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International Sanctions in Theory and Practice

by Margaret Doxey*

I. INTRODUCTION

As necessary and useful measures in situations where states contemplate or actually adopt policies which violate their international obligations and endanger community values, international sanctions have been the subject of intermittent public and scholarly debate for over 60 years.¹ While both the League of Nations Covenant and the United Nations Charter directed sanctions at the unlawful use of force,² in the United Nations context sanctions have also been linked to the defense of human rights,³ but until 1979 few instances of the use of sanctions were on the record. The short list included League of Nations sanctions against Italy in 1935-36, U.N. sanctions against Rhodesia/Zimbabwe from 1966-79 and an arms embargo against South Africa since 1977.⁴ In the past three years, however, western governments have imposed penalties against Iran, the Soviet Union, Poland and Argentina.⁵ These cases provide a wealth of new material for analyzing the efficacy of economic sanctions in achieving their goals and of the the costs incurred by initiating and third states as well as by the target(s). They also raise questions about trends and patterns in resort to collective measures, particularly the extent to which these measures can be said to have authoritative status and support community values. It is to the latter questions that this paper is mainly addressed. It seeks to explore the relationship between theory, in the sense of a developing set of ideas about sanctions, and practice, proceeding

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¹ Discussion of theoretical aspects of sanctions was particularly active in the early years of both the League of Nations and the United Nations, and analysis of their practicability has drawn heavily on the Rhodesian experience. For a select bibliography see M. DOXEY, *ECONOMIC SANCTIONS AND INTERNATIONAL ENFORCEMENT* (2d ed. 1980).

² LEAGUE OF NATIONS COVENANT art. 16; U.N. CHARTER arts. 41 and 42.

³ Discussed *infra*.

⁴ There have also been some regional programs of diplomatic and economic pressure, notably the measures imposed on Cuba by the Organization of American States (OAS) from 1962-75.

⁵ Discussed *infra*.

from a very brief restatement of the theory behind League and U.N. sanctions and analysis of its inherent weaknesses, to a discussion of actual cases and the lessons of experience.

II. SANCTIONS IN THEORY

As penalties which may be incurred as a consequence of norm violation, sanctions must relate to norms or rules, must be capable of application and must carry some negative power, whether symbolic or real. Failure to meet these minimum conditions would make them absurd. If sanctions are to have the character of legal penalties, their imposition should also have some authorized basis. This immediately compounds the problem at the international level where authority is conspicuously absent.

The idea embodied in the League of Nations Covenant and carried forward in the U.N. Charter, that a new and more peaceful world order would be created if states accepted restraints on their conduct by committing themselves to settling disputes by negotiation or arbitration rather than by force, included provisions for collective measures (sanctions) which would be authorized by the League or the United Nations if the rules were broken.⁶ The threat of sanctions was expected to act as a deterrent while imposition would bring conformity. In the League Covenant, sanctions were to be an automatic response to a breach of its rules⁷ and members were immediately to sever all relations with the offending state.⁸ However, this commitment was quickly diluted⁹ and only fulfilled once in the half-hearted application of sanctions against Italy following its invasion of Ethiopia.¹⁰ In the U.N. Charter, the Security Council has the authority to order sanctions to meet a threat to or a breach of the peace or in response to an act of aggression,¹¹ and members are bound to carry out its decisions.¹² The Security Council can also recommend sanctions.¹³ Moreover, in contrast to the narrow basis for sanctions in the League Covenant,¹⁴ the grounds for U.N. sanctions are potentially very

⁶ The word "sanction" does not feature in the text of the League Covenant or the U.N. Charter although it has always been used to describe the measures envisaged.

⁷ LEAGUE OF NATIONS COVENANT arts. 12, 13 and 15.

⁸ *Id.* art 16.

⁹ *Cf.* the Interpretative Resolutions passed by the Assembly in 1921 and accepted by the Council as guidelines for action in connection with art. 16.

¹⁰ *See* DOXEY, *supra* note 1; G.W. BAER, *THE COMING OF THE ITALO-ETHIOPIAN WAR* (1967).

¹¹ U.N. CHARTER art. 39.

¹² U.N. CHARTER art. 25.

¹³ U.N. CHARTER art. 39.

¹⁴ *E.g.* failure to wait for three months after a Council report before going to war - the technical breach of the Covenant for which Italy was punished in 1935.

broad. The prerequisite for the use of sanctions is agreement between all permanent members and at least four non-permanent members of the Security Council.¹⁵

Although subordinate to the Security Council, the General Assembly is not precluded from ruling on instances of norm-violation. At its annual sessions and at emergency sessions,¹⁶ the General Assembly has the power to condemn unacceptable behavior and recommend sanctions by a two-thirds majority vote.¹⁷

Not surprisingly, from the earliest days of the League, attention focussed on non-military measures as sanctions. Political and economic sanctions were thought capable of generating enough coercive power to be effective as a deterrent or penalty and as appropriate for an international body concerned with the prevention of war rather than its extension.¹⁸ Similar reasoning has influenced U.N. thinking and the failure to provide for U.N. forces under Article 43 of the U.N. Charter means that political and economic measures are the most severe which the Security Council can order. These League and U.N. collective measures were designed as part of a collective security system for which some sacrifices would be necessary. Sanctions were expected to serve wider community interests of peace and good order and not the national interests of individual states. Sanctions would not be cost free.¹⁹

But as part of a new order, the theory of collective security with sanctions as penalties for international delinquency did not address the problem of peaceful change. In the lifetime of the League, the aspirations of Germany, Italy and Japan prompted their ultimate resort to force, and force has been used on numerous occasions since World War II. The United Nations, however, has brought developments in norm creation directed at the correction of perceived inequities in the international system. Besides prescriptions for peaceful settlement of disputes, the U.N. Charter emphasis ideas of economic and social justice.²⁰ For Third World States who now constitute more than two-thirds of the U.N. membership,

¹⁵ U.N. CHARTER art. 27.

¹⁶ These are called under the Uniting for Peace Resolution, G.A. Res. 377(V), 7 U.N. GAOR Supp. (No. 20) at 10, U.N. Doc. A/1775 (1950).

¹⁷ *Id.* at 11.

¹⁸ See, for instance, Sir Anton Bertram's comments on the value of economic sanctions in Bertram, *The Economic Weapon as a Form of Peaceful Pressure*, in 17 TRANSACTIONS OF THE GROTIUS SOCIETY 141 (1932).

¹⁹ LEAGUE OF NATIONS COVENANT art. 16, para. 3, and U.N. CHARTER art. 50, provide skeletal provisions for burden-sharing.

²⁰ Article 55 sets out principles of human rights to which members pledge their support. There has been a progressive elaboration of these principles in UN Declarations and UN-sponsored conventions, starting with the Universal Declaration of Human Rights in 1948 and including the important International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights of 1966.

group norms, which delegitimize colonialism and racial discrimination and support self-determination, have been particularly important.²¹ While confusion exists when, for instance, the right to self-determination conflicts with the territorial integrity of states,²² the overall effect has been to extend international standards. Adherents to the International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights, or other international treaties concerning human rights, have incurred binding obligations, and even if General Assembly resolutions do not have the force of law, it might be thought that unopposed resolutions and declarations would impose some moral obligations on members to act in accordance with their precepts.²³ It is also open to the Security Council to determine that a failure to live up to any of these international standards constitutes a threat to the peace.²⁴

In theory, then, the United Nations has identified universal norms supporting peace and human rights, and offers protections which can be activated in their defense. The U.N. Charter even provides for regional enforcement action with the Security Council acting as the authorizing body.²⁵

III. SANCTIONS IN PRACTICE

The impracticality of the design outlined above has always been apparent, and it hardly needs stating that in practice the system has not worked. Collective security was a myth and the foreign policy goals of the major powers, even those which had been allies during each of the two world wars, quickly took divergent paths. The League of Nations suffered from major absentees and defections. The United Nations has achieved virtual universality but deep divisions between members along East-West and North-South lines severely limit any likelihood of agreement on norm violation. Further, because of the veto power, the superpowers and other permanent members of the Security Council as well as their friends and clients are protected from mandatory sanctions; there is no deterrent effect.²⁶ Rhodesia provides the only major instance of mandatory economic sanctions in U.N. history.

In theory, international sanctions, as distinct from acts of self-de-

²¹ See, e.g., G.A. Res. 1514, 15 U.N. GAOR Supp.(No.16) at 66, U.N. Doc. A/4685 (1960); G.A. Res. 1904, 18 U.N. GAOR Supp. (No.15) at 35, U.N. Doc. A/5515 (1963).

²² G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970).

²³ See, Bowett, *Economic Coercion and Reprisals by States*, 13 VA. J. INT'L L. 1 (1972).

²⁴ U.N. CHARTER art. 34.

²⁵ U.N. CHARTER art. 53.

²⁶ See Baldwin, *Power Analysis and World Politics*, in 31 WORLD POLITICS, 161-94, (1979), where the point is well made that probability as well as impact is relevant to calculations about the use of power.

fense, should be authorized within the framework of international organization. In practice, unauthorized measures have become increasingly frequent and the implications of this development are explored further below. Practice also has revealed that economic penalties do not necessarily bring compliance.

Rhodesia, an apparently vulnerable target, not only benefited from South Africa's (and, until 1974, Portugal's) non-participation in sanctions but also from serious weaknesses in implementation of the sanctions by participants. Application was partial and gradual and official tolerance of sanctions evasion existed, even in Britain.²⁷ Although the sanctions were not without some effect and the universal non-recognition of the regime of Ian Smith compounded its external and internal difficulties, Rhodesia displayed a surprising degree of political defiance and economic resilience. Sanctions were either circumvented or tolerated. In the long run, the civil war and the loss of South African support were more damaging than the U.N. sanctions. And the cost to innocent states, particularly Zambia, increased concern about the spillover effects of international economic penalties on this scale.²⁸

The Rhodesian case also showed that a difficult task faces states imposing sanctions to remedy situations where governments are denying human rights to their own citizens. Diplomatic, political and cultural sanctions will be mutually inconvenient, and economic measures which interfere with normal trade and investment patterns over a long period can be quite costly to sustain. Sanctions imposed for an extended period of time give the target the opportunity to devise and implement strategies which overcome the effect of such measures. Moreover, backsliding, second thoughts, and pressure from adversely affected interest groups, can all be confidently predicted within the sanctioning states where, in hard economic times, reluctance to forego profitable foreign trade and investment will certainly be greater.

Given the weaknesses of mandatory sanctions revealed by the Rhodesian experience, it is obvious that sanctions imposed on a voluntary basis following a General Assembly resolution will be even less effective. Such resolutions can identify norm-violations and lend some authority to measures which are then adopted — although this authority may be contested and is certainly undermined by selectivity in condemnation.²⁹ But,

²⁷ See Bingham & Gray, *Report on Supply of Petroleum and Petroleum Products to Rhodesia*, London HMSO, Sept. 1978; Reports of the Security Council Sanctions Committee, 1968-1979.

²⁸ See COMMONWEALTH SECRETARIAT, *THE FRONT LINE STATES: THE BURDEN OF THE LIBERATION STRUGGLE* (1978).

²⁹ And perhaps too by procedural devices, not provided for in the U.N. Charter, such as preventing South Africa from participating in the work of the General Assembly by refusing to accept the credentials of the South African delegation. Articles 5 and 6 permit suspension

in practical terms, resort to the General Assembly follows lack of agreement in the Security Council and therefore implies the existence of at least one important source of support for the target. There indeed may have been a cumulative symbolic effect from the repeated condemnation of South Africa by the General Assembly, but western powers have not heeded General Assembly calls for sanctions.³⁰ In fact, the continuing threat of economic sanctions spurred the South African government to build up its defenses.

A further development in practice, resulting from deadlock in the Security Council, was to allow regional organizations much more freedom to define and defend regional norms than was contemplated in the U.N. Charter. However, regional non-military measures have proved generally ineffective as a means of reversing situations and policies within the target which are deemed unacceptable by the rest of the group. Cuba provides a good example. In spite of an OAS declaration in 1962 that a Marxist-Leninist government could not be part of the Inter-American system³¹ and the diplomatic and trade sanctions imposed in 1964, Castro remains in power and internal economic problems have not prevented Cuban troops from venturing as far afield as Africa in support of likeminded regimes. The OAS sanctions were eventually lifted in 1975,³² although unilateral U.S. measures remain in force.³³ As long as substantial extra-regional support is forthcoming, such measures can hardly be decisive.

From regional sanctions which have an ideological motivation, it is a short step to negative measures adopted by states for similar reasons but outside the framework of international organization. The failure of the United Nations to act also may make measures of self-help necessary following a breach of legal obligations. Allies and friends of the injured party may also adopt punitive measures in its support. The indiscriminate use of the term "sanction" to cover any or all of these forms of behavior is unfortunate and tends to dilute its meaning. To call measures "sanctions" is to invest them with an aura of authority, but there is danger that the line between authorized and non-authorized measures may become completely blurred and that any injurious act of foreign policy

and expulsion of members on an Assembly vote with Security Council backing.

³⁰ The western powers have observed the Security Council's mandatory arms embargo, S.C. Res. 418, 32 U.N. SCOR (2046th mtg.) at 5, U.N. Doc. S/INF/33 (1977).

³¹ Meeting of Consultation of Ministers of Foreign Affairs (8th), Punta del Este, Jan 1962, *Final Act*, Washington D.C., Pan American Union, OEA/Ser. C/II.8.

³² Meeting of Consultation of Ministers of Foreign Affairs (16th), San Jose, July 1975, *Final Act*, Washington D.C., Pan American Union, OEA/Ser. C/II.16.

³³ For a statement of U.S. objectives which included demonstrating to "the people of Cuba. . . that the present regime cannot serve their interests. . ." see DEPT. OF STATE, AMERICAN FOREIGN POLICY: CURRENT DOCUMENTS 1964, at 323, 324 (1967).

may be so described.

The four most recent cases of group penalties—those against Iran, the Soviet Union, Poland and Argentina—have all been adopted outside an international organizational framework, and a brief account of the salient features of each will help to build a picture of current trends in state practice.

A. *The Tehran Hostage Incidents*

The seizure in Tehran of the U.S. embassy and 52 hostages by Iranian militants on November 4, 1979, ushered in 14 months of intense and varied diplomatic efforts to negotiate their release with the Iranian government. These negotiations ended in success on January 20, 1981, the day of President Reagan's inauguration.³⁴

The norm violation in this case was not in doubt, despite Iran's claims of prior and prolonged U.S. wrongdoing.³⁵ Time-honored international customary law regarding the immunity of diplomatic personnel and property had been codified in the Vienna Convention on Diplomatic Relations to which Iran was a party.³⁶ On November 9, 1979, the Security Council by unanimous vote called for the release of the hostages³⁷ and subsequently threatened "effective measures,"³⁸ but a U.S.-sponsored resolution for economic sanctions was vetoed by the Soviet Union on January 13, 1980.³⁹ The International Court of Justice (ICJ) also called for the release of the hostages in its Order for provisional measures of December 15, 1979⁴⁰ and upheld the U.S. case in its judgement.⁴¹ Meanwhile, the

³⁴ The intervening period had brought recourse to the International Court of Justice (ICJ) by the United States, a visit to Iran by U.N. Secretary-General Waldheim, an abortive U.N. rescue attempt, Algerian good offices which were instrumental in the resolution of the crisis, and diplomatic and economic measures against Iran imposed by the United States and some of its allies.

³⁵ Iran's claims were set out in letters to the International Court reproduced in its Order of Dec. 15, 1979, 1979 I.C.J. 10-11, and its Judgement of May 24, 1980, 1980 I.C.J. 8-9.

³⁶ Vienna Convention on Diplomatic Relations, April 18, 1961, 500 U.N.T.S. 96. The United States and Iran were also parties to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, December 14, 1973, 28 U.S.T. 1975, T.I.A.S. No. 8532.

³⁷ S.C. Res. 457, 34 U.N. SCOR (2178th mtg.) at 24, U.N. Doc. S/INF/35 (1979).

³⁸ S.C. Res. 461, 34 U.N. SCOR (2184th mtg.) at 24, U.N. Doc. S/INF/35 (1979).

³⁹ The Soviet Union, Czechoslovakia, Bangladesh and Kuwait had abstained on Sec. Council Res. 461 of December 31, 1979 which threatened 'effective measures'; the US-sponsored draft resolution for sanctions was opposed by the Soviet Union and East Germany. China did not participate and Mexico and Bangladesh abstained. The Soviet Union claimed that the issue was a bilateral one between the United States and Iran.

⁴⁰ 1979 I.C.J. 10-11.

⁴¹ See Case Concerning United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), 1980 I.C.J. 3.

United States had progressively adopted measures penalizing Iran, and called on its allies to do likewise. U.S. measures included: the freezing of Iranian assets and their inventorization with a view to possible confiscation; a ban on imports of Iranian oil and later, on all imports from and exports to Iran (excepting food and medicine); withdrawal of Iranian visas; a ban on travel to Iran; and the severance of diplomatic relations.⁴²

It was to be expected that the United States would respond to the Iranian government's failure to live up to its international obligations.⁴³ For other states, measures against Iran would register disapproval for its behavior. Third World countries were not willing to adopt such measures, and western governments were also reluctant to do so, despite U.S. pressure. In April 1980, European Community members and certain other countries, including Japan and Norway, imposed limited trade restrictions, but diplomatic relations were not severed.⁴⁴

It is obvious that the protection of diplomats is of basic importance to all states, irrespective of enmities or friendships, and this was reflected in the Security Council's unanimous call for the release of the hostages. Opinions were divided, however, on the merits of drastic penalties and the Soviet Union was not the only country to oppose them. Iran was in the throes of revolution, and there was concern about making the situation worse rather than better. In the west, too, concern was publicly aired that financial measures could have undesirable effects on confidence and stability for western banks: freezing Iranian assets could precipitate widespread withdrawal of deposits with serious consequences.⁴⁵ Reaction to the crisis in Iran was further complicated by the concurrent crisis in Afghanistan which is discussed in the next section.

B. Soviet Intervention in Afghanistan

Soon after the seizure of the hostages in Tehran came Soviet military intervention in Afghanistan in December 1979. A pro-Moscow regime had been in power in Kabul since April 1978 but serious internal unrest had developed. Soviet forces installed a new leader, Babrak Karmal, and brought Afghanistan, a third world country which had preserved some semblance of independence, fully into the Soviet sphere of influence.

At an emergency session of the General Assembly in January 1980, a heavily supported motion of condemnation reflected Third World concern

⁴² U.S. measures were progressively announced between January and April 1980.

⁴³ *But see* the comments on the U.S. rescue attempt in the ICJ judgment, *supra* note 41, at paras. 93-94.

⁴⁴ The two-stage plan adopted by the Ten European Community members is reported in KEESING'S CONTEMPORARY ARCHIVES 30530-1 (Oct. 24, 1980).

⁴⁵ See Carswell, *Economic Sanctions and the Iranian Experience*, 60 FOREIGN AFF. 247-65 (1981-82).

about Soviet action but there was no recommendation for sanctions.⁴⁶ No Security Council action was possible over the Soviet veto.

For the United States and its allies this extension of Soviet power southwards, outside its East European sphere of influence, was most unwelcome in the global strategic context, and it also posed a possible threat to Middle East oil supplies. In his State of the Union message on January 23, 1980 President Carter specifically declared the Gulf area to be a vital interest to the United States.⁴⁷ Earlier in the month, he had announced a series of unilateral measures to signal disapproval of the Soviet resort to military intervention, contrary to U.N. Charter principles.⁴⁸ The SALT II treaty was shelved. Other measures included a limited grain embargo, a proposed ban on participation in the Moscow Summer Olympics, withdrawal of Soviet fishing privileges in U.S. waters and a ban on the export to the U.S.S.R. of high technology.⁴⁹ U.S. allies were urged to take similar action, but only Britain offered prompt backing for the U.S. position. Its government terminated preferential credit arrangements with the Soviet Union, curtailed ministerial and cultural exchanges and officially endorsed the Olympic boycott.⁵⁰ France and West Germany were opposed to penalties and the NATO Council failed to agree on collective measures.⁵¹ In the United States the farmers bitterly resented the grain embargo and the Republican Presidential candidate, Ronald Reagan, promised to lift it if he were elected.⁵² The Soviet Union, meanwhile, made up the shortage of grain from other sources, notably Argentina, and the Olympics proceeded, albeit with less than full participation.

The United Nations could not proceed beyond General Assembly condemnation in this case. Outside the U.N. framework the pressure exerted by the United States on its allies for the imposition of punitive measures seemed at least as heavy as any pressure exerted on the Soviet Union by the measures themselves. There is an obvious danger that where one power applies penalties unilaterally and then finds that other disagree, its actions will thereby forfeit status as well as efficacy. This

⁴⁶ Res. E-6/2 called for the withdrawal of all Soviet troops. This was the sixth occasion when the Uniting for Peace Procedure had been used. Voting was 104 to 18 with 18 abstentions. The Soviet position was supported by Angola, Cuba, Ethiopia and Mozambique as well as East European governments. Romania abstained. See G.A. Res. ES-6/2, U.N. GAOR Sixth Emergency Special Session Supp. (No. 11) at 5, U.N. Doc. A/ES-617 (1980).

⁴⁷ State of the Union Address, PUB. PAPERS 195 (1980-81).

⁴⁸ Shipments of Agricultural Commodities to Soviet Union, PUB. PAPERS 183-188 (1980-81).

⁴⁹ See N.Y. Times, Jan. 5, 1980, at 1, col. 6.

⁵⁰ See The Times (London), Jan. 29, 1980, at 1, col. 1. British athletes defied their government's wishes and participated in the Olympics.

⁵¹ For an analysis of East-West trade relations and their relative importance to the U.S. and Western Europe, see S. WOOLCOCK, WESTERN POLICIES ON EAST-WEST TRADE (1982).

⁵² This promise was carried out in April 1981.

point and its implications for the west will be taken up in the concluding section.

C. Poland

The growing struggle in Poland between the independent Trade Union Solidarity and the Communist regime raised the twin specters of a collapse of order and of Soviet military intervention in 1981. On December 13, 1981 the Polish military took control of the government and declared martial law, suspending Solidarity and detaining its leaders.⁵³

Although martial law brought the harsh curtailment of civil liberties in Poland, international norm violation was doubtful in this case. No U.N. action was possible, but the Reagan administration responded promptly to developments in Poland. While the grain embargo against the Soviet Union was not reimposed, negotiations for a new long-term agreement on grain were (temporarily) shelved; Aeroflot flights to the United States were suspended, and Soviet maritime rights were restricted. Further, the ban on exports of high technology to the U.S.S.R., including equipment for the Siberian gas pipeline, was intensified.⁵⁴ Measures against Poland included the withdrawal of aviation and fishing privileges and the suspension of food aid and Export-Import Bank credits.⁵⁵

Again the allies were pressed to join the United States and again they proved unwilling. Britain imposed some limited diplomatic and economic measures early in February 1982, as did some other countries including Canada and Japan, but generally the European view differed sharply from that of the United States. Foreign Ministers of the European Community agreed not to undermine the U.S. measures,⁵⁶ but France and West Germany rejected economic measures against the Soviet Union unless it intervened directly in Poland. While deploring the loss of liberties in Poland, European governments were anxious to avoid making the situation worse. In general, the concern was to preserve East-West links and some remnants of detente. On the specific issue of the pipeline, there was a felt need to diversify energy sources and to protect the considerable investment and employment advantages it offered.

European recalcitrance prompted the U.S. administration to promulgate further regulations banning the export of oil and gas-related equipment and components and technology by U.S. foreign firms to the Soviet

⁵³ These events were fully reported in the press of December 1981.

⁵⁴ See *Contemporary Practice of the United States-Economic Sanctions*, 76 AM. J. INT'L L. 379-84 (1982).

⁵⁵ *Id.*

⁵⁶ Final Communiqué, Meeting of Foreign Ministers of the Economic Community, January 4, 1982. See KEESING'S CONTEMPORARY ARCHIVES 31457B (Apr. 30, 1982).

Union, except with the permission of the U.S. Government.⁵⁷ This action caused consternation among the allies. Canada protested the infringement of its sovereignty⁵⁸ while West European governments ordered firms within their jurisdiction to defy the ban and make deliveries under existing contracts.⁵⁹ In response, the U.S. Government blacklisted these firms from receiving oil and gas equipment, technology and services from U.S. sources.⁶⁰

While a case certainly exists for sustaining diplomatic pressure on the Polish and Soviet governments to live up to human rights pledges, including those embodied in the Helsinki Final Act, there is no legal basis for sanctions against either government. Retaliation for martial law in Poland, the desire to hurt the Soviet economy and deny it hard currency and the dangers of undue energy dependence on Soviet natural gas do not represent the imposition of sanctions in defense of universal norms.⁶¹

D. *The Falklands crisis*

A crisis of a different nature was precipitated on April 2, 1982 when Argentine forces seized the Falkland Islands, a British dependency long claimed by Argentina as part of its own territory as Las Malvinas.⁶² Previous negotiations over the future of the island between Britain and Argentina had not produced an acceptable solution, but, irrespective of the validity of competing claims, Argentina's action was a clear violation of Article 2(4) of the U.N. Charter which bans unilateral resort to force.

Britain immediately dispatched a naval task force to the South Atlantic as an act of self-defense and on April 7, 1982, proclaimed a 200-mile exclusion zone around the islands.⁶³ It also imposed a range of non-

⁵⁷ See *Financial Times*, June 19, 1982. This was done under the Export Administration Act of 1979, Pub. L. No. 96-72, 93 Stat. 503 (codified at 50 U.S.C. app. §§ 2401-2420 (Supp. IV 1980)).

⁵⁸ See Dept. of External Affairs (Ottawa) Communiqué No. 121 (Aug. 9, 1982).

⁵⁹ *N.Y. Times*, July 23, 1982 at 1, col. 1.

⁶⁰ These events were fully reported in the press in August and September 1982. See, e.g., *N.Y. Times*, Aug. 25, 1982 at A1, col. 4; Aug. 26, 1982 at A1, col. 4; Aug. 27, 1982 at A1, col. 4.

⁶¹ These explanations of U.S. measures were cited in the *Financial Times* of August 27, 1982 and described as a "confusing rag-bag of generalizations." Moreover, the sweeping nature of the June 1982 regulations raised questions about extraterritoriality, the legality of the cancellation of partially executed contracts and the general standing of western firms as credible suppliers which, as cogently pointed out in a Note from the European Community to the U.S. government, do a great deal of harm to the west. The full text of the *Note Verbale* and supporting argument can be found in *Europe, Documents, AGENCE INTERNATIONALE D'INFORMATION POUR LA PRESSE* N. 1216, Aug. 12, 1982.

⁶² See Myhre, *Title to the Falklands-Malvinas Under International Law* in 12 *MILLENNIUM: JOURNAL OF INTERNATIONAL STUDIES* 25-38 (1983).

⁶³ See *N.Y. Times*, Apr. 4, 1982, at A-1, col. 1.

military measures including the freezing of Argentine assets in Britain and embargoes on trade and financial transactions with Argentina.⁶⁴

Efforts were made to reach a negotiated settlement of the crisis through the good offices first of U.S. Secretary of State Haig and then of the U.N. Secretary-General. Britain had also taken the issue to the Security Council, calling an emergency meeting when the Argentine invasion seemed imminent, and it received support for the principle of peaceful settlement (but not for its own military action or for its own claims) in the form of Security Council Resolution 502 of April 3, 1982, which determined that a breach of the peace existed in the area and demanded an immediate cessation of hostilities, the withdrawal of Argentine forces and a diplomatic solution.⁶⁵ The Soviet Union abstained on this vote and the British government did not press further for U.N. sanctions, perhaps judging that a Soviet veto would undermine rather than strengthen Britain's case.⁶⁶ Commonwealth support of Britain was forthcoming and its European Community partners showed solidarity by imposing embargoes on arms sales to and imports from Argentina. The trade embargoes were initially of one month's duration but were renewed on May 16, 1982, by all members except Ireland and Italy.⁶⁷ At the end of April, after Mr. Haig's efforts to bring a settlement had failed, the United States also imposed some limited measures against Argentina and made its support for Britain clear.⁶⁸ Meanwhile, Argentina imposed counter-measures and sought help from the OAS but was unable to muster more than rhetorical support for its position, with Chile, Trinidad, Tobago and the United States in opposition.⁶⁹

On May 20, the British Prime Minister announced that diplomatic negotiations at the United Nations had failed and withdrew all offers from the negotiating table. In the following weeks the Falkland Islands were recaptured by British forces. The Argentine commander surrendered on June 14, 1982; his troops were taken prisoner and later repatriated. Sanctions are being lifted in stages, and the process is not complete as of this writing. However, Britain and Argentina reciprocally lifted financial measures on September 14, 1982, paving the way for help from the International Monetary Fund for Argentina's troubled economy.⁷⁰

⁶⁴ *Id.*

⁶⁵ Voting was 10 to 1 (Panama), with, Poland, Spain and the USSR abstaining.

⁶⁶ Britain (and the United States) later vetoed a resolution calling for a further attempt by the Secretary-General to exercise good offices.

⁶⁷ See KEESING'S CONTEMPORARY ARCHIVES 31532 (June 11, 1982); *id.* at 31713B (Sept. 24, 1982).

⁶⁸ Statement by Secretary of State Haig at a press conference on April 30, 1982.

⁶⁹ Connell-Smith, *The OAS and the Falklands Conflict*, 38 *THE WORLD TODAY* 340, 345-46 (1982).

⁷⁰ Comment in *THE ECONOMIST*, Sept. 14, 1982, at 90.

The Falklands crisis was precipitated by force and ended by force. Non-military measures were ancillary. No sanctions were authorized by the United Nations although Argentina's failure to obey Resolution 502 left it in a weak position to counter the moral force of the economic measures which were widely adopted against it.

IV. WHITHER SANCTIONS?

What trends or patterns in the resort to collective non-military measures can be discerned from the record of U.N. and state practice outlined above? The failure of the United Nations to establish authority and consistency in identifying norm-violation was predictable, given great power rivalry and the existence of the veto. In practice, however, crisis situations where superpowers and their clients are not directly involved as potential "wrongdoers" have produced Security Council responses which do not follow a straightforward Chapter 7 enforcement procedure. The sequence of identifying an Article 39-type situation and then ordering penalties to deal with it has been followed only in the cases of Rhodesia and South Africa — where the arms trade itself was deemed a threat to the peace.⁷¹ An alternative option is for the Security Council to avoid invoking Article 39. It can call on the offending state to end the crisis itself (for instance, calling on Iran to release the U.S. hostages) or *recommend* measures to U.N. members (as in the earlier call for a voluntary arms embargo against South Africa in 1963).⁷² Another procedure is to determine that an Article 39-type situation exists but make no order or recommendation for sanctions. Thus in the Falklands crisis a determination that a breach of the peace had occurred was not accompanied or followed by calls for sanctions. It is open to discussion whether measures adopted voluntarily by U.N. members following a Security Council call for action which is ignored by an offending state have more legitimacy if there has been no accompanying or subsequent call for sanctions than if their imposition has been vetoed by one permanent number of the Security Council.

Severance of the link between norm-violation and consequent penalties is also possible for the General Assembly as was apparent in the Afghanistan crisis. But the active role of the General Assembly in promoting norm development in the field of human rights has not been

⁷¹ S.C. Res. 418, *supra* note 30. In the case of North Korea, during the absence of the Soviet Union from the Security Council, the United States was able to secure passage of Sec. Council Res. 82 of June 25, and 83 of June 27, 1950, which determined a breach of the peace had occurred and *recommended* that military measures should be taken to assist South Korea. No repetition of this situation was likely.

⁷² S.C. Res. 181, 18 U.N. SCOR (1056th mtg.) at 7, U.N. Doc. S/INF/18/Rev. 1 (1963); S.C. Res. 182, 18 U.N. SCOR (1078th mtg.) at 8, U.N. Doc. S/INT/18/Rev. 1 (1963).

paralleled by the development of the General Assembly as an alternative to the Security Council in making authoritative rulings on norm-violation. A two-thirds majority vote condemning wrongdoing and/or recommending sanctions, whether mustered by the United States against the People's Republic of China in the early days of the United Nations or by third world states against white regimes in Southern Africa in more recent times, is not binding on the dissenting third. Even though a strong General Assembly vote of condemnation can carry a symbolic message, and repeated condemnation presumably builds some cumulative strength, the General Assembly's authority has been weakened by what Klaus Knorr accurately described as "the discriminatory manner in which normative constraints have been brought into play."⁷³

In place of authoritative U.N. judgments there are individual or group judgments about norm-violation and appropriate retaliatory action, possibly formulated inside, but more commonly outside, the framework of a limited-membership organization. These judgments may have regional backing and therefore enjoy some limited authoritative status, but they are open to challenge from other states who can also mitigate the effects of penalties on the target.

If the failure of the United Nations to provide an authoritative framework for sanctions and the consequent development of unauthorized *ad hoc* responses is a fact of international life, the record of state practice must also raise questions about the merits of economic penalties *per se*. They are less lethal than resort to force but they can prove very costly to all parties without achieving impressive results. The limited success of the Arab oil embargoes of 1973 and 1974, which were in no sense international sanctions, does not provide convincing evidence to the contrary. In that case there was a combination of exceptional control over a vital resource and a limited objective of influencing western governments to adopt a foreign policy posture more favorable to the Arab cause. The four cases described briefly in this paper illustrate the danger of the "backlash" and "ripple" effects of economic measures, not only for those imposing them and for innocent third states, but also for the international economy as a whole. The consequences for international confidence and monetary stability of freezing Iranian assets or of forcing Poland or Argentina into massive default on foreign loans have not escaped western commentators.⁷⁴

Economic sanctions have come to be widely regarded with skepticism and even alarm. Yet, if they are so demonstrably inefficient and costly, why are they imposed? Presumably governments will continue to feel the

⁷³ Knorr, *Is International Coercion Waning or Rising?*, 1 INTERNATIONAL SECURITY 98 (1977).

⁷⁴ See Carswell, *supra* note 45.

need to react to the behavior of others when their own interests are directly and adversely affected, and superpowers can define their own interests very broadly. There also can be an intention to convey an image of purposeful leadership to the domestic audience as well as a signal to other powers that they cannot act with complete impunity. There may indeed be an electoral payoff, and the warning may be taken seriously by other governments. Both the United States and Britain have pursued these goals and achieved such results by their response to the events described, but they have incurred costs in so doing. And, measures presented as defending international interest and called "sanctions" may be perceived as defending particular national interests which are not shared by other states.⁷⁵

U.S. measures against the Soviet Union, linked by Administration spokesmen to events in Poland, represent a re-intensification of the controls on East-West economic relations which have existed since the late 1940's but which were progressively relaxed in the years of detente. Coordinated by COCOM, a NATO committee, these measures sought to prevent, or at least to hinder, the growth of the Soviet economy and to limit Soviet military capability.⁷⁶ They are cold war measures. Differences of opinion between the United States and Western Europe over the scope of these controls are not new, but they have become sharper and much more public of late. It is ironic that penalties, described in the media as sanctions, should be imposed by the United States on European firms which continued to supply equipment under existing contracts for the gas pipeline, when blatant sanctions-breaking by U.N. members (particularly South Africa) went unchastised in the Rhodesian case.⁷⁷

If measures of a negative or coercive character are to be adopted by states without the backing of an international organization and are called sanctions, it is surely important for western democracies to restrict themselves to cases where a clear norm-violation has occurred, as for instance by Iran in 1979 and Argentina in 1982, and for the measures adopted to be proportionate to the offense and carefully considered in terms of their likely consequences for all who may be affected. This is particularly im-

⁷⁵ The Brezhnev doctrine, enunciated after the Soviet invasion of Czechoslovakia in 1968, purported to authorize action by socialist countries to defend socialism in Eastern Europe (and perhaps elsewhere), thereby over-riding the principle of national sovereignty, was an extreme example of self-serving rationalization of hegemonial behavior.

⁷⁶ See G. ADLER-KARLSSON, *WESTERN ECONOMIC WARFARE 1947-1967: A CASE STUDY IN FOREIGN ECONOMIC POLICY* (1968); McIntyre and Cupitt, *East-West Strategic Trade Control: Crumbling Consensus?* 25 *SURVEY* 81-108 (1980).

⁷⁷ The General Assembly, however, repeatedly called for the imposition of sanctions. The United States itself imported chrome from Rhodesia under the Byrd Amendment, 50 U.S.C. §98 (h)(1)(1976) from 1971 to 1977, in violation of the Security Council's mandatory resolutions imposing sanctions. See *Diggs v. Schultz*, 470 F.2d 461 (D.C. Cir. 1972).

portant for economic measures, given the range of problems which they are now known to bring in their wake. In certain cases condemnation without penalties may be advisable. Furthermore, condemnation and penalties will gain credibility if they are taken in concert. Public argument between allies over occasions for retaliation and over specific retaliatory measures not only damage the alliance but also any claims to be acting in support of principle and international law.