

## **Chapter 3**

### **EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATION AND ITS IMPACT ON HUMAN RIGHTS**

#### **3.1. Introduction**

Extraterritorial application of national legislation remains one of the most controversial areas of public international law. With increasing consensus over the years regarding their illegality, an effort is made to examine the impact of these measures on the enjoyment of internationally recognized human rights in this chapter. It will be demonstrated that these measures while having a strong negative impact on the enjoyment of human rights actually end up violating these rights and thus provide further evidence why such measures should be prohibited by international law in the broader interests of global justice. In addition, the chapter will shed light on the commendable efforts of the Special Rapporteur on the subject 'Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights' in articulating a principled position on the adverse impact of these measures from a human rights perspective. In this chapter as in other chapters of this Special Study, the notion of 'extraterritorial application of national legislation' will be used synonymously with 'unilateral sanctions' or 'unilateral coercive measures' all of which refer to the same phenomenon of a State applying its laws to territories other than its own specifically targeting another State (target State) and the consequent imposition of 'secondary sanctions' on third States that chose to deal with the target State.

#### **3.2. International Human Rights Law: The Juridical Framework for a Just World Order**

The Universal Declaration of Human Rights (UDHR), adopted on 10 December 1948 by the United Nations General

Assembly, having inspired a rich body of legally binding instruments, is globally accepted as the foundation of international human rights law<sup>1</sup>. The declaration as a commitment recognizes the universal belief that basic rights and fundamental freedoms are inherent to all human beings irrespective of barriers. These rights are inalienable and apply equally to all human beings and re-affirm the conviction that all human beings are born free and equal in dignity and rights.

As an international law instrument, the declaration remains the primary source of global human rights standards distinct from conventional obligations on account of its universal recognition as the source of international human rights law and rights<sup>2</sup>. According to Hurst Hannum, the Universal Declaration today exerts a moral, political and legal influence far beyond the contemplation of many of its drafters serving directly and indirectly as a model for many domestic policies, regulations, laws and constitutions that aim to protect fundamental human rights<sup>3</sup>. In addition, many of the provisions of the Universal Declaration are today part of customary international law, a view that was strengthened by the International Law Association in 1994 when it observed the universal recognition of the Declaration as an authoritative elaboration of the human rights provisions of the United Nations Charter<sup>4</sup>. Accordingly, it is now accepted that a violation of some of its most important provisions constitutes a violation of international law<sup>5</sup>.

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<sup>1</sup> See UN's website on the Universal Declaration of Human Rights: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, accessed on 08 September 2021.

<sup>2</sup> Hannum, H., 'The Status of the Universal Declaration of Human Rights in National and International Law', *GA.J. INT'L & COMP. L.*, 290, Vol. 25., 1995/96.

<sup>3</sup> Hannum, H., 'The UDHR in National and International Law', *Health and Human Rights*, 1998, Vol. 3, No. 2, *Fiftieth Anniversary of the Universal Declaration of Human Rights (1998)*, pp. 144-158.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*