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The Law of Economic Sanctions

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OVER THE YEARS, THE EXERCISE OF MILITARY FORCE to accomplish national or international objectives has become ever less acceptable and, in many instances, legally or politically objectionable. Consequently, the alternative of relying on economic sanctions has become more attractive. Indeed, the current decade has seen more instances of internationally organized economic boycotts than has probably all of recorded history, while at the same time individual national exercises of systematic economic pressures have also increased.

As a result, there are by now sufficient instances in which economic sanctions have been, and in some instances are still being, implemented that some tentative conclusions concerning their effectiveness can be drawn and the many legal problems that have, sometimes unexpectedly, arisen can be examined. This study will concentrate on the latter, while questions concerning effectiveness will be considered only in the context of whether a low degree of effectiveness may be relevant to the legality of particular measures and of legal and administrative steps that might be taken to increase effectiveness.

"Economic sanctions" will be dealt with in a broad sense—that is, all means of exercising pressures short of the threat or use of military force directly against a target State or entity. Thus, aside from strictly economic measures,

pressures exercised through breaking or reducing diplomatic, cultural, or communication ties will be considered.

The purpose of the pressures to be considered here must be to induce compliance with some international obligation that the target State has failed to observe. Collective sanctions for essentially punitive purposes have no accepted place in international law, and the question of the legality of individual national reprisal, retorsion, or retaliation will not be considered here. Nor will this study address the question of the legality of applying economic pressure as part of diplomatic bargaining. The pressures that will be examined range from a mere refusal to trade or to maintain certain economic, cultural, or diplomatic relations, to pressures on others to do likewise (secondary boycotts), as well as the use of force to prevent trading between the target State and third parties.

The Right to Impose Economic Sanctions

Rights of Individual States. Article 2(4) of the United Nations Charter prohibits all UN members from resorting to the threat or use of force against the territorial integrity or political independence of any State (i.e., UN member or not). Though the point was not explicitly stated, the word "force" in this context was at least initially generally understood to refer only to military force.[1] It is, however, necessary to examine whether this restricted meaning still prevails or whether some additional grounds have been developed for proscribing the exercise of other types of pressures by UN members against the political independence of any State.

Over the years, various international organs, and particularly the UN General Assembly, have adopted a series of solemn resolutions that, *inter alia*, are designed to delegitimize the use of economic force by individual States. One of the first of these was the 1965 "Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty," which declared that

> No State may use or encourage the use of economic, political or other types or 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.[2]

Precisely the same text was repeated in the 1970 "Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations,"[3] which is widely accepted as an authoritative interpretation of the UN Charter. A similar

text appears in the 1980 "Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States."[4]

In 1995 the General Assembly adopted a resolution on "Economic Measures as a Means of Political and Economic Coercion against Developing Countries."[5] In it the Assembly expressed grave concern "that the use of coercive economic measures adversely affects the economy and development efforts of developing countries and has a general negative impact on international economic cooperation" and urged

> the international community to adopt urgent and effective measures to eliminate the use by some developed countries of unilateral coercive measures against developing countries which are not authorized by relevant organs of the United Nations or are inconsistent with the principles contained in the Charter of the United Nations, as a means of forcibly imposing the will of one State on another.

In 1996 the General Assembly adopted a further resolution to similar effect, under the title "Elimination of Coercive Economic Measures as a Means of Political and Economic Compulsion."[6] In 1997 it adopted by near unanimity a resolution on "Unilateral Economic Measures as a Means of Political and Economic Coercion Against Developing Countries"—in which it largely repeated the 1995 language but added contravention of "the basic principles of the multilateral trading system" as an additional ground for eliminating "the use of unilateral coercive economic measures against developing countries"—as well as an even stronger though more limited resolution on "Human Rights and Unilateral Coercive Measures."[7]

Consequent on the 1995 resolution, the UN Secretariat in the summer of 1997 convened an *ad hoc* expert group meeting on "economic measures as a means of political and economic coercion against developing countries."[8] That group concluded, under the heading of "basic legal norms," that

> the basic principles of international law . . . as set out in the Charter of the United Nations, elaborated in a number of international legal instruments and backed by declarations adopted by international conferences, proscribe . . . the imposition of coercive economic measures as instruments of intervention in matters that are essentially within the domestic jurisdiction of any State.[9]

The allowable exceptions the group recognized from this general prohibition include: multilateral economic sanctions mandated by the Security Council (to which most of the balance of this study is devoted); other situations where the Security Council has determined the existence of a threat to the peace, breach

of the peace, or act of aggression; where the Security Council has merely recommended economic sanctions, provided that any limits specified by the Council are observed; where the General Assembly recommends sanctions by consensus or by large majorities over a period of time; certain instances where regional organizations impose economic sanctions for cause against their own members; where one or more States adopt unilateral measures in response to a clear violation of universally accepted norms, standards, or obligations, provided these States are not seeking advantages for themselves but are pursuing an international community interest; and where the economic measures constitute proportional countermeasures by a State for a prior injury, provided *inter alia* that the measures are not designed to endanger the territorial integrity or political independence of the target State.[10]

In this connection it should be noted that the international community, as represented by the UN General Assembly, has in the past several years and by increasing majorities (in 1997, by 143 in favor and three against) adopted ever-stronger resolutions of condemnation of the economic sanctions imposed by the United States against Cuba.[11]

It may thus be concluded that, as the twentieth century reaches its close, at least *de lege ferenda* no State may any longer claim a general legal right to impose economic sanctions against other States, except perhaps in situations where the coercion is exercised in the interest of the international community and the latter supports or at least does not strongly oppose the measures in question.

Role of International Organizations. Generally speaking, intergovernmental organization (IGOs) cannot take any steps vis-à-vis third parties that would not be within the authority of their members. However, if an organization exercises coercive measures against one of its members and in accordance with its constitution, then it may be said that that State has consented to such exercise by becoming a member of the organization and a party to its constituent treaty.

Even so, if the IGO in question is a "regional arrangement or agency" within the meaning of Chapter VIII of the UN Charter, then it may be bound by the requirement in Charter Article 53(1) that any enforcement action taken by a regional IGO requires the authorization of the Security Council. It should, however, be noted that in actual practice such IGOs (including the Organization of American States (OAS) and various regional African organizations, such as The Economic Council of West African States (ECOWAS)), have sometimes failed to secure such authorization, at least in advance, and the Council has not actually condemned them for that.

Aside from regional organizations, there are other IGOs whose charters allow them to impose economic penalties on members under certain circumstances. These IGOs include the International Atomic Energy Agency, which is authorized to impose certain nuclear sanctions on States that violate its safeguards—though for serious penalties it must turn to the Security Council.[12] Other treaties, such as the Montreal Ozone Protocol[13] and the Chemical Weapons Convention,[14] do establish IGOs, but the restrictions they impose that prohibit members from trading with non-cooperating nonmembers or with members in violation of certain treaty provisions, in materials covered by the respective treaties, do not generally involve these IGOs in sanctions decisions; rather these provisions are designed not so much to be coercive or punitive but to allow the undisturbed functioning of the regimes established by the treaties without giving an undue advantage to States not participating in them. They will not be explored further here.

The Obligation to Participate in International Economic Sanctions

In contrast to the general prohibition against States imposing unilateral economic sanctions against other States, when economic sanctions are decreed by the UN Security Council pursuant to Article 41 of Chapter VII of the UN Charter, all members (except any that might be exempted pursuant to Charter Article 48(1)) of the Organization are required to participate in such collective measures. This obligation flows from Articles 2(5), 25, and 48(1) of the UN Charter, by which all members are bound. As for nonmembers, Article 2(6) foresees that these too shall be required to cooperate, and in practice the few nonmembers (notably Switzerland) have done so voluntarily. While other IGOs cannot be commanded directly by the United Nations (though at least the "specialized agencies" and certain others have undertaken through relationship agreements to give serious consideration to UN recommendations), their members are required by Charter Article 48(2) to ensure their cooperation. Finally, private persons (natural or juridical), as well as NGOs (which are established and operate under some nation's law), must be required by their respective countries to conform to sanctions imposed by the Security Council.

It should be noted that the Charter generally allows no exception or excuse for noncooperation with sanctions—except that the Security Council can (though it only most exceptionally does[15]) in effect exempt one or more member States under Article 48(1). However, unless the Council does so, a State cannot raise the argument that compliance with a particular measure

ordered by the Council would violate a prior treaty or contractual obligation—for under Charter Article 103 a member's obligations under the Charter must prevail over those under any other international agreement.[16] Although Article 50 of the Charter recognizes that States may, as a result of carrying out sanctions measures ordered by the Security Council, find themselves confronted with special economic problems, such problems do not permit these States to exempt themselves from compliance but only afford them the right to consult with the Council regarding a solution to these problems.[17]

Finally, the question could be raised—though so far this has never formally been done—of whether a UN member could refuse to participate in the imposition of sanctions on the ground that these violated some higher norm, such as binding provisions of humanitarian law (a question that has been raised with respect to Iraq and will be examined below) or perhaps the "inherent right of self-defence" referred to in Charter Article 51 (a question that was raised with respect to Bosnia). It should be noted that there is no provision for definitively settling a dispute between the Organization or one of its organs and a member State. From the UN's point of view, it would necessarily have to insist that determinations of the Security Council are binding and that members have obligated themselves to comply with them. The Council or the General Assembly could request an advisory opinion of the International Court of Justice, either on that issue of principle or on the legitimacy of a particular Security Council action, but the Court's opinion would not be binding unless the State(s) concerned had agreed to accept it as such.

The Imposition of Mandatory Economic Sanctions[18]

The authority of the UN Security Council to impose mandatory economic sanctions constitutes part of a regime for the maintenance of international peace and security, set out in some detail in the Charter, which in turn is based on a considerably less detailed provision of the Covenant of the League of Nations. Article 16(1) of that instrument provided that if any League member resorted to war against another member, all other members were immediately and automatically to subject the former to a severance of all trade and financial relations, prohibit all intercourse with its nationals and prevent all financial, commercial, or personal intercourse between them and the nationals of the offending State.[19]

Formal Requirements. Under the UN Charter, the imposition of economic sanctions is by no means automatic, but is part of a graduated scheme set out in Chapter VII that remains at all times under the control of the Security Council. The first step must be a determination by the Security Council under Article 39 of "the existence of any threat to the peace, breach of the peace, or act of aggression."[20] Although in many instances (e.g., Iraq's invasion of Kuwait) the validity of such a determination is not in doubt, in others (such as the disintegration of the Somali government) the determination appears to have been made solely for the, arguably laudable, purpose of allowing humanitarian intervention in a country needing such assistance but not having any government in a position to request it.[21] On the other hand, the determination by the Council that the refusal of Libya to extradite two of its citizens to Scotland or the United States for trial in the Lockerbie case constituted a threat to or breach of the peace[22] appears to have been merely a device to enable three permanent members of the Council to reinforce their political demands by the imposition of worldwide economic sanctions.[23] Such determinations have raised the cry, in both academic and in some diplomatic circles, that the Council is exceeding its authority and that there appears to be no mechanism for preventing actual or possible abuses thereof.

Having made a determination under Article 39, the Council may at the same time, pursuant to that article and Article 40, "call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable." If it does so, the Council is to take account of any failure to comply with such recommended measures.

Whether or not any provisional measures have been called for or complied with, the Council may, under Article 41, decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call on UN members to apply such measures. Unless otherwise clearly specified (e.g., that the Council is merely making a recommendation or that it is not addressing itself to all members), such a call is binding on all members. These measures "may include complete or partial interruption of economic relations and of rail, sea, air, postal telegraphic, radio, and other means of communication, and the severance of diplomatic relations." As will be pointed out below, the Council can adjust these measures from time to time. It can also impose certain measures not explicitly listed in the Charter catalogue.

Should the Council consider that measures short of force are likely to be inadequate or have proven to be so, the Council may under Article 42 move to take military actions. These will not be examined in this study and are

mentioned here only to illustrate that economic sanctions do not stand alone but are part of a panoply of measures that the Council can deploy when faced with threats to or breaches of the peace, or with acts of aggression. It should be noted that the Council has considerable flexibility in doing so and is not bound (except for making the initial determination under Article 39) as to the sequence of the measures it may take. Nor is it required to restrict itself to one or the other at a time; however, before moving to military measures, it must make a determination that economic ones are not adequate to accomplish their purpose.

In connection with the imposition of economic (or for that matter, military) sanctions, the Charter does not require that the Council give a formal warning to the target State. However, the General Assembly has recently recommended to the Council that a warning in unequivocal language should be given.[24]

All decisions of the Council under Chapter VII—indeed all its substantive decisions—require the affirmative vote of at least nine (of the fifteen) members of the Council, "including the concurring votes of the [five] permanent members." In spite of this apparently clear language, the Council has since its very first year determined that only a negative vote by a permanent member constitutes a veto—that an abstention does not.[25] Thus, in theory, a decision of the Council could be taken by just nine of the non-permanent members, with all the permanent members abstaining. In practice decisions under Chapter VII are normally taken by near unanimity, especially of the permanent members. The same is true of all decisions that change a sanctions regime, whether to make it stiffer or easier, or to suspend or terminate it. The consequences of this custom are explored below.

The Practice of the Security Council. The Security Council has imposed mandatory economic sanctions infrequently. Each instance differs in at least some interesting aspects from the others. They are, in the order of the date of initial imposition, as follows:

- *Southern Rhodesia*: 1965 arms and oil embargo and a break in economic relations—terminated in 1979 on reaching the agreement, under the auspices of the British government, that established Zimbabwe.[26]
- *South Africa*: 1977 arms embargo—terminated in 1994 on assumption of power by the new government.[27]
- *Iraq*, in connection with the invasion of Kuwait: 1990 comprehensive economic embargo on exports and imports, especially on export of oil—still in force subject to certain exemptions.[28]

- *Yugoslavia*: (1) 1991 general and complete arms embargo on the Socialist Federal Republic of Yugoslavia (SFRY), continued after its dissolution in respect of all the successor States—phased termination started in November 1995; (2) 1992 complete economic embargo (including flights, sporting and cultural events) on the Federal Republic of Yugoslavia (FRY) and later also and especially on the Republika Srbska (the so-called Serb State in Bosnia and Herzegovina)—first hardened and later eased, suspended from time to time and then finally terminated in 1996.[29]
- *Somalia*: 1992 embargo on all arms deliveries.[30]
- *Libya*, in connection with the investigation of two airplane bombing incidents: 1992 arms and air embargo, reduction of diplomatic missions, later freezing of funds and embargo on importation of oil equipment.[31]
- *Liberia*: 1992 arms embargo.[32]
- *Haiti*: 1993 oil and arms embargo, suspended and reinstated several times, and terminated in 1994 on return of the Aristide government.[33]
- *Angola*: 1993 arms and petroleum embargo against UNITA (anti-government faction) and 1997 travel restrictions on high UNITA officials;[34]
- *Rwanda*: 1994 arms embargo—partially suspended in 1995 and terminated in respect of the government in 1996, but continued against anti-government forces;[35]
- *Sudan*: 1996 diplomatic sanctions and later an air embargo;[36] and
- *Sierra Leone*: 1997 arms and petroleum embargo and ban on travel by senior personnel of the coup-installed government, terminated in 1998 on the return of the elected President.[37]

On the basis of these instances, a number of relevant practices of the Security Council can be discerned. But first, a more general observation may be in order. Except for two minor instances, almost all economic sanctions were imposed in the first half of the 1990s. These were the years in which, as a result of the sudden disintegration of the Soviet Union and great political weakness in China, the Cold War suddenly ended, leaving the international diplomatic field at least temporarily to the Western allies and in particular to the United States. At the same time the United Nations, freed of the former political constraints and buoyed by the successful Namibia operation in 1989-1990, put into the field an entirely unprecedented number of peacekeeping operations—some of which were also supported by sanctions regimes. As it turned out, neither the infrastructure of the UN Secretariat nor that of the Security Council was really up to this tremendous expansion of business.[38] Thus peacekeeping operations were launched and economic

sanctions imposed without any significant studies of their objectives, means for accomplishing them, collateral harms that might result, or exit strategies. By the mid-1990s these faults were becoming evident. Even though the Council itself seemed reluctant to change its ways (in part because it was constantly busy with day-to-day decision-making), other UN organs, particularly the General Assembly, have confronted the Council on some of these issues and demanded reforms. These proposals too are reflected in the analysis below.

Decision-making by the Security Council. Decisions concerning sanctions—as is true of most decisions during the past decade—are taken by the Security Council in private consultation with all Council members, in most instances probably preceded by unofficial meetings among some or all of the permanent members. Only after a decision has been reached to accept the text of a particular draft resolution (whether the decision takes hours or weeks of negotiations) is a public meeting held at which the President (who rotates each month) announces that agreement has been achieved on a text, which is then distributed in public. A formal vote of the Council is then taken. After that vote, some or all of the members may make explanatory statements. At the same meeting, before or after the vote, nonmembers of the Council (in particular the States especially concerned) are invited to make statements. They evidently have no influence on the vote, because the decision on the draft resolution has already been taken: very rarely is a resolution brought to a public meeting and vote that is not assured of adoption, because of either insufficient votes or a veto by one or more permanent members. Council decisions of lesser import are increasingly taken in the form of presidential statements. Also negotiated in private consultations, these are issued only when a consensus[39] formulation can be agreed on; however, decisions imposing, changing, suspending, or terminating sanctions are invariably taken in the form of formal resolutions.

This Council procedure has come under growing criticism by member States without a seat on the Council, and complaints are often heard in the General Assembly, especially in its Special Committee on the Charter of the United Nations and on Strengthening the Work of the Organization. Though the Council President of the month now regularly holds briefings after every private consultations meeting, calls for increasing transparency and more effective participation by nonmembers of the Council continue.[40]

Suspension and Termination of Sanctions. The precise conditions relating to each sanctions regime are spelled out in the relevant Security Council

resolutions, which may be amended from time to time to improve clarity, add or remove conditions, or provide for *ad hoc* or long-term suspensions or ultimately for termination. One point that has come under increasing criticism by target States and the General Assembly itself is that although sanctions are imposed in connection with some target State noncompliance with demands made by the Council, the conditions for termination of the sanctions are by no means always clear. In particular, in complex situations, in which sometimes dozens of Security Council resolutions and an equal number of formal presidential statements are made over a period of years (e.g., in respect of Iraq and the Gulf War, or in respect of the Former Yugoslavia), with an equal or greater number of reactions by the target States, the direct connection (if one ever existed) between particular Council demands, State reactions, and sanctions measures may be obscured or lost. In such cases the members of the Council, and in particular the permanent ones, may disagree as to whether and when the target State has met the conditions for the easing, suspending, or terminating of sanctions.

In this connection it should be noted that sanctions resolutions have, with very few exceptions, been adopted without any built-in time limits (i.e., "sunset" provisions). This contrasts sharply with the practice that has evolved in respect of peacekeeping operations, whether of the "Chapter VI and a half"[41] or the Chapter VII variety. These have, since the collapse of the First United Nations Emergency Force (UNEF I), always been approved for only relatively short periods: normally six months, in a few instances shorter, rarely longer. At the end of any such specified period the force is discontinued automatically unless agreement can be reached on an extension; a resolution that so provides is, of course, subject to veto by any permanent member.

With respect to several of the long-term sanctions regimes, in particular those still covering Iraq and Libya, and formerly the ones relating to Yugoslavia, it appears clear that if a resolution to extend them without significant change had to be put to the Council, it would fail—sometimes because objective conditions have significantly changed, and sometimes because of altered political perceptions and alignments of the Council's permanent members. However, because sanctions regimes have no sunset provisions, those who wish to terminate or modify them bear the burden of convincing all permanent members not to veto such a change. It seems likely that in the future the Council will not adopt significant sanctions regimes without sunset provisions, because certain permanent members, and perhaps some nonpermanent ones, will not consent to approving new open-ended control regimes.

One factor that may contribute to such a change is the gradual recognition of the reality that in spite of the Charter obligations of all UN members to comply with Security Council-ordered sanctions, when a particular control regime gradually loses its legitimacy (either because many States consider that the target State has complied sufficiently with reasonable demands of the Council, or because the burden caused by the sanctions on either the target or on other States [discussed below] is considered excessive), the necessary cooperation of States diminishes and gradually disappears. As a particular sanctions regime thus visibly crumbles, even its most ardent supporters may see the advantage of negotiating a formal termination rather than tolerating, perforce, the informal disappearance of the regime, with the bad example that may set for continuing respect for other, more important ones.

In 1997 the General Assembly adopted a resolution,[42] following extensive consideration especially in the Informal Open-Ended Working Group on the Agenda for Peace, reflecting a number of major and minor dissatisfactions with the practices of the Security Council regarding the imposition of economic sanctions. In that resolution, which is not binding on the Council,[43] the Assembly *inter alia* recommended that "[t]he Council should define the time-frame for sanctions regimes taking [specified] considerations into account" and that the "steps required from the target country for the sanctions to be lifted should be precisely defined" by the Council.[44]

At present, with respect to the open-ended regimes, the burden is effectively on those wishing to terminate them to offer proposals acceptable to the permanent members that wish to maintain them. Sometimes decisions have been taken to suspend these regimes, either for short, renewable terms (which permits the proponents of a particular regime to veto each further extension of the suspension)[45] or indefinitely, in contemplation of an eventual termination but still allowing automatic reinstatement if a negative report is received from a designated official.[46]

Formal Targets of Sanctions. Normally, States are the targets of economic sanctions imposed by the Security Council. There are exceptions. For example, in imposing sanctions in respect of Angola, the Council targeted not the country as a whole but only the UNITA rebels that continued to fight the government in spite of several negotiated and agreed cease-fires.[47] Starting in September 1994, the Security Council imposed special sanctions in respect of the Republika Srpska,[48] the unrecognized Serb State established within Bosnia and Herzegovina.

In other instances, the Security Council, having concluded that undifferentiated sanctions may only injure the powerless masses (see below), has targeted especially governmental elites whose behavior caused the international offense for which sanctions were imposed and who may be in a position to bring the country into compliance. For example, in employing economic sanctions to neutralize a military coup against the elected government of Sierra Leone, the Council, *inter alia*, ordered all States to prevent the entry into or the transit through their territories of "members of the military junta and adult members of their families."[49]

Enforcement of Sanctions. Although all UN members are required to comply with economic sanctions imposed by the Security Council, the enthusiasm of these States for carrying out their assigned tasks in any given case is likely to be uneven. Some are economically deeply involved with the target State and apt to suffer painful economic losses (see below). Others may, on principle or for particular political reasons, not be in agreement with the Council as to the imposition or the continuation of sanctions. Also, some States may not really be in full control of their nationals, who might take advantage of an official breach of trade relations in order to smuggle goods at a profitable markup. These States may also lack the domestic legal mechanism for banning their nationals from forbidden trading and must install it (perhaps through parliamentary action) before it can be effective.

For all these reasons, fully voluntary compliance is apt to be an uneven affair, with immediate compliance low but strengthening over time, until perhaps international enthusiasm for the sanctions regime flags and compliance slips again.[50] In imposing sanctions, the Security Council therefore normally requests States to report on the legal and practical measures that they have taken to comply, and to require their nationals to do so. In most instances the Council also establishes a Sanctions Committee (see below), whose primary charge is to monitor compliance with sanctions, partly on the basis of the reports received from States. These are naturally likely to be somewhat self-serving and States in serious noncompliance are apt to fail to submit reports at all. The Committee is normally also authorized to receive reports, usually from other States, about instances of noncompliance.

In some instances the Security Council has established formal control mechanisms, in particular by authorizing interested States to monitor sea lanes leading to the target country.[51] When that country also has land borders, and especially if transit trade passes through it which the Council is not eager to disrupt, monitoring becomes more difficult. This was especially true in respect

of the sanctions imposed on the FRY, and even more particularly of those on the Republika Srpska, which shares a long border with the FRY. Though various attempts were made, the sanctions on Yugoslavia, while not entirely ineffective and in many ways painful, were notoriously leaky.[52] In its recent resolution on sanctions, the General Assembly emphasized the importance of compliance by member States and made various recommendations concerning their role as well as that of the Council in improving monitoring of and compliance with sanctions.[53]

At times, the Security Council has authorized a form of blockade designed to prevent forbidden cargo from entering or leaving the targeted State.[54] Typically, such measures are easier to maintain along a sea coast than along a land border. It should be noted that such a use of military force is generally not considered to be an exercise pursuant to Charter Article 42, but rather a means of implementing economic sanctions ordered under Article 41 and carried out under the aegis of that provision.

Sanctions Committees. In connection with almost every sanctions regime, the Security Council has established a Sanctions Committee as a subsidiary organ of the Council. The structures of all these bodies are essentially identical: all fifteen members of the Council are represented, which means that each year five of the nonpermanent members are replaced. The actual participants are lower-ranking members of the respective delegations. In the case of the United States and some of the other permanent Council members these representatives are specialists in sanctions questions and are supported by an appropriate infrastructure (i.e., contacts in the Departments of State, Defense, Treasury, Commerce, and probably the intelligence community), while the nonpermanent members are mostly represented by junior-level diplomats working part-time on these issues. As a number of such Committees function at the same time, the total burden of participation can be heavy. The chairmen of these Committees are chosen from among the nonpermanent members and serve for at least a year (unlike the monthly rotation of Council Presidents). The Secretariat generally services these Committees in only a formal way (i.e., arranging for meetings and for the flow of documentation), without substantive support in terms of economic or other analysis. As the composition of each Committee is identical to that of the Council, formal reports are rare (each representative presumably keeps his delegation sufficiently informed). This arrangement deprives the rest of the UN membership of insight into the work and decisions of these important bodies. Accordingly, and although annual reports from each Committee to the Security Council are now required,[55] a

General Assembly resolution has called for greater transparency in their work.[56]

The Committees work by consensus, with certain decisions normally taken on a no-objection basis. In particular, those decisions authorizing humanitarian shipments are circulated to all Committee members. If none objects within a given time frame, they are deemed approved; however, any representative may put an indefinite hold on any approval, without stating a reason. Under the consensus rule such a hold cannot be broken without the consent of the objecting representative.

Each Sanctions Committee receives special assignments in the Council resolution establishing it; subsequent resolutions often expand these assignments. In general, the tasks are the following:

- To monitor the implementation of sanctions, by reviewing the compliance reports submitted by States and considering information received from other States about violations, and by reporting violations to the Council[57]
- To consider applications for exceptions and exemptions provided for by the Council, mostly for humanitarian purposes (see below)[58]
- To consult, on behalf of the Council, with States alleging special economic problems arising out of their compliance with sanctions (see below).[59]

In recent years the Council has also required the Committees to promulgate guidelines to inform those concerned about the application procedures and the circumstances in which these and other types of relief are apt to be granted. A General Assembly resolution has called on the Council to make the mandates of the Committees more precise, to take account of what can be fulfilled in practical terms, and to specify standard approaches to be followed by the Committees.[60]

These Assembly recommendations reflect the fact that over the years dissatisfaction with the performance of the Sanctions Committees has grown. In part, this has been due to their insufficiently precise mandates, to the sheer volume of work in dealing with numerous applications, and to a general unresponsiveness to apparently legitimate concerns of target States and of nontarget States injured by the sanctions regime. The Council itself has responded to some of these criticisms by issuing guidelines in the form of a series of presidential notes in 1995–1996,[61] but the Assembly believes these have not solved all problems.[62]

Impact of Economic Sanctions on the Designated Targets

Objectives and Types of Sanctions. The general objective of sanctions is to induce compliance by the target State (or other entity) with the Security

Council demands for particular actions to be taken or discontinued in order to eliminate threats to or breaches of the peace, or acts of aggression.

Some sanctions, in particular arms embargoes, are meant to disable or at least to restrict a government or some other target entity from continuing effectively the proscribed conduct. The prospects of success depend on the extent to which the target authorities are dependent on major and relatively sophisticated weapons systems, whose flow can most easily be controlled. Embargoes on the import of petroleum and other oil products may also have the effect of hindering a war machine heavily dependent on such imports.

For the most part, however, sanctions are designed to exert general pressures on the economy of the target country in the hope that rational considerations will cause the government or the ruling elite to yield on the issues of concern to the Council so as to relieve the pressures on the economy. Unfortunately, this calculation rarely works, for the target States are almost always authoritarian (sometimes it is the very authoritarian and illegitimate nature of the government that provokes the imposition of sanction), in which the general population may suffer, sometimes severely, without being able to induce its government to change its course. As discussed below, if the pressures on the general population become, or at least are deemed to have become excessive, this may raise legal or at least public relations concerns making it difficult for the world community to continue that type of pressure. In some instances, resistance to long-continuing economic sanctions comes less from the target State and more from the traditional trading partners who wish to resume normal commerce, though they may be subtly encouraged to raise their voice by the target State itself.

In some cases the argument for general economic sanctions may not be expressed in such essentially political terms, but rather as an attempt to weaken the country so as to make it less able to carry out the mischief that is of concern to the Council.

Because, as will be demonstrated below, general economic sanctions have only rarely proven to be effective, and because they may inflict possibly undue pain on an essentially impotent population and significantly burden neighboring States, other types of sanctions have been tried and are coming increasingly into favor. For example, in many of its recent resolutions (e.g., those relating to Iraq, Angola, and Sierra Leone), the prohibition is on travel by governmental figures, particularly those held especially responsible for the acts that provoked the Security Council, as well as by their families, or generally by the elite of the country. Though perhaps these restraints may also not prove effective, they at least target for discomfort those who bear some responsibility for the situation, rather than the arguably innocent and impotent masses.

Another type of sanction that has been used from time to time and that has in a few instances proven to be surprisingly effective without significant side effects have been cultural sanctions, in particular the exclusion of athletes of the target country from international sports competitions.[63] In respect of South Africa and of the Federal Republic of Yugoslavia, these exclusions, evidently for psychological reasons, struck peculiarly sensitive nerves, and the rulers of these countries were prepared to make significant concessions to terminate them.

The Actual Effectiveness of Economic Sanctions. Reviewing the history of the application of economic sanctions and the consequences thereof, the picture, based on a few prominent examples, is rather mixed.

- The government of *Southern Rhodesia*, which was exposed for well over a decade to economic sanctions, in particular as to the import of petroleum products, eventually yielded and in negotiations under the auspices of the British government agreed to the arrangements that established the State of Zimbabwe. Although the long-continued sanctions were probably a factor (they were to an extent always neutralized by South Africa, itself a pariah State), probably more important was the continuing and increasingly savage civil war supported by neighboring States.

- *South Africa* was technically subject only to an arms embargo, which caused it to build up, albeit at considerable expense, an autonomous arms industry. However, though general obligatory economic sanctions were blocked in the Security Council by Western vetoes, the General Assembly recommended such sanctions to all States. Though not binding on UN members, more and more complied. Once the United States did so too (because of domestic political concerns), the pressures of the South African business community on the government became significant and almost surely contributed to the unexpectedly peaceful denouement.

- *Iraq* was clearly not deterred by the severe economic sanctions imposed immediately after its invasion of Kuwait. Although there were some significant arguments before the Coalition air attacks were unleashed some five months later, that more time should be allowed for the economic sanctions to work (arguments that were countered by pointing to the increasing suffering of the Kuwaiti people under the continuing occupation), the very fact that the destruction wrought by six weeks of practically unrestrained bombing was also insufficient to cause Iraq to leave Kuwait suggests that no severity or extent of economic sanctions could have achieved that result. The continuation of the practically unrelieved sanctions into the postwar period (including a severe ban

on all but humanitarian imports and also on the export of Iraq's one commodity, oil—though these have lately been considerably eased) is designed to encourage Iraqi cooperation with a number of Council objectives, such as the monitoring of arms facilities, the return of Kuwaiti prisoners and captured property, and eventually the financing of the UN Claims Commission. However, it is not clear that the sanctions have induced Iraq to become in any way more cooperative. Rather than complying willingly, it is instead mounting a massive propaganda campaign against the continuation of the sanctions regime.[64]

• The *Federal Republic of Yugoslavia* was subjected to increasingly severe economic, cultural, and diplomatic sanctions starting in 1992, for the most part because of its intervention in the Bosnian civil war on the side of the Bosnian Serbs (Republika Srpska). These sanctions, though never implemented fully because of Yugoslavia's many land borders[65] with States that were either somewhat sympathetic to the Serb cause or were for political or economic reasons not in a position to oppose Yugoslav interests too directly, were effective enough to cripple the FRY economy and give rise to an enormous black market conducted by associates of the ruling officials. To secure an easing of these sanctions, President Milosevic of Serbia agreed in September 1994 to cut off assistance to the Bosnian Serbs. As a result, a few economic and cultural sanctions on the FRY (but not the Republika Srpska) were suspended for a series of hundred-day periods.[66] At the conclusion of each the Council examined FRY's behavior before granting a further extension.[67] After the Dayton Accords all the remaining sanctions were first suspended indefinitely,[68] and then terminated on the basis of compliance reports from those implementing the agreements.[69] It can thus be said that these sanctions had at least been moderately effective.[70]

• The *Socialist Federal Republic of Yugoslavia* and after its dissolution all of its successor States were subjected to a complete arms embargo from 1991[71] until 1996.[72] That embargo, though never particularly effective (especially against the Serbs, who inherited most of the enormous arms stocks of the SFRY) because of the many land borders the successor States had with sympathetic States, succeeded in somewhat reducing the flow of heavy and modern armaments into Bosnia and Herzegovina, where they would have threatened UN and other international forces. In particular, the Bosnian Muslims complained that the embargo unfairly prevented them from exercising their inherent right of self-defence, a complaint that found a sympathetic ear in the United States, which at least passively abetted a flow of arms to them.[73]

Altogether, there is no unambiguous answer to the question of the effectiveness of economic sanctions, except to say that if they work at all they appear to require long-term application.

Critics have pointed out that one reason for both the frequent ineffectiveness of economic sanctions and for our uncertainty about their operations is that the United Nations has not been in a position, in considering the imposition of sanctions, to make any detailed projections as to their likely effect, and during their actual application to secure any but anecdotal evidence about their actual effectiveness and their impact on the target State. Thus, whether or not economic sanctions could actually be effective if applied scientifically, this has never actually been done. At most, the Organization has relied on studies prepared by the governmental services of some of the permanent members, studies which were not shared with the United Nations itself but which presumably motivated the decisions proposed by their representatives in the Security Council and Sanctions Committees.

It might be pointed out that part of the difficulty in dealing objectively and scientifically with this subject is a terminological one. The "effectiveness" of sanctions can refer to any of three distinct calculations: (1) the extent to which States actually comply with the Security Council directives to cut off the flow of commerce or finances to and from the target State; (2) the extent to which such a cut in the international flow of resources actually impacts on the economy of the target State; (3) the extent to which the target State actually modifies its behavior as a result of the impacts on its economy.

Legal Constraints on Economic Sanctions. The long-continued economic sanctions on the FRY and especially those on Iraq have raised the specter of undue harm to the most vulnerable members of the target society: children and the women who care for them, the elderly, and the sick. It is true that these sanctions regimes, as adopted by the Security Council, invariably exempted the supply of food and medicines for humanitarian purposes and that the respective Sanctions Committees were given broad powers to grant effective relief. Against this, the target States and their sympathizers claim that the Sanctions Committees, as they actually operate, are far too prone to allow indefinite and unexplained holds on proposed humanitarian shipments. In addition, it is claimed that because the foreign assets of target States are frozen and their exports blocked, these States are not in a position to purchase even the humanitarian supplies that they would be permitted to import.

Naturally, the proponents of sanctions deny the allegations of undue harshness in the implementation of sanctions regimes; they countercharge that

the target States generally appear to have sufficient hidden assets to finance the import of luxury goods for their elites and even extensive armament programs, that their governments often distribute available humanitarian supplies unfairly, and that extensive black markets are allowed to flourish for the benefit of those close to the government.

From a legal point of view it is undoubtedly true that even the United Nations and the Security Council, and of course all States, are bound by universally applicable humanitarian principles that forbid the starvation of civilian populations[74] and that call for special care to be taken to protect vulnerable persons.[75] To give precision to these concepts, the General Assembly has called for further attention to the concept of the "humanitarian limits of sanctions" and proposed that "standard approaches should be elaborated by the relevant United Nations bodies." At the same time, the Assembly has made a number of pertinent operational recommendations.[76]

Impact of Economic Sanctions on Third States[77]

It was recognized already in the Covenant of the League of Nations that a universal obligation to impose economic sanctions on peace-breakers might require mutual support in order to minimize the loss and inconvenience resulting from such economic measures.[78] The UN Charter preserved this rule in Article 49. It also added Article 50, which, although going somewhat further, ultimately contents itself with granting States "confronted with special economic problems arising from the carrying out of [preventive or enforcement] measures" only "the right to consult the Security Council with regard to the solution of these problems."

When this Article was being formulated at the San Francisco Conference, several initiatives for strengthening it were turned down. These included a South African proposal that a State suffering economic damage from sanctions not directed against it should be able to charge the target State, through the Security Council, to pay compensation;[79] another was a Venezuelan proposal that if approached by a State that had suffered damage, the Council would be obliged to take corrective measures.[80] From the text adopted, it appears clear that the State concerned has no "right" except to consult the Council. Incidentally, what pertains to economic difficulties arising directly from a State's application of sanctions, applies even more strongly to those that merely suffer from the general economic distortions resulting from the sanctions regime.

The question then arises what steps the Security Council could take to relieve a complainant State. Though not specified in Article 50, it appears from Article 48(1) that the Council could excuse a State from participating in the imposition of the sanctions. In the World Court's advisory opinion in the *Certain Expenses* case it is suggested that the Council could provide for the United Nations to pay compensation to such a State, the costs of which would then be assessed on all members as expenses of the Organization.[81]

In practice, from the very first time that the Security Council imposed broad economic sanctions; i.e., those on Southern Rhodesia, neighboring States that were especially affected have sought to resort to Article 50. Indeed, this has been the case in respect of all such broad sanctions—but of course not in those instances when the embargo was merely on the sale of arms or on communications, or on cultural or diplomatic intercourse. The Council, in turn, has generally referred these States to the respective Sanctions Committee, charging these with giving the complainant States a hearing but not authorizing the Committees to grant any specific relief.

In no instance has a Sanctions Committee recommended the exemption under Article 48(1) of a complainant State from the obligation to participate in the sanctions regime.[82] Further, in no instance has consideration been given to compensating directly such a State from the UN budget. Instead, the Committees, or the Council on their recommendation, have issued general appeals to the international community, that is to other States and competent IGOs or organs, to assist particular States or the affected States in general. Though there has been some response to these appeals and assistance has been provided to the most severely affected States, in general the relief provided has been in no degree commensurate with the damage caused or at least claimed.[83] The result has been that the burden of sanctions has remained distributed most unevenly among member States, generally with the target's neighbors or its traditional trading partners affected much more severely than others, especially the permanent members of the Security Council.[84]

For some years affected States have been taking their complaints to the General Assembly, which has launched several studies and considerations on this subject.[85] Some of the Assembly's latest recommendations are set out in its above-mentioned resolution on sanctions, which in this respect merely recommends that the Assembly itself and other relevant organs "should intensify their efforts to address the special economic problems of third countries affected by sanctions regimes" and that the subject be studied more intensely in the near future.[86] Other recommendations, also calling mostly for further studies, appear in the 1997 resolution on "Implementation of the

Provisions of the Charter of the United Nations Relating to Assistance to Third States Affected by the Application of Sanctions."[87] The Secretary-General had already suggested in the 1992 *An Agenda for Peace* that the Security Council devise a set of measures involving financial institutions and the UN system "to insulate States from such difficulties."[88]

Conclusions

Unlike "sanctions" imposed by individual States or groups of States, the legality of which have become ever more suspect over the past decades and particularly in recent years, the legal foundations of economic sanctions imposed by the Security Council under Article 41 of Chapter VII of the Charter are solidly founded in international law. However, this does not mean they are not problematic.

One difficulty, of what initially may appear to be primarily a practical nature, is that in the past almost no collective efforts (as distinguished from those of individual members, in particular the permanent members of the Security Council) have been made to establish on the basis of thorough economic and political studies what sanctions can sensibly be applied to a target State, what their likely impact would be on the target and on other States, how well sanctions are actually implemented, and what their actual effects are over time. Thus, this potentially devastating economic weapon is being used without proper guidance or control. In particular, it is difficult to tell, because of the dearth of significant information on most sanctions regimes, whether their impact is proportionate to the benefit sought. Evidently, the possible infliction of major harm that may or may not conform to the general rule of proportionality is problematic from a legal point of view.

Secondly, it is necessary to address the essentially legal issue of the "humanitarian limits of sanctions," i.e., whether some economic sanctions may not be applied or continued indefinitely if their impact on vulnerable populations is excessive. While it seems clear that in principle there must be some limits, the difficulty is in deciding whether in a given case the ostensible effects of the sanctions imposed are indeed excessive, and if so whether the cause for that excess lies in the rules establishing the regime in question, in the implementation of that regime by the competent Sanctions Committee, or perhaps in the authorities of the target State, which may deliberately distribute the resources available to it in such a way as to put even legitimate sanctions in an unfavorable light.

Finally, the problem recognized in Article 50 of the UN Charter, that is the collateral damage that a sanctions regime may impose on innocent third parties, has so far not been satisfactorily or systematically addressed. The hardship caused by these regimes is thus most arbitrarily and unevenly distributed, sometimes burdening the weakest and often uninvolved States rather than those more responsible for their imposition and better able to bear the burden.

Notes

1. *See* Randelzhofer, *Article 2(4)*, *in* THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 106, 112 (Simma ed., 1994).

2. U.N. Doc. A/RES/2131(XX) (1965), at annex, para. 2.

3. U.N. Doc. A/RES/2625(XXV) (1970), at annex.

4. U.N. Doc. A/RES/36/103 (1981).

5. U.N. Doc. A/RES/50/96 (1995).

6. U.N. Doc. A/RES/51/22 (1996); *see also* U.N. Doc. A/RES/51/103 (1996).

7. Respectively U.N. Docs. A/RES/52/181 (1997), adopted by a vote of Y = 109, N = 1 (USA), A = 50; and A/RES/52/120 (1997), adopted by a vote of Y = 91, N = 46, A = 26.

8. The report of the expert group is summarized in part IV (paras. 53–94) of U.N. Doc. A/52/459 (1997).

9. *Id.*, para. 73.

10. *Id.*, sub-paras. 76(a)-(g).

11. U.N. Docs. A/RES/47/19 (1992), 48/16 (1993), 49/9 (1994), 50/10 (1995), 51/17 (1996), and 52/10 (1997).

12. *See* IAEA *Safeguards: Sanctions*, Part II of FISCHER AND SZASZ, SAFEGUARDING THE ATOM: A CRITICAL APPRAISAL (Goldblat ed., 1985); and Szasz, *Sanctions and International Nuclear Controls*, 11 CONN. L.R. 545 (1979).

13. Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, arts. 4 & 8, 1522 U.N.T.S. Reg. No. 26369, 26 I.L.M. 1550 (1987).

14. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, 1993, art. XII.3 and pt. VII, para. 31, of the Annex on Implementation and Verification, 32 I.L.M. 800, 819 & 859 (1993).

15. The only instance appears to be the informal exception granted to Jordan by the Iraq Sanctions Committee from the obligation to discontinue all oil imports from Iraq—in practice its only source.

16. See, e.g., U.N. Doc. S/RES/757 (1992), para. 11, in which the Security Council, in connection with the imposition of comprehensive economic sanctions on the Federal Republic of Yugoslavia (FRY), calls on all States and IGOs to act strictly in accordance with the resolution "notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into . . . prior to the date of the present resolution."

17. This study will examine *infra* the past practice with respect to implementing Charter Article 50 and some recent proposals made by the General Assembly in this regard.

18. *See, generally*, Martin and Laurenti, *The United Nations and Economic Sanctions: Improving Regime Effectiveness*, Paper No. 5 of the UNA-USA International Dialogue on the Enforcement

of Security Council Resolutions (UNA-USA, August 1997). *See also* Eisemann, *Article 41, in La Charte des Nations Unies: Commentaire article par article* 692 (Cot & Pellet eds., 1985) and Frowein, *Article 41, in* Simma, *supra* note 1 at 621.

19. The apparent automaticity of the application of these sanctions was considerably weakened by decisions taken by the League Council during the initial years. DOXEY, INTERNATIONAL SANCTIONS IN CONTEMPORARY PERSPECTIVE 4 (2d ed. 1996).

20. In the practice of the Security Council it is not necessary that Chapter VII or Article 39 be explicitly referred to—though most of the time one or both of them are—or that the precise words of the Charter be used.

21. Article 2(7) of the Charter prohibits the UN from intervening in matters that "are essentially within the domestic jurisdiction of any state," an obstacle that can only be surmounted in respect of enforcement measures under Chapter VII of the Charter; hence the somewhat dubious finding in S/RES/733 (1992) that the situation in Somalia constituted a threat to the peace.

22. U.N. Doc. S/RES/748 (1992).

23. It should be noted that Libya turned to the International Court of Justice for relief but could not do so as a direct challenge to the Security Council. Instead, in separate complaints brought against the United Kingdom and the United States, Libya claimed that these States should first have resorted to the disputes resolution mechanism of the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation before turning to the Council. The Court has recently decided that it has jurisdiction (Judgments on Preliminary Objections of 27 February 1998) but the merits have not yet been reached. However, when initially presented to the Court with requests for an indication of provisional measures pursuant to Article 41 of the ICJ Statute, including an injunction against any Security Council sanctions, the Court carefully avoided dealing with a situation that could have brought it into direct conflict with the Council; Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. U.K.; Libya v. U.S.), Request for Provisional Measures, Order(s), 1992 I.C.J. 3 & 114.

24. *See* U.N. Doc. A/RES/51/242, annex II, para. 7, referred to in note 42 *infra*.

25. This was first done, by the USSR, at the thirty-ninth meeting of the Security Council. In para. 22 of its advisory opinion on Namibia (South West Africa) (1971 I.C.J. 16, 22), the International Court of Justice accepted this practice by stating that "this procedure followed by the Security Council . . . has been generally accepted by Members of the United Nations and evidences a general practice of that Organization."

26. U.N. Docs. S/RES/217 (1965),232 (1966), 253 (1968), 277 (1970), 288 (1970), 310 (1972), 314 (1972), 320 (1972), 327–329 (1973), 333 (1973), 386 (1976), 388 (1976), 409 (1977), 411 (1977), & 460 (1979). In this and the following lists of sanction-related resolutions only those are included that relate directly to that subject, while resolutions solely on other matters (such as the deployment of UN forces) are not included.

27. U.N. Docs. S/RES/418 (1977), 421 (1977), & 919 (1994).

28. U.N. Docs. S/RES/661 (1990), 665 (1990), 666 (1990), 669 (1990), 670 (1990), 706 (1991), 712 (1991), 778 (1992), 986 (1995), 1051 (1996), 1060 (1996), 1111 (1997), 1115 (1997), 1120 (1997), 1134 (1997), 1137 (1997), 1143 (1997), & 1153 (1998).

29. U.N. Docs. S/RES/713 (1991), 724 (1991), 757 (1992), 760 (1992), 787 (1992), 816 (1993), 820 (1993), 942 (1994), 943 (1994), 967 (1994), 970 (1995), 988 (1995), 992 (1995), 1003 (1995), 1015 (1995), 1021 (1995), 1022 (1995), & 1074 (1996).

30. U.N. Doc. S/RES/733 (1992).

31. U.N. Docs. S/RES/748 (1992), 883 (1993), 910 (1994), & 915 (1994).

32. U.N. Docs. S/RES/788 (1992), 985 (1995), 1083 (1996), & 1116 (1997).

33. U.N. Docs. S/RES/841 (1993), 861 (1993), 873 (1993), 875 (1993), 917 (1994), & 944 (1994).

34. U.N. Docs. S/RES/864 (1993), 1075 (1996), 1087 (1996), 1098 (1996), 1102 (1997), 1127 (1997), 1130 (1997), 1135 (1997), 1149 (1998), & 1157 (1998).

35. U.N. Docs. S/RES/918 (1994), 1005 (1995), 1011 (1995), & 1053 (1996).

36. U.N. Docs. S/RES/1054 (1996) & 1070 (1996).

37. U.N. Docs. S/RES/1132 (1997), & 1156 (1998).

38. In the forty-five years up to 1990, the Security Council had adopted some 650 resolutions; as recently as 1987 it adopted only thirteen, mostly short, routine ones. Since 1990 the Council has adopted over five hundred resolutions, as many as ninety-three in 1993 alone, many of these consisting of long and complicated texts.

39. In UN practice, the term "consensus" means that no member of the body concerned is sufficiently opposed to a proposed decision to insist on blocking it. Consensus decisions can thus be taken even though one or more members indicate that they disapprove of certain portions of the agreed text.

40. This dissatisfaction of the General Assembly with the operations of the Security Council also fuels the calls for an increase in the latter's size, in order to make it more "representative." For the present, these calls are resisted by most of the permanent members, without whose ratification no amendment of the Charter (as would be necessary to increase the size of the Council) can enter into force.

41. This term, usually attributed to the late Secretary-General Dag Hammarskjöld, indicates that the so-called "blue helmet" operations, i.e., those in which a lightly armed force is introduced into an area with the consent of all significant parties, and which are not military forces authorized under Article 42 of Chapter VII, do not have any firm basis in the Charter.

42. U.N. Doc. A/RES/51/242 (1997), Annex II: "Question of sanctions imposed by the United Nations," consisting of thirty-nine paragraphs.

43. Under Article 10 of the Charter, the General Assembly may make recommendations to the Security Council but, unlike certain recommendations made by the Council to the Assembly that are at least negatively binding (i.e., the Assembly need not act on them but may not take a decision that disregards them), those made by the Assembly are in no way binding on the Council.

44. U.N. Doc. A/RES/51/242 (1997), Annex II, paras. 3 & 6.

45. This was done in respect of certain economic and cultural sanctions against the FRY, which were suspended for successive hundred-day periods starting in September 1994 (Security Council Resolution 943 (1994)), which suspension was renewed by Resolutions 970 (1995), 988 (1995), 1003 (1995), & 1015 (1995), after which all sanctions were suspended indefinitely by Resolution 1022 (1995) and terminated by Resolution 1074 (1996).

46. See S/RES/1022 (1995), which provided that the remaining economic sanctions on the FRY would be suspended indefinitely but must automatically be reinstated five days after the UN Secretary-General reports on possible failures of performance by the FRY, or five days after the "High Representative" for Bosnia or the commander of the NATO force reports on any noncompliance, unless the Council decides otherwise (by a vetoable decision). The resolution also specified the conditions for the ultimate termination of the sanctions.

47. U.N. Doc. S/RES/864 (1993).

48. U.N. Doc. S/RES/942 (1994). Special provisions concerning this Bosnian Serb entity also appear in S/RES/1022 (1995).

49. U.N. Doc. S/RES/1132 (1997), paras. 5 & 10(f).

50. Fortunately, there have been few instances in which a State has openly and formally breached sanctions imposed by the Security Council under Charter Chapter VII, such as the 1971 U.S. "Byrd Amendment" (P.L. 92-156, 50 U.S.C. 98h-4) defying the embargo on Southern Rhodesia's sale of chrome; that provision was adopted by Congress in spite of the special appeal in A/RES/2765(XXVI) of 17 November 1971 and was upheld in Diggs v. Schultz, 470 F.2d 461 (D.C. Cir., 1972); cert. den. 411 U.S. 931, with the Circuit Court holding that even though the law was "in blatant disregard of our treaty undertakings" it had no power to reverse this congressional action.

51. *E.g.*, U.N. Doc. S/RES/665 (1990), directed at Iraq.

52. *See* the third (final) report of the Chairman of the Yugoslav Sanctions Committee (U.N. Doc. S/1996/946).

53. U.N. Doc. A/RES/51/242 (1997), annex II, paras. 10–13.

54. In the first instance in which this was done, the Council in 1965 called on the United Kingdom to use necessary measures to prevent a tanker from delivering oil to Southern Rhodesia (U.N. Doc. S/RES/221 (1996)). In respect of Iraq, the Council authorized a maritime force (U.N. Doc. S/RES/665 (1990)). *See* Rosenzweig, *infra* note 65, at 173–74.

55. As specified in a note from the President of the Security Council (U.N. Doc. S/1995/234).

56. U.N. Doc. A/RES/51/242 (1997), Annex II, para. 33.

57. *E.g.*, U.N. Doc. S/RES/1132 (1997), para. 10(a)–(d), in respect of sanctions on Sierra Leone.

58. *Id.*, para. 10(d)-(e).

59. *E.g.*, U.N. Doc. S/RES/669 (1991) in respect of sanctions on Iraq.

60. U.N. Doc. A/RES/51/242 (1997), Annex II, paras. 27-28.

61. *See* U.N. Docs. S/1995/234, S/1995/438, S/1996/54.

62. U.N. Doc. A/RES/51/242 (1997), Annex II, para. 29, as well as paras. 27-39 generally.

63. *See, e.g.*, paras. 8(b) and (c) of U.N. Doc. S/RES/757 (1992) in respect of the FRY.

64. For many years the Security Council offered to allow Iraq to sell substantial quantities of oil, provided that 30 percent of the proceeds would be allocated to the United Nations to reimburse it for the costs of its Iraqi operations and mainly to fund the Compensation Commission established to help assist those who had suffered losses due to the Iraqi occupation of Kuwait (*e.g.*, Kuwaiti citizens, guest workers who had been suddenly expelled, private enterprises, etc.). The rest of the proceeds were to be used for humanitarian purposes, for the most part distributed by the Iraqi government under UN supervision but with a specified fraction distributed directly by the United Nations to the Kurds (U.N. Doc. S/RES/706 (1991)). However, for several years the government refused this offer, until it finally accepted, after long negotiations, the arrangements set out first in Resolution S/RES/986 (1995) and in a related Memorandum of Understanding with the Secretary-General, and then renewed by Resolution S/RES/1111 (1997). A considerable increase in the volume of these oil sales is allowed by Resolution S/RES/1153 (1998).

65. These borders were in part patrolled by Sanctions Assistance Missions (SAMs), consisting of teams of customs officials from Western countries, who had no powers to enforce sanctions but only to assist the neighboring States in improving their compliance. *See* Rosenzweig, *United Nations Sanctions: Creating a More Effective Tool for the Enforcement of International Law*, 1995 AUSTRIAN J. OF PUBLIC AND INT'L L. 161, 175–76.

66. U.N. Doc. S/RES/943 (1994).

67. U.N. Docs. S/RES/970 (1995), 988 (1995), 1003 (1995), 1025 (1995).

68. U.N. Doc. S/RES/1022 (1995).

69. U.N. Doc. S/RES/1074 (1996).

70. A particularly valuable report on the Yugoslav sanctions experience was prepared by the Organization for Security and Cooperation in Europe (OSCE) on the basis of the Copenhagen Round Table on United Nations Sanctions in the Case of the Former Yugoslavia, 24–25 June 1996 (U.N. Doc. S/1996/776). The Yugoslav Sanctions Committee submitted its third and final report on 15 November 1996 (U.N. Doc. S/1996/946).

71. U.N. Doc. S/RES/713 (1991).

72. U.N. Doc. S/RES/1021 (1995), providing for a phased lifting of the arms embargo.

73. It would appear that the complaint to the ICJ brought by Bosnia and Herzegovina against the FRY in 1993 accusing the latter of committing genocide had at least as an important purpose that the ICJ propose provisional measures under Article 41 of its Statute to the effect that the arms embargo should be lifted in respect of Bosnia, because it prevented the Bosnian government from protecting its people against genocide; the Court had no difficulty in twice turning aside these specific requests for an indication of provisional measures which, if granted, would have brought it into direct conflict with the Security Council (Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Federal Republic of Yugoslavia), Provisional Measures Order of 8 April 1993, 1993 I.C.J. 3, 32 I.L.M. 888 (1993); Provisional Measures Order of 13 September 1993, 1993 I.C.J. 325, 32 I.L.M. 1599 (1993)).

74. *See* Protocol I to the 1949 Geneva Conventions, 1977, art. 53(1), 1125 U.N.T.S. 3, 16 I.L.M. 1391 (1977).

75. *Id.*, arts. 1, 2, 51, and Geneva Convention IV relative to the Protection of Civilian Persons in Time of War 1949, art. 16, 75 U.N.T.S. 287, 6 U.S.T. 3516, T.I.A.S. 3365.

76. U.N. Doc. A/RES/51/242, annex II, paras 14-20.

77. Burci, *The Indirect Effects of United Nations Sanctions on Third States: The Role of Article 50 of the UN Charter*, 1995 AFRICAN Y.B. INT'L L. 157. *See also* Eisemann, *Article 50, in* Cot & Pellet, *supra* note 18, at 761, and Bryde, *Article 50, in* Simma, *supra* note 1, at 659.

78. COVENANT OF THE LEAGUE OF NATIONS art. 16.3.

79. IV U.N.C.I.O. 668-69.

80. IV U.N.C.I.O. 263.

81. Certain Expenses of the United Nations, Advisory Opinion, 1962 I.C.J. 151, 167. This suggestion was discussed in an opinion by the UN Legal Counsel (1976 UN JURIDICAL Y.B. 203).

82. *See* note 15 *supra*.

83. It would appear that one of the most effective relief operations was that mounted, largely on the initiative of the United States, by the Gulf Crisis Financial Coordination Group, persuading financially able States to assist some of those most directly affected by the Iraqi action or by the measures taken against Iraq; however, all this happened essentially outside the UN framework.

84. See the series of reports by the UN Secretary-General on "Economic Assistance to States Affected by the Implementation of the Security Council Resolutions Imposing Sanctions on the Federal Republic of Yugoslavia," U.N. Docs. A/48/573, A/49/356, A/50/423, A/51/356, A/52/535.

85. See, in particular, the extensive catalogue of such reports set out in subparas. (a)-(h) of the fourth preambular para. of U.N. Doc. A/RES/52/162 (1997).

86. A/RES/51/242 (1997), Annex II, paras. 24-26.

87. A/RES/52/162 (1997).

88. U.N. Doc. A/47/277-S/24111, para. 41.