nacla.org/sanctions-may-impoverish-nicaraguans-will-not-change-their-vote>

[101] US, Department of the Treasury, "Treasury Sanctions against Nicaraguan Officials for Supporting Ortega's Efforts to Undermine Democracy, Human Rights, and the Economy", (US Press Releases, 9 June 2021) available at <https://home.treasury.gov/news/press-releases/jy0218>

Reform Act, also known as RENACER Act. According to the U.S. administration, this bill was adopted to address alleged corruption and human rights abuses in Nicaragua.

In conclusion, the analysis of the Nicaraguan experience facing the U.S. pressure, have demonstrate; firstly, that unilateral coercive measures can be highly destructive against the economy of a developing country. Secondly, these coercive measures have enormous intrusive capabilities in matters considered within the *domaine réservé* of a State, such as economic, social, and political affairs, including electoral processes. Finally, the U.S. unilateral coercive measures originally targeted government officials, however the most affected were the Nicaraguan people, negatively impacting on the enjoyment of their fundamental human rights and the economy of the country.

1.3. The progressive escalation of U.S. coercive measures against Venezuela

The U.S. have been applying a growing number of unilateral coercive measures on the Bolivarian Republic of Venezuela for more than a decade and has "blacklisted" the country on various grounds[102]. These U.S. measures imposed against Venezuela are currently more extensive than those of the Nicaraguan program, starting since 2005, and being steadily increased since 2014, with a slight change in 2022. At the present, more than 43 UCM have been adopted against Venezuela by the U.S. through: Executive Orders, Laws, General Licenses, and others. These coercive measures have effectively paralysed the economy, blocked oil exportation globally, and frozen Venezuelan financial assets abroad while denying access to international financial systems. This loss in oil revenue and assets has amounted to a shortfall worth billions of U.S. dollars, prohibiting the importation of essential, lifesaving products and technological equipment[103].

In this regard, the first set of U.S. unilateral coercive measures was declared in 2005, when the United States has made an annual determination that Venezuela has "failed demonstrably (…) to make substantial efforts to adhere to its obligations under international counter-narcotics agreements"[104]. In 2006, Venezuela has also been subjected to terrorism-related measures, as U.S. officials have expressed concern about the lack of cooperation on

[102] UN HRC, Report of the SR, 2019, p. 6, § 17.
[103] Tanya ZAKRISON and Carles MUNTANER, "US sanctions in Venezuela: help, hindrance, or violation of human rights?" (The Lancet, Vol. 396, 29 June 2019), p. 2586.
[104] UN HRC, Report of the SR, 2019, p. 6, § 17.

U.S. anti-terrorism efforts. As a result, the U.S. have prohibited all commercial arms sales and retransfers to Venezuela[105].

In 2014, the U.S. Congress passed the first law against Venezuela named "*the Venezuela Defense of Human Rights and Civil Society Act"*[106]*,* which was signed by President Obama, to impose targeted sanctions on certain individuals in Venezuela that were alleged as responsible for violations of human rights committed during the 2014 Venezuelan protests. In 2015, President Obama also decided to adopt an Executive Order to declare Venezuela as "an unusual and extraordinary threat to the national security and foreign policy of the United States"[107]. For this reason, the U.S. government declared "a national emergency to deal with that threat".

In 2017, more coercive measures were adopted against the Venezuelan government and its state entities, including State oil company, Petroleos de Venezuela (PDVSA) and the Central Back of Venezuela (BCV), blocking them from transactions and access to U.S. and other financial markets[108]. In 2018, the U.S. Government took three Executive Orders. Firstly, to prohibit all transactions in any digital currency or digital coin, that was issued by, for, or on behalf of the Government of Venezuela[109]; Secondly, to prohibit all transactions related to the purchase of any debt owed to the Government of Venezuela[110], and third, to set forth a framework to block the assets of and prohibit certain transactions with persons operating in the gold sector, as well as to suspend the entry of such persons in the U.S. territory[111].

In 2019, the U.S. decision to stop recognizing the government of President Maduro, in favour of the self-proclaimed "president *interim*" Juan Guaido, former President of the Venezuelan Parliament, has been met with threats of military intervention in the name of humanitarian intervention[112]. All this has added to an already unstable political situation and a difficult economic situation, terrible repercussions on the enjoyment of human rights.

[105] *Ibid*., p. 6, §18.
[106] US Congress, *Venezuela Defense of Human Rights and Civil Society Act,* 2014, available at <https://www.congress.gov/bill/113th-congress/senate-bill/2142>.
[107] US Presidential Documents, Executive Order No 13692*, Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela,* (Federal Register, Vol. 80, No. 47, 8 March 2015).
[108] US Presidential Documents, Executive Order No 13808, *Imposing Additional Sanctions With Respect to the Situation in Venezuela* (Federal Register, Vol. 82, No. 16624, August 2017).
[109] US Presidential Documents, Executive Order No 13827, *Taking Additional Steps to Address the Situation in Venezuela* (Federal Register, March 19, 2018).
[110] US Presidential Documents, Executive Order No 13835, *Prohibiting Certain Additional Transactions with Respect to Venezuela* (Federal Register, May 21, 2018).
[111] US Presidential Documents, Executive Order 13850, *Blocking Property of Additional Persons Contributing to the Situation in Venezuela* (Federal Register, November 1, 2018).
[112] UN HRC, Report of the SR, 2019, p. 6, § 16.

International observers generally agree that the UCM adopted by the U.S., have played a non-negligible role in crippling the economy of Venezuela[113]. Then, the U.S. administration imposed further coercive measures through two additional Executive orders namely "Taking Additional Steps to Address the National Emergency with Respect to Venezuela"[114] and *"*Blocking Property of the government of Venezuela"*[115]*. The first implies the amendment of the previous five Executive orders to extend the measures to any person who has acted or purported to act directly or indirectly for or on behalf of, the government of Maduro, PDVSA, and the Central Bank. The Second means that all the property of the Venezuelan government located within the U.S. territory, including accounts with incomes from the oil industry, would be freeze and could not be transferred, paid for, exported, withdrawn, or otherwise processed.

At the time of writing, there were seven Executive Orders adopted by the U.S. against Venezuela since 2015 in different areas, notably in the food, petrol, gold, oil, and other financial sectors of the Venezuelan economy[116], and more than 28 General Licenses, which is an authorization delivered by the U.S. Office of Foreign Assets Control (OFAC) to engage in a transaction that otherwise would be prohibited.

In particular, the freezing of assets of the Venezuelan government has had terrible consequences on the human rights of the population to provide their citizens' basic needs, including food and medicines. These difficulties have increased in the context of the Covid-19[117]. As the coercive measures caused the overall loss of more than US$38 billion in the past

[113] *Ibid*., p. 6, § 16.
[114] US Presidential Documents, Executive Order No 13857*, Taking Additional Steps To Address the National Emergency With Respect to Venezuela* (Federal Register, January 25, 2019).
[115] US Home Treasury, Executive Order No 13884, *Blocking Property of the Government of Venezuela,* (5 August 2019).
[116] For more information about the US Executive Orders against Venezuela see: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/venezuela-related-sanctions>.
[117] For example, during the pandemic, the Bank of England refused to unfreeze any part of the US$1 billion in gold held from the Central Bank of Venezuela, for procuring medicines and other humanitarian goods, as reported by the United Nations Development Programme (UNDP). For more details see Corina PONS and Mayela ARMAS, "Exclusive: Venezuela asks Bank of England to sell its gold to U.N. for coronavirus relief – sources" (*Reuters,* 29 April 2020) available at <https://www.reuters.com/article/us-health-coronavirus-venezuela-gold-exc-idUSKBN22B30X>; and also see UN HRC, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, UN Doc A/HRC/45/7, 21 July 2020, hereafter "Report of the SR, 2020", p. 9.

years, more cuts in imports of medicine, food, and medical equipment, are foreseeable in the immediate future[118].

In this regard, the UN Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, declares after her official visit to Venezuela in 2021 that, the hardening of U.S. unilateral coercive measures has:

> (…) undermined the positive impact of the multiple reforms and the state's capacity to maintain infrastructure and continue to implement social programmes. Today, Venezuela faces a lack of necessary machinery, spare parts, electricity, water, fuel, gas, food and medicine. Venezuelan assets frozen in the US, the UK and the EU banks amount to US$6 billion. The purchase of goods and payments by public companies are blocked (…) To mitigate this economic and financial strangulating and the related growing over-compliance the government adopted in October 2020 the Anti-Blockade Constitutional Law[119].

In addition, the Special Rapporteur stated that the scarcity of resources and reluctance of foreign partners, banks, and delivery companies to deal with Venezuelan partners, mainly because of U.S. measures, have resulted in the impossibility to buy the essential technological and medical equipment, undermining the enjoyment and exercise of the most fundamental rights to life, food, water, health, housing and education[120]. In fact, these measures have had a devastating effect on the Venezuelan people, especially the most vulnerable, such as women, children, the elderly, people with disabilities, and indigenous communities[121].

In this regard, the Venezuelan government has qualified these coercive measures as "crimes against humanity" and submitted a referral to the International Criminal Court pursuant to Article 14 of the Rome Statute on 13 February 2020, regarding the situation in its own territory. The case is currently being investigated by the pre-trial Chamber[122].

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[118] ICSLATAM, "Venezuela loses $38 billion for US sanctions" (19 February 2019) available at <https://www.icslatam.com/venezuela-loses-38-billion-for-us-sanctions?lang=en>

[119] UN HRC, *Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan. Visit to the Bolivarian Republic of Venezuela*, Doc. A/HRC/48/59/Add.2, 6 September 2021, p. 5. For further details on the Venezuelan Anti-Blockade Constitutional Law, see GACETA OFICIAL DE VENEZUELA, No 6.583 Extraordinario, *Ley Constitucional Antibloqueo para el Desarrollo Nacional y la Garantía de los Derechos Humanos,* 12 de octubre 2020.

[120] *Ibid.,* p. 5-6.

[121] *Ibidem.*

[122] See ICJ, Preliminary examination, Venezuela II, available at <https://www.icc-cpi.int/venezuela-ii>

However, the author takes note of a recent slight change in the U.S. policies regarding Venezuela. In the current international context, the rise of oil prices has put pressure on the U.S. administration to find alternative sources to replace the Russian oil. In a meeting celebrated in March 2022 between U.S. and Venezuelan officials, the U.S. Treasury Department decided to slightly eased restrictions to discuss future cooperation with the Venezuelan oil companies[123].

In conclusion, this brief empirical review shows the important role that UCM have played in the conduct of U.S. foreign policy. Here again, the U.S. have played the dominant role as guardian of its version of morality, where Human Rights, have became *cause célèbre* to adopt unilateral coercive measures[124], as well as a reason to intervene in the internal affairs of other States.

The details of this analysis are relevant to the present discussion because they bring up the question of how Latin American countries have reacted to these measures contributing in a certain way in the development of an emerging legal framework, in order to resist and condemn the use of unilateral coercive measures, as we will examine in the next section.

2. CONTRIBUTIONS OF LATIN AMERICAN COUNTRIES TO CONDEMN UNILATERAL COERCIVE MEASURES. THE DEVELOPMENT OF THE PRINCIPLE OF NON-INTERVENTION

As Professor Marcelo Kohen argued, from their birth to independent life, the Latin American States have exercised an important influence in the development of international law[125]. Having arrived in the international society in the first quarter of the nineteenth century, Latin American states found an international law that was not favourable to them. The colonization of non-European territories, the existence of a monarchical legitimacy promoted by the Holy Alliance, the use of force in international relations, were some of the rules which characterized the international law at the time[126].

In this regard, the LA States in the nineteenth century laid the foundations for the transformations of the international legal system that took place later. During the following century, these rules were generalized one after the other, to become part of today content of

[123] Congressional Research Service (CRS), *Venezuela: Overview of U.S. Sanctions,* version 37*,* Updated May 23, 2022. Available at <https://sgp.fas.org/crs/row/IF1 0715.pdf>
[124] Gary C. HUFBAUER, Jeffrey SCHOTT and Kimberly Ann ELLIOT, *Economic Sanctions Reconsidered,* pp. 7-8.
[125] Marcelo KOHEN, « La Contribution de l'Amérique Latine au Développement Progressif du Droit International en matière territoriale », in *Relations internationales*, Presses Universitaires de France, No 137, 2009/1, p. 13.
[126] *Ibidem.*

general international law[127]. For example, several efforts have been made by Latin American countries to resist and condemn the use of unilateral coercive measures. One of the most significant has been its influence in the development of the "principle on non-intervention" in the internal affairs of other states. At the present, the later principle is considered as the principal rule of international law that prohibits the use of coercion in inter-state relations[128]. This principle is based on the idea that each state has an absolute sovereign right to define its political and economic regime without external interferences, and when another state intervenes in this sovereign right using coercive means, then they violate this principle.

As we have seen, in Latin America this principle was designed *a priori* as a protection against European dominance and its desire for recolonization. Later, this principle also influenced intraregional relations in the continent, particularly to protect the LA countries against the U.S. interventions.

In the section that follows, this Article shows, firstly, the Latin American influence in the development of a regional legal framework to regulate the use of unilateral coercive measures. Secondly, this paper examines the efforts of Latin American countries to condemn UCM in an International level.

2.1. Latin American influence in the development of a regional legal framework

Latin American countries have played a pioneering role in developing the principle of non-intervention, as highlighted by the works of the Haitian lawyer Jacques Noël[129]. The author agrees with the conclusions reached by the latter, in which he shows a profound contradiction between the "rule of law", which is the affirmation of the principle of non-intervention in the region, and the "state of facts" which results in repeated violations of this principle in the hemisphere by the U.S. In this regard, to use the terminology employed by Jean Salmon, this is a "situation that is both paradoxical and exemplary"[130].

In fact, at the beginning of the nineteenth century, the new states of Latin America denounced the practice of intervention by the great European powers, who were accused of

[127] *Ibid.,* p. 14.
[128] Mohamed HELAL*, "*On coercion in International Law" (*Op. Cit.),* p. 3.
[129] Jacques NOEL, *Le principe de non-intervention: théorie et pratique dans les relations inter- américaines,* Centre Henri Rolin de l'Institut de Sociologie de l'Université libre de Bruxelles, Editions de l'Université de Bruxelles, E. Bruylant, 1981.
[130] Jean SALMON, « Préface », in Jacques NOËL, *Le principe de non-intervention (Op. Cit.),* p. I.

using force in the region to restore the *status quo* and impose political regimes on the former colonies. However, since the twentieth century, the concept of intervention has been used to denounce the U.S. imperialist policy[131].

In this sense, Latin American states have implemented several steps to integrate the principle of non-intervention into regional law. One of the first steps was the adoption of the "Montevideo Convention on the Rights and Duties of States" in 1933, which proclaimed in Article 8 that: "No State has the right to intervene in the internal or external affairs of another"[132].

Three years later, a new step was taken at the Inter-American Conference for the Maintenance of Peace, in Buenos Aires. At this occasion, it was decided by the participants, including the U.S., to adopt an "Additional Protocol relative to Non-Intervention", which stipulates in Article 1 that "The High Contracting Parties declare inadmissible the intervention of any of them, directly or indirectly, and whatever the reason, in the internal or external affairs of any other of the Parties. Violation of the stipulations of this article will give rise to a mutual consultation to exchange ideas and seek procedures for peaceful settlement"[133].

In 1947, the non-intervention principle was adopted in the "Rio Treaty", also known as the Inter-American Treaty of Reciprocal Assistance (TIAR), negotiated at the beginning of the Cold War to design a regional security system aimed to prevent and repel threats and acts of aggression against any of the countries of America. According to Article 1, the signatory states will "formally condemn war and undertake in their international relations not to resort to the threat or the use of force in any manner inconsistent with the provisions of the Charter of the United Nations or of this Treaty"[134]. However, the Rio Treaty has been very controversial in the region since it was considered a tool used by U.S. to justify its interventions[135]. For example, not all states in Latin America consider the treaty as legitimate. Several states have denounced this instrument and decided to withdraw their country from the mechanism, such as Mexico

[131] Daniel COLARD, « Revue de la Thèse de Jacques Noël sur le principe de non-intervention », *Revue Études Internationales,* Vol. 14, No 2, 1983, pp. 357-360, available at <https://www.erudit.org/fr/revues/ei/1983-v14-n2-ei3013/701508ar/>
[132] Article 8, Montevideo Convention on the Rights and Duties of States, 1933.
[133] Article 1, Additional Protocol on Non-Intervention, 1936.
[134] Article 1, Inter-American Treaty of Reciprocal Assistance (TIAR), 1947.
[135] Jean-Michel ARRIGHI, « L'Organisation des États Américains et le Droit International », *RCADI,* Vol. 355, 2012, pp. 262-268.

(2004), Bolivia (2014), Nicaragua (2014), Venezuela (2015), Ecuador (2016) and Uruguay (2019).

In 1948, during the 9th Inter-American Conference held in Bogota, was adopted the OAS Charter, which incorporated the non-intervention principle to its body. This text is among all constitutive charters of regional bodies, the only one that makes an "explicit reference" to the prohibition of the use of coercion in international relations, in Articles 19 and 20, as follows:

> No state or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the state or against its political, economic, and cultural elements[136].

> 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 its advantages of any kind[137].

In the same line, different regional platforms have adopted Political declarations to condemn the U.S. interventionist actions and coercive measures. Just to mention a few, in an Emergency Summit of the Union of South American Nations (UNASUR), held in Quito, in March 2015, the Foreign ministers of 12 Member States, condemned the U.S. decision to declare Venezuela as a "security threat" and for imposing unilateral coercive measures against this country[138]. UNASUR also qualified the U.S. actions against Venezuela as "a threat to the principle of non-interference in the internal affairs of other countries[139]".

In 2018, during the 15th Summit of Heads of States and Government of the Bolivarian Alliance for the Peoples of Our America- Peoples' Trade Treaty (ALBA-TCP), held in Caracas, the Member States of this group adopted a Political Declaration to "reject the US unilateral coercive measures and sanctions imposed against the Bolivarian Republic of Venezuela that

[136] Article 19, OAS Charter, 1948.
[137] Article 20, OAS Charter, 1948 (Emphasis added).
[138] Infobae, "La UNASUR pidió a los Estados Unidos que derogue las sanciones contra Venezuela" (Infobae, 14 March 2015), available at <https://www.infobae.com/2015/03/14/1715929-la-unasur-pidio-los-estados-unidos-que-derogue-las-sanciones-contra-venezuela/>
[139] MERCOPRESS, "Unasur calls on the US to revoke measures against Venezuela and implement dialogue" (16 March 2015), available at <https://en.mercopress.com/2015/03/16/unasur-calls-on-the-us-to-revoke-measures-against-venezuela-and-implement-dialogue>

affects the life and development of the noble people of Venezuela and the enjoyment of their rights"[140].

Furthermore, the Community of Latin American and Caribbean States (CELAC), during its VI Summit of Heads of State and Government, held in Mexico, in September 2021, adopted a Political Declaration in which states "reiterate its rejection of the application of unilateral coercive measures contrary to international law and reaffirm its commitment to the full validity of international law, the peaceful settlement of disputes and the principle of non-intervention in the internal affairs of States[141]".

It appears that solidarity and unity within those regional group are an important means to resist pressure from powerful States[142]. However, despite the progress achieved in integrating the principle of non-intervention at a regional level and to condemn the use of these measures in Political Declarations; some additional efforts have been needed on an international level to resist and condemn these measures and to show that they are contrary to the principles of the UN Charter and International law, as this paper will show in the next section.

2.2. Latin American efforts in an international level

Several declarations adopted by the UNGA, under the initiative of developing countries, including Latin American states, have considered the use of unilateral coercion as inconsistent with the principles of the UN Charter and International law. Firstly, the Declaration on the inadmissibility of intervention in the internal affairs of states and the protection of their independence and sovereignty of 1965; secondly, the Declaration on the principles of international law concerning friendly relations and cooperation between states of 1970; and third, the Charter of Economic Rights and Duties of States of 1974. These documents clearly declare 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 it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind"[143].

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[140] TELESUR, "Declaration of The 15th ALBA-TCP Summit" (5 March 2018), available at <https://www.telesurenglish.net/analysis/Declaration-of-The-15th-ALBA-TCP-Summit-20180307-0014.html>

[141] CELAC, "Political Declaration of Mexico City, VI Summit of Heads of State and Government" (18 September 2021), available at the website <https://www.gob.mx/presidencia/documentos/political-declaration-of-mexico-city-celac-2021?tab=>

[142] Alexandra HOFER, "The Developed/Developing Divide on Unilateral Coercive Measures" (*Op. Cit.),* p. 38.

[143] Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (adopted 21 December 1965, UNGA Res. 2131 (XX)); Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter

As well, the illegal nature of UCM has been repeatedly affirmed in several resolutions of UNGA[144] and of the Human Rights Council (HRC)[145], reaffirming that "people should not be deprived of their means of subsistence, especially as concerns food and medicines, and that the extraterritorial application of the law, is inadmissible"[146].

For instance, the most recent UNGA Resolution 76/161, on *Human rights and Unilateral Coercive Measures*, submitted by the Non-Aligned Movement (NAM)[147], and adopted in 2021, by a recorded vote of 131 in favour to 54 against, with no abstentions, is clear, stating in its preambulatory paragraphs the conviction that "unilateral coercive measures are contrary to international law, international humanitarian law, the Charter of the UN and the norms and principles governing peaceful relations among states"[148]. Furthermore, the same UNGA resolution emphasises that "unilateral coercive measures are stated to be one of the major obstacles to the implementation of the Declaration on the Right to Development and the 2030 Agenda for Sustainable Development"[149]. It also condemned the inclusion of Member States in unilateral lists under false pretexts, including false allegations of terrorism sponsorship, considering such lists as instruments for political or economic pressure against developing countries[150]. Several LA countries sponsored and supported this UNGA resolution, such as Argentina, Bolivia, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela[151].

In the same way, a second resolution entitled *Unilateral economic measures as a means of political and economic coercion against developing countries* is introduced on a bi-annual basis, on behalf of the G77 and China, and adopted at the UNGA Second Committee. Since 1994, this resolution urges:

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of the United Nations (adopted 24 October 1970, UNGA Res. 2625 (XXV)); and Charter of Economic Rights and Duties of States (adopted 12 December 1974, UNGA Res. 3281 (XXIX)), Article 32.

[144] UNGA Res. 69/180, paras. 5–6; Res. 70/151 paras. 5–6 and Res. 71/193, paras. 5–6.

[145] UN HRC Res. 15/24, paras. 1–3 (2010); Res. 19/32, paras. 1–3 (2012); Res. 24/14, paras. 1–3 (2013); Res. 27/21, paras. 1–3 (2014); Res. 30/2, paras. 1–4 (2015); and Res. 34/13, paras. 1–2 (2017) and in the UNGA Res. 69/180, paras. 5–6 (2015); Res. 70/151 paras. 5–6 (2016) and Res. 71/193, paras. 5–6 (2017).

[146] See UN HRC, Report of the SR (2020), p. 4.

[147] Since 2006, the draft resolutions on this issue have been introduced by the Cuban Delegation on behalf of the NAM.

[148] UNGA, Resolution 76/161, UN Doc. A/RES/76/161,16 December 2021, p. 2.

[149] *Ibid,* p. 3.

[150] *Ibid,* p. 4.

[151] See UNGA, *Official Records of the Seventy-sixth session,* 53rd plenary meeting, UN Doc. Doc. A/76/PV.53, New York, 16 December 2021.

> "(…) the international community to adopt urgent and effective measures to eliminate the use of unilateral coercive economic measures against developing countries that are not authorized by relevant organs of the United Nations or are inconsistent with the principles of international law as set forth in the Charter of the United Nations and that contravene the basic principles of the multilateral trading system"[152].

As Alexandra Hofer writes, both resolutions -NAM and G77+China- are traditionally adopted by a large majority[153]. However, in the beginning, it was possible to observe a political rift in the voting patterns. For example, when the resolution on *Human rights and unilateral coercive measures* was first introduced in the UN in 1996, it was evenly split: 57 voted in favour, 45 voted against, and 59 abstained[154]. Nevertheless, since then, the voting pattern has completely changed. In the last years, about 130 developing countries voted to condemn the UCM, whereas an average of 50 developed countries – mainly the U.S., the EU Member States, and their allies – cast a negative vote. Similarly, the resolution on *Unilateral economic measures as a means of political and economic coercion against developing countries* is currently adopted by a large majority against only two opposing votes emanating from the U.S. and Israel, and some abstentions from the EU Member States. Consequently, the two texts are typically adopted by slightly over two-thirds of the UNGA's Member States, which could indicate an emerging customary international law[155].

Likewise, at the Online Mid-term Ministerial Conference of the NAM, held in July 2021, the Ministers of 120 countries undertook a review of the progress achieved in the implementation of the outcomes of the XVIII NAM Summit, held in Baku, Azerbaijan, in 2019. In the Political declaration adopted on this occasion, the Ministers expressed:

> "[S]trong condemnation at the promulgation and application of unilateral coercive measures against Member States of the Movement, in violation of the Charter of the United Nations and international law, particularly the principles of nonintervention, self-determination and independence of States. In this respect, reiterate determination to denounce, and demand the repeal of, such measures, which affect

[152] UNGA Res. 48/168 (22 February 1994) to UNGA Res 76/191 (17 December 2021).
[153] A. HOFER, *"The Developed/Developing Divide on Unilateral Coercive Measures", (Op. Cit.)*, p. 14.
[154] Voting result for UNGA Res. 51/103 (3 March 1997).
[155] A. HOFER, *Op. Cit.*, p. 14.

> human rights and prevent the full economic and social development of the peoples subjected to them"[156].

Additionally, the Foreign Ministers of the Group of 77 and China, at their Forty-fifth annual Ministerial meeting in November 2021, reaffirmed their strong objection to the imposition of unilateral coercive economic measures against developing countries, which does not contribute to economic and social development[157].

Other organizations with a decidedly pro-South and development-focused mission, such as the United Nations Conference on Trade and Development (UNCTAD), have also worked to condemn these measures. For example, during its Fourteenth Session, held in July 2016, in Kenya, was adopted the "Nairobi Maafikiano", which basically means the Nairobi Consensus. This document calls all States to refrain from adopting any unilateral coercive measures, as follow:

> "States are strongly urged to refrain from promulgating and applying any unilateral economic, financial or trade measures not in accordance with international law and the Charter of the United Nations that impede the full achievement of economic and social development, particularly in developing countries, and that affect commercial interests. These actions hinder market access, investments and freedom of transit and the well-being of the populations of affected countries"[158].

In the same line, we have observed different State reactions, notably from of our three cases studies, on an international level, which supports the idea that the Latin American experience facing these measures have contributed to the process which seeks to legally qualify these unilateral practices as "unlawful acts". For example, the Cuban case has significantly contributed to the recognition of UCM as illegal in an international level. For example, the rejection of the U.S. embargo on Cuba has become so widespread within the international community that in 2018 a near-universal consensus was reached through the adoption of a UNGA Resolution. Moreover, several experts consider that the UNGA resolutions concerning the Cuban embargo have a broader scope and implications, since they contain language that

[156] NAM, *Political Declaration 'Non-Aligned Movement at the center of multilateral efforts in responding global challenges',* 13-14 July 2021, pp. 8-9, §47, available at <http://www.dirco.gov.za/docs/2021/nam0714.pdf>
[157] G77-China, *Ministerial Declaration on their forty-fifth annual meeting,* 30 November 2021, available at <https://www.g77.org/doc/Declaration2021.htm>
[158] UNCTAD, *Nairobi Maafikiano. From decision to action: Moving towards an inclusive and equitable global economic environment for trade and development,* Doc. TD/519/Add.2, 17–22 July 2016, pp. 8-9, §34.

clearly applies to unilateral coercive measures in general, whatever the context. Through the terms of the text, the UNGA Resolution reiterated its call upon all States to refrain from promulgating and applying laws and UCM, in conformity with their obligations under international law and the UN Charter[159].

In this regard, according to the first UN Special rapporteur on unilateral coercive measures, Idriss Jazairy (2019): "It would thus appear that the international community views as unlawful those unilateral coercive measures the extraterritorial effects of which affect the sovereignty of other States (…) Being almost universally proclaimed as such by the international community, that view therefore qualifies as an emerging rule of customary international law[160]".

Concerning the contributions of the Nicaraguan case to the legal qualification of these measures, in1984, Nicaragua filed an application instituting proceedings at the ICJ against the U.S., for its unilateral actions supporting the military and paramilitary activities of the *Contras*. In 1986, the ICJ delivered its judgement on the merits. The findings included a statement that the U.S. had violated the obligations imposed by customary international law: not to intervene in the internal affairs of another state, not to use force and not to infringe the sovereignty of another state[161]. However, the most significant contribution of this judgement is that the ICJ qualify -for the first time- the term "coercion" as the "fundamental component of an illegal intervention"[162], which lead us to deduce that the use of UCM represents a violation of the principle of non-interference, and by consequence, a breach of an international obligation.

Moreover, the Venezuelan case has also contributed to legally qualify these measures as unlawful acts. For example, the UN Special Rapporteur, Alena Douhan, considers that the state of "national emergency" declared by the U.S. Government in 2015, as the ground for introducing UCM against Venezuela, and repeatedly extended until now, do not correspond with the conditions required in Article 4 of the International Covenant on Civil and Political Rights (ICCPR)[163], which allows a State to declare a public emergency when existing threatens

[159] UNGA Resolution 73/8, 1 November 2018, para. 2–3.
[160] UN HRC, Report of the SR, July 2019, p. 14, § 46.
[161] ICJ, Nicaragua v. United States of America (Overview of the case), 1986, available at < https://www.icj-cij.org/en/case/70 >.
[162] ICJ, Case Nicaragua v. United States of America (Merits), 1986, para 205. (Emphasis added)
[163] Article 4.1. of the ICCPR establishes "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of

to the life of the nation. To explain this in practical terms, the U.S. used the argument that Venezuela was a threat to the U.S. security and the life of the Nation, in order to declare a public emergency in the country, and subsequently adopt measures against Venezuela. However, these grounds refer to an internal situation of a country and it does not fulfill the criteria of the existence of a real threat to the life of the U.S. nation[164], because Venezuela have not committed an act of aggression or a pervious unlawful act against the U.S. In fact, without denying that each subject of international law is free to assess what constitutes a situation that threatens its security or not, the author contest the fact that a national assessment not founded in solid grounds or evidence, could legitimizes an illegal interference in the internal affairs of another State, which is contrary to international law.

In addition to this, Professor Douhan declared that U.S. coercive measures against Venezuela do not fit the criteria applied to "countermeasures" to exclude the wrongfulness of its acts[165], in accordance with article 49, paragraph 1, of the Draft Articles on Responsibility of States, because countermeasures can be only taken by an injured State against a State which is responsible for an internationally wrongful act. In effect, there is an absence of grounds or evidence to demonstrate that the U.S. could qualify as an "injured State" in that circumstance, because, as a matter of fact, Venezuela has not perpetrated any international unlawful action against U.S. The same situation has been explained in the Reply submitted by Venezuela to the General Court of the European Union in 2022, claiming that the General Court should annul Council Regulation (EU) 2017/2063 concerning restrictive measures in view of the situation in Venezuela, as well as Council Decision (CFSP) 2018/1656 and Council Implementing Regulation (EU) 2018/1653. In this case, the Council denies in its answer that the nature of EU restrictive measures is "countermeasures *stricto sensu*", arguing that they are not based on a previous offense. For its part, Venezuela fully agrees with the Council that the measures adopted against the country are not countermeasures because, Venezuela has not committed any international unlawful action against the EU or against any of its Member States[166]. Since

the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin".

[164] UN HRC, *Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan. Visit to the Bolivarian Republic of Venezuela*, Doc. A/HRC/48/59/Add.2, 6 September 2021, p. 14, § 81.

[165] *Ibid.,* p. 14, § 82-83.

[166] Reply submitted by the Bolivarian Republic of Venezuela to the General Court of the European Union, 2022, pursuant to Article 83(1) of the Rules of Procedure of the General Court, in Case T-65/18 RENV concerning an application pursuant to Article 263 of the Treaty on the Functioning of the European Union for the annulment of Council Regulation (EU) 2017/2063 of 13 November 2017 concerning restrictive measures in view of the situation

they are not countermeasures, the Council purports to justify the restrictive measures as a sort of "international sanctions". However, these measures are adopted without any legal basis because there is no mandate from the UNSC. In the absence of prior authorization from the UNSC and considering that they are not countermeasures, it is clear that the measures are "unilateral coercive measures"[167].

These are just a few examples of the initiatives and efforts made on an international level by targeted Latin American states, as well as other Third countries, as part of groups of developing countries, such as the NAM and the G77 + China, which show an emerging consensus of the international community to condemn and resist the extraterritorial application of unilateral coercive measures. As we observe, a corpus of political and legal instruments has been devised to reject these unilateral actions. This is a positive evolution in international law and therefore deserves to be welcomed and continued.

3. LATIN AMERICA DIVIDE ON UNILATERAL COERCIVE MEASURES. CONTEMPORARY TRENDS AND DEVELOPMENTS

As this paper indicated at the beginning, the role played by Latin American countries has been mostly as *targeted states* rather than *coercing states*. However, most recently, LA states have also adopted coercive measures to promote political changes in the region. In other words, we have seen recently some Latin American countries having a more favourable approach to unilateral practices, also playing the role of coercing states. This situation marks a "break" from the past[168] and shows the contemporary trends in the region regarding the resort of unilateral coercion.

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in Venezuela in so far as its provisions concern the Applicant, p. 12. See also Judgment of the EU General Court, 20 September 2019, *Venezuela v Council* (T-65/18), and also Judgment of the EU Court of Justice, 22 June 2021 (Grand Chamber), *Venezuela v Council (Whether a third State is affected*) (C-872/19 P).

[167] *Ibidem.*

[168] In the past, the Latin American attitude against intervention was clearer. For example, in 2014 during the Community of Latin American and Caribbean States (CELAC) Summit, thirty-three member states adopted the Declaration of La Havana, proclaiming Latin America and the Caribbean as a "Zone of Peace". This declaration which emphasizes the necessity of global disarmament is based on the purposes and principles of the UN, in particular the prohibition of the threat and use of force, and on the obligation to negotiate disputes in conformity with the UN Charter. As the former Independent Expert on the Promotion of a Democratic and Equitable International Order, Alfred DE ZAYAS, emphasized, the Declaration of La Havana was "(…) a strong and positive example for the entire world". However, the current trends in the region show that LA states are more favorable to the resort of unilateral coercive measures in Inter-states relations, and they are repeating the same US coercive tactics and methods, which means that there is a break with the past culture of non-intervention. Declaration of Alfred DE ZAYAS are available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14215&>

This situation clearly illustrates a divide between Latin American States on unilateral coercive measures that should not be dismissed. In the interests of understanding how this division came into existence, the article proceeds to consider some of the recent unilateral practices in the region, notably against Venezuela, with the aim to produce a political change, and shows the position assumed by different LA countries.

For example, in August 2017, Venezuela was illegally suspended from the regional economic organization Mercado Común del Sur (MERCOSUR) by a decision of Argentina, Brazil, Paraguay, and Uruguay, based on political reasons, alleging a "rupture of the democratic order" in that country, in accordance with Article 3 and 4 of the Ushuaia Protocol. This suspension was presumed to be a political coercive measure against Venezuela adopted with the aim to promote and call for a transitional government[169]. At this occasion, the Venezuelan government claimed that it is inadmissible to apply this protocol in false assumptions because no rupture of the democratic order had occurred in its territory[170].

Also, on the same month, a group of countries subscribed the "Lima Declaration", a document which established the "Lima Group", a political alliance composed initially by twelve countries [171], with the common purpose of promoting a political change in Venezuela. On this occasion, not all the Latin American states subscribed to this Declaration, considering the latter as an illegal mechanism and a clear violation of the principle of non-intervention in the internal and external affairs of a State.

In May 2018, a progressive escalade of tensions occurred after the presidential elections in Venezuela, in which President Maduro was reelected for a second term. The results were boycotted by the national opposition coalition and rejected by the OAS Permanent Council and by the Lima Group. This triggered the path to impose new unilateral coercive measures by some actors. According to the Office of the High Commissioner for Human Rights' preliminary study: Colombia banned the entry of several Venezuelans citizens with government ties; and Panama imposed coercive measures against Venezuelan individuals and entities considered to

[169] The resolution approved is available at <https://www.mercosur.int/suspension-de-venezuela-en-el-mercosur/>
[170] TELESUR, "Suspenden ilegalmente a Venezuela del Mercosur" (5 August 2017) available at < https://www.telesurtv.net/news/Suspenden-a-Venezuela-del-Mercosur-20170805-0026.html>
[171] The Lima Group was originally composed by Argentina, Brasil, Canadá, Chile, Colombia, Costa Rica, Guatemala, Honduras, México, Panamá, Paraguay y Perú.

be at risk of engaging in money laundering[172]. In 2019, the Lima Group countries agreed to ban the entry of Venezuelan officials in their territories and deny them access to their financial systems. Also, some States parties of the Rio Treaty approved a resolution allowing targeted measures against Venezuelan officials alleged to participate in human rights violations[173].

As observed, the Lima Group countries imposed economic sanctions against Venezuela and supported other countries to do the same, aggravating the economic and humanitarian situation in that country[174]. However, some Latin American and Caribbean States, such as Mexico, Bolivia, Argentina, Peru, and Saint Lucia[175], decided to leave the Lima group due to their disagreement over unilateral practices to intervene in Venezuela. As well, other States, such as Uruguay, abandoned the TIAR, in response to the U.S. and Lima Group-led effort to use the treaty as a basis to sanction Venezuela, and to promote a military intervention in that country[176].

In this regard, in front of the current scenario of regional fragmentation, where on one hand, some subregional organisations such as CELAC, UNASUR and ALBA-TCP have repeatedly condemned the use of unilateral coercive measures and, on the other hand, the OAS, MERCOSUR and the Lima Group have supported unilateral practices, seems to demonstrate that at the present, no South American instance has the institutional guarantees to monitor and regulate the use of these unilateral practices[177]. As Ramanzini Júnior, M. P. Mariano and J. Gonçalves argued "Unlike previous periods when regionalism and democracy evolved from the

[172] OHCHR, *Preliminary findings of the visit to the Bolivarian Republic of Venezuela by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights*, 12 February 2021, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26747>

[173] OEA, *Resolution to the Thirtieth Meeting of Consultation of Ministers of Foreign Affairs, Acting as the Consultative Organ in Application of the Inter-American Treaty of Reciprocal Assistance (TIAR),* approved by 16 of the 19 states parties at the plenary meeting held in New York City, on September 23, 2019. Available at < https://www.oas.org/en/media_center/press_release.asp?sCodigo=S-018/19>

[174] Pedro BARROS, Julia. S. B. GONÇALVES, "Fragmentação da Governança Regional: o Grupo de Lima e a política externa brasileira (2017-2019)", *Mundo e Desenvolvimento,* Vol. 2, No. 3, 2019, pp. 6-39.

[175] TELESUR, "Peru Confirms Extinction of US-Controlled Lima Group" (22 September 2021) available at <https://www.telesurenglish.net/news/Peru-Confirms-Extinction-of-US-Controlled-Lima-Group--20210922-0007.html>.

[176] Kyle RAPP and Nicolás ALBERTONI, "Uruguay and the Inter-American Treaty of Reciprocal Assistance" (Global American, 3 October 2019) available at <https://theglobalamericans.org/2019/10/uruguay-and-the-inter-american-treaty-of-reciprocal-assistance/#:~:text=On%20September%2024%2C%20Uruguay%20abandoned,a%20basis%20to%20sanction%20Venezuela.>

[177] Pedro BARROS and Julia S. B. GONÇALVES, "Crisis in South American regionalism and Brazilian protagonism in Unasur, the Lima Group and Prosur", *Revista Brasileira de Política Internacional*, August 2021, p. 12.

effort to prevent the return to dictatorships by strengthening South American institutions for democracy protection; democracy in this new scenario has been used for domestic political purposes (…)"[178].

From a practical perspective, Latin America is divided on the issue of unilateral coercive measures. The aforementioned actions show that, a group of states seems to appear more favorable to impose unilateral coercive measures, and another group in the region is more inclined to support an approach focused on diplomatic negotiations rather than the imposition of pressure. However, it is important to mention that this trend, where some LA countries support the imposition of unilateral coercive measures, emerged in a specific period in the region, marked by a right-wing political configuration in the hemisphere, which means the existence of a majority of rightist governments. As Sanahuja and López argue, the political changes that took place from 2015 to 2018 in South America were followed by the emergence of a neo-patriotic far-right, whose political actions to impact the system rely on their ability to diffuse their ideology through discursive practices, either by leading governments (with Bolsonaro in Brazil and Duque in Colombia)[179].

However, we have seen how the left re-emerges on the continent, with the recently victory of Lula da Silva in Brazil, the arrival of Gustavo Petro in Colombia, the triumph of Gabriel Boric in Chile, the victories of Xiomara Castro in Honduras, the return of the Movement for Socialism (MAS) in Bolivia with Luis Arce and the already established governments of Manuel Lopez Obrador in Mexico and Alberto Fernández in Argentina, in addition to the left proposals of Pedro Castillo in Peru, which proves that the advance of leftist governments is undeniable in the region and this could mark a turning point on the issue of unilateral measures[180]. As Rogelio Sierra Diaz explains "Since 2018, new political changes began to take place in Latin America, with the coming to power of progressive and nationalist leaders, suggesting a change in the correlation of forces (…) The end of the Lima Group with the departure of Mexico, Argentina and Peru, (…) [and] Mexican efforts to unfreeze the actions of

[178] Haroldo RAMANZINI JÚNIOR, M. P. MARIANO and Julia GONÇALVES, "The Quest for Syntony: Democracy and Regionalism in South America", *Bulletin of Latin American Research*, 2021, pp. 1-15.
[179] Quoted by P. BARROS and J. GONÇALVES, *Op. Cit.,* p. 5. For more details see José Antonio SANAHUJA and Camilo LÓPEZ, "Las derechas neopatriotas en América Latina: contestación al orden liberal internacional", in *Revista CIDOB d'Afers Internacionals,* 2020, No. 126, pp. 41-63, available at <https://doi.org/10.24241/rcai.2020.126.3.41>
[180] Diego M. RAUS, "La vuelta de la izquierda en América Latina (…) ¿Pero qué izquierda?", (Latinoamérica 21, 24 March 2022), available at <https://latinoamerica21.com/es/la-vuelta-de-la-izquierda-en-america-latina-pero-que-izquierda/>

the Community of Latin American and Caribbean States (CELAC), are indicators that favor left-wing governments". In this regard, the dissolution of the Lima group, which was one of the main regional actors involved in the promotion of UCMs against Venezuela, represents that the pression and diplomatic harassment from the right-wing forces, will gradually cease, against Venezuela and probably, against other left-wing States. In addition, left leaders such as the Mexican President, Lopez Obrador, have condemned in the UNGA, the UCMs imposed by U.S. against Cuba, qualifying these as a "retrograde, medieval and inhumane measure"[181]. In the same way, the Argentinian President, Alberto Fernández, called for an end to the economic coercive measures faced by LA countries such as Cuba and Venezuela[182]. In accordance with the author's opinion, the contemporary trends in the region show that a general consensus in Latin American on the illegality of unilateral coercive measures could be achieved in the near future".

4. ASSESSMENT OF THE LEGAL STATUS OF UNILATERAL COERCIVE MEASURES

The illegal nature of unilateral coercive measures has been repeatedly affirmed by the United Nations General Assembly[183] for being contrary to international law and for having negative effects on human rights and the economy of developing States. Despite the obvious and prejudicial negative impact of those measure in the targeted states, there are very few academic works providing a legal assessment of unilateral coercive measures.

Additionally, the positions of targeted and coercing States differ considerably on this issue. Regarding our cases of study, Cuba qualifies these measures as an "act of aggression and a permanent threat against the stability of the country"[184], and said that the human damage caused by the U.S.-led blockade against his country is an "act of genocide" and creates obstacles for cultural, academic, and scientific engagement throughout the island[185]. Venezuela, for its

[181] 5 septiembre, "López Obrador: El bloqueo es una medida retrógrada, medieval e inhumana», 3 November 2022, available at <http://www.5septiembre.cu/lopez-obrador-el-bloqueo-es-una-medida-retrograda-medieval-e-inhumana/>

[182] XINHUA, "Presidente argentino pide terminar con "bloqueos" en América Latina" (20 September 2022), available at <http://spanish.xinhuanet.com/20220920/16e3a989472a41e4b18515a09d9dc986/c.html>

[183] UN HRC, *Unilateral coercive measures: notion, types and qualification. Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan,* Doc. A/HRC/48/59, 8 July 2021, hereafter "Report of the SR, 2021", p. 16 and n. 114. Also see HRC Res. 15/24, 19/32, 24/14, 30/2 and 34/13 and UNGA Res. 69/180, 70/151 and 71/193.

[184] OHCHR, *Note Verbale N°252/2020 of the Permanent Mission of the Republic of Cuba to the United Nations Office and other International Organizations in Geneva, to the United Nations High Commissioner for Human Rights,* 4 June 2020, p. 2.

[185] Cuba's Minister for Foreign Affairs, Bruno Eduardo RODRÍGUEZ PARRILLA, who introduced the UNGA Annual Resolution Calling for end the U.S. Embargo on Cuba, said during his official statement that the human

part, have considered these measures as "crimes against humanity"[186], and Nicaragua rejects unilateral coercive measures for being "a selective political instrument to illegally change governments"[187]. On the other side of the spectrum, the U.S. consider that "unilateral and multilateral sanctions are a legitimate means to achieve foreign policy, security, and other national and international objectives"[188] and describe unilateral coercive measures as "part of a State's right to conduct its economic relations freely"[189].

These statements demonstrate that there is a clear divide between targeted and coercing States' perception on these measures, which seem to be reflected in the State practice. As Alexandra Hofer argues, these measures are "an accepted foreign policy tool for the States or group of States that adopt them and are measures contrary to international law according to the States that are targeted as well as the group they belong to"[190].

In this regard, this section will study, firstly, the difference between permissible and non-permissible coercion in international relations. Secondly, this paper will list the peremptory norms violated by the imposition of unilateral coercive measures.

4.1. Difference between permissible and non-permissible coercion

Prof. Alena Douhan, the Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights, has emphasized that not every "unfriendly act" or "means of applying pressure" in inter-states relations can be qualified as an illegal UCM. In this regard, she has declared:

> "States are free to choose their partners in trade, economic or other types of international relations. Customary international law provides for the possibility of unfriendly acts that do not violate international law and of proportionate

damage caused by the US-led blockade against his country qualifies as an "act of genocide" and creates obstacles for cultural, academic and scientific engagement throughout the island. He said that "the blockade continues to be the main obstacle to the implementation of the Sustainable Development Goals," and it violates the right of Cubans to self-determination. "It is an act of oppression and an act of war." Mr. Rodríguez added that there is a "ferocious intensification" of the extraterritorial implementation of the blockade, particularly the persecution of Cuba's financial transactions, and that the embargo goes against the UN Charter and international law. See UN Meeting Coverages and Press Releases, *Seventy-Third Session, GA /12086,* 1 November 2018. Available at <https://press.un.org/en/2018/ga12086.doc.htm>

[186] See <https://www.icc-cpi.int/venezuela-ii>

[187] UNGA, *Statement by H.E. Mr. Denis MONCADA COLINDRES, Minister of Foreign Affairs of the Republic of Nicaragua*, 73rd Session of the United Nations General Assembly, October 1, 2018.

[188] U.S. Statement at the UNGA Third Committee, A/C.3/70/SR.52 (20 November 2015), para.32.

[189] A. HOFER, "The Developed/Developing Divide on Unilateral Coercive Measures" (*Op. Cit.*), p. 16.

[190] *Ibid.,* pp. 18-19.

countermeasures in response to the violation of international obligations, as long as they abide by the limitations set out in the draft articles on responsibility of States for internationally wrongful acts"[191].

In this regard, determine if the unilateral act committed by a state constitutes a UCM, producing legal consequences, remains a challenging task. International law has not proposed yet a "legal criteria" to differentiate "unilateral coercion" from the multitude of forms of "pressure" existing in the international political life, which leads this paper to deduce that there is not, at this time, a uniform legal framework establishing boundaries to clarify what unlawful coercion would be. In that sense, the debate is therefore centred on what are the elements that make it possible to assess whether or not these measures of coercion are compatible with international law.

To contribute with the debate, Prof. McDougal and Feliciano argue that the historical alternatives of the international community have been either to permit a complete disorder or to aspire to minimal public order. If the choice is a complete disorder, nations will witness the most intense and complete destruction of values. However, if the choice is made to pursue at least a minimum of order in the world arena, allowing peaceful coexistence among states, the coercion that is to be prohibited clearly must be distinguished from that which is to be permitted. In this sense, the definitions both of permissible and of non-permissible coercion are thus necessary[192].

In this regard, a principal purpose of modern efforts at international organization has been to make clear the distinction between permissible and non-permissible coercion and to establish the institutions and procedures thought indispensable and appropriate for sustaining that distinction[193]. For example, the UN Charter indicates, the level of coercion that is sought to be prohibited -and this is declared a basic principle- as follow: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations"[194]. This means that "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not

[191] UN HRC, Report of the SP, 2020, p. 4, § 27.
[192] Myres S. MCDOUGAL, Florentino P. FELICIANO, "Legal Regulation of Resort to International Coercion: Aggression and Self-Defense in Policy Perspective", *The Yale Law Journal*, Vol. 68, N° 6, May 1959, p. 1063.
[193] *Ibid.,* p. 1059.
[194] Article 2 para. 4, UN Charter.

endangered"[195]. However, after this prohibition have been established, States have found alternative means to the use of force, resorting to "unilateral coercive measures", as a surrogate of war and other military means[196].

In addition to this, Prof. McDougal and Feliciano refer to three types of "permissible coercion", as follow:

> One reference is to all coercion which is implicit in and concomitant to the ordinary interaction of states, and which does not rise to the level and degree of prohibited coercion. Another and more common reference is to coercion of a high degree of intensity, including the most comprehensive and violent uses of military instruments, when employed in individual or group defense against unlawful coercion (…) A third reference is a coercion exercised in fulfillment of or in accordance with certain commitments and permissions of members to participate in police measures required or authorized by the general security organization to prevent or repress impermissible coercion[197].

In conclusion, the author endorses the idea that the UNSC should be the only instance authorized with a legal mandate to imposed coercive measures. Articles 24 and 25 and Chapter VII of the UN Charter provide the Security Council with unique powers to impose enforcement measures for the maintenance of international peace and security. It is also generally agreed that international or regional organizations may impose sanctions on its Member States in accordance with their constituent documents[198], under these conditions these measures will be considered as "permissible coercion". However, any other coercive measure taking by a single State or a group of States, without any UN's authorisation, and not in self-defence, seeking to require the targeted state to change its policies on any matter within its domestic jurisdiction, through coercive means, and clearly interfering in the internal affairs of that state, will be considered as "non-permissible coercion". Having these considerations in mind about the definitions of permissible and non-permissible coercion in international relations, this paper

[195] Article 3 para. 3, UN Charter.
[196] Gary Clyde HUFBAUER, Jeffrey SCHOTT and Kimberly Ann ELLIOT, *Op. Cit.,* p. 5.
[197] Myres S. MCDOUGAL, Florentino P. FELICIANO, *Op. Cit*., p. 1061.
[198] UN HRC, *Unilateral coercive measures: notion, types and qualification. Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights,* UN Doc. A/HRC/48/59, 8 July 2021, p. 16, §71.

will now explore the peremptory norms violated by the imposition of UCM in inter-states relations.

4.2. Peremptory norms violated by the imposition of unilateral coercive measures

To affirm that these measures represent a serious breach of international obligations, the author will now answer the question on *what are the peremptory norms violated by the imposition of unilateral coercive measures that can give rise to the responsibility of the coercing state*? Several peremptory norms can be directly affected when a state impose UCM, such as the right to self-determination, the prohibition of racial discrimination and apartheid, and basic principles of international humanitarian law[199].

The UN Special Rapporteur, Idriss Jazairy, has already made the point that these three sets of peremptory norms referred to above could possibly be breached through the imposition of at least certain forms of economic coercive measures[200]. Firstly, the right to self-determination is recognized, in common Article 1 (1) of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which also spells out that, all peoples freely determine their political status and freely pursue their economic, social and cultural development. It has been noted in that respect that "the imposition of economic sanctions on a state may raise special risks of depriving a people of its means of subsistence"[201]. Secondly, the prohibition of racial discrimination, another prominent peremptory norm, may be infringed when a State impose UCM against persons based on the country of residence or their nationality, violating Article 26 of the International Covenant on Civil and Political Rights and Articles 1 and 2 of the International Convention on the Elimination of All Forms of Racial Discrimination[202]. Finally, the core rules of international humanitarian law may be disregarded through the imposition of coercive measures affecting basic human rights of the civilian population at large, even in peacetime[203]. Although several

[199] Martin DAWIDOWICZ, "The Obligation of Non-Recognition of an Unlawful Situation", in James CRAWFORD, Alain PELLET, Simon OLLESON, Kate PARLETT (Eds.), *The Law of International Responsibility*, Oxford Commentaries on International Law, 2010.
[200] UN HRC, Report of the SR, 2019, p. 14, § 48.
[201] Ben SAUL, David KINLEY and Jacqueline MOWBRAY, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials,* Oxford, Oxford University Press, 2014, p. 117.
[202] UN HRC, Report of the SR, 2019, p. 15, § 50.
[203] *Ibidem.*

UCM regimes include general licenses regarding humanitarian trade, those can be criticized regarding their ineffectiveness[204].

In addition to this, the present author consider that the imposition of unilateral coercive measures could lead to a violation of other six categories of peremptory norms, namely: 1) norms of *jus cogens*, such as the right to life; 2) the two corollary principles of the principle of the sovereign equality of States: the non-intervention in the internal affairs of a State, and the prohibition of the use of threat or force; 3) the rules of State Immunity, in the event of freezing of official assets of a State ; 4) the right to development is also violated when UCM prohibit the export of medical equipment and technologies which impaired the development of a country; 5) international human rights law, including the right to health, the right to food, the right to an adequate standard of living, the right to education and the right to a healthy environment, among others, and 6) the principles of international economic law (IEcL), whose violation is invoked when coercive measures aimed to interrupt economic relations, including the principles of freedom of trade and navigation, equal treatment, which can deprived a population of a dignified life. Although the fact that principles of IEcL as peremptory norms could be highly arguable, they have been included in the list above for being recognized as mechanisms that serve several peremptory norms[205]. Indeed, these categories listed do not

[204] In this regard, the Special Rapporteur, Alena Douhan, issued a public statement on 3 April 2020, in which she urged Governments "*to lift all unilateral coercive measures obstructing the humanitarian responses of sanctioned States*, in order to enable their health-care systems to fight the COVID-19 pandemic", and trade with other countries to buy vaccines and other technological devices necessaries to save lives. See UN HRC, Report of the SR, 2020, p. 2, § 6 (emphasis added). In addition, "On 30 April, the Special Rapporteur issued a joint public statement calling upon the United States to lift its economic and financial embargo on Cuba, as it was obstructing the humanitarian response to help the country's health-care system fight the COVID-19 pandemic. She urged the Government of the US to withdraw measures aimed at establishing trade barriers and to ban tariffs, quotas and non-tariff measures, including those that prevent the purchase of medicines, medical equipment, food and other essential goods". See UN HRC, Report of the SR, 2020, p. 3, § 14.

[205] Two authors, Makane Moïse Mbengue and Apollin Koagne Zouapet, have conducted research on the relationship between peremptory norms and international economic law (IEcL). They explained that IEcL has been "one of the main drivers of *jus cogens* in international law. The prohibition of slavery, one of the first recognized norms of *jus cogens* in international law, was a reaction to what was still the permissible trade in human beings and forced labour*"*. The authors also note "the emergence of a general prohibition in the economic and business world of certain types of behaviour considered contrary to "business and trade ethics". The Kimberley Process is another example of the development of measures in international trade to ensure that WTO rules are not used to facilitate the flow of "blood diamonds" from conflict zones, the sale of which contributes to fuelling deadly conflicts. This is an indication of the limits of what may or may not be acceptable within the international trade regime". The conclusion the authors draw is: "focusing on mechanisms to enforce compliance with *jus cogens,* IEcL offers important avenues of support. The mechanisms of IEcL are suitable to serve a number of peremptory norms." See Makane MOÏSE MBENGUE and Apollin KOAGNE ZOUAPET, "Chapter 19. Ending the Splendid Isolation. *Jus Cogens* and International Economic Law", in *Peremptory Norms of General International Law (Jus Cogens),* Brill, Nijhoff, 2021, pp. 510, 570-571, 574.

exhaust all international norms that may be violated by the application of unilateral coercive measures. Building a comprehensive catalogue of all the rights violated by the coercing state when imposing these measures, mainly depends on an analysis of each specific circumstance and situation.

It is clear that unilateral measures violate international law and have negative effects on the rights of the targeted state. The coercive measures imposed by the U.S. against many countries are a clear example of how these unilateral actions massively undermine the prevailing principles and rules of international law. This article focusses its attention on the U.S. practice, because it is the most documented, the most accessible, as well as the most significant and abundant on materials[206], becoming the gold reference of a foreign policy that systematically uses unilateral coercive measures to achieve political aims.

In light of these three cases, the author observes that the conduct of U.S. diplomacy often involves the deployment of a combination of multiple tools, many of which are lawful and some of which are unlawful. In this regard, unilateral coercive measures fit into the latter category, not only for the use of coercive means without UN's authorization, but also for the dramatic effects on the population and the economy of the targeted state. For these reasons, these measures should be legally qualified as "Internationally wrongful acts" under International law, in accordance with Article 2 of the ILC Draft Articles on the Responsibility of States, which establishes that: "There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State"[207]. Both elements have been proved to be present when referring to the use of unilateral coercive measures in inter-state relations.

Finally, the importance of declaring UCM as Internationally Wrongful Acts, lies in the fact that it would be possible to declare the coercing State as responsible for its unlawful acts and thus accountable before the international justice, giving the right for the targeted states to claim for justice and receive adequate compensation and reparation for the damages caused in its population and economy. Having these considerations in mind, this article concludes that "unilateral coercive measures" should be legally qualify as "Internationally Wrongful Acts", giving rise to the responsibility of the coercing State. These measures represent a serious

[206] Jean-Victor LOUIS, « L'efficacité des mesures de pression », *RBDI*, 1984-1985, No 1, p. 126.
[207] Article 2, Draft Articles on the Responsibility of States, 2001.

violation of international obligations, seeking to require the targeted state to change its policies on any matter within its domestic jurisdiction, through coercive means[208], violating the principle of sovereign equality of States and non-intervention, as have been demonstrated in our three case studies.

[208] Matthew HAPPOLD and Paul EDEN, *Economic Sanctions and International Law*, Hart Publishing, 2016, p. 3.

CONCLUSION

Based on the discussion up to this point, it is now possible to offer some conclusions. Firstly, it is undeniable that the use of UCM in inter-states relations is part of the modern challenges that are facing the world. The fact that the U.S. have been adopting unilateral coercive measures against developing countries, including LA states, without any UN's authorisation, proves that Latin America has been used as a "great laboratory". In this context, the U.S. have been benefiting from violating international law and receiving "red carpet" treatment from the West and the UN. They have been testing an infinite variety of instruments of coercion in the region and expanding their extraterritorial character, while the UN, for its part, continues acting as a silent spectator of these violations.

Secondly, it is laudable the efforts made on an international level by these three LA countries targeted by UCMs. For example, Cuba have presented several resolutions to the UNGA on the necessity of ending the US embargo. This resolution was initially tabled in 1992, and since then they have gained nearly universal consensus to reject the US coercive measure. Nicaragua, for its part, has brought the matter to the ICJ in 1986, obtaining provisional measures and a judgement which recognized the support provided by the U.S. to the *Contras* to destabilize the country. Venezuela did not stay behind and, in 2018, they requested to initiate consultations with the U.S. at the Dispute Settlement Body of the World Trade Organization (WTO) concerning measures relating to trade in goods and services[209]. Then, Venezuela referred the issue of the US unilateral coercive measures to the International Criminal Court (ICC) in 2020, qualifying these measures as "crimes against humanity" and recently, the Venezuelan government decided to invite the UN Special Rapporteur on the negative impact of UCM to officially visit the country in 2021[210], to assess the impact of these measures on the population and its economy.

[209] WTO, *United States — Measures relating to trade in goods and services, Request for Consultations by Venezuela* (28 December 2018). See Doc. WT/DS574/1 G/L/1289 S/L/420, 8 January 2019. In addition to this, on 14 March 2019, Venezuela requested the establishment of a Panel. On 15 March 2021, Venezuela submitted a revised request for the establishment of the panel. For more information of the status of this procedure, see WTO website <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds574_e.htm>

[210] "The Special Rapporteur undertook an official visit to the Bolivarian Republic of Venezuela from 1 to 12 February 2021 to assess the impact that unilateral sanctions imposed by several States and international organizations have had on the human rights of Venezuelans. She concludes that sectoral sanctions on the oil, gold and mining industries, the economic blockade, the freezing of Central Bank assets, the targeted sanctions imposed on Venezuelans and third-country nationals and companies and the overcompliance by banks and third-country companies have exacerbated the pre-existing economic and social crisis and had a devastating effect on the entire population, especially those living in poverty, women, children, older persons, persons with disabilities or life-

Thirdly, Latin America is divided on unilateral coercive measures. Two facts evidence this. On the one hand, several LA countries have condemned and rejected unilateral practices against South American states, some of them disassociating from interventionist actions, from the Lima Group, TIAR or at the OAS. On the other hand, some LA countries have proved an enthusiasm toward unilateral coercive measures, supporting the approach defended by the U.S., who consistently affirm that they have the sovereignty right to impose UCM as a legitimate mean to achieve foreign policy, and other national and international objectives[211]. However, the contemporary trends in the region, with the new political configuration - due to the advance of leftist governments -, will probably mark a turning point on the issue of unilateral measures, in the sense, that a potential general consensus on the illegality of UCM, could be achieved between LA States in a near future.

Fourth, the lack of a uniform legal framework to regulate the use of coercion in inter-states relations leaves the door open to several abuses and human rights violations. In this regard, the international community should continue paving the way to legally qualify these practices as “Internationally Wrongful Acts"; and adopt a set of guidelines, a declaration, or a legally binding instrument to regulate the use of UCM in international relations. The coercing state should also be accountable before the international justice for their actions, giving the right to the targeted States to receive adequate compensation for the damage caused in their territories. In situations where unilateral coercive measures inflict undue sufferings or have a terrible human rights impact, on the population of a targeted State, they become clearly illegal[212].

Finally, it is evident that UCM do not promote harmony between States but instead give rise to resistance, resentment, and all the friction that follows, escalating disputes and increasing tensions in international relations[213]. In addition, the unclear legal status of specific unilateral measures imposes the urgent need to establish a universal and comprehensive legal framework and to get consensus and cooperation among States in the assessment of the negative impact of

threatening or chronic diseases, and the indigenous population. No strata of society has been untouched. She recommends that these sanctions, which were imposed mostly in the name of human rights, democracy and the rule of law, be lifted, as they undermine those very principles, values and norms”. See Doc. A/HRC/48/59/Add.2, “Summary”, *Visit to the Bolivarian Republic of Venezuela - Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights*, *Alena Douhan.*

[211] Unfortunately, the US is not alone in that practice. Countries such as Canada, Switzerland, the United Kingdom, and most European Union Member States, have used UCM as a tool of foreign policy to achieve political aims. See US Statement pronounced before the UNGA Third Committee, A/C.3/70/SR.52, 20 November 2015, para.32.

[212] UN HRC, Report of the SR, 2018, p. 18.

[213] *Ibid*, p. 41.

these measures, to finally stop the abuses and violations, and to promote the peaceful coexistence among States.