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INTRODUCTION

ECONOMIC WARFARE is a game that all can play. Many states have played this game, especially since 1945. In that year Article 2(4) of the Charter of the United Nations established the general prohibition of the threat or use of force, a provision which Waldock called "the corner stone of peace in the Charter."[1] Since then new problems have arisen and the world situation has changed.

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Richard N. Gardner[2] dealt with this changing world situation and noticed these facts of life when he proposed to deny U.S. exports and aid to countries which refuse to supply the U.S. and other states with needed raw materials.[3] His speech given on November 14, 1973 before 2,000 business leaders at the 60th National Foreign Trade Convention stimulated many U.S. Senators to ask for major changes in President Nixon's trade legislation.

In his statement Professor Gardner proposed that the pending trade bill be "revised from top to bottom" to take account of the recent developments in international relations such as the use of economic and political pressure. With special emphasis on the Arab oil embargo, he asked that the President be authorized to deny United

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[1] Waldock, *The Regulation of the Use of Force by Individual States in International Law*, 81 RECUEIL DES COURS 451 (1952).

[2] Currently Henry L. Moses Professor of Law and International Organization, Professor Gardner has also served as Deputy Assistant Secretary of State for International Affairs in the Kennedy Administration and was a member of President Nixon's Commission on International Trade and Investment Policy.

[3] Columbia Law Alumni Observer, Dec., 1973, at 12.

States exports and aid to countries that deny the United States and others needed raw materials.

These suggestions evoked a lively response from several Senators, who, as members of the Senate Finance Committee, asked Professor Gardner to prepare language which could be incorporated into the bill.

Professor Gardner replied that he was not proposing "at this time" that the United States retaliate against the Arab oil-producing countries because there was still a chance that the Middle East settlement might be achieved through quiet diplomacy. However, he said that the U.S. negotiating position would be strengthened "by some carefully drawn amendments to the trade bill that put the oil-producing nations and others on notice that they cannot wage economic war upon us with impunity." He noted that, although the United States and its partners in the Organization for Economic Cooperation and Development (OECD) depended on Arab oil, the Arabs also depended on the United States and its partners for food, medicines, industrial machinery, and consumer goods.

"The Soviet bloc is not in a position to fill the gap completely if the OECD countries cut off supplies," he asserted. "In any event, countries like Saudi Arabia would think twice about becoming completely dependent on Communist countries."

Citing the Roosevelt-Churchill meeting, which resulted in the Atlantic Charter, as an example, Professor Gardner recalled that in 1941 the postwar goal was proclaimed to be, access, on equal terms, to the trade and the raw materials of the world.

> In the first postwar decades, when the preoccupation was with unemployment and surplus production, international trade negotiations focused almost entirely on access to markets and virtually ignored the problem of access to supplies. Now, however, we are moving into an era of resource scarcity and accelerated inflation — an era in which producing countries are increasingly tempted to withhold supplies for economic and political reasons.
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> Since the U.N. Charter, countries are no longer permitted to use force to back up their economic claims. Quite apart from legal prohibition, such actions now entail costs and risks that make them politically undesirable. But if the Atlantic Charter concept of equal access to raw materials cannot be guaranteed by the use of force, we need to consider guaranteeing it in some other way.
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> I have no easy solution to this problem, but I do suggest that we bend every effort to write some new rules of international law providing for equal access to raw materials into the GATT and into other international agreements and that we develop some multilateral sanctions against countries that violate these rules, whether they are parties to the agreements or not. If we can propose cutting

> off air services to countries that give refuge to hijackers, if we can contemplate denying port facilities to nations that pollute the oceans with their tankers, we should certainly explore the possibility of multilateral trade and aid embargoes on nations that withhold vital raw materials for political purposes.[3a]

This speech proposes methods of responding to economic war and political pressure and methods for utilizing the economic potential of one country in conjunction with international economic relations as countermeasures for dealing with this type of coercion. It is astonishing that Professor Gardner draws his attention to the Atlantic Charter and even to the GATT, but mentions the Charter of the United Nations only when he refers to the prohibition of the use of force to back up the economic claims of one country. No consideration is given to the questions concerning the extent that economic and political pressure may be used in international relations, whether these kinds of coercion are in accordance with international law and whether blockades, embargoes and boycotts are consistent with what the U.N. Charter prescribes.

The purpose of this article will be to examine whether economic and political pressure may be used in international relations without violating the Charter of the United Nations. Focusing on this document is necessary in order not to expand the arguments ad infinitum. No attempt is made here to deal with all aspects and implications of international law related to this matter. Emphasis will be laid on the general prohibition of the use or threat of force as formulated in Article 2(4) of the Charter and further consideration will be given to related provisions which might be of relevance in this connection.

Before turning to the questions of law, it is useful to recount the facts of the two recent situations where economic pressure was used to achieve political goals and which played a predominating role in international relations, the Arab oil embargo and the financial and economic pressure exerted by the United States against Chile before the overthrow of Allende.

Both situations differ in various aspects. In the first case it was the developing countries which imposed the embargo with the developed states, especially the United States having to suffer. In the second case it was just the opposite; the United States playing the active role and a country from the third world, Chile, being the affected state. The oil embargo was imposed by a large group of states with common political interests and many nations felt the repercussions; while in Chile's case only two states were involved. The

[3a] *Id.*

Arab countries used pressure directed against other governments; the United States coerced Chile mainly through international organizations such as the World Bank and the Inter-American Development Bank. Other differences will be obvious by an examination of the facts.

In both cases political considerations led to the use of economic pressure, and the states which played the game of economic warfare, by and large, achieved their goals.

THE FACTS: TWO RECENT EXAMPLES OF THE USE OF ECONOMIC COERCION

The Arab Oil Embargo

The Arab oil embargo was one of the most successful weapons introduced into world politics during the last years. One of the main reasons for its success is the fact that oil reserves are not evenly distributed among nations.[4] More than 63 percent of known world petroleum reserves are located within the territory of states belonging to the Organization of Petroleum Exporting Countries (OPEC),[5] seven of whose 11 full members are Arab states. Thus, most of these reserves can be found in the Persian Gulf area. The rest is owned primarily by the United States (about six per cent), and the Socialist countries (about 15 per cent).[6]

A similar imbalance exists in oil consumption. On the demand side the United States is the country with the greatest need. With only six percent of the world population, it consumes almost one-third of the world's oil production. Two-thirds of this demand is supplied from domestic resources, the rest being imported.[7] Other major energy-consuming countries of the industrial world are even more dependent upon oil imports. For example, the European Community imports 90 percent of its needs and Japan virtually all. Countries which for the present are self-sufficient in their energy re-

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[4] For further elucidation, see Amuzegar, *The Oil Story: Facts, Fiction and Fair Play*, 51 FOREIGN AFFAIRS 676 (1973) and KEESING'S CONTEMPORARY ARCHIVES 26224 (Nov. 6-Dec. 2, 1973).

[5] The OPEC (headquarters in Vienna) was founded in 1960 in Baghdad. Members are: Abu Dhabi, Algeria, Indonesia, Iraq, Iran, Kuwait, Libya, Nigeria, Qatar, Saudi Arabia, Venezuela and Ecuador. Its function is to coordinate oil policies of member states. For details of OPEC's history, see KEESING'S ARCHIV DER GEGENWART, Nov. 15, 1973, at 18319.

[6] OIL & GAS J., Dec. 25, 1972, at 82.

[7] It now produces about 11 million barrels of oil a day and consumes nearly 17 million barrels a day. By 1985 or even sooner, the U.S. need for oil imports is estimated to reach nearly 15 million barrels a day or more than 50 per cent of consumption.

quirements, like the Soviet Union and China, are likely to become oil importers by the end of this century. Thus, the future imbalance between supply and demand of oil is indeed significant. Countries which exploit this critical situation unscrupulously for political purposes in international relations have a dangerous weapon at hand and are able to put world economics into total disorder. The Arab oil embargo has illustrated this point since 1967 when oil was first brought into play as a weapon for achieving political aims.[8] In the 1967 Six-Day War, Saudi Arabia and other oil-rich countries placed a total embargo on oil shipments to the United States and Great Britain.

In 1967, it furthermore must be remembered that, Saudi Arabia cut the flow of oil involuntarily — under pressure by Nasser — and therefore did not enforce the measure strictly. The boycott was lifted through the efforts of Saudi Arabia after one month and its effects never became bothersome. Indeed, Saudi Arabia had repeatedly objected to proposals by Nasser and Arab radicals to use oil as an instrument in the service of the Arab cause. King Faisal, in particular, insisted that oil and politics should not be mixed. He proclaimed that the Arabs should not and that he himself would not allow oil to be used as a political weapon.

This situation has changed, however, but it is difficult to ascertain why. From the economic viewpoint, it is arguable that in the past, Saudi Arabia was dependent on all the revenues earned from oil for its own needs. Thus the oil weapon was of limited use and could hurt the state which was attempting to use it. Today the increase in oil revenues, far beyond current needs, makes it possible for oil producers to be more flexible in using this weapon, without having to fear retaliation by those countries affected. On the political side it is surely important that after Nasser's death and the failure of a comparable personality to emerge in the Arab world, King Faisal need not comply with anyone's pressures and can retain control of the weapon himself.

Not only has King Faisal's reluctance disappeared, in 1972 other Arab leaders in influential positions made no less than 15 different threats to use oil as a weapon against their political adversaries, in particular singling out the United States.[9] The common response from the American side has been: "They need us as much as we

[8] For further information, see Akins, *The Oil Crisis: This Time the Wolf is Here*, 51 FOREIGN AFFAIRS 462 (1973), and Safran, *The War and the Future of the Arab-Israeli Conflict*, 52 FOREIGN AFFAIRS 215, 219-22 (1974).

[9] *See* Akins, *supra* note 8, at 467.

need them;" "they can't drink the oil;" or "boycotts never work."[10] They seemingly have not taken these threats seriously.

In the months preceding the outbreak of the Yom Kippur War on October 6, 1973, increasing pressures built up within OPEC to take a stronger line in dealings with the major international oil companies, which are principally U.S.-based. In addition, Libya nationalized a majority interest in most of the remaining foreign oil companies operating within her territory.[11] These demands were partly based on market conditions and taken in the light of the combined effects of adjustments in currency parities and inflation in the developed countries.[12]

A further major factor was the constantly growing hostility of Arab nations towards the United States and to a lesser degree, towards other Western countries which gave support to Israel in her confrontation with countries of the Arab world.[13] In May 1973 the Egyptian president, Anwar Sadat, called on Arab states to use their oil to pressure the U.S. to drop its support of Israel.[14] Libya, Iraq, Kuwait and Algeria temporarily halted the flow of oil to the West on May 15 as a symbolic protest against the continued existence of Israel as a state. On August 31 King Faisal of Saudi Arabia warned the U.S. Government that it would be "extremely difficult" for his country to maintain friendly relations with the United States and to

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[10] *Id.*

[11] Libyan action during 1973 is described in KEESING'S CONTEMPORARY ARCHIVES 26194 (Nov. 12-18, 1973), especially as far as the companies Nelson Bunker Hunt, Occidental and Oasis, Texaco, Standard Oil of California, Mobil, Exxon, and Shell are concerned. In this respect it is interesting that Hon. Cunnar Lagergren, a Swedish appeals judge appointed as arbitrator by the International Court of Justice in the dispute between Libya and British Petroleum, had ruled in October, 1973, that the nationalization of the BP assets was illegal and confiscatory, in breach of BP's concession agreement, a clear violation of international law, made for purely extraneous political reasons, and arbitrary and discriminatory in character; he said BP was entitled to damages which would be assessed later.

[12] Only a limited inflationary element had been contained in the five-year agreement signed in Tehran with the six Gulf states (Abu Dhabi, Iran, Kuwait, Qatar, and Saudi Arabia), although a revised system had been adopted in June 1973 for these states. *Id.* at 26195.

[13] In particular, anti-American feeling was intensified when the U.S. on July 26, 1973, vetoed a U.N. Security Council draft resolution which expressed "serious concern" at Israel's lack of cooperation with U.N. Middle East peace efforts, "strongly deplored" Israel's continuing occupation of Arab territories, and reaffirmed Resolution 242 of 1967. The debate on the Middle East situation had begun on June 6 but had been suspended from June 15 until July 20. The draft resolution received 13 affirmative votes, with China abstaining, but the U.S. vote was cast against (the 5th U.S. veto since the establishment of the U.N.), and the resolution was therefore defeated.

[14] *See* FACTS ON FILE 391 (1973); Sadar said: "The case is one of protracted struggle and not only on the Suez-Canal battle. There is the battle of America's interests, the battle of energy and the battle of the Arabs."

continue supplying oil because of the U.S. "complete support of Zionism against the Arabs."[15] On the other hand he cautioned the Arab leaders against the use of oil as a political weapon in an interview given the previous day.[16] On September 4 the oil ministers of ten Arab states met in Kuwait to formulate a common policy on using their oil resources as a diplomatic weapon against Israel. As radical and conservative states posed sharply differing opinions, the conference failed to reach an agreement on joint action.[17] The time for a complete embargo by all Arab countries had not yet come.

On October 6, 1973, Yom Kippur, the fourth Arab-Israeli war broke out.[18] The United States continued its support of Israel, resupplying her with weapons. As a countermeasure the Arab oil exporting countries took concerted action to reduce supplies of oil to Europe and Japan and to withhold supplies entirely from the United States and the Netherlands.[19] Almost overnight they made the world aware of how their strong weapon could effectively be used to achieve political goals and the consequences to be born by the industrialized nations from the lack of oil supplies.

This time Saudi Arabia took the leading role in the Arab action against the United States and other countries, notwithstanding its hitherto more conservative policies and cordial relations with the United States.

At a meeting of the Organization of Arab Petroleum Exporting Countries (OAPEC) in Kuwait on October 17, the ten member-states[20] decided to reduce production of petroleum by at least five percent progressively each month, until Israeli forces had withdrawn completely from territories occupied in the 1967 Six-Day War

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[15] *Id.* at 737; for further warnings see pp. 329, 780, 837.

[16] KEESING'S CONTEMPORARY ARCHIVES 26194 (Nov. 12-18, 1973): "No one is asking where, if we cut off the oil, we would get the money we need for supporting our country and providing assistance to our brothers on the confrontation lines with Israel."

[17] FACTS ON FILE 737 (1973).

[18] For comments on this event, see Smart, *The Super-Powers and the Middle East*, 30 THE WORLD TODAY 4 (1974); Smart, *Die Supermächte und der Nahe Osten*, 29 EUROPAARCHIV 9 (1974); Menning, *Der vierte Nahost-Krieg in den Vereinten Nationen*, 21 VEREINTE NATIONEN 202 (1973); Hottinger, *Der vierte arabisch-israelische Krieg und seine politischen Folgen*, 29 EUROPAARCHIV 83 (1974).

[19] For details, see FACTS ON FILE 861 (1973) and KEESING'S CONTEMPORARY ARCHIVES 26224 (Nov. 26-Dec. 2, 1973); for related questions, see Mabro & Monroe, *Arab Wealth from Oil: Problems of its Investment*, 50 INTERNATIONAL AFFAIRS 15 (1974).

[20] Abu Dhabi, Algeria, Bahrein, Egypt, Iraq, Kuwait, Libya, Qatar, Saudi Arabia, and Syria; OAPEC (headquarters in Kuwait) was founded in 1968. Its function is to coordinate the interests of its member-states and to cooperate in oil production. For details of OAPEC's history, see KEESING'S ARCHIV DER GEGENWART 18319 (Nov. 15, 1973).

and the legal rights of the Palestinians had been restored. In addition, a number of Arab countries imposed total embargoes on shipments to the United States.[21] Later in October similar total bans were placed on shipments to the Netherlands.[22] Further cutbacks were announced at meetings of Arab Oil Ministers held in Kuwait on November 5 and in Vienna on November 18. At the latter meeting it was decided to exempt from these cutbacks all members of the European Community with the exception of the Netherlands "in appreciation of the political stand taken by the Common Market countries in their communique concerning the Middle East crisis."[23] In addition, the Gulf states unilaterally announced on October 16 a seventy percent increase in the posted price of crude oil, thereby abandoning the price formula agreed to in Tehran in February 1971.[24]

It would go too far to describe all the effects caused by the Arab action.[25] The United States which suffered heavily from the oil embargo warned the Arab states on November 21, 1973 through Secretary of State Kissinger that the U.S. might have to consider retaliatory action if the embargo continued "unreasonably and indefinitely." He did not specify what kind of countermeasures the U.S. might be prepared to take or whether any deadlines had been set, but he said that "those countries who are engaging in economic pressure against the U.S." should consider whether their continued embargo was now appropriate while peace efforts were in progress. Saudi Arabian Oil Minister Yamani, directly responded to Kissinger's remarks: If the U.S. made any attempt to use military force, Saudi Arabia would blow up its oil fields.[26]

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[21] This embargo involved directly some 6 percent of U.S. consumption, much of it from the U.S.-owned Aramco operating in Saudi Arabia.

[22] This latter ban had serious effects not only on the Netherlands, but also on various other countries since much crude oil is refined in Rotterdam and re-exported in refined form.

[23] Text: KEESING'S CONTEMPORARY ARCHIVES 28227 (Nov. 26, 1973).

[24] For further price increases see Amuzeger, *supra* note 4, at 679.

[25] For details, see KEESING'S CONTEMPORARY ARCHIVES 26226-28 (Nov. 26-Dec. 2, 1973).

[26] FACTS ON FILE 983, 984 (1973); for further threats see 1001 (1973) and 1 (1974). During the summit meeting of Arab leaders in Algiers (Nov. 26-28), a resolution was passed which stated that the conference had decided "to continue the use of oil as a weapon in the battle until the withdrawal from occupied Arab lands is realized and the rights of the Palestinian People were assumed." This strategy would be carried out as follows:

(a) By maintaining the oil embargo on all states supporting Israel;

(b) By maintaining cuts in petroleum production to a degree that would not lead to reducing the income of the producing states by more than one quarter of their 1972 income.

These last remarks show clearly the escalation of the crisis, with threats and counterthreats of embargoes, boycotts and other means of political and economic pressure and demonstrate how serious and difficult a situation existed. Thus enormous relief could be felt in the international political arena when the oil producing countries finally decided at the end of March 1974 to lift the embargo against the United States, freeze posted prices and raise production levels.

Now the world is aware of how important, effective and dangerous oil, as a political weapon in international relations, can be. It should be kept in mind that this weapon can easily be used again for political reasons and oil consumers would be well advised to reach some agreement with the oil producing nations in order to avoid a new outbreak of this kind of economic warfare.

THE U.S. FINANCIAL AND ECONOMIC BLOCKADE AGAINST CHILE BEFORE THE OVERTHROW OF ALLENDE

When President Allende spoke before the General Assembly of the United Nations on December 4, 1972, he stated that an "invisible financial and economic blockade" was imposed on Chile by the United States.[27] Since the time he had been elected to office in September 1970, he said, his country had to suffer from heavy economic and political pressure calculated to cut off his country from trading with other states, to paralyze the export of its main revenue source, copper, and to barricade the way to international finances, all with the purpose of securing the overthrow of his government. He referred to this "financial strangulation" as "yet another manifestation of imperialism, one that is more subtle, more cunning and terrifyingly effective in preventing us from exercising our rights as a sovereign state." He called it an indirect form of aggression, not openly declared but taking place in a veiled form, hurting the economy of his country and undermining its sovereignty and dignity. Such actions represented "the exertion of pressure on an economically weak country, the infliction of punishment on a whole nation for its decision to recover its own basic resources, and a form of intervention in the internal affairs of a sovereign state."

What were the facts which lead to such a strong accusation and what incidents might justify such enormous criticism?

Shortly after the 1970 Chilean presidential elections, in which

[27] For the text of Allende's speech see 28 EUROPAARCHIV D86 (1973); excerpts are given in FACTS ON FILE 980 (1972); and KEESING'S CONTEMPORARY ARCHIVES 25825 (Apr. 9-15, 1973).

Allende was elected by only 36 per cent of the vote, the Chilean Government started nationalizing American property in Chile.[28] In July 1971 an amendment to the Chilean Constitution, providing for nationalization of the copper mines, was unanimously passed by both houses of the legislature and signed by President Allende. Thus the large copper mining industry became completely owned by the Chilean State.[29] The amendment provided for compensation as follows: the amount of compensation should be determined through independent evaluation by the Controller General; but from that evaluation the "excess profits" that nationalized companies had obtained were to be deducted.[30] This deduction for excess profits was a radical departure from past compensatory schemes and led to great controversies between Chile and the United States. Moreover, after the announcement of evaluation and excess profit figures it was clear that the two major companies, Kennecott and Anaconda, would not receive any compensation whatsoever, as their "excess profits" exceeded the evaluation of their assets.[31]

This nationalization of the copper mining industry[32] was not the only measure taken against U.S. economic holdings in Chile. U.S. interests were, *inter alia*, affected by a moratorium, declared in November 1971 on most of Chile's foreign debts.[33]

These and other incidents resulted in U.S. countermeasures. In January 1972, President Nixon issued a formal policy statement which specified that the United States would not extend new bilateral economic benefits and would oppose multilateral loans to countries expropriating significant U.S. interests without taking "reasonable steps" towards compensation.[34] Shortly before this, ITT

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[28] Allende and his opponent candidate, Radomiro Tomic (who received 29 percent) had both demanded immediate and total nationalization in their election campaigns; the vote showed that Chile's population supported this movement. *See* N.Y. Times, Sept. 6, 1971.

[29] Part of the ownership had already been taken over in 1967 and 1969 under President Frei.

[30] *See* Law No. 17450 of July 16, 1971, in 10 INTERNATIONAL LEGAL MATERIALS 1067 (1971).

[31] For details, see 10 INTERNATIONAL LEGAL MATERIALS 1235-40 (1971).

[32] For further information, see Fleming, *The Nationalization of Chile's Large Copper Companies in Contemporary Interstate Relations*, 18 VILL. L. REV. 593 (1973); Schiesser, *Recent Developments in Latin American Foreign Investment Laws*, 6 INT'L LAWYER 64 (1972) and U.S. Dept. of State Report on Nationalization, Expropriation, and other Taking of U.S. and Certain Foreign Property since 1960 in 11 INTERNATIONAL LEGAL MATERIALS 84 (1972).

[33] *See* Sigmund, *The "Invisible Blockade" and the Overthrow of Allende*, 52 FOREIGN AFFAIRS 322, 324 (1974).

[34] *Id.*

had submitted to the State Department proposals of how to put Chile under pressure, including an embargo on Chilean exports to the U.S., a veto on Chile's requests for loans in the Inter-American Development Bank (IDB) and the World Bank, and advice to the U.S. and international banking industry not to extend further credits to Chile.[35] Actually, U.S. banks had already changed their loan policies especially as far as short-term loans were concerned, and had systematically begun suspending all sources which Chile previously had used to finance its imports. Within fourteen months credits dropped from $220 million to $25 million.[36]

Finally, the Congress of the United States passed in 1972 the "Gonzales Amendment" which instructed U.S. representatives in multilateral lending institutions and international finance organizations to vote against loans requested by countries expropriating U.S. companies without compensation.[37]

This increased the existing tension in Chile's relations with the United States. As Chile's inner economic situation worsened, those who wanted to use coercive measures against the Allende Government by cutting off Chile from international financial sources had an excellent excuse by referring to Chile's "credit-worthiness." Thus it becomes difficult to draw a line between legitimate reasons for denial of loans and credits and those of a possibly illegal character, like economic warfare to cause the economic breakdown of a country. A short survey of single measures taken by different institutions might be helpful to illustrate this distinction.

The last loans approved to Chile during Allende's presidency by the Inter-American Development Bank were two loans of January 1971, one of $7 million for the Catholic University in Santiago and the other in the amount of $4.6 million for the Universidad Austral in Valdivia.[38] Requests submitted by the Allende Government for educational loans to the Catholic University of Valparaiso and the Universidad del Norte were never taken into consideration by the IDB board.

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[35] *Id.* at 331 with further references.

[36] Figures are given by Mario Diaz in Punto Final (Santiago), June 20, 1972, at 16-18. *See also* Jaime Faivovich, Punto Final, Sept. 26, 1972, at 2, and James F. Patras & Robert La Porte, *Chile: No*, FOREIGN POLICY, Summer, 1972, at 132.

[37] Sigmund, *supra* note 33, at 326.

[38] *Id.* at 327. According to the Senate ITT Hearings, $54 million from previously approved loans had also been disbursed by the Bank; *see Hearings on Multinational Corporations and United States Foreign Policy Before the Subcomm. on Multinational Corporations of the Senate Comm. on Foreign Relations*, 93d Cong., 1st Sess., pt. 2, at 533 (1973).

In this respect it is important to know that the United States controlled forty percent of the votes on the board of the Bank and thus was able to veto all requests, the approval of which required a two-thirds majority, as in the case of educational loans. It may hardly be doubted that the U.S. used its influence in order to make these loans unavailable to Chile.[39]

The World Bank's policy was similar. Several projects had been under consideration. But when in early 1971 the Inter-American Committee of the Alliance for Progress (CIAP) conducted its annual country review, the representative of the World Bank stated that Chile's economic situation was temporarily uncertain. This factor made the efficacy and rationality of further loans questionable. Several pending loans were, as a consequence, not approved.[40] In addition, the issue of compensation for the nationalization of the copper mines was taken into consideration. The Bank's demands for reasonable progress in settling these disputes were rejected by Chile. All these events resulted in the fact that the Allende Government did not receive any further loans from the World Bank,[41] and led to sharp controversies between Alfonzo Inostroza, president of the Central Bank of Chile, and Robert McNamara, president of the World Bank. Inostroza accused the Bank of acting "not as an independent multinational body at the service of the economic development of all its members, but in fact as a spokesman and instrument of private interests in one member country."[42] McNamara replied that in similar instances concerning Bolivia, Guyana and Iraq the Bank had approved loans to these countries despite compensation disputes, but that in the case of Chile "that question had not yet arisen because the primary condition for Bank lending — a soundly managed economy with clear potential for utilizing additional funds efficiently has not been met."[43]

The International Monetary Fund (IMF) took a completely different position; it did not care about compensation disputes or ques-

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[39] Sigmund, *supra* note 33, at 327. Sigmund mentions a report published in The New York Times and other newspapers which stated that immediately after the coup of September, 1973, the Bank approved $65 million of new loans; in his opinion this statement is not true, as "it appears from Bank sources that the $65 million figure was based only on tentative budget planning for 1974 . . . ."

[40] *Id.* at 328 with further references.

[41] This situation has recently changed; the World Bank is providing Chile with $5.25 million to cover the foreign exchange costs of carrying out pre-investment studies; *see* U.N. Press Release IB/3246, Feb. 8, 1974.

[42] Sigmund, *supra* note 33, at 329.

[43] *Id.*

tions of credit worthiness. According to its function, assisting member-countries with foreign exchange difficulties, it made available to Chile loans to allow for adjustment in the drop in world copper prices. The United States could not object to this lending policy which was within the authority of the IMF.[44]

In July 1971 negotiations between Chile and the Export-Import Bank concerning a request for a $21 million loan for the purchase of three passenger jets from Boeing for the Chilean national airline were nearly completed. But the Bank refused to give its final approval for the credit and informed the ambassador of Chile that the decision had been deferred until further information on the copper compensation question would be available. At a press conference held shortly thereafter the Chilean ambassador called this deferral a "blatant attempt to pressure the Chilean government."[45]

It is certain that the cited measures contributed to Chile's catastrophic financial and economic situation in 1972 and 1973. There were hardly any substantial foreign exchange reserves left, the inflation rate climbed within a few months from 33 to 99.8 per cent,[46] and Chile was not able to pay its international debts.[47] But, the United States' action had another effect in that Chile was enormously successful in obtaining loans from other countries[48] and thus could avoid a total collapse of its economy. Nevertheless the U.S. policy can undoubtedly be regarded as a major contribution to the overthrow of Allende even if other basic causes may admittedly be sought elsewhere.[49]

Repercussions on Inter-state Relations

In describing the factual situation of the Arab oil embargo and the financial and economic pressure exercised by the United States against Chile before the overthrow of Allende it has been shown what important role political and economic coercion can play in international relations. It has to be kept in mind that similar in-

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[44] Sigmund gives further details. *Id.*

[45] *Id.* at 330. Unofficial information was given by the State Department that this decision had been made under influence from business interests "at the White House level." N.Y. Times, Aug. 14, 1971, at 3, col. 2.

[46] Sigmund, *supra* note 33, at 335.

[47] For recent developments in Chile's economic situation, see KEESING'S CONTEMPORARY ARCHIVES 26553 (April 1-7, 1974).

[48] Detailed figures are given by Sigmund, *supra* note 33.

[49] This point is emphasized by Sigmund, *id.* at 338-40. *See also* Whitehead, *Why Allende Fell*, 29 THE WORLD TODAY 461 (1973).

stances occur daily. Most of them are not of such an outstanding character as the examples just given.[50] But almost always it is for the achievement of political goals that this kind of pressure is used. There are probably very few situations, if any, which do not have repercussions on inter-state relations; even disputes of a minor character are sometimes likely to endanger the maintenance of international peace and security. The second part of this article will therefore deal with the question as to the extent economic and political pressure may be used in international relations without violating the U.N. Charter and whether or not there are any means of eliminating this kind of coercion from the list of international disputes endangering world peace and security.

THE LAW: CONSISTENCY WITH THE CHARTER OF THE UNITED NATIONS?

The General Prohibition of the Use of Force in Art. 2(4) of the Charter

Historical Background

The idea that the use or threat of force is contrary to international law is relatively new; traditionally, international law prior to 1919 did not limit any kind of force, pressure or coercion in interstate relations. Recourse to war was permitted not only for enforcing rights recognized by international law, but also for challenging and destroying the existing legal rights of other states.[51] If war in general was permitted, it is beyond a doubt that there was no limitation to minor kinds of "coercion" like political and economic pressure.

These foundations of the traditional rule of international law have been altered since the First World War. The result of this development has been a limitation and, subsequently, a renunciation and prohibition of war, and, more generally, of the use or threat of force. As the first cornerstone in this development, the Covenant of the League of Nations has to be examined. Although it did not abolish the right of war, means of pacific settlement prescribed in

[50] One most critical issue has been left aside in this paper, the situation between the two German states — especially concerning West-Berlin. The political tension in this area is a permanent source of economic and political pressure. *See* Bowett, *Economic Coercion and Reprisal by States*, 13 VA. INT'L L.J. 1, 8 (1972). *See also* Note, *Recognition of the DDR: Some Legal Aspects of West Germany's Foreign Policy and the Quest for German Reunification, infra* at 94.

[51] The historical development of the legal regulation of the use of force is illustrated in detail in BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 1-122 (1963).

Articles 10 to 15 had to be exhausted before states were allowed to resort to it. Otherwise a war was unlawful and sanctions could be applied against a state violating these prohibitions. The Covenant, therefore, fundamentally changed the status of war in international law and made any war between states a matter of international concern. The next important step was taken in the General Treaty for the Renunciation of War in 1928 (Pact of Paris or Kellogg-Briand Pact) in which the parties solemnly declared that they condemned recourse to war for the solution of international controversies and renounced it as an instrument of international policy in their relations with one another. In addition they agreed that the settlement or solution of disputes should never be sought except by pacific means.[52] As a result of this treaty war had ceased to be a legal remedy or an instrument for changing the law. In the years that followed numerous treaties reaffirmed the Pact's obligations, as a result state practices were considerably affected.

The Charter of the United Nations, in force since October 24, 1945, finally provides a general prohibition of the threat or use of force. Its basic provision relating to that matter, Article 2, paragraph 4 states:

> 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 purpose of the United Nations.

As a consequence the use or threat of force, other than in self-defense or with the authority of an organ of the United Nations, is illegal.

The cumulative result of these international enactments of a general character was to completely alter the legal position of war and of the threat or use of force. Taking into account the universality of the Organization of the United Nations it may be said that the wide-reaching prohibition of the threat or use of force in Article 2(4) of the Charter constitutes general international law. Referring to the importance of these new principles, Brownlie stated: "The Charter stands with the Kellogg-Briand Pact and the two instruments though independent of each other form the essential juridical basis of the world legal order and of world peace."[53]

But does this general principle of the illegality of the threat or use of force include economic and political pressure, or is it only

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[52] Arts. I and II of the Pact.

[53] BROWNLIE, *supra* note 51, at 113.

military force which is prohibited? Since the foundation of the United Nations this problem has been of major concern. Opinions on this issue differ widely and numerous controversies have arisen out of this question. Different aspects have been discussed at international conferences, during regional meetings of states, in judicial decisions, and in writings of qualified publicists of various nations. States of the Eastern Bloc and countries of the Third World have been especially vocal in their repeated demands for the inclusion of "non-military" forms of duress within the general prohibition of force.[54]

The tremendous amount of literature already existing in this field reflects the relevance of this question for international relations.[55] In this article only a few major arguments can briefly be discussed to elucidate whether the general prohibition of the threat or use of force as laid down in Article 2(4) of the Charter includes economic and political pressure.

Interpretation of Article 2(4) of the Charter

According to the interpretation rules of the Vienna Convention on the Law of Treaties of 1969,[56] a treaty shall be interpreted grammatically, systematically, logically and in light of its object and purpose; supplementary means are the *travaux preparatoires* and the practice of the United Nations.[57]

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[54] *See* WENGLER, DAS VÖLKERRECHTLICHE GEWALTVERBOT, PROBLEME UND TENDENZEN 10 (Berlin 1967).

[55] A thorough examination of the existing literature is given in the monograph by Rolf M. Derpa, Das Gewaltverbot der Satzung der Vereinte Nationen und die Anwendung Nichtmilitärischer Gewalt, 1970 (Bad Homburg, W. Germany).

[56] This convention is not yet in force, but the necessary number of 35 ratifications will probably soon be reached; *see* H. BROSCHE, ZWANG BEIM ABSCHLUSS VÖLKERRECHTLICHER VERTRÄGE: EINE UNTERSUCHUNG DER IN DER WIENER VERTRAGSRECHTSKONVENTION VON 1969 GETROFFENEN REGELUNG 90, 170 (SCHRIFTEN ZUM VÖLKERRECHT, Vol. 35, Berlin 1974).

[57] Art. 31 Vienna Convention reads:

> 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
> 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
> (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
> (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
> 3. There shall be taken into account together with the context:
> (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provision;

The key word of Article 2(4) of the Charter is the term "force." It is questionable if this covers only physical or armed force. A vast number of publicists on international law understand it in this narrow sense. Bowett writes:

> Taking the words in their plain, common-sense meaning, it is clear that, since the prohibition is of the use or threat of force, they will not apply to economic or political pressure, but only to physical, armed force.[58]

Others, particularly authors from socialist countries, support a broad reading of this provision. An analysis in the light of several modern English language dictionaries shows that both interpretations of the term "force" are possible.[59] The same is true when the French, Spanish and Russian wording ("*force*," "*fuerza*," "*sila*") of the Charter are defined in their respective languages.

An examination of the term "force" in the context of Article 2(4) does not resolve the problem. Force is prohibited, if it is directed against the territorial integrity or political independence of any state or if it is otherwise inconsistent with the purposes of the United Nations. It is beyond doubt that the political independence of a state can be eroded without the use of armed force. Just how effective weapons of economic warfare can be has been demonstrated in the first portion of this article detailing the facts of the Arab oil embargo and the U.S. pressure against Chile. Turning to the purposes of the United Nations, it is not obvious that only military force is inconsistent with these objectives. Economic coercion may occasionally constitute a threat to the peace. Further it is hard to call this coercion a peaceful settlement of international disputes as described in Articles 1(1) and 2(3) of the Charter. Further consideration will be given to this question *infra*.

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
(c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.
Art. 32 reads:
Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of Art. 31, or to determine the meaning when the interpretation according to Art. 31:
(a) leaves the meaning ambiguous or obscure;
or
(b) leads to a result which is manifestly absurd or unreasonable.

[58] BOWETT, SELF-DEFENSE IN INTERNATIONAL LAW 148 (1958).

[59] *See, e.g.*, BLACK'S LAW DICTIONARY 773-74 (4th ed. 1968) and THE LITTLE OXFORD DICTIONARY OF CURRENT ENGLISH 202 (3d ed. 1968).

A comparison with other parts of the Charter shows that in some provisions the term "force" is used without additional explanations,[60] whereas in other articles the language "armed force" is to be found.[61] This different terminology could lead to the conclusion that the word "force" without the special addition "armed" has to be understood in a broader sense. This conclusion is, however, unwarranted. Article 44, for example, speaks of "force" only, though it deals with "armed" force as can easily be seen by an examination of its context.

As grammatical and systematic interpretation do not give an unambiguous answer, it is useful to examine the object and purpose of this provision and thereby attempt to interpret it teleologically. It has already been mentioned that, in particular, developing countries and members of the Eastern Bloc espouse a broad interpretation of the prohibition on force.[62] Their arguments are based on the purposes and principles of the United Nations as formulated in Articles 1 and 2 of the Charter: development of friendly relations, respect for the principles of equal rights and self-determination of peoples, and achievement of international cooperation in solving international problems of an economic or social character. They emphasize the economic interdependence between states in our modern world. Due to this fact economic coercion is most dangerous for the independence of a state and could be even more effective than armed force in reducing a country's power of self-determination, especially if its economy depends primarily on a single crop or on the export of a single product. Therefore, the highly developed and industrialized nations are superior and can use their entire economic potential to back up their own interests. Such neo-colonialist practices, they maintain, are means of economic exploitation, retarding or nullifying all efforts to overcome under-development, and should therefore be denounced with utmost vigor.

These means of pressure may cause considerable harm for economically weak countries lessening their freedom of self-determination.[63] On the other hand, we have to give full consideration to

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[60] *E.g.*, Art. 2(4) and 44 of the Charter.

[61] *E.g.*, Arts. 41, 46 and Preamble § 7 of the Charter.

[62] For details, see BROSCHE, *supra* note 56, at 67-74, 183-86, and 190-92 with further references.

[63] In this respect it is interesting that the Soviet Union — one of the vehement defenders of a wide concept concerning Art. 2(4) — did not hesitate to withdraw all development aid from China, when the Ussuri conflict affected Chinese-Russian relations. *See* Derpa, *supra* note 55, at 46 n.179.

the fact that it is extremely difficult to draw a distinction between economic and political means of coercion and measures of permitted influence and persuasion. The latter are unavoidable in interstate relations and may be attributed to a state's sovereignty and therefore within the realm of permissible discretion.

On December 21, 1965 the General Assembly of the United Nations adopted Resolution 2131 (XX),[64] the "Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty." Paragraph 2 of this resolution reads:

> 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, or to secure from it advantages of any kind.

Considering this far-reaching formulation we have to keep in mind that to a certain extent the exercise of influence on the politics and economy of other states is desirable. Without this influence no normal economic and diplomatic relations between states are possible; a minimum of influence and contact is essential and necessary for the peaceful co-existence of nations and for the maintenance of peace. Two recent examples illustrate this phenomenon. The United States imposed strong pressure on the government of South Vietnam in order to sign the armistice agreement drafted by the U.S. and North Vietnam and in the most recent Middle-East conflict the parties were forced to end the war under pressure from the two superpowers. Further pressure is currently being used in attempts to bring about a final peace treaty. Thus, economic and political coercion play an important role in the regulation of international conflicts, without being collective measures authorized by organs of the United Nations. A prohibition of the threat or use of force including any kind of political and economic pressure would consequently be a mere illusion and utopian ideal. Even if Article 2(4) of the Charter is not limited to armed force, a subtle distinction has to be drawn vis-à-vis permitted exercises of influence and persuasion.

For further interpretation we may look at the nexus between Article 2(4) and Articles 39 and 51 of the Charter. The Security Council's monopoly over the use of force laid down in Articles 39 and 42 is one of the counterparts of the prohibition of the use of

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[64] Text: YEARBOOK U.N. 1965, at 94; the vote was 109 to none with the United Kingdom abstaining. *See* Onuf, *The Principle of Nonintervention, the United Nations, and the International System*, 25 INT'L ORGANIZATION 209 (1971).

force in Article 2(4). Because of this close relationship it is arguable that the terms "threat to the peace, breach of the peace or act of aggression" in Article 39 constitute a disposition of the "force" prohibited in Article 2(4).[65] Since the majority interprets Article 39 as excluding the use of economic and political pressure,[66] it might follow that Article 2(4) has to be read in a similarly narrow sense. The right of self-defense formulated in Article 51, the other counterpart of Article 2(4), is unanimously interpreted as applying only to an armed attack.[67] As self-defense and prohibition of force correspond with each other in the system of the Charter, the limitation of Article 51 to an armed attack may suggest a narrow reading of Article 2(4).

The arguments discussed thus far leave it uncertain whether political and economic coercion falls within the ambit of the general prohibition of the use of force. This ambiguity may be resolved by recourse to supplementary means of interpretation such as the preparatory work of the Charter and the atmosphere surrounding its conclusion. Among the materials submitted to the conference in San Francisco in 1945 was an amendment promulgated by Brazil which deserves consideration. According to this amendment Article 2(4) should be worded:

> All members of the Organization shall refrain in their international relations from the threat or use of force and from the threat or use of economic measures in any manner inconsistent with the purposes of the Organization.[68]

This amendment was rejected by a vote of 26 to 2.[69] From this legislative history it may be concluded that the delegates in San Francisco opposed the idea of a broadly construed Article 2(4).[70] Nevertheless, the session reports do not support this conclusion: "The Delegate of the United States made it clear that the intention of the Authors of the original text was to state in the broadest terms an

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[65] *See* Wengler, *supra* note 54, at 23 n.31.

[66] *See* VERDROSS, VÖLKERRECHT 694 (5th ed. 1964).

[67] GOODRICH, HAMBRO & SIMONS, CHARTER OF THE UNITED NATIONS 349 (3d ed. 1966); Dahm, *Das Verbot der Gewaltanwendung nach Art. 2 (4) der Uno-Charta und die Selbsthilfe gegenüber Völkerrechtsverletzungen, die keinen bewaffneten Angriff darstellen*, 11 JAHRBUCH FÜR INTERNATIONALES RECHT 48, 52 (1962); Wildhaber, *Gewaltverbot und Selbstverteidigung*, in Schaumann, VÖLKERRECHTLICHES GEWALTVERBOT UND FRIEDENSSICHERUNG 147, 149 (1971), with further references.

[68] 6 U.N.C.I.O Docs. 559 (1945).

[69] *Id.* at 334-39, 405, 609.

[70] *See* Derpa, *supra* note 55, at 123, with further references.

absolute all-inclusive prohibition; the phrase 'or in any other manner' was designed to insure that there should be no loopholes."[71]

According to these remarks the possibility that economic coercion falls within the provisions of Article 2(4) is not absolutely excluded.[72] Even if the vote indicates a certain degree of hesitation by the conference to give the prohibition of force a broad interpretation, one has to bear in mind that the United Nations Charter is no historical monument, but a living instrument which continues to expand due to the dynamic and progressive nature of our international society whose prime objectives is still the maintenance of peace and security.

If we finally examine the practice of the United Nations, the results reached are confirmed; early resolutions of the General Assembly indicate a narrow interpretation on the prohibition of the use of force.[73] More recent resolutions, on the other hand, deal expressly with economic and political pressure and emphatically condemn this kind of coercion. Resolution 2131 (XX) "Declaration on the Inadmissibility of Intervention" has already been mentioned. Other examples are Resolutions 1803 (XVIII) and 2160 (XXI). The latter, "Strict Observance of the Prohibition of the Threat or Use of Force," states:

> Accordingly, armed attack by one State against another or the use of force in any other form contrary to the Charter of the United Nations constitutes a violation of international law giving rise to international responsibility.

Even if these documents are not in themselves a source of international law,[74] and therefore do not impose direct obligations on states, they may, nevertheless, initiate the development of general principles of customary law and are thus useful in interpreting general clauses of the Charter in accordance with the corresponding will of the majority of states.

Before reaching a final conclusion as to the ambit of Article 2(4)

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[71] 6 U.N.C.I.O. Docs. 335, 405 (1945).

[72] *See* von Studnitz, Der erzwungene Vertrag im Völkerrecht unter besonderer Berücksichtigung der Wiener Konvention über das Vertragsrecht 69 (Diss., Cologne 1972).

[73] *See, e.g.*, Res. 376 (V), 378 (V) and 380 (V).

[74] Some modern writers consider that important U.N. Resolutions put direct obligations on states; thus they are likely to be a special source of international law and may constitute some kind of international legislation. For details, see Golsong, *Das Problem der Rechtsetzung durch internationale Organisationen (insbesondere im Rahmen der UN)*, in 10 BERICHTE DER DEUTSCHEN GESELLSCHAFT FÜR VÖLKERRECHT 1-50 (Karlsruhe 1971).

of the Charter, it is useful to recall two other occasions where the general prohibition of the threat or use of force played an important role and where particular consideration was given to economic and political pressure. These were the work of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States and the discussions of the Vienna Conference on the Law of Treaties concerning Article 52 of the "Treaty on Treaties" dealing with "Coercion of a State by the threat or use of force."

The work of the Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation among States

Article 13(1)(a) of the Charter instructs the General Assembly to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification. At first it was mainly the duty of the International Law Commission to fulfill this task.[75] In 1963 a new organ, the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, was created by the General Assembly in Resolution 1966 (XVIII) to work on the fundamental principles of peaceful co-existence among states.[76] This committee was composed of members from twenty-seven states. Some of the principles the committee was instructed to consider were:

> (i) The principle that States 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;
> (ii) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;
> (iii) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter.

The committee held six sessions between 1964 and 1970 which resulted in the formulation of the "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations." This declaration was approved without vote by the General Assem-

[75] For the ILC's history, see BRIGGS, THE INTERNATIONAL LAW COMMISSION (1965).

[76] Onuf, *supra* note 64, at 213 elucidates the political background for this creation: ". . . because of the commission's conservative, 'legalistic' approach to its duties, neither the International Law Commission nor the interested states desired to have the commission assigned this project."

bly in its Resolution 2625 (XXV) at the commemorative session of the United Nation's twenty-fifth anniversary.[77]

The principle concerning the threat or use of force was discussed widely during the committee's sessions. The delegates considered Article 2(4) of the Charter to be general international law, binding not only on member states of the United Nations but on non-members as well, on the basis of customary international law. During the discussions emphasis was given to the question whether the prohibition of the use of force refers to military actions only or if the use of economic and political pressure inconsistent with the Charter was also included. The arguments brought up in the committee were similar to those already mentioned when interpreting the purpose of Article 2(4).[78] Representatives of the developing countries alleged that the use of economic and political coercion is akin to the use of armed force and likely to achieve similar results. As military hostilities become more and more unlikely, developed countries use their economic capacity to obtain their political objectives, and as a result force their will upon weaker states. The Western Powers opposed this view very strongly and argued that politics and economic measures are intermingled and cannot always be separated. A certain degree of uncertainty would be introduced if any kind of economic pressure were prohibited. The sovereignty of states would generally be affected if states were allowed to denounce certain economic measures of another state as "force." Nevertheless, delegates of Western states admitted that a distinction should be drawn between economic pressure used for the purpose of affecting the political independence of other states and other kinds of pressure which are a mere corollary of economic necessities, not being used to obtain these "tainted" objectives.

Although careful and extensive examination was given to the wording of Article 2(4), to its context and relation with other provisions, to its legislative history and development since the entry into force of the Charter, to its object and purpose as well as the current requirements of the world community, no definite conclusion could

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[77] Text: 25 U.N. GAOR Supp. 28, at 121. For the work of the committee see Houben, *Principles of International Law Concerning Friendly Relations and Co-operation Among States*, 61 AM. J. INT'L L. 703 (1967) and Rosenstock, *The Declaration of Principles of International Law Concerning Friendly Relations: A Survey*, 65 AM. J. INT'L L. 713 (1971).

[78] For a summary of the arguments, see DOHNA, DIE GRUNDPRINZIPEN DES VÖLKERRECHTS ÜBER DIE FREUNDSCHAFTLICHEN BEZIEHUNGEN UND DIE ZUSAMMENARBEIT ZWISCHEN DEN STAATEN 54-48 (SCHRIFTEN ZUM VÖLKERRECHT, Vol. 30, Berlin 1973).

be reached. Therefore, the members of the committee in unofficial consultations agreed to exclude this critical question from the principle of the use or threat of force and leave it to the separate principle of non-intervention. Concurrently it was made clear that "that was not to say that all forms of economic and political pressure which threatened the territorial integrity and political independence of another State were permissible: they might well constitute illegal intervention."[79]

Due to these facts the term "force," as incorporated in the principle that states shall refrain from the threat or use of force,[80] is open to future interpretation.[81]

The principle of non-intervention was as widely discussed as the principle concerning the use or threat of force, especially after the General Assembly in December 1965 adopted Resolution 2131 (XX), the "Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty."

The delegates agreed on the point that the principle of non-intervention was not *expressis verbis* laid down in the Charter. But in considering from which of the Charter provisions it might be deduced, the disagreement became obvious. Questions of content and ambit of the principle were the major reasons for this dispute. Representatives of Western states cited Article 2(4), which limited the extent of this principle. Socialist, Afro-Asian and Latin-American delegates put emphasis on Article 1, Article 2(1) and particularly on Article 2(7) of the Charter, in order to give the principle a broad meaning. In relation to Article 2(7), which in prohibiting intervention addresses itself to the United Nations only, it was argued that this provision assumes that in interstate relations, intervention in domestic affairs is all the more forbidden than it would be for the United Nations, which as an international organization is responsible for maintaining peace without self-interest. The U.S. delegate contested this view referring to the interpretation rule *expressio unius est exclusio alterius*;[82] the fact that Article 2(7) men-

[79] Mr. Sinclair of the United Kingdom, U.N. Doc. A/AC. 125/SR. 25, at 12.

[80] Paragraph 1 of the principle reads: "Every state has the duty to refrain in its 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. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues."

[81] *See* DOHNA, *supra* note 78, at 57-58.

[82] Schwebel, U.N. Doc. A/AC. 119/SR. 29, at 8 and SR. 30, at 23.

tions the United Nations specifically, when broader terminology could have been used, is indicative of the narrowness of this provision.

Another critical issue was the introduction of economic and political measures into the principle of non-intervention. With this, Western delegates saw a restriction of political freedom of decision. Nevertheless, they agreed to the interdiction of any kind of economic and political interference. Thus, the final adoption of all principles was not endangered.[83]

The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any state, in accordance with the Charter, reads in sections 2 and 4:

> 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. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of a regime of another State, or interfere in civil strife in another State.
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> Every State has the inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

It is of interest that the passage dealing with subversive measures is already governed by Article 2(4) of the Charter insofar as armed actions are concerned; in the context of non-intervention this language also covers subversive measures of non-military character. Section 4 in particular prohibits any interference or pressure for changing the social or political order in another State. Both sections are of special relevance as far as Chile is concerned.

It is unclear whether this declaration represents a mere recommendation or a statement of binding legal rules. Opinion between members of the United Nations differs in this respect.[84] Neither of these two extremes can be proven correct, but the truth may come closer to the latter.

The Vienna Conference on the Law of Treaties

In 1968 and 1969 the Vienna Conference on the Law of Treaties[85] debated the International Law Commission's Draft Articles on

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[83] DOHNA, *supra* note 78, at 126.

[84] On this issue see Rosenstock, *supra* note 77, at 713-714, and Dohna, *supra* note 78, at 241-64.

[85] Invoked by the General Assembly in its Resolutions 2166 (XXI) of Dec. 1966 and 2207 (XXII) of Dec. 1967.

the Law of Treaties. This draft contained a provision concerning the use or threat of force in the conclusion of treaties which was finally adopted as Article 52 of the Convention on the Law of Treaties.[86] It reads:

> A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

The International Law Commission, when discussing whether the term "force" embraced pressures of an economic or political nature, was unable to arrive at any consensus on this point. Waldock, the Special Rapporteur, therefore, recommended choosing a general "open-ended" formulation:

> [A]ny interpretation of the principle that States are under an obligation to refrain from the threat or use of force in violation of the principles of the Charter, which becomes generally accepted as authoritative, will automatically have its effects on the scope of the rule laid down in the present article."[87]

The Commission, in its commentary on this provision, remarked:

> Some members of the Commission expressed the view that any other forms of pressure, such as a threat to strangle the economy of a country, ought to be stated in the article as falling within the concept of coercion. The Commission, however, decided to define coercion in terms of a "threat or use of force in violation of the principles of the Charter," and considered that the precise scope of the acts covered by this definition should be left to be determined in practice by interpretation of the relevant provisions of the Charter.[88]

The Conference in Vienna did not favor this formulation. Nineteen states introduced an amendment to add the words "including economic and political pressure" after "force."[89]

Major objections were raised by the Western states over this

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[86] On this provision, see Bothe, *Consequences of the Prohibition of the Use of Force*, 27 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 507 (1967); Bindschedler, *Völkerrechtliche Verträge und Zwang*, 21 REVISTA ESPAÑOLA DE DERECHO INTERNACIONAL 309 (1968); Stone, *De Victoribus Victis: The ILC and Imposed Treaties of Peace*, 8 VA. INT'L L.J. 356 (1968); Murphy, *Economic Duress and Unequal Treaties*, 11 VA. INT'L L.J. 51 (1970); and the monographs by V. Studnitz, *supra* note 72, and BROSCHE, *supra* note 56.

[87] YEARBOOK ILC 1966, Vol. II, 19, ¶ 5.

[88] *Id.* at 256, ¶ 3.

[89] U.N. Doc. A/Conf. 39/C. 1/L. 67/Rev. 1/Corr. 1; sponsors: Afghanistan, Algeria, Bolivia, Congo (Brazzaville), Ecuador, Ghana, Guinea, India, Iran, Kenya, Kuwait, Mali, Pakistan, Sierra Leone, Syria, United Arab Republic, United Republic of Tanzania, Yugoslavia and Zambia. See U.N. Conference on the Law of Treaties, Offical Records, Documents of the Conference 172.

amendment. If this language would be added, the scope of the provision would be so wide as to make it a serious danger to the stability of treaty relations and to the doctrine of *pacta sunt servanda.* Investors would regard the amendment as increasing their risks and raising the cost of their respective investments. The amendment was, therefore, likely to hurt those it was supposed to help.[90]

Had it been pressed to a vote, the amendment would surely have been adopted by a clear majority. But the opponents strenously insisted on their position and made it clear that the "adoption of the nineteen states amendment would seriously jeopardize the prospect of producing a convention which would command the support of many delegations."[91] In order to save the work of the conference the sponsors did not insist on putting their amendment to a vote. Informal consultations were held to solve this conflict in hope of reaching an agreement on a declaration to accompany Article 52 of the Convention. This declaration was finally adopted by a vote of 102 to none with four abstentions and forms part of the Final Act of the Conference.[92] It reads:

> The United Nations Conference on the Law of Treaties,
> Upholding the principle that every treaty in force is binding upon the parties to it and must be performed in good faith,
>
> Reaffirming the principle of the sovereign equality of States,
>
> Convinced that States must have complete freedom in performing any act relating to the conclusion of a treaty,
>
> Deploring the fact that in the past States have sometimes been forced to conclude treaties under pressure exerted in various forms by other States,
>
> Desiring to ensure that in the future no such pressure will be exerted in any form by any State in connexion with the conclusion of a treaty,
>
> 1. Solemnly condemns the threat or use of pressure in any form, whether military, political, or economic, by any State in order to coerce another State to perform any act relating to the conclusion of a treaty in violation of the principles of the sovereign equality of States and freedom of consent,
>
> 2. Decides that the present Declaration shall form part of the Final Act of the Conference on the Law of Treaties.

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[90] Kearney (USA), 51st meeting of the Committee of the Whole, U.N. Conference on the Law of Treaties, First Session, Official Records 292, ¶ 51.

[91] Sinclair (United Kingdom), *id.* at 284, ¶ 37. *See also* Partridge, *Political and Economic Coercion: Within the Ambit of Article 52 of the Vienna Convention on the Law of Treaties?*, 5 INT'L LAWYER 755 (1971).

[92] U.N. Doc. A/Conf. 39/C. 1/L. 323, U.N. Conference on the Law of Treaties, Second Session, Official Records, 101, ¶ 13; text: Documents of the Conference, 173, and 285.

This declaration,[93] by influencing not only the development of the future law of treaties, but also the evolving principles in other areas of international law, should be instrumental in the movement to outlaw economic and political pressure in inter-state relations.

Thus we have seen that the world is split on the question of whether the general prohibition of the threat or use of force as formulated in Article 2(4) of the Charter embraces pressures of an economic or political nature. The Western view still confines Article 2(4) to armed force, excluding types of non-military coercion. But current trends are clearly on the side of those who opt for a broader interpretation. Particularly, Asian, African and Latin-American countries are supporters of a broad view, as the debates in the Special Committee concerning Friendly Relations and during the Vienna Conference have shown. Their strong movement to outlaw economic and political pressure will bring about new norms governing the limits of permissible economic coercion; new rules of customary international law will emerge.

Turning back to the Arab oil embarge and the pressure exercised by the United States against Chile, it is perhaps too early to say that these measures were definitely prohibited by Article 2(4) of the Charter. It is amazing that the embargo was imposed by countries which have the strongest voice when the prohibition of economic and political pressure is in question. This fact places some doubt on their credibility. In the case of Chile it may be said that even if Article 2(4) of the Charter was not violated, the principle of non-intervention was, nevertheless, affected.

The Principle of pacific settlement of disputes in Article 2(3) and Chapter VI of the Charter

Considering related provisions of the Charter of the United Nations which might be of relevance in this matter, we have to take into account that the obligation of Article 2(4) is completed by section 3 of the same article which provides that:

> [A]ll members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

This refers to Chapter VI of the Charter on "Pacific Settlements of Disputes," particularly Article 33. "Peaceful settlement" is a logi-

[93] In addition a resolution was adopted in order to bring this declaration to the attention of all states and give it the widest possible publicity and dissemination.

cal corollary of the principle that states shall refrain from the threat or use of force set forth in Article 2(4).

Maintenance of international peace and security through peaceful settlement is one of the primary purposes of the United Nations.[94] For this reason the Charter imposes upon members the obligation to settle their international disputes by peaceful means. But the principle as stated in Article 2(3) assumes that a "dispute" exists; similarly the title of Chapter VII refers to disputes; Articles 34, 35 and 36 use the somewhat broader language "or any situation which might lead to international friction or give rise to a dispute. . . ." A dispute has been defined as a "disagreement on a point of law or fact, a conflict of legal views of interest between two persons."[95] It has also been characterized by Fawcett, in the "Sub-Committee on International Co-operation in the Political Field," as:[96]

> a disagreement; in other words, there must be a controversy between the parties. This takes the form of claims, which are met with refusals, counter-claims, denials or countercharges, accusations etc.

This definition certainly applies to the situation in the Middle East. The Arab states objected to the United States' policy towards Israel during the Yom Kippur War and imposed the embargo in an attempt to modify this pro-Israel policy. The situation in Chile was quite different. The mere fact that the Allende government followed a socialist policy did not constitute a dispute of an international character. It would be absurd to allow one state, seeking to change the political and economic situation of another state, to declare its political intention to be an international dispute, thus, forcing the other state to settle the controversy through negotiations. Such an interpretation would be contrary to the principle of non-intervention which protects this area of domestic jurisdiction from any interference. The nationalization of the copper mines, on the other hand, affected American interests, and in this respect the existence of a dispute certainly cannot be denied. This dispute was not of a mere private nature. The excess-profits doctrine made it a matter of international concern, as the general standards of compensation were affected.

Article 33 of the Charter explains the general obligation stated in Article 2(3) in greater detail. It refers to disputes, "the con-

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[94] See Art. 1(1) of the Charter.

[95] PCIJ (Mavrommatis-Case) Ser. A/No. 2, p. 11.

[96] 5 U.N. GAOR Supp. 14, at 6, U.N. Doc. A/1388 (1950).

tinuance of which is likely to endanger the maintenance of international peace and security" and enumerates various procedures for their settlement: *i.e.*,

> Negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice.

Even if this list is not considered to be exhaustive, it is quite clear that embargoes, boycotts, blockades, reprisals, or other kinds of economic and political pressure do not constitute procedures of pacific settlement. They are not peaceful means and not appropriate for the solution of disputes. The use or imposition of such measures would constitute a violation of the obligation to settle international disputes by peaceful means.

The principle of Article 2(3) was one of those which the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States took into consideration for the progressive development and codification of international law. In the committee's declaration as approved in Resolution 2625 (XXV) by the General Assembly, this principle is further interpreted in the following language:

> States parties to an international dispute, as well as other States, shall refrain from any action which may aggravate the situation so as to endanger the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the United Nations. International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality.[97]

The clause prohibiting any action which may aggravate a dispute shows clearly which measures are not considered to be peaceful. Further, the passage dealing with sovereign equality reads in its original draft: "International disputes shall be settled on the basis of the sovereign equality of States, in the spirit of understanding and without the use of any form of pressure."[98] Due to these facts it becomes evident that the use of any kind of pressure is contrary to the principle of peaceful settlement of disputes.

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[97] Sections 4 and 5 of this principle.

[98] *See* DOHNA, *supra* note 78, at 151.

CONCLUSION AND OPINION

This examination of whether economic and political pressure may be used in international relations was limited to possible violations of the Charter of the United Nations. In concentrating on this document other material dealing with these questions has been left aside. Without becoming a thorough examination, brief mention should, nevertheless, be made of this other material, to correlate it to the analysis of the Charter, *supra*.

Articles 15 and 16 of the Charter of the Organization of American States state:

> 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 a State or against its political, economic and cultural elements.
>
> 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 it advantages of any kind.

It is questionable whether these provisions are of any relevance outside the Western hemisphere.[99] But they obviously deserve further consideration in the relations between Chile and the United States, as both countries are members of the OAS and, therefore, bound by the provisions of its Charter.

Turning to the GATT which was mentioned in Professor Gardner's speech, one finds specific rules of economic conduct.[100] These provisions even provide a form of dispute settlement for illegal economic coercion.

Several conferences and meetings were concerned with pressures of an economic and political nature. The Afro-Asian Conference at Bandung (1955) gave in its Final Communiqué approval to a renunciation of any kind of pressure.[101] The Conferences of Heads of State or Government of Non-aligned Countries, held 1961 in Belgrade and 1964 in Cairo, and the tripartite meeting of 1966 in New Delhi between President Tito, President Nasser and Prime Minister Indira Ghandi, singled out economic and political pressure as a form of force exercised by certain powers over developing countries and

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[99] *See* Derpa, *supra* note 55, at 133; and THOMAS, THE CONCEPT OF AGGRESSION IN INTERNATIONAL LAW 90 (1972).

[100] On this issue, see Bowett, *supra* note 50, at 4-5.

[101] Principle 6(b); *see* Sasse, Die asiatischafrikanischen Staaten auf der Bandung-Konferenz, Dokumente vol. 27 (Frankfurt/Berlin 1958), p. 75.

further condemned the use of economic and financial aid as an instrument of pressure.[102] These denunciations cannot in themselves establish international rules because they still lack universal assent, but they will contribute to the development of customary international law.

In light of the foregoing examination, the use of economic and political coercion in international relations, as it occurred during the Arab oil embargo and before Allende's overthrow in Chile, *is* inconsistent with the Charter of the United Nations. The general prohibition of the threat or use of force as formulated in Article 2(4) is, from the Western viewpoint, still confined to military and armed force. But as the evidence presented in previous sections indicates, current trends are clearly towards a broader interpretation of this principle. To disregard these events is to ignore the change that is taking place in contemporary international law. Furthermore, it may be argued that, in certain cases, measures of an economic and political character which equal armed force in their results fall within the ambit of Article 2(4). It is difficult to tell whether the oil embargo and the Chilean situation constitute measures of this kind. They are certainly on the borderline and contrary to the spirit of the Charter. The Chilean case may even be contrary to the principle of non-intervention.

As far as Article 2(3) and Chapter VI of the Charter are concerned, it is beyond doubt that any kind of pressure is contrary to the principle of pacific settlement of disputes. The obligations imposed by these provisions were consequently violated in both cases.

It is evident that states have become more interdependent in economic relations despite failure to develop and agree upon fundamental principles of economic justice. To a certain extent economic warfare is still accepted by many countries as a means of regulating interstate relations and obtaining political goals. The differences in strength of economic power between rich and poor countries make it easy to use this weapon. In addition, even though the developing states, many of which are newly independent, seem to be the staunchest advocates of the outlawing of economic and political pressure, they sometimes find themselves having recourse to these kinds of coercion. Therefore, we are still far from a total denunciation of economic warfare.

Lastly, it might be suggested that organs of the United Nations

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[102] For further examples, see GOODRICH, HAMBRO & SIMONS, *supra* note 67, at 42, n.62.

become more involved in settlements of disputes such as those discussed. Article 11 of the Charter specifically authorizes the General Assembly to discuss and make recommendations on questions related to the maintenance of international peace and security whenever the Security Council is unable to discharge its primary responsibility. Article 14 makes it clear that the General Assembly may also recommend measures for the peaceful adjustment of other types of situations which might impair the general welfare or friendly relations among nations. Article 34 finally gives the Security Council authority to investigate any dispute, or any situation which might lead to international friction or give rise to a dispute. The significance of these articles cannot be overstressed. They constitute the basis for pacific settlements of disputes through United Nations' organs and in addition, can be invoked for the denunciation of economic and political pressure in international relations.