Vanderbilt Journal of Transnational Law

Volume 17
Issue 2 *Spring 1984*

Article 1

1984

The Transnational Boycott as Economic Coercion in International Law: Policy, Place, and Practice

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Vanderbilt Journal of Transnational Law

VOLUME 17 SPRING 1984 NUMBER 2

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I. INTRODUCTION

Nations historically have employed economic coercion[1] in the conduct of their foreign affairs with varying degrees of success.

1. Throughout this Article, "international economic coercion" means a

Despite the technological and political intricacies that earmark the current international economic system,[2] the transnational boycott remains a prominent technique of international economic coercion.

The transnational boycott can be described as a coercive quasi-conspiratorial combination effort by one state to prevent another state from transacting commercial business.[3] Threats or intimidation may be directed at the target state's customers to induce them to withhold or withdraw their patronage.[4] While the ends

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state's controlled management of access to goods, services, money, or markets, for the purpose of denying access to a target state while maintaining access for itself. *See* M. McDOUGAL & F. FELICIANO, LAW AND MINIMUM WORLD PUBLIC ORDER 30 (1961). For a discussion of different kinds of economic coercion, see K. KNORR, THE POWER OF NATIONS 79-103 (1975). *See also* ECONOMIC COERCION AND THE NEW INTERNATIONAL ECONOMIC ORDER (R. Lillich ed. 1976); Acevedo, *The U.S. Measures against Argentina resulting from the Malvinas Conflict*, 78 AM. J. INT'L L. 323 (1984); Bilder, *Comments on the Legality of the Arab Oil Boycott*, 12 TEX. INT'L L.J. 41 (1977); Blum, *Economic Boycotts in International Law*, 12 TEX. INT'L L.J. 5 (1977); Bowett, *International Law and Economic Coercion*, 16 VA. J. INT'L L. 245 (1976); Dempsey, *Economic Aggression and Self-Defense in International Law: The Arab Oil Weapon and Alternative American Responses Thereto*, 9 CASE W. RES. J. INT'L L. 253 (1977); Doxey, *International Sanctions in Theory and Practice*, 15 CASE W. RES. J. INT'L L. 273 (1983); Lillich, *The Status of Economic Coercion Under International Law: United Nations Norms*, 12 TEX. INT'L L. J. 17 (1977); Lillich, *Economic Coercion and the International Legal Order*, 51 INT'L AFF. 358 (1975); Lillich, *Economic Coercion and the "New International Economic Order": A Second Look at Some First Impressions*, 16 VA. J. INT'L L. 233 (1976); Neff, *The Law of Economic Coercion: Lessons from the Past and Indications of the Future*, 20 COLUM. J. TRANSNAT'L L. 411 (1981).

2. *See generally* D. BLAKE & R. WALTERS, THE POLITICS OF GLOBAL ECONOMIC RELATIONS (2d ed. 1983); J. SPERO, THE POLITICS OF INTERNATIONAL ECONOMIC RELATIONS (2d ed. 1981).

3. *See* BLACK'S LAW DICTIONARY 234 (4th ed. 1968). Two other specific techniques of economic coercion have been used in recent years. First, an economic blockade is used to terminate all of a state's commerce. Second, a trade embargo is used by one state to prohibit the departure of ships or goods from the ports of another state until further orders are given. For perceptive treatments, see A. HINDMARSH, FORCE IN PEACE 64-71 (1933); W. MEDLICOTT, THE ECONOMIC BLOCKADE (1959). *Cf.* Paust & Blaustein, *The Arab Oil Weapon: A Reply and Reaffirmation of Illegality*, 15 COLUM. J. TRANSNAT'L L. 57 (1976); Paust & Blaustein, *The Arab Oil Weapon—A Threat to International Peace*, 68 AM. J. INT'L L. 410 (1974); Shihata, *Arab Oil Policies and the New International Economic Order*, 16 VA. J. INT'L L. 261 (1976); Shihata, *Destination Embargo of Arab Oil: Its Legality Under International Law*, 68 AM. J. INT'L L. 591 (1974).

4. *See supra* note 3. *See generally* Bouvé, *The National Boycott as an In-*

and means of transnational boycotts may seem clear, their legal status appears to be open to conjecture. This situation can be attributed in no small part to the more sophisticated and manipulative methods currently available for effecting and maintaining modern boycotts.[5]

This Article first seeks to examine critically the historical evolution and policy underpinnings of the transnational boycott and the political and economic ramifications that stem from a state's use of a boycott strategy. Second, this Article attempts to determine more precisely the international legal status of the transnational boycott as a deliberate instrument of a state's foreign policy. The intent of this analysis is to provide a better understanding of the political rationales of governments that resort to boycott strategies, the resultant economic implications, and the international legal parameters for transnational boycotts.

II. THE TRANSNATIONAL BOYCOTT IN HISTORICAL PERSPECTIVE

A. General Observations

Concerted efforts to deny social and economic intercourse to designated individuals or groups have occurred since Biblical times. For example, the Jews eschewed the Samaritans; the Pharisees ostracized the Publicans; and the Greeks, after the rule of Cleisthenes, often shunned unsuccessful aspirants for high politi-

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ternational Delinquency, 28 AM. J. INT'L L. 19 (1934).

5. The traditional declaratory forms of economic coercion, boycotts, blockades, and embargoes, no longer suffice to influence one's adversaries or, for that matter, one's allies. More refined measures of coercion have greatly amplified the scope and nature of contemporary international economic coercion, particularly when used to augment a state's boycott strategy. These measures have included the blocking or freezing of a target state's foreign assets; the blacklisting of firms and individuals trading with the target state; preclusive transnational purchasing designed to evaporate potential foreign supplies for the target state; controlling the transshipment of products from a neutral state's territory; the imposition of licensing schemes, tariffs, or quotas for regulating selected imports or exports; the enactment of measures aimed at manipulating the strength of a target state's foreign exchange; the curtailment of foreign aid or development assistance; and, over the long term, penetrating the target state's economy by the use of cartels, the discouragement of technological transfers, or the restriction of available patent assignments. M. MCDOUGAL & F. FELICIANO, *supra* note 1, at 30. An analysis of these economically coercive policies is found in Y. WU, ECONOMIC WARFARE *passim* (1952).

cal office.[6] Throughout the ascendancy of the Roman Empire, many citizens were publicly rendered social outcasts under the recognized fiat of *interdictio aqua et igni* ("the denial of water and fire to a legal transgressor").[7] During the Middle Ages, the Roman Catholic Church's sanction of excommunication was tantamount to an "imperial ban," which "severed a person from the Christian community" and relegated him to the merciless status of a pagan.[8] The antitrade measures undertaken by North American colonists during the late 1760s and early 1770s against local English merchants are also noteworthy examples of economic disapproval and protest.[9] While all of these actions certainly shared the objective of deliberate alienation with boycotts, they were designated by contemporary political literature as "acts of economic non-intercourse," not "boycotts" in the strict sense.[10]

The word "boycott" did not appear in the vernacular until the late nineteenth century. The term can be traced to the organized social ostracism in 1880 of Captain Charles C. Boycott, an English rent collector for the Earl of Erne's estates in County Mayo, Ireland, by local tenant farmers.[11] From its inception during this

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6. H. LAIDLER, BOYCOTTS AND THE LABOR STRUGGLE: ECONOMIC AND LEGAL ASPECTS 27 (1913).

7. In imperial times this Roman form of punishment included deportation to an island and forfeiture of all property rights, but allowed retention of citizenship. 1 H. ROBY, ROMAN PRIVATE LAW 45-46 (1902).

8. F. LOGAN, EXCOMMUNICATION AND THE SECULAR ARMY IN MEDIEVAL ENGLAND: A STUDY IN LEGAL PROCEDURE FOR THE THIRTEENTH TO THE SIXTEENTH CENTURY 13 (1968).

9. For an historical discussion of North American colonial boycotts against English goods, see H. FAULKNER, AMERICAN ECONOMIC HISTORY 166 (8th ed. 1960).

10. *See*, 2 L. OPPENHEIM, INTERNATIONAL LAW 134-35 (7th ed. 1952); E. DE VATTEL, LAW OF NATIONS 145 (6th ed. 1844); *cf.* 6 G. HACKWORTH, DIGEST OF INTERNATIONAL LAW 152 (1943).

11. Beginning in 1878, Ireland was beset by a severe agricultural crisis. English landlords saw the famine conditions as an excellent opportunity to drive out unwanted tenant farmers from their estates. To remedy this unjust situation, Charles S. Parnell assumed leadership of the farmers' cause and banded together the Irish Land League, a union which served as the farmers' representative bargaining agency with the estate owners.

In August 1880 Captain Boycott refused to accept as full payment a group of rent collections that had been reduced 25% by the Land League. The consequences of Boycott's recalcitrance were soon evident: his life was threatened, portions of his property were destroyed, several workers were forced by the Land League to leave his employ, and tenant farmers on his estate refused to

particular episode in Irish history, the appellation "boycott" has come to denote any intentional social or political policy of economic excommunication.

B. The Chinese Boycotts: 1905-1933

For twenty-five years after Captain Boycott's ostracism, boycotting incidents were limited to domestic labor movements, with those in the United States attaining the most prominence.[12] In 1905, however, the first transnational application of a boycott was instigated by China against the United States. This boycott began the period during the early twentieth century when China was considered the undisputed master practitioner of the national boycott. From 1905 to 1931, China effectively organized and rigorously enforced at least eleven national boycotts on nine separate occasions.[13]

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work for, or even associate with, any member of the Boycott family. Deprived of local labor for gathering the potato harvest, Captain Boycott was compelled within a month to entreat the English landlords for assistance. They agreed to secure a relief expedition, and hired 50 men from Ulster to work under the guard of 900 English soldiers to bring in Boycott's crop. Although the landlord's actions saved Boycott's crops and circumvented the local labor strike, the price they paid remains an example of poetic justice: the estate owners' protective scheme for digging up an estimated £500 of Captain Boycott's potatoes cost the British Government more than £5,000. Vinton, *The History of "Boycotting,"* 5 MAG. W. HIST. 211-24 (1886).

12. *See generally*, H. LAIDLER, *supra* note 6; L. WOLMAN, THE BOYCOTT IN AMERICAN TRADE UNIONS (1916).

13. C. REMER, A STUDY OF CHINESE BOYCOTTS WITH SPECIAL REFERENCE TO THEIR ECONOMIC EFFECTIVENESS 22 (1933). In 1905 China imposed a six-month boycott against the United States because of the latter's restrictive immigration entry policies for Chinese laborers. *Id.* at 29. In 1908 a nine-month boycott was imposed against Japan in reaction to an ultimatum the Japanese Government had issued to the Chinese Government following China's controversial seizure of the Japanese steamer *Tatsu Maru*. *Id.* at 40; North China Herald, Apr. 24, 1908, at 218; Orchard, *China's Use of the Boycott as a Political Weapon*, 152 ANNALS 253, 253 (1930). In January 1915 another Chinese boycott was directed against Japan in response to the infamous "Twenty-One Demands" that Japan had dictated earlier that month to the Chinese Government. The Twenty-One Demands were a set of political concessions demanded by Japan to extract territorial prerogatives, special railway permits, and various mining privileges in specified regions of Manchuria, Eastern Mongolia, Shantung, the Yangtze Valley, and Fukien. C. REMER, *supra*, at 46. While this boycott lasted only six months, Japanese exports to China during the interim are estimated to have fallen by some $18 million. Orchard, *supra*, at 254. In May 1919 a popular boycott campaign lasting two years was launched by China against Japan to protest the lat-

Thus, by the 1930s China had deservedly acquired an interna-

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ter's acquisition under the Versailles Treaty of property rights in Shantung that had previously been held by Germany. Accounts of the 1919 Shantung boycott are found in Muller, *The New East*, 109 THE NATION 833 (1919); Sokolsky, 99 THE INDEPENDENT 388, 388-90 (1919); LITERARY DIG., July 19, 1919, at 19. When extrapolated over the boycott's prolonged two-year operation, Japan suffered a combined trade loss with China of nearly $116 million. Orchard, *supra*, at 255. In 1923 a fourth boycott was undertaken against the Japanese over the latter's repeated failure to abrogate the Twenty-One Demands of 1915. C. REMER, *supra*, at 80. Japan's exports to China during the seven months of the 1923 boycott decreased by approximately $34.5 million, or about four percent of Japan's entire export trade in 1922. Orchard, *supra*, at 256. Sparked by labor disputes in foreign-managed worker settlements during 1925 and 1926, a "triple boycott" was organized simultaneously against Japanese, British, and Hong Kong commercial interests in China. C. REMER, *supra*, at 92. When compared to the average annual value of trade conducted between 1921 and 1924, the fifteen-month boycott cost British export trade $58 million, Orchard, *supra*, at 260, while Hong Kong's external trade fell by some $3 million. *Id.* at 259. In March 1927 the arrival in China of some 16,000 British troops and a smaller contingent of Japanese Marines, touched off popular boycotts over the next year against trade from both countries. *See* C. REMER, *supra*, at 128-30. The value of Japanese trade lost by China's 1927 boycotts exceeded $2.735 million. Orchard, *supra*, at 256. After armed clashes between the Chinese Nationalist Army and Japanese troops in May 1928, a general boycott against all Japanese goods in China was enforced in 1928 and 1929. C. REMER, *supra*, at 137, 140. More than $36.5 million in exports to China were lost by Japan during 1928-1929. Orchard, *supra*, at 256. Last, the invasion of Manchuria by Japan in 1931 elicited the Great Boycott of 1931-1933—the most intense, prolonged, and effective transnational boycott up to that time. C. REMER, *supra*, at 163. Of the early experiments in transnational economic coercion, the Great Boycott of 1931-1933 stands out for its sophisticated organization and strict enforcement procedures.

In 1931 the Shanghai Municipal Anti-Japanese and Chinese Emigration Association was created to implement a comprehensive boycott program. General coordination responsibilities were assumed by the Nationalists' Kuomintang. The scope of these boycotting techniques was well illustrated in the October 1931 resolutions adopted by the Shanghai Anti-Japanese Association: (1) all Chinese merchants were to abstain from the purchase, sale, transportation, or consumption of Japanese goods unless permission was given by the Anti-Japanese Association; (2) Chinese merchants were to remove all Japanese goods to Association warehouses within a week; (3) Chinese merchants were to abstain from supplying raw materials to the Japanese; (4) pickets were to be posted to prevent the loading or unloading of Japanese cargo and to prohibit Chinese passengers from travelling on Japanese ships; (5) wharf coolies were to refuse to handle Japanese cargo; (6) Chinese were to withdraw all deposits from Japanese banks and cease to use Japanese bank notes; (7) Chinese banks were to cease dealing with Japanese firms or with Chinese firms guilty of breaking the boycott; (8) all Chinese were to resign from Japanese employ within a period of three days; and (9) all Chinese firms were to discharge their Japanese employees within a period of

tional reputation as the national boycotter *par excellence*. China's continuing experiment with transnational boycotts, however, was more significant for establishing the credibility of, and demonstrating effective methods for utilizing, economic coercion as an instrument of political protest against the policies of other states.

C. Collateral National Boycotts: 1896-1955

1. *India's Boycotts of Great Britain*

Among the innovators of transnational boycotts were leaders of the *swadeshi* movement, a nationalistic organization that flourished between 1880 and 1906 throughout northern colonial India.[14] The first *swadeshi*-inspired boycott arose in February 1896, as a direct result of Great Britain's imposition of an unpopular series of countervailing duties on Indian cloth.[15] The partition of Bengal in July 1905 unleashed the second *swadeshi* boycott, a movement symbolically directed against textile imports from

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three days. North China Herald, Oct. 6, 1931, at 12. The strategy underpinning China's boycott, therefore, was the complete severance of economic relations with Japan. To attain this goal, additional boycott measures were devised, including: (1) the cancellation of existing orders for Japanese goods; (2) the refusal to accept Japanese goods in transit at the time of the boycott's inception upon arrival at their points of destination; (3) the registration of all available in-store Japanese products, which were then either placed under confiscatory seal or sold at public auction (if sold at auction, the proceeds were donated to a municipal boycott association); (4) the denial of foodstuffs and other supplies to all resident Japanese; (5) the refusal of the use of any port facilities to ships of Japanese registry; and (6) the obstruction of public communication, whether by radio, telephone, or telegraph, with all Japanese citizens. C. REMER, *supra*, at 172.

The effectiveness of these methods of economic coercion obviously depended upon how rigorously they were enforced. In the early days of the 1931 boycott, various local penalties were fixed for smuggling Japanese goods into China. For instance, in Shanghai three degrees of public punishment were carried out in 1931: (1) if the value of the goods exceeded Ch. $5,000, the face of the offender was branded with the three Chinese characters signifying traitor; (2) for goods valued between Ch. $2,500 and Ch. $5,000, the offender was arrested and placed in a wooden cage for a week; (3) for goods valued below Ch. $1,000, the offending merchant was paraded through the street for three successive days. North China Herald, July 28, 1931, at 11.

14. B. CHANDRA, THE RISE AND GROWTH OF ECONOMIC NATIONALISM IN INDIA 122 (1966).

15. *Id.* at 130.

Great Britain.[16] The last and largest of India's transnational boycotts came in April 1930. This boycott, organized by Mahatma Gandhi, was conceived as an act of civil disobedience designed to encourage pan-Indian protest against Great Britain's increase on the tax of India's indigenous manufacture of salt.[17]

2. *The Turkish Boycott of Austria-Hungary*

On October 6, 1908, the Austro-Hungarian Monarchy proclaimed its annexation of Bosnia and Herzogovina, and permitted Bulgaria to declare its independence from the Ottoman Empire.[18] Two days later, Austria refused to honor any settlement of Turkey's claims to Bulgarian debts. Reacting to this refusal, militant young Turks in Constantinople instigated a national boycott on all Austro-Hungarian goods and shipping facilities.[19] Their effort was formalized on October 21 with the creation of the "Ottoman Boycott Committee," which was charged with systematically directing Turkey's boycott operation.[20] Although peaceful settlement of the dispute came within six months, Turkey's boycott was considered effective in that Austria reported a substantial loss of trade revenues during that period.[21]

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16. The boycott, which was supported by Indian mill owners, was principally intended to dispel illusions of British economic omnipotence. N. BOSE, THE INDIAN NATIONAL MOVEMENT 46 (1974).

17. R. MOORE, THE CRISIS OF INDIAN UNITY 1917-1940 171 (1974). The boycott's chief trade targets included imports of British cloth, liquors, and intoxicating drugs. *Id.* The mass arrest of its leaders, repressive local ordinances, and an agricultural depression contributed to the 1930 boycott's brief duration and swift demise. N. BOSE, *supra* note 16, at 93.

18. T. BATZ, INTERNATIONAL LAW 66-70 (1909). *See generally*, B. SCHMITT, THE ANNEXATION OF BOSNIA, 1908-1909 (1937).

19. The boycott was aimed chiefly at Austrian goods. The inclusion of Hungary as a target state was intended mainly to incite Hungarian public opinion against the annexation of Bosnia and Herzogovina. W. DAVID, EUROPEAN DIPLOMACY IN THE NEAR EASTERN QUESTION 1906-1909, at 101 n.81 (1940), *reprinted in* 25 ILL. STUD. SOC. SCI. No. 4, at 101 n.81 (1975).

20. W. DAVID, *supra* note 19, at 101 n.81, *reprinted* at 101 n.81.

21. Austria's exports to Turkey declined from £920,000 (Turkish pounds) in the last quarter of 1907 to £417,000 (Turkish pounds) in the last quarter of 1908. W. DAVID, *supra* note 19, at 102 n.86, *reprinted* at 102 n.86. One estimate placed Austria's total trade loss at 20,000,000 francs. *See* W. DAVID, *supra* note 19, at 102 n.86, *reprinted* at 102 n.86.

3. *The COMECON Boycott of Yugoslavia*

The widening ideological rift between Marshall Tito's government and the Soviet Union after World War II culminated in the expulsion of Yugoslavia from the Soviet bloc in 1948. In addition to political ostracism, the Soviet Union and its Eastern European satellite countries implemented a complete economic boycott of Yugoslavia,[22] employing a variety of anti-Yugoslav measures through the Council for Mutual Economic Assistance (COMECON).[23] The COMECON boycott of Yugoslavia ended in 1955 when political rapprochement facilitated the normalization of economic relations. Nevertheless, the seven-year boycott almost completely reversed Yugoslavia's international trade pattern.[24]

4. *Great Britain's Boycott of Iran*

On May 1, 1951, Prime Minister Mohammed Mossadegh proclaimed the nationalization of Iran's oil industry, including the indigenous British-controlled Anglo-Iranian Oil Company.[25] Fol-

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22. M. DOXEY, ECONOMIC SANCTIONS AND REGIONAL ENFORCEMENT 33-34 (1971). *See generally* R. FARRELL, YUGOSLAVIA AND THE SOVIET UNION 1948-1956 (1956).

23. In 1948 Hungary, without justification, terminated war reparation payments due Yugoslavia, Bulgaria ceased restitution of cultural objects taken from Yugoslavia during World War II, the Soviet Union and COMECON members abruptly cancelled several validly concluded commercial contracts with Yugoslavia, and all economic agreements with Yugoslavia were voided. One authoritative Yugoslav document posited that by 1951, the Soviet Union had unilaterally abrogated no less than 46 treaties relating to political, economic, and cultural dealings with the Yugoslav Government. For an analysis, supplemented by official documentation, of these and other measures utilized in the Yugoslav boycott, see generally YUGOSLAV MINISTRY OF FOREIGN AFFAIRS, WHITE BOOK ON AGGRESSIVE ACTIVITIES BY THE GOVERNMENTS OF THE USSR . . . TOWARDS YUGOSLAVIA (1951).

24. In 1947 an estimated 56% of Yugoslavia's imports came from Soviet bloc countries. By 1948 this figure had dropped to 45.7%. In 1955, however, only 3.6% of products imported by Yugoslavia came from COMECON members. Exports evidenced a similar trend. In 1948 nearly 51% (down 2% from the previous year) of Yugoslavia's exports were sent to COMECON countries. When the boycott was terminated in 1955, Yugoslav exports to Soviet bloc states had diminished to a mere 10% of its export trade. *Soviet-Yugoslav Economic Relations 1945-1955*, 12 WORLD TODAY 38, 42 (1956) (table).

25. The British Government, greatly offended by the abruptness of Mossadegh's action, charged that his nationalization of Iran's oil industry directly

lowing futile diplomatic efforts,[26] the British Government in June 1951 chose to foment internal unrest against the Mossadegh regime by imposing an all-inclusive boycott against imported Iranian commodities,[27] freezing Iranian deposits in British banks,[28] and undertaking concerted measures to preclude Iran's participation in the free trade of the world petroleum market.[29]

The British boycott of Iranian trade effectively ended with the overthrow of Mossadegh's regime on August 19, 1953, and the accession to power of Mohammed Reza Pahlavi. This twenty-six month involuntary estrangement from world commerce was costly for the Iranian economy. The loss in petro-revenues, the alienation of former trading customers, and the interruption of potentially forthcoming developmental assistance were particularly damaging.[30]

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contravened the 1933 Concession Agreement by which Iran had deprived itself of "the sovereign right of annulling the contract at any time." N. FATEMI, OIL DIPLOMACY 181 (1954). N.Y. Times, May 26, 1951, at 1, col. 7.

26. In addition to diplomacy, the British made a show of force, ordering troops and naval vessels to the Mediterranean. N.Y. Times, May 26, 1951, at 1, col. 7.

27. *See* N.Y. Times, July 1, 1951, at 1, col. 5.

28. B. NIRUMAND, IRAN: THE NEW IMPERIALISM IN ACTION 55 (1969). In addition, the British Exchequer directed that any purchaser of Iranian oil making payment in pounds sterling would be subject to criminal sanctions. *Id.*

29. The undertaking entailed a two-part plan. First, to offset any possible harmful effects on world petroleum prices that might arise from removing Iranian oil from world commerce, a "voluntary" agreement was drawn up among the seven major international oil companies. Instigated by Great Britain and jointly promulgated on June 25, 1951, under the auspices of the United States Departments of Defense and Interior, this compact required the seven major cartel members (Gulf Oil, Socony-Mobil Oil, Standard Oil of California, Standard Oil of New Jersey, Texaco, British Petroleum, and Royal Dutch Shell) to adopt certain stipulations to regulate the sale and exchange of oil and to absorb localized production increases in Iraq, Kuwait, and Saudi Arabia. These production increases, as anticipated, fully compensated market demand in light of the withdrawal of Iranian oil. *Id.* at 68-69.

As the second facet of Great Britain's boycott scheme, the international oil cartel affirmed that any shipping company which provided tankers for transporting Iranian oil would receive no further shipping orders from the cartel's affiliated subsidiaries. This threat was not dismissed lightly by the international shipping industry; fewer than 40 tankers were willing to risk transporting Iranian crude oil during the two years in which the Mossadegh Government remained in power. *Id.* at 70.

30. Perhaps the best indicator of the effectiveness of Britain's boycott is that Iran managed to export only 103,000 tons of petroleum during the two-year boy-

D. The Arab Boycott Against Israel

Of all the contemporary boycotts, the League of Arab States'[31] boycott against Israel is, ideologically, the most virulent; organizationally, the most sophisticated; politically, the most protracted; and, legally, the most polemic.[32] The anti-Israel boycott originated and persists as a political response by Arab states to Israel's formation[33] and continued existence.[34]

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cott period—an aggregate sum less than the amount of petroleum it had exported each day prior to nationalization. *Id.* at 55.

31. The Arab League formally came into existence on March 22, 1945, with the following states as charter members: Egypt, Iraq, Lebanon, Jordan, Saudi Arabia, and Yemen. Currently, there are 21 Arab League states, including the seven listed above and Libya (1953), The Sudan (1956), Tunisia (1958), Morocco (1958), Kuwait (1961), Algeria (1962), People's Democratic Republic of Yemen (1967), Bahrain (1971), United Arab Emirates (1971), Oman (1971), Qatar (1971), Mauritania (1973), Somali Republic (1974), and Djibouti (1978). On March 31, 1979, in reaction to the peace treaty signed with Israel, the Arab League voted to expel Egypt and extend the scope of the anti-Israel boycott to trade with Egypt. *See* Howe, *Arab League Expels Egypt,* N.Y. Times, Apr. 1, 1979, at 1, col. 3; *see also Saudis Reported to Favor Recalling Envoys in Cairo but Retaining Ties,* N.Y. Times, Mar. 31, 1979, at 2, col. 1; *Saudis and U.S. Act to Keep Close Ties,* N.Y. Times, May 16, 1979, at 7, col. 1.

32. For further commentary on these observations, see generally C. Joyner, Boycott in International Law: A Case Study of the Arab States and Israel (May 13, 1977) (unpublished dissertation available in University of Virginia Library).

33. The origins of the Arab boycott actually antedate Israel's creation in 1948. On December 2, 1945, the Council of the Arab League adopted Resolution No. 16, which formally initiated the boycott. The resolution advocated that:

> Jewish products and manufactured [goods] in Palestine shall be [considered] undesirable in the Arab countries; to permit them to enter the Arab countries would lead to the realization of the Zionist political objectives. Accordingly, until these objectives are changed, . . . every State of the League should, before January 1, 1946, take measures which they consider fit and which will be in conformity with the principles of administration and legislation therein, such as making use of import balances in this respect in order to prevent these products and manufactured [goods] from entering [these] countries regardless of whether they have come from Palestine or by any other route.

Resolution No. 16, The Council of the League of Arab States, Sess. 2, Sched. 11 (Dec. 2, 1945), at 6, *reprinted in* M. KHALIL, THE ARAB STATES AND THE ARAB LEAGUE: A DOCUMENTARY RECORD 161 (1962).

In June 1946 the Arab League Council implemented the boycott program through Resolution No. 70, calling for several economically coercive actions. These included the establishment of local boycott offices in each participating member state; a ban on raw material exports which aided "Zionist production"; the listing of materials and commodities exported from Arab countries to aid

Structurally, the Arab boycott of Israel manifests itself at four target levels. First, there is a *primary* boycott, by which Arab League states refuse to purchase Israeli products. Second, Western firms that are suspected of violating boycott regulations[35] become the target of a *secondary* boycott which "blacklists"[36] them from trade with Arab League members. Third, there is the complicated *tertiary* boycott in which Arab governments pressure pri-

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Palestinian Arabs; use of certification procedures by customs officials as a means of ascertaining the national origin of imported goods; and a boycott of "Zionist services" in Palestine, including banks, insurance companies, factories, commercial houses, transportation agencies, and work contractors. Resolution No. 70, The Council of the League of Arab States, Sess. 4, Sched. 6, at 18-19, *reprinted in* M. KHALIL, *supra*, at 162-63. *See also* Burgoyne, *Arab League Boycott Regulations: Their Origin and Growth Examined*, 1977 ANTI-BOYCOTT BULL. 87.

34. *See* Boutros-Ghali, *The Arab League: Ten Years of Struggle*, 498 INT'L CONCILIATION 387-406 (1954); Losman, *The Arab Boycott of Israel*, 3 INT'L J. MIDDLE E. STUD. 99 (1972).

Significantly, some commentators have contended that the belligerent conditions that have existed legally between Israel and its Arab neighbors since 1948 further substantiate the legality of this boycott operation. Although armistice agreements were signed in 1949 between Israel, Egypt, Lebanon, Syria, and Jordan, with the exception of the peace treaty between Israel and Egypt, peace treaties have never been formally negotiated. Thus, because an armistice agreement "does not signify termination of the state of war between belligerent parties," the Arab boycott represents the continuation of a war by economic means. M. ISKANDAR, THE ARAB BOYCOTT OF ISRAEL 15-21 (1966); *see also* S. ROSENNI, ISRAEL'S ARMISTICE AGREEMENTS WITH THE ARAB STATES—A JURIDICAL INTERPRETATION 22-45 (1951); Dep't of State, Memorandum Concerning Boycott Provisions in U.S. Law and the Arab Boycott of Israel, *Discriminatory Arab Pressure on U.S. Business: Hearings Before the Subcomm. on Int'l Trade and Commerce of the House Comm. on Int'l Relations*, 94th Cong., 1st Sess. 223, 223-25 (1975) [hereinafter cited as Dep't of State Memorandum].

35. Dep't of State Memorandum, *supra* note 34, at 223-25. *But see* Hamza, *Update on Arab States' Policies on Boycott Rules and Accommodation*, 2 BOYCOTT L. BULL. 165 (1966); Ludwig & Smith, *The Business Effects of the Antiboycott Provisions of the Export Administration Amendments of 1977—Morality Plus Pragmatism Equals Complexity*, 8 GA. J. INT'L & COMP. L. 581 (1978); Saba, *How to Deal with Being Blacklisted: A Word About Negotiating Contracts*, 1977 ANTI-BOYCOTT BULL. 125.

36. "Blacklisting," in this instance, is the prohibition of any dealings with a person or firm from Israel. Blacklisting is imposed by individual Arab governments primarily to deny entry of the blacklisted subject's goods or services into those states. *See* H. HASSOUNA, THE LEAGUE OF ARAB STATES AND REGIONAL DISPUTES 270-71 (1975); Burgoyne, *supra* note 32, at 88; Vander Clute, *How the Blacklist Works, Its Criteria for Listing and the Procedures Used*, 1977 ANTI-BOYCOTT BULL. 45.

vate firms to reject trade with firms that continue to trade with Israel.[37] Last, there is an anomalous, albeit intriguing target level, the *personal* boycott.[38] Named persons,[39] noncommercial organizations,[40] and designated institutions[41] in this category are blacklisted because they are believed to be "pro-Zionist"—overtly sympathetic to Israel.

The Arab boycott against Israel is ostensibly coordinated and orchestrated by the Central Boycott Office of the Arab League,[42] headquartered in Damascus, Syria. Regional boycott offices operate as governmental agencies within each boycotting state.[43] Furthermore, a special legal fiat[44] and sanction standardizations[45]

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37. The complicated legal implications of the tertiary boycott are well demonstrated in AMERICAN JEWISH CONGRESS, AMERICAN LAW VS. THE ARAB BOYCOTT (1975). *See also* Ludwig & Smith, *supra* note 35; Steiner, *International Boycotts and Domestic Order: American Involvement in the Arab-Israeli Conflict*, 54 TEX. L. REV. 1355 (1976).

38. The personal boycott has included practices such as blacklisting firms known to have prominent Jews in management, blacklisting entertainers for being sympathetic to Israel, and even blacklisting motion pictures (e.g. "Exodus") for their "pro-Zionist" content. *See* Guzzardi, *The Curious Barrier on the Arab Frontiers*, FORTUNE, July 1975, at 84.

39. Those targeted include Elizabeth Taylor, Danny Kaye, Paul Newman, Barbara Streisand, Otto Preminger, and Leon Uris. Guzzardi, *supra* note 38, at 84; Short, *Trading With the Enemy*, 60 MIDDLE E. INT'L 11, 11-13 (1976).

40. Targeted organizations include the American Committee for Boys Town, Jerusalem; the American Jewish Committee; the American Jewish Congress; and the Anti-Defamation League of B'nai B'rith.

41. Targeted institutions include the Brooklyn Apts, Inc. and the entire cities of Boston and Miami.

42. The Central Boycott Office (CBO) is administered by a Commissioner General, who is appointed by the Secretary General of the Arab League and is assisted by a delegate from each Arab League member's government. Each delegate acts as a liaison officer for his or her government. The CBO basically acts as a secretariat whose responsibilities entail policy proposals and information gathering, analysis, and dissemination. *See The Boycott of Israel Office*, ARAB ECONOMIST, Apr. 1975, at 36; N. JOYNER, ARAB BOYCOTT/ANTI-BOYCOTT 24 (1976).

43. Wide disparities in administrative purview exist among these regional boycott agencies, primarily because each state defines and enforces boycott rules within the parameter of its own government and executes national policy through its own legislative and executive system. *Multinational Corporations and United States Foreign Policy: Hearings Before the Subcomm. on Multinational Corporations of the Senate Comm. on Foreign Relations*, 94th Cong., 1st Sess. 213 (1975) [hereinafter cited as *Multinational Corporations Hearings*].

44. The Arab League imposed a specific legal sanction for violations of the anti-Israel boycott by approving a "Unified Law on the Boycott of Israel." Resolution No. 849, Comment of the League of Arab States, Sess. 22-II (Dec. 11,

foster the uniform application of the Arab League's boycott for the blacklisting of suspected boycott noncompliers.[46]

1954), *reprinted in* N. JOYNER, *supra* note 42, app. C. Provisions of the "Unified Law" were subsequently incorporated into the domestic legislation of each member state. *See* General Union of Chambers of Commerce, Industry & Agriculture for Arab Countries, The Arab Boycott of Israel: Its Grounds and Regulations (summary of boycott rules in the format of an undated letter from President Abdul Aziz, H. al Sager) [hereinafter cited as The Arab Boycott of Israel], *reprinted in Contempt Proceedings Against Secretary of Commerce, Rodgers C.B. Morton: Hearings Before the Subcomm. on Oversight and Investigations of the House Comm. on Interstate and Foreign Commerce*, 94th Cong., 1st Sess. 146-49 (1975).

45. The boycott against Israel is ostensibly applied by the Arab League in accordance with a set of 40 "General Principles" covering various categories of economic activities and transactions. While no official statement by the League of Arab States or stipulated principles for the anti-Israel boycott exists, two recent compilations appear to be authoritative. *See* The Arab Boycott of Israel, *supra* note 44; League of Arab Countries, General Secretariat, Head Office for the Boycott of Israel, *General Principles for Boycott of Israel*, June 1972, [hereinafter cited as *General Principles*], *reprinted in Multinational Corporations Hearings*, *supra* note 43, at 442-76.

46. The General Principles, *supra* note 45, state that any foreign company or institution may be blacklisted for any of the following "offenses":

1. Directly or indirectly aiding Israel's economic growth or war potential;
2. Owning shares in an Israeli corporation;
3. Investing in an already blacklisted company;
4. Assembling products in Israel;
5. Licensing patents, trademarks, or copyrights to an Israeli firm;
6. Providing technical or managerial assistance to an Israeli firm;
7. Carrying out construction projects in Israel;
8. Establishing a general agency or main office for a company's Middle Eastern operations in Israel, or entrusting this responsibility to an Israeli firm or individual;
9. Failing to promptly answer inquiries from the Arab boycott authorities;
10. Manufacturing goods containing Israeli-made materials or components;
11. Importing Israeli goods for sale in commercial quantities while refusing to offer Arab products for sale on the same basis;
12. Representing, selling, popularizing or assisting in any manner the commercialization of Israeli products;
13. Selling products that contain a motor or generator made by a blacklisted firm, or having components manufactured by a blacklisted firm worth more than 35% of the unit cost value;
14. Selling stock to Israeli citizens or appointing an Israeli as a corporate officer;
15. Using the Israeli Star of David as a trademark or using other names and designs similar to those used by an Israeli firm;
16. Joining a foreign-Israeli chamber of commerce in Israel or abroad;

Since the mid-1970s the Arab boycott has assumed added economic credibility through the massive accumulation of petrodollars generated by the Arab oil-producing governments' manifold petroleum price increases.[47] Arab "petro-politics" during this time have raised serious questions regarding the legality of enforcing the anti-Israeli boycott, particularly as it relates to Western corporations and their concerns over government antitrust statutes.[48] Accordingly, while a detailed, comprehensive analysis

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17. Lending money or providing financial aid in any form to Israeli entities (firms and officers);
18. Taking part in or supporting propaganda activities on behalf of Israel;
19. Constructing ships or tankers for Israel;
20. Engaging in a joint venture with an Israeli company;
21. Acting "for the account of Israel or in its interests"; or,
22. Becoming affiliated as parent, subsidiary, or partner with a blacklisted company if the latter's interest exceeds 50% or leads to administrative control.

Id., reprinted at 449-53.

47. *See* Joyner, *The Petrodollar Phenomenon and Changing International Economic Relations*, 138 WORLD AFF. 152 (1975); *see also* Niehuss, *Foreign Investment in the United States: A Review of Government Policy*, 16 VA. J. INT'L L. 75 (1975). For indications of the role that petrodollars played in enhancing the Arab boycott's coercive influence upon United States trade, see generally *Foreign Investment and Arab Boycott Legislation: Hearings on S. 425, Amendment No. 24 Thereto; S. 953, S. 995, and S. 1303 Before the Subcomm. on International Finance of the Senate Comm. on Banking, Housing, and Urban Affairs*, 94th Cong., 1st Sess. (1975) [hereinafter cited as *Foreign Investment and Arab Boycott Hearings*]; *Hearings on Foreign Investment in the United States Before the Subcomm. on International Finance of the Senate Comm. on Banking, Housing, and Urban Affairs*, 93d Cong., 2d Sess. (1974); *Hearings on Foreign Investment in the United States Before the Subcomm. on Foreign Economic Policy of the House Comm. on Foreign Affairs*, 93d Cong., 2d Sess. (1974).

Significant amounts of petrodollars have found their way into the United States as direct foreign investments. By late 1981, the Commerce Department reported that total OPEC holdings were $69.8 billion, including $34.9 billion in government securities, $6.1 billion in corporate bonds, $8.5 billion in corporate stocks, and $13.9 billion in commercial bank liabilities. *OPEC's Secrets*, TIME, Oct. 5, 1981, at 70. One analyst, David Mizrahi, claims that Saudi Arabia's investment holdings in the United States exceed $100 billion, those of Kuwait are $55 billion, and those of the United Arab Emirates are $45 billion. *Id.; see also* Dentzer, *A Flood of Petrodollars*, NEWSWEEK, Oct. 26, 1981, at 65-66; *Arabs Search Out More U.S. Deals*, BUS. WK., Oct. 26, 1981, at 62-63. For a provocative account, see generally H. LEVINS, ARAB REACH: THE SECRET WAR AGAINST ISRAEL (1983).

48. *See The Arab Boycott and American Business: Report by the Subcomm.*

of various states' legislative responses to the Arab boycott lies outside the scope of this Article,[49] due attention will be given to considerations having special import to the legal parameters of boycotts in general.[50]

E. The United States

Through the International Emergency Economic Powers Act,[51] in 1977 the United States Congress delegated to the President certain powers for regulating foreign economic transactions during times of national emergency.[52] That Act, and the amended Trading with the Enemy Act,[53] are the principal United States

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on Oversight and Investigations of the House Comm. on Interstate and Foreign Commerce, 94th Cong., 2d Sess. (1976) [hereinafter cited as *The Arab Boycott and American Business*]; *Discriminatory Arab Pressure on U.S. Business: Hearings Before the Subcomm. on International Trade and Commerce of the House Comm. on International Relations*, 94th Cong., 1st Sess. (1975) [hereinafter cited as *Discriminatory Arab Pressure on U.S. Business Hearings*]; *Hearings on the Effectiveness of Federal Agencies' Enforcement of Laws and Policies Against Compliance, By Banks and Other U.S. Firms, with the Arab Boycott*, 94th Cong., 2d Sess. (1976); *Multinational Corporations Hearings*, *supra* note 43.

49. National legislation to counteract discriminatory repercussions from the anti-Israel boycott upon third-party states has been limited to the United States, France, and the Netherlands. *See* Phillips, The Arab Boycott of Israel: Possibilities for European Cooperation with U.S. Anti-boycott Legislation (1979) (Congressional Research Service Document 79-215F); *see also infra* text accompanying notes 215-338.

50. *See infra* text accompanying notes 100-210.

51. 50 U.S.C. §§ 1701-1706 (1982).

52. *Id.* § 1702. *See* Marcuss & Richard, *Extraterritorial Jurisdiction in United States Trade Law: The Need for a Consistent Theory*, 20 COLUM. J. TRANSNAT'L L. 439, 460 (1981).

53. 50 U.S.C. app. § 5(b) (1982). Section 5(b) provides in part:

> (1) During the time of war, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise-
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> . . .
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> (B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest . . .
>
> by any person, or with respect to any property, subject to the jurisdiction of the United States. . . .

policy instruments for the imposition of boycott-related coercion abroad, often labeled "embargoes." The Department of Treasury administers these programs by focusing on certain critical facets of transnational boycotts. Unless licensed otherwise, boycotts typically prohibit all financial transactions with the target state, all transfers of property into the United States by the target state or its nationals, and any transfer of property to a target state or its nationals that is subject to the jurisdiction of the United States.[54] The Treasury Department is currently supervising at least five boycott-related programs. First, the Foreign Assets Control Regulations[55] establish a boycott and embargo of United States trade with North Korea, North Vietnam, Cambodia, and South Vietnam.[56] Second, the Transaction Control Regulations[57] prohibit the purchase or sale of strategic commodities in any foreign country when the transaction includes shipment to any state designated under the Foreign Assets Control Regulations.[58] Third, the Foreign Fund Control Regulations[59] block the movement of selected assets located in the United States that belong to Czechoslovakia, East Germany, Estonia, Latvia, and Lithuania. Fourth, the Cuban Assets Control Regulations[60] embargo all financial and commercial transactions involving any property interest of Cuba or a Cuban national, and prohibit the importation of any goods of

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Id.

Since 1977 the applicable scope of the Trading with the Enemy Act has been limited to times of war. *Compare id. with* 50 U.S.C. app. 5(b)(1) (1976) (amended 1977) (granted the President the power to apply "[d]uring time of war, or during any other period of national emergency declared by the President"). *See generally* Note, *Presidential Emergency Powers Related to International Economic Transactions: Congressional Recognition of Customary Authority*, 11 VAND. J. TRANSNAT'L L. 515 (1978).

54. Malloy, *Embargo Programs of the United States Treasury Department*, 20 COLUM. J. TRANSNAT'L L. 485, 496-97 (1981). The licensing of exceptions devolves to the Treasury Department's Office of Foreign Assets Control. *Id.* at 496-97.

55. 31 C.F.R. §§ 500.101-.809 (1983).

56. Part I of the Schedule to 31 C.F.R. § 500.201, designates the following effective dates for the regulations' prohibitive application: North Korea (Dec. 17, 1950), North Vietnam (May 5, 1964), Cambodia (Apr. 17, 1975), and South Vietnam (Apr. 30, 1975).

57. 31 C.F.R. §§ 505.01-.60.

58. *Id.* § 505.10(b).

59. *Id.* §§ 520.01-.809.

60. *Id.* §§ 515.101-.809.

Cuban origin.[61] Fifth, the Iranian Assets Control Regulations,[62] promulgated in the wake of the Iranian hostage crisis, blocked transfer of rights in any Iranian property within the jurisdiction of the United States and forbade dealings with Iran.[63] A comprehensive anti-Iranian trade embargo or boycott, however, was not expressly intended by this action.[64]

The recent utilization of transnational economic coercion by the United States has emphasized embargo restrictions more than boycott prohibitions. United States embargo and boycott programs, however, have not escaped criticism on grounds of both commission and omission.[65] To better appreciate the legal status of transnational boycotts, an appraisal of a boycott's generic character when wielded as a policy implement of economic coercion is necessary.

III. The Transnational Boycott as Economic Coercion

A. Taxonomy

The salient traits and prominent features common to most boycotts suggest the delineation of a general taxonomy for boycotts. A boycott's situational focus, authority support, and targeted

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61. *Id.* § 515.204.

62. *Id.* §§ 535.101-.904.

63. 31 C.F.R. § 535.201. The scope of the Iranian Assets regulations was cut back by President Reagan. *See* Exec. Order No. 12,282, 46 Fed. Reg. 7,925 (1981).

64. *See* Office of the White House Press Secretary, Press Briefing by G. William Miller, Secretary of the Treasury 5 (Nov. 14, 1979) (copy on file at offices of Vanderbilt Journal of Transnational Law). A trade embargo was, however, subsequently imposed against Iran by President Carter's Executive Order of Apr. 7, 1980. Exec. Order No. 12,205, 45 Fed. Reg. 24,099 (1980).

65. Commentators Stanley Marcuss and Eric Richard have come to the following conclusion regarding the Foreign Asset Control Regulations:

> By imposing nearly absolute bans on certain exports from third countries by foreign subsidiaries of U.S. corporations, and by failing to provide for particularized analysis of the nationality of those subsidiaries or the effect of the transactions on U.S. security, these regulations create the potential for interference with the sovereignty of other states without adequate justification.

Marcuss & Richard, *supra* note 52, at 482. They conclude a sweeping indictment of United States extraterritorial economic coercion by positing that "[t]he failure of U.S. trade regulation laws to reflect a consistent theory of international legal principles pertaining to jurisdiction is a serious impediment to the evolution of the rule of law in international trade." *Id.* at 483.

market flow provide instructive characteristics for such a delineation.

A boycott's situational focus may be either *internal* (domestic-directed), or *external* (foreign-directed). If the boycotters and the target group are members of the same political society, a boycott is considered internal.[66] If a boycotting faction and the target group are from different political societies, the boycott is considered external.[67]

A boycott's sources of support may be either *official* (government-sanctioned), or *unofficial* (civilian-sponsored). If a government enacts legislation or imposes fiats to enforce boycott regulations, an official boycott exists.[68] On the other hand, if a government remains politically aloof from an internal boycott movement, or permits private groups to organize a boycott, the boycott is unofficial.[69]

A boycott may be directed at a target state's economic *demand* (consumption pattern), or its *supply* (production capability). Most commonly, one state simply refuses to purchase specified goods from another state.[70] The principal facet of a boycott could also be the curtailed export of selected commodities to the target state.[71] A third possibility is for a boycott to encompass aspects of both supply and demand; in this instance the boycott might be labeled *compound.* As a boycott becomes more prolonged, the unavoidable strain in diplomatic relations between the imposing state and the target state increases the likelihood of a compound

66. Examples of an internal boycott are the numerous citizen movements by China against resident Japanese and the actions taken by Indians in 1905 and 1930 to harm local British merchants. *See supra* notes 13-14 and accompanying text.

67. COMECON's regional estrangement of Yugoslavia, Great Britain's action against Iran, and the Arab boycott against Israel illustrate the external boycott. *See supra* text accompanying notes 22-49.

68. COMECON's boycott of Yugoslavia (1948-1955) and the ongoing Arab League boycott against Israel are examples of official boycotts. *See supra* text accompanying notes 22-24, 31-50.

69. Boycotting episodes by the Chinese, Indians, and Turks clearly assumed the popular support characteristic of unofficial boycotts. *See supra* text accompanying notes 13-21.

70. *Cf. supra* notes 13-49 and accompanying text.

71. This becomes tantamount to a quasi-embargo, which happened in the case of COMECON's trade with Yugoslavia during the early 1950s. *See supra* text accompanying notes 22-24.

boycott.[72]

The transnational boycott can be described as a mode of passive resistance which is employed as a weapon against the foreign trade of one nation in order to secure governmental redress for what the boycotter deems to be legitimate grievances. In this respect, there are three features intrinsic to transnational boycotts: (1) boycotts necessarily must involve concerted action, the effects of which are intended to transcend national boundaries; (2) boycotts are primarily, though not exclusively, economic in nature, and entail a premeditated refusal to purchase or trade designated goods and services from target states; and (3) as acts of coercion, boycotts represent a means to an end and not an end in themselves. Thus, boycotts possess special characteristics as instruments of dispute, having as their immediate purpose subjection of the target state to pervasive social inconvenience and substantial economic loss.

B. Efficacy

The utility of a boycott depends primarily upon its efficacy in inflicting the intended adverse economic consequences upon foreign trade of the target state.[73] A boycott's effectiveness, however, must not be confused with its success. A boycott may be effective in severing commercial relations with the target state, and yet be incapable of bringing about the desired change in the target state's foreign policy behavior.[74] Similarly, a boycott is unlikely to succeed unless it can muster at least some degree of effectiveness.

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72. This was precisely the case in both the Chinese boycott against Japan and the ongoing boycott of Israel by the Arab League states. *See supra* text accompanying notes 13, 31-49.

73. Admittedly, precise quantitative determinations of a boycott's effect is difficult to determine. Trade statistics, when available, are not always reliable because they often are "adjusted" or suitably "reinterpreted" by governments to skew or distort the true commercial effect of a boycott. Measuring boycott-related trade interruptions using currency values expressed as "trade loss indicators" may be graphically instructive as an heuristic device, but these figures cannot be regarded as either comprehensive or accurate indicators of a boycott's efficacy because they fail to account for trade between the boycotting state and the target state through third parties. For an illustration of the difficulties incurred in attempting to calculate such impacts, see A. SPANDAU, ECONOMIC BOYCOTTS AGAINST SOUTH AFRICA: NORMATIVE AND FACTUAL ISSUES 132 (1979).

74. The Arab League boycott of Israel, notwithstanding its relatively sophisticated composition and regulation, is a good example. *See supra* text accompanying notes 31-48.

Historically, certain factors stand out as important indices of a boycott's success against the target state: (1) the target state's total share in market demand supply; (2) alternative markets or sources of supply for the boycotted goods; (3) availability of substitutes for the boycotted goods; (4) positive identification for the boycotted goods; (5) organization of the boycott; (6) selection of economically significant target goods or services; (7) reasonable integration of the law into the boycott; and (8) the sense of injustice felt by the boycotters. While each point does not pertain equally to every boycott, they all contribute to a boycott's overall efficacy.

If a boycott is to be effective and successful, the boycotting group must comprise a sensitive segment of the target state's attainable market. In other words, the greater the purchasing power or supply potential of a boycotter coalition, the greater the likelihood that the boycott will have an effect on the supply or demand of the targeted goods.[75]

The extent to which alternative sources of supply or market outlets are available for boycotted goods will significantly affect a boycott's success. The more difficult it is for the target state to secure access to supplementary markets or sources of supply, the greater the chances of a boycott's success.[76]

In consumer or demand boycotts, the absence of price competitive substitutes makes it harder for boycotters to do without the targeted goods. Conversely, in supply-oriented boycotts, the lack of substitutes for boycotted products forces the target state to import replacement goods which increases the potential that the boycott will have a significant adverse economic effect on the target state.[77]

The precise designation of boycotted goods, facilitated by a convenient method of identifying those goods, enables boycotters

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75. This was the case in both Great Britain's boycott against Iran's petroleum trade and the Arab oil-producing governments' strategy to use petroleum revenues at the secondary and tertiary levels of the boycott against Israel. *See supra* notes 25-48 and accompanying text.

76. The case of Iran during the British boycott of 1951-1953 is illustrative. *See supra* notes 25-30 and accompanying text.

77. The failure of boycotts to achieve these results probably accounts for the relatively insignificant impact of the Chinese boycotts against Japan during 1908, 1915, 1923, and 1928, and for the lack of success of India's boycotts against Great Britain. *See supra* notes 13-17 and accompanying text.

to enforce more rapidly and definitely a boycott operation.[78]

The active participation of skilled management on behalf of boycotters is critical for coordinating and regulating a boycott. The more efficient a boycott's organization, the greater its potential for inflicting serious damage on the target state.[79]

A boycott's effectiveness depends to a large degree upon how seriously the reduction in foreign trade affects a target state's economy. The boycotted goods or services must have a significant place in the target state's economy. For example, while a boycott of petroleum may produce quick and meaningful results, a boycott of black pepper or oregano could not be expected to have a similar effect.[80]

The extent to which the law of the boycotting state is reasonably integrated into a boycott can be crucial in facilitating the boycott's success. Official sanction and legislative regulations not only contribute to a boycott's enforcement, but also establish its legitimacy.[81] If, on the other hand, a government were to legislate harsh anti-boycott penalties and repressive ordinances, these devices would surely discourage widespread participation in the boycott.[82]

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78. For example, under the Arab boycott, a company's response to the Central Boycott Office's request for certain documents of identification may determine whether or not the company will be placed on the blacklist. One accepted response is to furnish a negative certificate of origin certifying that neither the goods shipped, nor their components, are of Israeli origin. *See* N. JOYNER, *supra* note 42, at 3-4. An information request usually contains the following questions:

1. Do you have main or branch factories, assembly plants, or joint ventures in Israel?
2. Do you hold shares in Israeli companies?
3. Do you provide technical assistance or consultative services to Israel?
4. Do you maintain general agencies or main offices in Israel for Middle East operations?
5. Do you license technology to Israel?
6. Are you prospecting for natural resources in Israel?
7. Are you acting as the principal importer or agency for Israeli goods?

Foreign Investment and Arab Boycott Hearings, *supra* note 47, at 21 (statement of John K. Tabor, Undersecretary of Commerce at the time of the hearings). Failure to respond is deemed an admission of guilt and warrants blacklisting. *See* H. HASSOUNA, *supra* note 36, at 469.

79. For examples of organizational efforts, see *supra* notes 13, 27-30, 31-48 and accompanying text.

80. *Cf. supra* text accompanying notes 44-48.

81. *See supra* note 43.

82. This has been the intention underlying the United States attitude to-

A critical element in the efficacy and success of any boycott is the emotional factor that fuels its implementation. The sense of injustice and psychological injury felt by the boycotters will determine the degree of their personal motivation and commitment to a boycott campaign. The more intense the popular conviction favoring a boycott's cause, the more willing the boycott participants will be to endure the resultant economic burdens and self-sacrifice.[83]

C. Negative Considerations

Thus far, the political ramifications of boycotts have been cast in a positive light. Several negative aspects of transnational boycotts do exist, however, and they should not be disregarded. First, because they represent a form of denial, boycotts by definition leave any initiative of response to the opposition.[84] In addition, the time-consuming nature of boycotts necessitates reliance upon continued social pressure exerted over considerable lengths of time.[85] Extraterritorial boycotts are costly and their supporters must incur substantial trade losses if the boycotts are to have any

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ward nonprimary facets of the Arab boycott against Israel. *See infra* text accompanying notes 218-46.

83. Undoubtedly, "injustice" was the paramount motivation fomenting the several Chinese boycotts against Japan, the Indian boycotts against Great Britain, and the Turkish reaction to Austria's annexation of Bosnia. *See supra* text accompanying notes 13-21. A good example of a politically motivated transnational boycott is the Arab League's action against Israel. Abdul Raham Azzam Bey, Secretary of the Arab League, announced that the League's member states would institute a boycott against all Jewish-produced goods from Palestine. Bey averred that the boycott was necessary because Jewish industry in Palestine "is based on Zionist funds collected in foreign countries to serve a political purpose: the establishment of a Jewish national home and state in Palestine. This purpose is not realizable except by the exploitation of markets in Arab countries." 2 ESCO FOUNDATION FOR PALESTINE, PALESTINE: A STUDY OF JEWISH, ARAB AND BRITISH POLICIES 1205 (1947). *See also* W. QUANDT, F. JABBER & E. LESCH, THE POLITICS OF PALESTINIAN NATIONALISM (1973).

84. Jewish reaction in the United States in recent years to the "unjust" anti-Israeli boycott has been virulent, intense, and largely successful in promoting the passage of antiboycott legislation. *See infra* text accompanying notes 218-63.

85. Three of the Chinese boycotts persisted at least two years (1919-1921, 1927-1928, and 1931-1933), the COMECON boycott of Yugoslavia lasted for nearly seven years (1948-1955), and the Arab boycott against Israel has been in effect for more than thirty-five years. *See supra* notes 13, 22-24, 31-48 and accompanying text.

significant effect.[86] Finally, boycotts are inefficient because they often affect many consumers who are not involved in the dispute and who have negligible influence over policies of the targeted state.[87]

IV. The Transnational Boycott in International Law

A. The Transnational Boycott as Intervention

More than two centuries ago, the eminent Swiss legal philosopher, Emmerich de Vattel, posited that:

> Every state has consequently a right to prohibit the entrance of foreign merchandises; and the nations that are affected by such prohibition have no right to complain of it, as if they had been refused an office of humanity.
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> . . . .
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> Since then a nation cannot have a natural right to sell her merchandises to another that is unwilling to purchase them,— since she has only an imperfect right to buy what she wants of others,—since it belongs only to these last to judge whether it be proper for them to sell or not—and, finally, since commerce consists in mutually buying and selling all sorts of commodities,—it is evident that it depends on the will of any nation to carry on commerce with another, or to let it alone. If she be willing to allow this to one, it depends on the nation to permit it under such conditions as she shall think proper. For in permitting another nation to trade with her, she grants that other a right; and every one is at liberty to affix what conditions he pleases to a right which he grants of his own accord.[88]

de Vattel's observations highlight the frequently made assertion that international commercial dealings lie within the prerogatives of national sovereignty. International law assigns to each state, as an incident of its sovereignty, the right to choose the economic policies that will govern its relations with trading partners.[89] Even so, when a state intentionally uses its extraterritorial

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86. Not surprisingly, trade losses incurred by the boycotting state are rarely admitted, and statistics concerning such losses are generally unavailable.

87. *See* D. Losman, A Consideration of Boycotts in International Economic Sanctions: The Cases of Cuba, Israel, and Rhodesia 124-40 (1979).

88. E. de Vattel, *supra* note 10, at 38-39.

89. *See* C. Fenwick, International Law 249-52 (4th ed. 1965); 1 C. Hyde, International Law 205-09 (1945); 1 L. Oppenheim, International Law 286-90 (8th ed. 1955).

policies as cudgels for the attainment of foreign policy goals or to register transnational protest, certain implications arise for the law of the affected nations. When transnational boycotts are wielded intentionally by a government to coerce the sovereign will of another government, those policies are considered interventionary—premeditated dictatorial interference into the affairs of the target state.[90] It is patently obvious that transnational boycotts entail interference into another state's sovereign realm. Although transnational boycotts constitute extraterritorial intervention, they are not ipso facto illegal instruments of economic coercion pursuant to international law. The circumstances under which a boycott is implemented, the motivations underlying its use, and the degree of severity it assumes will determine a boycott's legal status.

The intent underlying a nation's imposition of a transnational boycott is, therefore, a principal consideration in determining the legality of a boycott.[91] When a state willfully implements a boycott policy, particular objectives are sought by that state. If a state, obligated under international law to abstain from boycott activities, nevertheless initiates or supports a boycott, the primary objective of which is to cause a direct and unjustified interference in the affairs of a nonconsenting target state, the boycott may violate well-established international law principles.[92] On the other hand, when a transnational boycott is utilized by a state as an instrument of intervention, the boycott may be deemed legal if it was exercised in self-defense, or as a means of self-help to redress injuries inflicted upon that state.

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90. *See* J. BRIERLY, THE LAW OF NATIONS 402 (6th ed. 1963); 1 L. OPPENHEIM, *supra* note 89, at 305; 5 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 452-53 (1965); Fenwick, *Intervention: Individual and Collective*, 39 AM. J. INT'L L. 645 (1945). *See generally* Burke, *The Legal Regulation of Minor International Coercion: A Framework for Inquiry*, in ESSAYS ON INTERVENTION 87 (R. Stranger ed. 1964).

91. *See infra* text accompanying notes 138-39.

92. Commentators have argued that for intervention to be illegal under international law, the use or threat of force must be made against a territory. *See, e.g.*, H. KELSEN, PRINCIPLES OF INTERNATIONAL LAW 64 (1952); T. LAWRENCE, PRINCIPLES OF INTERNATIONAL LAW 124 (6th ed. 1913); E. STOWELL, INTERVENTION IN INTERNATIONAL LAW 318 n.48 (1921).

1. *Justifiable Intervention*

a. Self-defense

The right of self-defense is universally acknowledged and accepted in international law.[93] A boycott undertaken when specific circumstances demand self-defense assumes the legal status granted by international law. To attain this legitimacy, a transnational boycott must rest upon those factors that render intervention for purposes of self-defense legal: the boycott must be enacted against a state whose attack or impending attack was objectively illegal; the danger must have been direct and immediate; and the boycott must adhere to the grounds of necessity and proportionality by being a just response and clearly not excessive in relation to the threat.[94]

b. Securing redress

Boycotts undertaken to secure adequate redress after an injury has been inflicted upon one state by another state may also be legal under international law. Because international law is relatively primitive, self-help remains the preeminent authorized sanction and the principal means of legal enforcement. The transnational boycott is a valid means of self-help when used by a state to secure redress for an injustice done to it. Used in this manner, a boycott entails a limited interference by the wronged state into the sovereign interests of the alleged transgressor state in order to economically coerce the latter to meet its international obligations and duties to the former.

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93. *See generally* D. BOWETT, SELF-DEFENSE IN INTERNATIONAL LAW 3-25 (1958); M. WHITEMAN, *supra* note 90, at 966-1048 (1965).

94. For a discussion of factors legitimizing self-defense, see 1 L. OPPENHEIM, *supra* note 89, at 297-304. D.W. Bowett has observed the following characteristics typifying the right of self-defense:

> (1) The right of self-defence lies against conduct by states which is delictual as being in breach of a duty established by international law.
>
> (2) The exercise of the right of self-defence presupposes the absence of any alternative means of protection for certain essential rights of the state which are endangered.
>
> (3) The danger to those rights must be serious, and must be actual or imminent.
>
> (4) The measures of self-defence taken must be reasonable, limited to the necessity of protection, and proportionate to the danger.

D. BOWETT, *supra* note 93, at 269.

(*i.*) *Retorsion*—As a foreign policy instrument of redress, the transnational boycott may be classified as a method of retorsion.[95] In international law, retorsion is an inimical form of retaliation taken by one government in response to another government's discourteous, unfair, unkind, or inequitable action. It is important to note that the act prompting retorsion is not illegal, but merely unfriendly.[96] Retorsion implies that the retaliation for some noxious, albeit legal, act will be by resort to a noxious, albeit legal, act of similar degree.[97] Consequently, the transnational boycott employed as a vehicle of retorsion is inherently legal. When retorsion can be properly employed, however, is not easy to ascertain precisely. Frequently, difficulties arise from the parties' differing perceptions as to the extent of a discourtesy or the gravity of an unfriendly act. Thus, a government's ability to legally justify a transnational boycott by retorsion rests substantially upon the merits and circumstances of each separate instance of provocation.

(*ii.*) *Reprisal*—Pursuant to international law, transnational boycotts enacted as sanctions are legally permissible if effected against a state that is guilty of contravening international law. Boycotts imposed in retaliation by an injured state to secure redress against the transgressor state are labeled reprisals and are allowed. It is contrary to international law, however, for a state to use a boycott to coerce the sovereign will of another state or to obtain any undue advantages from it.[98]

2. *Illegal Intervention*

a. Generally

A fundamental norm of international law is a state's sovereign right to independence in conducting both its domestic and its foreign policies.[99] Illicit intervention under international law, there-

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95. For a discussion of retorsion, see 2 C. HYDE, *supra* note 89, § 588; 2 L. OPPENHEIM, *supra* note 10, at 134-35; G. SCHWARZENBERGER, INTERNATIONAL LAW 76-77 (1945); H. WHEATON, ELEMENTS OF INTERNATIONAL LAW 368 (1972) (repaginated reprint of 8th ed. 1866).

96. *See* C. FENWICK, *supra* note 89, at 635-36; 2 L. OPPENHEIM, *supra* note 10, at 134; G. SCHWARZENBERGER, *supra* note 95, at 76.

97. 2 L. OPPENHEIM, *supra* note 10, at 135; H. WHEATON, *supra* note 95, at 368-69.

98. *See infra* notes 200-04 and accompanying text.

99. *See supra* note 89 and accompanying text.

fore, is not limited to interference in the internal affairs of other states. If the national policies of one state unduly or dictatorially contravene another state's external affairs, such an intervention may be deemed illegal. A state's external independence—including a state's right to determine what relations to pursue with other states—is as important as its internal independence. Resort to a boycott, therefore, may constitute an undue or excessive interference into both the internal and external affairs of the target state, particularly if that boycott were made extraordinarily severe by its comprehensive coverage, strict compliance, or rigorous enforcement.

When the essence of a boycott's economic intervention becomes intentional compulsion, its legality may become susceptible to challenge and criticism.[100] A transnational boycott that exerts excessive economic coercion, or seeks as its paramount purpose to influence certain behavior by imposing its dictatorial will, exceeds the parameters of legality. Such a boycott does not fall within the ambit of either self-defense or legitimate redress, but instead, tends more toward illegal economic intervention and should be construed as such.

b. Injury to third party states

A transnational boycott that intentionally interferes with the trading patterns of a state which has committed no offense against the instigating government may be legally suspect. Depending upon the severity and reach of the interference, such a boycott may be considered excessive and injurious by affected third-party states and, therefore, be branded as an illegal foreign policy of economic coercion.

In a related vein, the legality of a transnational boycott having multiple levels may be impugned if it interferes with the domestic domain of a disinterested third-party state. Each state retains the undisputed sovereign right to construct its own internal laws and regulations for governing natural and legal persons under its national jurisdiction.[101] When the secondary or tertiary levels of a transnational boycott impinge upon the ability of a nontargeted, third-party state to maintain its inherent legal competence, the

100. This has undoubtedly been the case with the Arab boycott of Israel. *See supra* note 48 and accompanying text.

101. *See supra* note 89 and accompanying text.

boycott's reach may be deemed excessive and, if severe enough, may abrogate the fundamental legal norm of nonintervention. For example, if State A boycotts State B and instigates a secondary transnational boycott that affects corporations of State C trading with State B, that boycott would not necessarily be illegal because State A does not have to trade with either State B or any other state's corporate entities if it so chooses.[102]

Suppose, however, that in the process of boycotting State B, State A threatens or attempts to curtail trade with those corporations of State C that trade with other corporations of State C, who in turn trade with State B. In such a tertiary boycott case, State A would be enforcing a restraint of trade between corporations of State C, designed to injure State B. In this situation, State A could be intervening illegally into the domestic affairs of State C if its actions violate State C's domestic antitrust laws.[103]

c. Discriminatory boycotts

The status of a transnational boycott instigated for, or motivated by, overt discriminatory considerations is less clear under international law. A transnational boycott undertaken for the express purpose of curtailing trade with some other state on grounds of religious, ethnic, or racial prejudice is legal because such a boycott still lies within a state's sovereign prerogative to trade with whomever it pleases. This realization does not imply, however, that a discriminatory boycott should be morally respected or condoned by the international community. An expressly discriminatory boycott cannot help but violate the spirit of international law and undermine respect for accepted standards and emergent legal principles associated with the minimum of human rights.[104]

Similarly, if State A's secondary and tertiary level boycott is

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102. *See infra* notes 101-24 and accompanying text. The boycott would be illegal if it violated existing valid treaties or contracts.

103. In recent years, governments have fashioned legislative responses to deal with possible antitrust violations. *See infra* notes 215-63, 277-304 and accompanying text.

104. *See generally* L. SOHN & T. BUERGENTHAL, INTERNATIONAL PROTECTION OF HUMAN RIGHTS (1973); Ermacora, *Human Rights and Domestic Jurisdiction*, 124 RECUEIL DES COURS 375 (1968); Falk, *Responding to Severe Violations*, in ENHANCING GLOBAL HUMAN RIGHTS 207 (J. Dominguez ed. 1979); Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 AM. U. L. REV. 1 (1982).

motivated by discriminatory religious, ethnic, or racial considerations, the gravity of its transgression would probably be compounded. If disciminatory criteria are employed by State A as guideline considerations for application by State C's corporations in restraint of their trade, the lawfulness of State A's boycott operation becomes openly suspect on at least two counts. First, the imposition of such dictatorial sway by State A would per force foster discriminatory actions by and among legal persons in State C.[105] Second, this interference by State A into the trade of State C would amount to an excessive use of unmitigated economic coercion falling outside the permissible bounds of self-defense, rights and redress, or mere commercial estrangement as provided for in international law.[106] Consequently, the secondary and tertiary levels of State A's composite boycott could be appropriately criticized for their illicit character.

In conclusion, the legal status of transnational boycotts can be considered in much the same way as the legality of intervention is appraised in international law. The general right of a state to enact a boycott as an economic policy is circumscribed by the rule that a boycott may be employed only as a sanction in support of the law, not as a measure designed solely to coerce or to inflict injury upon another state. Whether or not a boycott will be legally characterized as intervention depends upon both the nature of the boycott and the purpose for which the boycott was undertaken.

B. The Transnational Boycott in Treaty Law

In global economic relations, treaties play a paramount role in facilitating, sustaining, and regulating trade between and among states.

1. *Bilateral Treaties*

The current popularity of bilateral agreements is evidenced by the considerable number of friendship, commerce, and navigation (FCN) treaties in force, the fundamental purposes of which are the continuation of free trade and the perpetuation of amicable

105. This appears to have been the case with the Arab boycott of Israel. *See infra* text accompanying notes 233-38.

106. *See supra* notes 89-93 and accompanying text.

commercial relations.[107] These agreements normally contain provisions that grant most-favored-nation treatment for exports and imports between both contracting nations.[108] There is typically a nondiscrimination stipulation that forbids the imposition of a boycott unless a similar restriction is made applicable to like imports from, or exports to, all other countries.[109] A boycott instigated by a state that is party to such a treaty may be in violation of international law on the grounds that the boycott is a breach of the fundamental norm of *pacta sunt servanda*, a principle mean-

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107. *See, e.g.*, Treaty of Friendship, Commerce and Navigation, Apr. 2, 1953, United States-Japan, 4 U.S.T. 2063, T.I.A.S. No. 2863.

108. For example:

> Nationals and companies of either Party shall be accorded national treatment and most-favored-nation treatment with respect to access to the courts of justice and to administrative tribunals and agencies within the territories of the other Party, in all degrees of jurisdiction, both in pursuit and in defense of their rights. It is understood that companies of either Party not engaged in activities within the territories of the other Party shall enjoy such access therein without registration or similar requirements.

Id. art. IV para. 1.

109. For example:

> 2. Neither Party shall impose restrictions or prohibitions on the importation of any product of the other Party, or on the exportation of any product to the territories of the other Party, unless the importation of the like product of, or the exportation of the like product to, all third countries is similarly restricted or prohibited.
>
> 3. If either Party imposes quantitative restrictions on the importation or exportation of any product in which the other Party has an important interest: . . . (b) If it makes allotments to any third country, it shall afford such other Party a share proportionate to the amount of the product, by quantity or value, supplied by or to it during a previous representative period, due consideration being given to any special factors affecting the trade in such product. . . .
>
> . . . .
>
> 7. Notwithstanding the provisions of paragraphs 2 and 3(b) of the present Article, a Party may apply restrictions or controls on importation and exportation of goods that have effect equivalent to, or which are necessary to make effective, exchange restrictions applied pursuant to Article XII. However, such restrictions or controls shall depart no more than necessary from the aforesaid paragraphs and shall be conformable with a policy designed to promote the maximum development of nondiscriminatory foreign trade and to expedite the attainment both of a balance-of-payments position and of monetary reserves which will obviate the necessity of such restrictions.

Id., art. XIV.

ing agreements of the parties must be observed.[110]

2. *Multilateral Conventions*

a. The General Agreement on Tariffs and Trade

The General Agreement on Tariffs and Trade (GATT) is more closely related to the totality of international commercial conduct.[111] Negotiated in 1947, GATT currently counts eighty-eight countries as contracting parties, including most major non-communist nations.[112] The widespread acceptance of GATT as a mechanism for governing international trade is founded upon the belief that some regulatory instrument is essential for dissuading national political leaders from pursuing limited policies of economic self-interest—policies that eventually might lead to retaliatory action and a sharp, chaotic decline in the volume of international commerce.[113]

The original GATT convention clearly was designed to ensure that all contracting states had access to international markets and that the erection of discriminatory barriers in foreign commercial dealings would be prohibited. Intriguing questions about the role of transnational boycotts are raised by GATT provisions that guarantee the availability of exports to all participating countries. For example:

> No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party or on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.[114]

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110. *Accord* Vienna Convention on the Law of Treaties, art. XXVI, U.N. Doc. A/CONF. 39/27, 289 (1969) [hereinafter cited as Vienna Convention] *reprinted in* 63 AM. J. INT'L L. 875 (1969). *See generally* Wehberg, *Pacta Sunt Servanda*, 53 AM. J. INT'L L. 775 (1959); Kunz, *The Meaning and the Range of the Norm Pacta Sunt Servanda*, 39 AM. J. INT'L L. 180, 180-81 (1945).

111. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A3, T.I.A.S. No. 1700, 55 U.N.T.S. 266 [hereinafter cited as GATT].

112. *See* U.S. DEPT. OF STATE, TREATIES IN FORCE: A LIST OF TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES IN FORCE ON JANUARY 1, 1982, 237 (1982) (DOS Pub. 351). Several other states have officially expressed various forms of diplomatic intent or interest in GATT. *Id.*

113. *See* J. JACKSON, WORLD TRADE AND THE LAW OF GATT § 1.3 (1969).

114. GATT, *supra* note 111, art. XI.

A member of GATT is thus enjoined from imposing boycotts and other export controls except in certain designated circumstances,[115] during which any restriction must be made applicable to similar products from "all third countries."[116] GATT also allows special exceptions to the unilateral export curtailments for "the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption."[117]

It should be noted that GATT contains a national security exception in article XXI, which declares that the Convention should not be construed as precluding "any contracting party from taking any action which it considers necessary for the protection of its essential security interests. . .[when] taken in time of war or other emergency in international relations."[118] Consequently, a transnational boycott by a party to GATT could be sustained as a legitimate act of foreign policy if it is initiated during a condition of belligerency or "other emergency."[119]

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115. These circumstances allow measures:

I. (a) necessary to protect public morals; (b) necessary to protect human, animal, or plant life or health; (c) relating to the importation or exportation of gold or silver; . . . (e) relating to the products of prison labor; (f) imposed for the protection of national treasures of artistic, historic or archaeological value . . . .

II. (a) essential to the acquisition or distribution of products in general or local short supply . . . .

Id. art. XX.

116. *Id.* art. XIII, para.(i).

117. *Id.* art. XX, para.(g). It is important to note that a qualifying provision would negate these restrictions should they be applied "in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail." *Id.* at art. XX.

118. *Id.* at art. XXI, para.(b)(iii). Other security interests included are activities relating to fissionable materials and to traffic in arms, ammunition, and the implements of war. *Id.* at para.(b)(i)-(ii).

119. Although he concedes the need for national security qualifications in GATT's provisions, one expert commentator on the legal facets of GATT has posited that the exceptions expressed in articles XX and XXI create a "dangerous loophole to the obligations of GATT." J. JACKSON, *supra* note 113, § 28.4. Another authority has asserted that article XXI has "effectively vitiated" all the principles represented by GATT's promulgation. *See Hearings on Economic Impact of Petroleum Shortages before the Subcomm. on International Economics of the Joint Economic Comm.*, 93d Cong., 1st Sess., 157 (1973) (statement of Professor Richard N. Gardner, Professor of Law and International Organizations, Columbia University). *See generally* C. BERGSTEN, COMPLETING THE GATT: TOWARD NEW INTERNATIONAL RULES TO GOVERN EXPORT CONTROLS

b. The Vienna Convention on the Law of Treaties

A second multinational instrument used to determine the legal status of a transnational boycott is the Vienna Convention on the Law of Treaties.[120] Article 52 of the Vienna Convention provides: "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."[121] Article 52 is augmented in the treaty's Annex by the Resolution Relating to the Declaration on the Prohibition of Military, Political or Economic Coercion in the Conclusion of Treaties.[122] This resolution provides:

> *The United Nations Conference on the Law of Treaties . . . 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. . . .[123]

Unlike GATT, these two Vienna Treaty provisions unmistakably stipulate that a nation's resort to force—including economic coercion such as the use of a transnational boycott—to secure a treaty agreement is illegal under international law. Should a state seek to compel such an agreement, the treaty would automatically be abrogated.[124]

(1974).

120. Vienna Convention, *supra* note 110.

121. *Id.* art. 52. For an extensive bibliography of the legislative history behind the textual evolution of article 52, see S. ROSENNE, THE LAW OF TREATIES: A GUIDE TO THE LEGISLATIVE HISTORY OF THE VIENNA CONVENTION 286-89 (1970). *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 LAW. 755 (1971).

122. U.N. Doc. A/7697 (1969), *reprinted in* S. ROSENNE, *supra* note 121, at 432.

123. *Id.* (emphasis in original).

124. Notwithstanding the illegality of such an act, there remains some uncertainty whether article 52 and its companion Declaration represent the codification of existing international law or merely indicate the direction in which the law is proceeding. *See* Sinclair, *Vienna Conference on the Law of Treaties*, 19 INT'L & COMP. L.Q. 47, 49-50 (1970).

C. The Transnational Boycott in United Nations Law

1. *The Charter and "Economic Force"*

Three United Nations Charter provisions, article 2, section 4; article 39; and article 51, are intrinsic to the United Nations fundamental purpose of maintaining international peace and security. Article 2(4) of the United Nations Charter circumscribes one of the most cherished sovereign possessions of a state: the "use of force" in its international conduct.[125] This accomplishment has been described by one contemporary legal scholar as the creation of the "principal norm of international law in our time."[126] Nonetheless, the term use of force is undefined, unspecified, and consequently, open to wide interpretation.[127] The types of force—military, economic, social, cultural, or political—that are prohibited under this provision is an open question.

Because nations have often chosen transnational boycotts as the means to achieve foreign policy objectives, one might deduce that economic methods of coercion (and political, social, and cultural influences as well) should be subsumed under the prohibitions of article 2(4).[128] This conclusion, however, contains a number of inconsistencies.

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125. U.N. CHARTER art. 2, para. 4. Article 2(4) directs "all members [to] 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 matter inconsistent with the Purposes of the United Nations." *Id.* (emphasis added).

126. Henkin, *The Reports of the Death of Article 2(4) Are Greatly Exaggerated*, 65 AM. J. INT'L L. 544, 544 (1971). *But cf.* Franck, *Who Killed Article 2(4)? Or: Changing Norms Governing the Use of Force by States*, 64 AM. J. INT'L L. 809 (1970).

127. *See* Comment, *The Use of Nonviolent Coercion: A Study in Legality Under Article 2(4) of the Charter of the United Nations*, 122 U. PA. L. REV. 983, 987 (1974). *Cf.* Brosche, *The Arab Oil Embargo and United States Pressure Against Chile: Economic and Political Coercion and the Charter of the United Nations*, 7 CASE W. RES. J. INT'L L. 3 (1974); Claude, *The United Nations and the Use of Force*, 532 INT'L CONCILIATION 325 (1961).

128. For representative views of this proposition, see D. BOWETT, *supra* note 93, at 147, 176; H. KELSEN, THE LAW OF THE UNITED NATIONS 726-31 (1950); M. MCDOUGAL & E. FELICIANO, *supra* note 1, at 124-29. During the 1945 United Nations Conference on International Organization in San Francisco, Brazil proposed an amendment that would have extended the scope of article 2(4) to include "the threat or use of economic measures in any manner inconsistent with the purposes of the United Nations." This proposal, however, was rejected. *See* Doc. 215, I/1/10, 6 U.N.C.I.O. Docs. 525, 549 (1945); Doc. 784, I/1/27, 6 U.N.C.I.O. Docs. 331, 334-35 (1945).

First, a broad interpretation of the term "force," which includes economic forms of coercion such as a boycott, gives rise to the immediate problem of reconciling article 2(4) with article 51, the U.N. Charter's self-defense provision.[129] Resort to self-defense is restricted to instances in which *armed* attacks have occurred. If article 2(4) were to include the economic coercion of a boycott in its definition of force, and if a state were to apply such economic coercion against another state, the target state would have no legal recourse of self-defense. A serious textual incongruity would be created in the U.N. Charter; the target state would be the victim of illegal force, but would not be availed of any legally exercisable right of self-defense under article 51.[130]

Second, article 39 entrusts the Security Council with the responsibility for determining "the existence of any threat to the peace, breach of the peace, or act of aggression," in order that it may take or recommend measures "to restore international peace and security."[131] The wording of article 39 suggests that the framers of the U.N. Charter intended this provision to pertain only to *armed* incidents of coercion.[132] If article 39 was interpreted expansively to embrace economic coercion as "threats" or "aggression,"[133] the Security Council would be empowered with a discretionary authority so great that many states would find the concession of sovereignty unacceptable.[134]

The scope of the term "aggression" under article 39, therefore,

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129. "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations. . . ." U.N. CHARTER art. 51.

130. *See* Kunz, *Individual and Collective Self-Defense in Article 51 of the Charter of the United Nations*, 41 AM. J. INT'L L. 872 (1947).

131. U.N. CHARTER art. 39.

132. *See* I. BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 361 (1963).

133. The philosophy that economic measures of coercion should be handled by the Security Council, rather than the General Assembly, was reaffirmed by the International Court of Justice in the *Expenses Case*. Advisory Opinion on Certain Expenses of the United Nations, 1962 I.C.J. 163. *See also* Lillich, *The Status of Economic Coercion Under International Law: United Nations Norms*, 12 TEX. INT'L L. J. 17 (1977).

134. The United States and other Western industrialized democracies surely would withhold consent from such a development, because any Security Council inaction on an issue of "economic aggression" might lead to the transfer of an extraordinary amount of power to the majority group of 77 states controlling the General Assembly, by means of the Uniting for Peace Resolution.

is similar to the question of the meaning of "force" as used in article 2(4). It is unclear what substantive criteria the international community must use in apolitically determining the legality of a national economic boycott policy under either U.N. Charter provision. Any satisfactory solution of these issues necessitates the creation and universal acceptance of a judgmental norm of behavior. This behavioral norm would require the delicate balancing of a number of factors including the intensity, purpose, and actual nature of the coercive act.[135] It is very doubtful that such a behavioral norm could ever be applied impartially by all members of the United Nations to all boycotts alleged to be economically coercive, especially in light of the strained relations that exist between lesser developed countries and industrialized Western nations.[136]

In summary, the U.N. Charter articles provide inadequate criteria for defining the legal boundaries of a transnational boycott. The lack of definitional specificity, the inconsistencies between articles within the U.N. Charter, and the present volatile political climate all prevent the U.N. Charter provisions from delineating boundaries for the coercive use of a transnational boycott. Despite the U.N. Charter's ineffectiveness in dealing with transnational boycotts, the United Nations itself has long perceived the serious implications of employing economic coercion as a tool for the advancement of national foreign policy objectives.[137] In fact, the United Nations General Assembly has expressly condemned such acts in various declarations and resolutions.

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135. Comment, *supra* note 127, at 988-93.

136. For reactions to the perceived Third World "threat" to the Western members of the United Nations, see A. YESELSON & A. GAGLIONE, A DANGEROUS PLACE: THE UNITED NATIONS AS A WEAPON IN WORLD POLITICS (1974); Falk, *The American Attack on the United Nations: An Interpretation*, 16 HARV. INT'L L.J. 566 (1975).

137. *See supra* note 126 and accompanying text. The Organization of American States (OAS) also incorporated the notion of economic coercion into its Charter: "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." OAS CHARTER art. 16. *See* A. THOMAS & A. THOMAS, THE CONCEPT OF AGGRESSION IN INTERNATIONAL LAW 90 (1972).

2. *United Nations Declarations and Resolutions*

An examination of General Assembly proclamations since the mid-1960s clearly indicates the international community's increasing concern over the growing use of economic and political policies as means of coercion against other states.

The Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty[138] provides:

> 1. . . . [A]rmed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are condemned.
> 2. 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. . . .[139]

The over-inclusive terminology, "all other forms of interference or attempted threats," of paragraph one should be interpreted loosely and analyzed in a broad perspective. In a world woven so tightly by interdependence, the interchange of political and economic influence among nations is unavoidable. This interchange of influence is both desirable and necessary to maintain open diplomatic channels and to ensure healthy, reciprocal patterns of trade. Thus, for the first paragraph to be understood fully, permissible "influence" must be differentiated from illegal "interference." The second paragraph is designed to achieve this purpose. Without a close reading of the second paragraph, however, the meaning of "interference" with respect to transnational boycotts would probably be misconstrued.

The second paragraph does not state that boycotts and other practices of international economic coercion are illegal per se, but instead declares that a state's motivation for a boycott must be unequivocally ascertained to be either for the subordination of another state's sovereign rights, or for the extraction of any advantages at the expense of the victim state. The identification of a transnational boycott as an illicit act of economic coercion thus depends on three factors: (1) the motive of the coercing state; (2) the determination of when the "subordination" of the target state

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138. G.A. Res. 2131, 20 U.N. GAOR Supp. (No.14) at 12, U.N. Doc. A/6220 (1965), *reprinted in* 60 AM. J. INT'L L. 662 (1966).

139. *Id.* at ¶¶ 1-2, *reprinted* at 663.

occurs; and (3) whether the victim state has lost any "advantages."

In 1970 the first and second paragraphs of the Declaration on the Inadmissibility of Intervention were incorporated verbatim by the General Assembly into its Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations.[140] This resolution, which reaffirmed the peremptory norms for international economic behavior,[141] went on to declare that "[e]very State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State."[142] The overriding presumption was that if the impact of a boycott was severe enough to interfere with a state's right of choice, an illegal act of intervention into the domestic jurisdiction of another state would exist.[143] The obvious difficulty lies in the determination of exactly when a transnational boycott's permissible interference ends and its intervention begins.

Other quasi-legal statements that consider boycotts to be a form of international economic conduct are found in General Assembly resolutions concerning permanent sovereignty over a state's natural resources.[144] One such declaration, adopted on December 14, 1962,[145] emphasized "respect for the economic independence of States"[146] in the use of resources and the import of foreign capital.[147] The use of a boycott or any other form of economic coercion that violates a nation's sovereignty over its natu-

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140. G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970), *reprinted in* 9 I.L.M. 1292 (1970).

141. *See* Rosenstock, *The Declaration of the Principles of International Law Concerning Friendly Relations: A Survey*, 65 AM. J. INT'L L. 713 (1971).

142. G.A. Res. 2625, *supra* note 140, *reprinted* at 1295.

143. *See infra* notes 182-94 and accompanying text.

144. For pertinent discussion on the evolution of this notion, see generally M. RAJAN, SOVEREIGNTY OVER NATURAL RESOURCES (1978); O. SCHACHTER, SHARING THE WORLD'S RESOURCES (1977); Gess, *Permanent Sovereignty Over Natural Resources*, 13 INT'L & COMP. L. Q. 398 (1964); Hyde, *Permanent Sovereignty Over Natural Wealth and Resources*, 50 AM. J. INT'L L. 854 (1956); O'Keefe, *The United Nations and Permanent Sovereignty Over Natural Resources*, 8 J. WORLD TRADE L. 239 (1974). *See also infra* text accompanying notes 158-69.

145. G.A. Res. 1803, 17 U.N. GAOR Supp. (No. 17), at 15, U.N. Doc. A/5217 (1962), *reprinted in* 57 AM. J. INT'L L. 710 (1963).

146. *Id.* at para. 15, *reprinted* at 710.

147. *Id.* at para. 2, *reprinted* at 711.

ral resources would be "contrary to the spirit and principles of the Charter of the United Nations" and an impediment to international peace and cooperation.[148]

The doctrine of permanent sovereignty over natural wealth and resources is a matter of continuing concern in the United Nations General Assembly, as amply demonstrated by the adoption of similar resolutions in 1966[149] and in 1973.[150] The 1966 resolution is primarily a reaffirmation of the doctrine's nature and content, followed by an exhortation declaring that developed nations should give accelerated developmental assistance to developing countries.[151]

In 1973 the generic concept of permanent sovereignty over natural resources became perceptibly linked to the use of boycotts as international economic coercion. The fourth paragraph of the 1973 Resolution on Permanent Sovereignty over Natural Resources asserts that the General Assembly "[d]eplores acts of States which use force, armed aggression, economic coercion or any other illegal or improper means in resolving disputes concerning the exercise of sovereign rights" over natural resources.[152] The resolution further dissuades implementation of such policies by "[e]mphasiz[ing] the duty of all States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the territorial integrity of any State and the exercise of its national jurisdiction."[153]

The passages are especially significant for two reasons. First, they update and reinforce pronouncements made earlier in the General Assembly's Declaration on the Inadmissibility of Intervention and its Declaration on Friendly Relations.[154] Second, and more important, these provisions reveal the implicit relationship between the doctrine of permanent sovereignty over natural resources and the right of self-determination exhibited by the prohibition of boycotts and other practices of economic coercion. An

148. *Id.* at para. 7, *reprinted* at 712.

149. G.A. Res. 2158, 21 U.N. GAOR Supp. (No. 16) at 29, U.N. Doc. A/6518 (1966), *reprinted in* 6 I.L.M. 147 (1967).

150. G.A. Res. 3171, 28 U.N. GAOR Supp. (No. 30) at 55, U.N. Doc. A/9030 (1973), *reprinted in* 13 I.L.M. 238 (1974).

151. *See* G.A. Res. 2158, *supra* note 149.

152. G.A. Res. 3171, *supra* note 150, para. 4, *reprinted* at 239.

153. *Id.* at para. 4, *reprinted* at 240.

154. *See supra* note 140.

earlier resolution,[155] promulgating the 1966 International Covenant on Economic, Social, and Cultural Rights,[156] lends credence to these observations. This Covenant avows that each nation has the right to utilize and dispose of its natural resources as it sees fit.[157] This Covenant also presumes that a boycott or any other external economic interference that allocates or administers natural wealth would be an unlawful act of economic coercion.

A more recent United Nations statement that addressed the impermissible use of instruments of international economic coercion is the General Assembly's Charter of Economic Rights and Duties of States.[158] Adopted in 1974, the Economic Charter declared its fundamental purpose to be "the establishment of the new international economic order, based on equity, sovereign equality, interdependence, common interest and co-operation among all States, irrespective of their economic and social systems."[159] With respect to economic coercion in general, the draft-

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155. G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), *reprinted in* Djonovich, *United Nations Resolutions,* Series 1 General Assembly vol. 11 (1966-1968).

156. G.A. Res. 2200 Annex, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6319 (1966), *reprinted in* 6 I.L.M. 360 (1967).

157. *See id.* at art. 1, para. 2, *reprinted* at 360. The second paragraph of the Covenant provides that:

> All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

Id.

158. G.A. Res. 3281, 29 U.N. GAOR Supp. (No. 31) at 50, U.N. Doc. A/9631 (1974), *reprinted in* 69 AM. J. INT'L L. 484 (1975). The Economic Charter was adopted on December 12, 1974, by a vote of 120 to 6 with 10 abstentions. *Id.*

159. G.A. Res. 3281, *supra* note 158, preamble, *reprinted* at 485. Despite its avowed purpose, the underlying aim of this document was to impose additional obligations upon the more developed nations in order to mobilize massive economic and technological assistance for the less developed countries. Consequently, the Charter of Economic Rights and Duties became the subject of much heated debate, causing some legal scholars to question whether it represented a reflection or a rejection of contemporary international law. *See* Brower & Tepe, *The Charter of Economic Rights and Duties of States: A Reflection or Rejection of International Law?,* 9 INT'L LAW. 295 (1975); *cf.* Haight, *The New International Economic Order and the Rights and Duties of States,* 9 INT'L LAW. 591 (1975); Rozental, *The Charter of Economic Rights and Duties of States and the New International Economic Order,* 16 VA. J. INT'L L. 309 (1976); White, *A New International Economic Order?,* 16 VA. J. INT'L L. 322 (1976).

ers of the Economic Charter warily avoided inserting any language that might further exacerbate the already strained political relations between developed and developing countries. They instead opted for the status quo and adopted an abbreviated version of the same paragraph on economic coercion that had previously been incorporated into both the Declaration on the Inadmissibility of Intervention and the Declaration on Friendly Relations.[160]

While the key reference to economic coercion in the Charter of Economic Rights and Duties is article 32, it is not the only such reference. Article 1 declares that every state has the sovereign and inalienable right to choose its own economic, political, social, and cultural systems, free from "outside interference, coercion or threat in any form whatsoever."[161] Article 2 reaffirms every state's permanent sovereignty over its "wealth, natural resources and economic activities;"[162] and article 5 guarantees all states the right to form primary commodity producer organizations (i.e. cartels), with the concomitant duty of all other states "to respect that right by refraining from applying economic and political measures that would limit it."[163] Finally, article 16 enumerates the following "coercive policies": "colonialism, . . . neocolonialism and all forms of foreign aggression, occupation and domination, and the economic and social consequence thereof."[164]

Thus, instead of providing specific legal criteria for determining whether or not a transnational boycott is a form of impermissible economic coercion, the Economic Charter strengthened and safeguarded the rights of international economic development, especially as it pertained to developing countries. When placed in the context of the entire Charter of Economic Rights and Duties, an economically coercive boycott emerges as a national instrument for antidevelopmentalism wielded by the developed minority against the developing majority. The transnational boycott is depicted as a neocolonialist device for national aggrandizement un-

160. *See supra* text accompanying notes 137-39. Article 32 of the Charter of Economic Rights and Duties provides that "[n]o 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." G.A. Res. 3281, *supra* note 158, art. 32, *reprinted* at 493.

161. G.A. Res. 3821, *supra* note 158, art. 1, *reprinted* at 486-87.

162. *Id.* at art. 2, *reprinted* at 487.

163. *Id.* at art. 5, *reprinted* at 487-88.

164. *Id.* at art. 16, *reprinted* at 490.

dertaken at the expense of the "have-not" countries.[165] The provisions pertinent to economic coercion in the Charter of Economic Rights and Duties regrettably contribute little to help understand the transnational boycott under international law.

International lawyers generally agree that resolutions of the General Assembly are not legally binding, either upon the states voting for them or upon the entire membership of the United Nations.[166] This is not to suggest, however, that they lack any legal effect whatsoever.[167] At the very least, these proclamations connote the world consensus on a particular subject or issue,[168] and some analysts believe that they may be harbingers of the direction in which international law is evolving.[169] Should this latter contention prove to merit serious legal attention, the substantive importance of General Assembly resolutions with respect to a transnational boycott's economic coercion would become even more manifest.

D. The Transnational Boycott and General Principles of Law

In modern times, the nearly universal acceptance of general principles of law concerning the use of force in international relations has been clearly evidenced. Accordingly, with respect to transnational boycotts, the legal aspects of the general principles of non-aggression, non-intervention, and self-defense are especially relevant.

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165. *See, e.g.*, G.A. Res. 3821, *supra* note 158, arts. 13-14, 16-18, 22-26, 31-32, *reprinted* at 489-93; *see also* Brower & Tepe, *supra* note 159, at 309-12; Tiewul, *The United Nations Charter of Economic Rights and Duties of States*, 10 J. INT'L L. & ECON. 645, 676-77 (1975); Recent Development, *The General Assembly's International Economics*, 16 HARV. INT'L L. J. 670 (1975). One might also infer from the Economic Charter that any denial of economic aid, technical assistance, or preferential tariff treatment to a lesser developed country is tantamount to imposing economic coercion upon that country. *See* Note, *Charter on Economic Rights and Duties of States: A Solution to the Development Aid Problem?*, 4 GA. J. INT'L & COMP. L. 441 (1974).

166. For a discussion of this issue, see Joyner, *U.N. General Assembly Resolutions and International Law: Rethinking the Contemporary Dynamics of Norm-Creation*, 11 CAL. W. INT'L L. J. 445, 452-53 (1981).

167. *See generally* O. ASAMOAH, THE LEGAL SIGNIFICANCE OF THE DECLARATIONS OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS (1966); J. CASTAÑEDA, LEGAL EFFECTS OF UNITED NATIONS RESOLUTIONS (1969); Falk, *On the Quasi-Legislative Competence of the General Assembly*, 60 AM. J. INT'L L. 782 (1966).

168. Falk, *supra* note 167, at 787-90.

169. *E.g.*, Joyner, *supra* note 166, at 463-64.

1. *Non-Aggression*

Devising a suitable definition for the international legal concept of aggression has long concerned legal scholars[170] and diplomats.[171] There has been considerable debate whether the achievement of an all-inclusive definition of aggression is indeed possible,[172] or, for that matter, desirable.[173] The central question, however, is whether or not the economic coercion generated by a transnational boycott constitutes a form of aggression under current international law. The preponderance of evidence gleaned from state practice and diplomatic negotiation suggests that it does not. Indeed, the United Nations General Assembly's Special Committee on the Question of Defining Aggression arrived at this conclusion in 1974.[174]

The Special Committee defined aggression as "the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations."[175] In order

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170. *See e.g.*, Ferencz, *Defining Aggression: Where It Stands and Where It's Going*, 66 AM. J. INT'L L. 491 (1972); Piper, *The Legal Control of the Use of Force and the Definition of Aggression*, 2 GA. J. INT'L & COMP. L. 1 (1972); Schwebel, *Aggression, Intervention, and Self-Defence in Modern International Law*, 136 (II) RECUEIL DES COURS 411 (1975); Comment, *The United Nations Definition of Aggression: A Preliminary Analysis*, 5 DEN. J. INT'L L. & POL'Y 171 (1975).

171. *See* B. FERENCZ, DEFINING INTERNATIONAL AGGRESSION: THE SEARCH FOR WORLD PEACE (1975).

172. Chacko, *International Law and the Concept of Aggression*, 3 INDIAN J. INT'L L. 396 (1963); Fitzmaurice, *The Definition of Aggression*, 1 INT'L & COMP. L. Q. 137 (1952); Comment, *Why Try Again to Define Aggression?*, 62 AM. J. INT'L L. 701 (1968).

173. J. STONE, AGGRESSION AND WORLD ORDER 74-77 (1958); Fitzmaurice, *supra* note 172, at 140-43.

174. The General Assembly's directives to this Special Committee may be found in the following: G.A. Res. 3105, 28 U.N. GAOR Supp. (No. 30) at 143, U.N. Doc. A/9030 (1973); G.A. Res. 2967, 27 U.N. GAOR Supp. (No. 30) at 116, U.N. Doc. A/8730 (1972); G.A. Res. 2781, 26 U.N. GAOR Supp. (No. 29) at 137, U.N. Doc. A/8429 (1971); G.A. Res. 2644, 25 U.N. GAOR Supp. (No. 28) at 126, U.N. Doc. A/8028 (1970); G.A. Res. 2549, 24 U.N. GAOR Supp. (No. 30) at 107, U.N. Doc. A/7630 (1969); G.A. Res. 2420, 23 U.N. GAOR Supp. (No. 18) at 88, U.N. Doc. A/7218 (1968); G.A. Res. 2330, 22 U.N. GAOR Supp. (No. 16) at 84, U.N. Doc. A/6716 (1967).

175. Resolution on the Definition of Aggression, G.A. Res. 3314, 29 U.N. GAOR Supp. (No. 31) at 142, U.N. Doc. A/9631 (1975), *reprinted in* 13 I.L.M. 710, 713 (1974).

for an action to be considered aggression under this interpretation, one state must resort to *armed* force against another state.[176] The omission of economic coercion from this definition implies that armed aggression constitutes the "most serious and dangerous form of aggression," and deserves paramount emphasis.[177] An earlier incisive criticism of the concept of "economic aggression" was contained in a 1952 Report of the Secretary-General on the definition of aggression:

> The concept of economic aggression appears particularly liable to extend the concept of aggression almost indefinitely. The acts in question not only do not involve the use of force, but are usually carried out by a State by virtue of its sovereignty or discretionary power. Where there are not commitments a State is free to fix its customs tariffs and to limit or prohibit exports and imports. If it concludes a commercial treaty with another State, superior political, economic and financial strength of course give it an advantage over the weaker party; but that applies to every treaty, and it is difficult to see how such inequities, which arise from differences in situations, can be evened out short of changing the entire structure of international society and transferring powers inherent in States to international organs.[178]

The use of boycotts and other potentially deleterious international economic measures as part of a state's foreign policy is not currently considered to be an explicit type of aggression by a consensus of United Nations members. The use of a transnational boycott to economically coerce another state might, however, still be construed as a "threat to" or "breach of" the peace.[179] Under that interpretation, article 39 of the United Nations Charter would then be applicable. This scenario brings the analysis back

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176. G.A. Res. 3314, *supra* note 175, at arts. 1-2, *reprinted* at 713.

177. *See* Ferencz, *The United Nations Consensus Definition of Aggression: Sieve or Substance?*, 10 J. INT'L L. & ECON. 701 (1975); Garvey, *The U.N. Definition of "Aggression": Law and Illusion in the Context of Collective Security*, 17 VA. J. INT'L L. 177 (1977).

178. Study of the Definition of Aggression: Report of the Secretary-General, 7 U.N. GAOR Annexes (Agenda Item 54) at 74, U.N. Doc. A/2211 (1952). These remarks were in reaction to a draft declaration submitted by Bolivia that would have included as aggression any "unilateral action to deprive a State of the economic resources derived from the fair practice of international trade, or to endanger its basic economy, thus jeopardizing the security of that State." *Id.*

179. *See supra* text accompanying notes 122-34. *Cf.* M. MCDOUGAL & F. FELICIANO, *supra* note 1, at 161-62; J. STONE, *supra* note 173, at 95-98.

full circle to the uncomfortable problem of entrusting the United Nations Security Council with an overabundance of discretionary and interpretative power.[180]

In summary, because transnational boycotts have not been formally recognized as a type of aggression, the principle of nonaggression does not legally prohibit its use as a form of international economic coercion.[181] This conclusion should not suggest that the use of unrestricted economic force through boycotting is permissible under international law. On the contrary, manifold treaty commitments, multilateral conventions, and General Assembly resolutions have repeatedly stressed the illegality of boycotts and censured economically coercive actions.

2. *Nonintervention*

It is a fundamental principle of international law that all states have the legal duty to refrain from intervening in the affairs of other states.[182] This doctrine of nonintervention, expressed in article 2(7) of the United Nations Charter,[183] is articulated emphatically in the General Assembly's Declaration on the Inadmissibility of Intervention.[184]

Two facets of the Declaration's treatment of the nonintervention doctrine merit attention. First, the Declaration proclaims that "armed intervention is synonymous with aggression."[185] Sec-

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180. *See supra* notes 133-34.

181. This is not to say, however, that efforts in this direction have been lacking. For example, in 1954 the Soviet Union formally attempted to expand the definition of aggression to include forms of economic coercion. The Soviet draft proposed that "economic aggression" be found to exist when a state: "(a) Takes against another State measures of economic pressure violating its sovereignty and economic independence and threatening the bases of its economic life; (b) Takes against another State measures preventing it from exploiting or nationalizing its own natural riches; (c) Subjects another State to an economic blockade." Union of Soviet Socialist Republics: Draft Resolution, 9 U.N. GAOR C.6 Annex (Agenda Item 51) at 6-7, U.N. Doc. A/C. 6/L.332/Rev. 1 (1954).

182. G. WILSON, HANDBOOK OF INTERNATIONAL LAW 58-65 (3d ed. 1939). *See generally* R. VINCENT, NONINTERVENTION AND INTERNATIONAL ORDER (1974).

183. "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state . . . ." U.N. CHARTER art. 2, para. 7.

184. *See supra* note 138-39 and accompanying text [hereinafter cited as the Declaration].

185. G.A. Res. 2131, *supra* note 138, at 12, *reprinted* at 663.

ond, as previously discussed,[186] the Declaration condemns, though not as aggression, "all other forms of interference or attempted threats" against a state's "personality" or its political, economic, and cultural elements.[187] Although intervention may either be armed, in which case it becomes "aggression," or unarmed, the Declaration formally condemns both forms of intervention as impermissible.

Additional support for the duty of nonintervention, including a state's responsibility to curtail economically coercive transnational boycotts, may be found in other General Assembly resolutions, specifically the 1970 Declaration on Friendly Relations,[188] the 1973 Resolution on Permanent Sovereignty over Natural Resources,[189] and the 1974 Charter of Economic Rights and Duties.[190] In addition, the Bogota Charter of 1948[191] defined nonintervention so broadly that it encompassed acts which are, like transnational boycotts, directed against the internal economy of a state.[192]

Clearly, the principle of nonintervention is widely accepted today. The question remains, however, whether a boycott constitutes an impermissible act of economic intervention into the internal affairs of the target state because it deprives the latter of trade, and hence potential domestic benefits. When applied in its primary form, the transnational boycott is clearly not an act of intervention, because nations are free to trade with whomever they choose. In other words, no principle exists in international law that requires every state to have commercial relations with all other states.[193] On the other hand, secondary and tertiary aspects of transnational boycotts possess certain characteristics of intervention that are far more economically and politically complex, particularly concerning the possible repercussions for the domes-

186. *See supra* text accompanying notes 138-43.

187. G.A. Res. 2131, *supra* note 138, at 12, *reprinted* at 663.

188. G.A. Res. 2625, *supra* note 140.

189. G.A. Res. 3171, *supra* note 150.

190. G.A. Res. 3281, *supra* note 158.

191. 119 U.N.T.S. 4 (1952).

192. *Id.* art. 15. "No state . . . has the right to intervene in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements." *Id.*

193. *See supra* note 89 and accompanying text.

tic affairs of third-party nations.[194]

3. *Self-Defense and Retaliation*

Public international law grants each state the absolute, essential rights of existence, self-preservation, and independence.[195] In a global society marked by decentralized governmental machinery and primitive, immature legal systems, the exercise of the basic right of self-defense may be necessary for a state to secure maintenance of these sovereign rights. D. W. Bowett has posited that the right of self-defense "is common to all systems of law" and is the "fundamental" right of every state.[196] In other words, self-defense is considered a "privilege" of self-help that has been legalized to protect the essential rights upon which the security of a state depends.[197] Self-defense, however, must conform to an internationally accepted set of preconditions to be considered legitimate.[198] Thus, economic measures otherwise considered illegal may be justified if taken in the legitimate self-defense of a state's national security or independence. The imposition of a transnational boycott as a means of self-defense is sanctioned as an instrument of foreign policy.[199]

Closely associated with the principle of self-defense are two types of retaliation, reprisal and retorsion. Reprisal is a state's nonbelligerent action taken in retaliation for what it deems to be an illegal act committed against it by another state. An act of reprisal is, in itself, legal, but only if made in response to another party's illegal act.[200] The international legal proposition which asserts that reprisals involving the use of armed force are illegal has

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194. *See infra* notes 212-325 and accompanying text; *see also supra* text accompanying note 100.

195. G. WILSON, *supra* note 182, at 55-58.

196. D. BOWETT, *supra* note 93, at 3-4.

197. *Id.* at 269. *See also* Hindmarch, *Self-Help in Time of Peace*, 26 AM. J. INT'L L. 315 (1932).

198. D. BOWETT, *supra* note 93, at 269-70. For a list of these preconditions, see *supra* note 94.

199. *Cf.* M. McDOUGAL & F. FELICIANO, *supra* note 1, at 228-29.

200. Any act of reprisal raises complex legal issues and difficult problems of interpretation and perception. For instance, accusations would probably be exchanged between the states as to who committed the first illegal act and who responded with the reprisal. Indeed, uncertainty might exist over the legality of the acts themselves. *See* U. WHITAKER, POLITICS AND POWER: A TEXT IN INTERNATIONAL LAW 545 (1968).

received ample support. This restriction was expressed in the General Assembly's 1970 Declaration on Friendly Relations,[201] and has been widely recognized by numerous legal scholars and jurists.[202] Any limitations on the use of transnational boycotts for reprisals, however, are conspicuously absent. Considering both the acknowledged illegality of using armed force in reprisals and the consistent omission of any reference to the legal status of economic reprisals, one noted authority has concluded that "[i]t is not possible, therefore, to categorize economic reprisal as unlawful per se; on the contrary, the category is one which must be accepted as an exception to the general prohibition of economic coercion."[203] Notwithstanding the tenuous grounds upon which this deduction rests, if economic coercion in the form of transnational boycotts is viewed as a legitimate means of reprisal, a boycott must rest upon the traditional preconditions for self-defense.[204]

The second type of legal retaliation, retorsion, occurs when a state whose citizens are being subjected to severe, though legal, regulation or harsh treatment enacts measures of equal severity applicable to the initial aggressor state.[205] Acts of retorsion, or as T. J. Lawrence labeled them, "negative reprisals," are neither violent nor directly connected with force or war.[206] States often resort to acts of retorsion for political expedience and to secure redress from another state's legal, though intrusive, conduct.[207] This observation prompted George Grafton Wilson to remark, "How far such restrictions may go is not a matter of law, but of political policy."[208] Although transnational boycotts may be employed le-

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201. G.A. Res. 2625, *supra* note 140. The Declaration states that: "States have a duty to refrain from acts of reprisal involving the use of force." *Id.*, *reprinted* at 1294.

202. *See e.g.*, I. BROWNLIE, *supra* note 132, at 163; Bowett, *Reprisals Involving Recourse to Armed Force*, 66 AM. J. INT'L L. 1 (1972); Waldock, *The Regulation of the Use of Force by Individual States in International Law*, 81 RECUEIL DES COURS 451, 475-94 (1952).

203. Bowett, *supra* note 1, at 251.

204. *See supra* note 94.

205. BLACK'S LAW DICTIONARY, 1183 (5th ed. 1979). *See supra* notes 95-97 and accompanying text.

206. T. LAWRENCE, THE PRINCIPLES OF INTERNATIONAL LAW 312 (7th ed. 1923).

207. This argument was often marshalled to support the Arab oil embargo of 1973-74. *See supra* note 3.

208. G. WILSON, *supra* note 182, at 244.

gally as instruments of retorsion, such a policy would likely be unwieldy and inefficient in securing immediate or short-term redress.[209] When grievances persist over a protracted period of time, however, it seems more feasible to consider transnational boycotts as a method of retorsion.[210]

E. Summation and Evaluation

An economically coercive transnational boycott is not specifically prohibited by the principle of nonaggression because it has not been interpreted as an illegal action or as an act of aggression. A transnational boycott could violate the legal principle of nonintervention only if the boycotting state's motive was the unmitigated contravention of another state's sovereignty, territorial integrity, or political independence.

The use of transnational boycotts as economically coercive measures appears fully justified by international law as a means of legitimate self-defense. Though not clearly sanctioned, a transnational boycott may be used as a form of reprisal as long as it does not violate the principles of nonaggression and nonintervention. The use of transnational boycotts for the purpose of retorsion, however, has been established and recognized as a legitimate practice under international law. Of all the rationales presented for imposing economically coercive boycotts, retorsion may be the most convenient and legally defensible in current international politics.

Restraints on the use of boycotts as instruments of national foreign policy have been formally incorporated into a multitude of bilateral and multilateral international treaties. Under provisions of the United Nations Charter, the concept of the transnational boycott as a form of economic coercion is constrained by strict interpretation. The inexact language of the U.N. Charter tends to obscure the precise conceptual relevance of economic coercion, particularly as applied to boycotts. Because economic coercion is not interpreted legally as aggression, "force," or "armed force," it is immune from the self-defense provision of article 51.

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209. More efficient acts of retorsion include raising national tariffs, suspending payments due a state, and imposing cumbersome travel or diplomatic restrictions on a state's nationals until adequate redress is made. *Id.*; T. LAWRENCE, *supra* note 206, at 312; U. WHITAKER, *supra* note 200, at 545.

210. Consider, for example, the Arab League's boycott against Israel. *See* N. JOYNER, *supra* note 42, at 278-84.

Furthermore, the intrinsic definitional characteristics of economic coercion are so multifaceted and susceptible to diverse interpretation that any potential consideration of what economic actions might constitute a "threat to or breach of the peace" pursuant to article 37 would open a Pandora's box of political and legal difficulties. Through formal resolutions and recommendations, the United Nations General Assembly has repeatedly called for the condemnation of transnational boycotts and other acts of international economic coercion that interfere with the sovereign rights of other states. Although these documents are not legally binding, they do represent an apparent consensus of member nations.

This Article has appraised the permissible parameters within which transnational boycotts exist under international law. When states attempt to extend their jurisdictional purview extraterritorially, they implicitly invite tension or conflict with other states. The growing awareness of international economic coercion during the mid-1970s, largely a result of the influence of the Arab boycott against Israel, prompted a great deal of governmental concern and policy debate about transnational boycotts. Indeed, a number of Western states proposed specific domestic countermeasures for dealing with the adverse repercussions from transnational boycotts. Significantly, the legislative responses adopted by these states pose salient questions about the international legality of transnational boycotts.[211] These queries merit special attention in order to appreciate the current practice and legal status of transnational boycotts as policy instruments of economic coercion.

V. The Transnational Boycott in Municipal Law

A. General Observations

National economic policies may be compatible with the free flow of commerce between nations or they may operate to restrict or suppress that flow. With respect to transnational boycotts, even though an instigating state's main objectives may initially

211. For example, does current municipal legislation serve to impugn or rebuke the lawfulness of primary transnational boycotts? What legal implications have devolved from the extraterritorial reach of antiboycott laws, and what special relevance does such municipal legislation hold for international law regarding transnational boycotts? Do such antiboycott statutes gainsay the right of a state, or a group of states, to impose transnational boycotts that have multiple levels of coercive reach?

appear to be political and economic, commercial repercussions may nonetheless be felt in nontargeted sectors of the international community.

Primary transnational boycotts normally do not directly affect the domestic economies of third-party states. Secondary and tertiary levels of transnational boycotts, however, tend to have a more sweeping economic impact[212] and may produce more serious commercial ramifications for third-party states and pose serious conflicts for sovereign prerogatives, national interests, and extraterritorial jurisdiction.[213] Traditionally, the reaction of nontargeted third-party states to transnational boycotts has been one of indifference, primarily because of the boycott's muted economic effects and other considerations of overriding national interest.[214] More recently, however, the heightened political salience of the Arab League's boycott against Israel,[215] and its pervasive repercussions on international commerce,[216] have generated special legislation against boycotts in the United States and other Western nations.[217]

B. The United States

United States legislative attention to transnational boycott-related activities dates back to the Export Control Act of 1949.[218] Under this statute, Congress authorized the President to regulate exports from the United States, its territories, and its possessions, for purposes of national security, foreign policy, or supply shortages. In 1965 Congress amended this legislative policy pro-

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212. *See* Comment, *The Arab Boycott: A Legislative Solution to a Multi-Dimensional Problem*, 39 U. PITT. L. REV. 63, 67 (1977).

213. *See* Marcuss, *The Antiboycott Law: The Regulation of International Business Behavior*, 8 GA. J. INT'L & COMP. L. 559, 561-63 (1978).

214. *See, e.g., The Arab Boycott and American Business*, *supra* note 48, at viii-xii. This has also been the contemporary attitude espoused by several Western European governments regarding the Arab boycott against Israel. *See generally* Turck, *A Comparative Study of Non-United States Responses to the Arab Boycott*, 8 GA. J. INT'L & COMP. L. 711 (1978); Phillips, *supra* note 49, at 41-91.

215. *See supra* text accompanying notes 32-49.

216. *See generally The Arab Boycott and American Business*, *supra* note 48; *Discriminatory Arab Pressure on U.S. Business Hearings*, *supra* note 48, at 115.

217. Paradoxically, the United States is an active practitioner of transnational economic coercion, both during peacetime crises and during times of national emergency. *See supra* notes 55-63 and accompanying text.

218. 50 U.S.C. app. §§ 2021-2032 (1949) (expired 1969).

nouncement.[219] It became United States policy:

> (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States and (B) to encourage and request domestic concerns engaged in the export of articles, materials, supplies, or information, to refuse to take any action, including the furnishing of information or the signing of agreements, which has the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against another country friendly to the United States.[220]

Because the initial antiboycott law was enforced only by rudimentary reporting requirements,[221] it served as little more than a United States policy declaration. In the Export Administration Act of 1969,[222] Congress reiterated both this general policy proclamation and its reporting requirements.[223] Within a year, the President transferred his delegated authority over boycotts to the Secretary of Commerce.[224]

Following a period of protracted controversy[225] and heightened sensitivity[226] regarding United States business involvement in,

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219. Act of June 30, 1965, Pub. L. No. 89-63, § 3, 79 Stat. 209, 210 (1965), (amending 50 U.S.C. app. § 2022 (1949)) (current version at 50 U.S.C. app. § 2402 (5)) (1982).

220. *Id.*

221. For implementation, Congress provided the following:

> Such rules and regulations shall implement the provisions of section 2(4) of this Act and shall require that all domestic concerns receiving requests for the furnishing of information or the signing of agreements as specified in section 2(4) must report this fact to the Secretary of Commerce for such action as he may deem appropriate to carry out the purposes of section 2(4).

Act of June 30, 1965, *supra* note 219, § 4(d).

222. Act of Dec. 30, 1969, Pub. L. No. 91-184, 83 Stat. 841 (1969) (current version at 50 U.S.C. app. §§ 2401-13 (1982)).

223. *Id.*

224. Exec. Order No. 11,533, 35 Fed. Reg. 8,799 (1970), *reprinted in* 50 U.S.C.A. app. § 2403, at 12,580 (1970) *revoked by* Exec. Order No. 12,002, 42 Fed. Reg. 35,623 (1976), *reprinted in* 50 U.S.C. app. § 2403, at 495.

225. *See, e.g., The Arab Boycott and American Business, supra* note 48, at 29; *The Spreading Boycott Brouhaha*, TIME, Nov. 8, 1976, at 93.

226. *See, e.g., Discriminatory Arab Pressure on U.S. Business Hearings, supra* note 48, at 2-10 (statement of Henry A. Waxman, United States Representative from the twenty-fourth District of California); D. CHILL, THE ARAB BOYCOTT OF ISRAEL: ECONOMIC AGGRESSION AND WORLD REACTION (1976); Turck, *The Arab Boycott of Israel*, 55 Foreign Aff. 472, 479 (1977); *Backlash at the*

and compliance with, Arab boycott demands during the mid-1970s,[227] Congress enacted the 1977 Amendments to the Export Administration Act of 1969.[228] The 1977 Amendments were subsequently incorporated verbatim into the Export Administration Act of 1979 (EAA),[229] and represents the most comprehensive foreign boycott regulatory scheme adopted by any national government to date.

The 1977 Amendments pertain solely to certain specified acts performed intentionally[230] by "United States persons"[231] engaged

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Boycott, TIME, Mar. 10, 1975, at 39.

227. *See generally The Arab Boycott and American Business*, *supra* note 48; *Discriminatory Arab Pressure on U.S. Business Hearings*, *supra* note 48; AMERICAN JEWISH CONGRESS, *supra* note 37.

228. Act of June 22, 1977, Pub. L. No. 95-52, 91 Stat. 235 (1977) (current version at 50 U.S.C. app. §§ 2401-2413 (1982)). The literature on the 1977 Amendments is extensive. *See, e.g.*, A. LOWENFELD, INTERNATIONAL ECONOMIC LAW: TRADE CONTROLS FOR POLITICAL ENDS (1977); Friedman, *Confronting the Arab Boycott: A Lawyer's Baedeker*, 19 HARV. INT'L L. J. 443 (1978); Ludwig & Smith, *supra* note 35; Marcuss, *The Antiboycott Law: The Regulation of International Business Behavior*, 8 GA. J. INT'L & COMP. L. 559 (1978); Steiner, *Pressures and Principles—The Politics of the Antiboycott Legislation*, 8 GA. J. INT'L & COMP. L. 529 (1978); Tate & Lake, *Taking Sides: An Overview of the U.S. Legislative Response to the Arab Boycott of Israel*, 6 DEN. J. INT'L L. & POL'Y 613 (1977); Note, *Extraterritorial Application of the Export Administrative Amendments of 1977*, 8 GA. J. INT'L & COMP. L. 741 (1978); Note, *Analysis and Application of the Anti-Boycott Provisions of the Export Administration Amendments of 1977*, 9 LAW & POL'Y INT'L BUS. 915 (1977); Note, *The Development, Scope and Application of the New Antiboycott Law of the United States*, 10 N.Y.U. J. INT'L L. & POL. 397 (1977).

229. 50 U.S.C. app. §§ 2401-2420 (1982).

230. The regulations provide:

> Actions will be deemed to be taken with intent to comply with an unsanctioned foreign boycott if the person taking such action knew that such action was required or requested for boycott reasons. On the other hand, the mere absence of a business relationship with a blacklisted person or with or in a boycotted country does not indicate the existence of the requisite intent.

15 C.F.R. § 369.1(e)(6) (1984).

231. A "United States person" is defined as any "person who is a United States resident or national, including individuals, domestic concerns, and controlled in fact foreign subsidiaries, affiliates, or other permanent foreign establishments of domestic concerns." 15 C.F.R. § 369.1(b). "Controlled in fact" indicates that determination of control over a foreign subsidiary is not predicated solely on a proportion of equity ownership in the foreign subsidiary. Rather, it will also depend on the authority or ability of the "domestic concern" to set general policies or control daily operations of the foreign subsidiary. *Id.* §

in either interstate or foreign commerce of the United States.[232] The EAA prohibits "taking or knowingly agreeing . . . to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation."[233] The Act forbids persons under its jurisdiction from refusing to do business with, or in, a boycotted state if that refusal is based upon a requirement or request from, or on behalf of, a boycotting government.[234] The Act also outlaws boycott-related discrimination against United States persons on the basis of race, religion, sex, or national origin;[235] as well as the furnishing, for reasons related to a boycott, of any information pertaining to race, religion, sex, or national origin of any United States person, or any owner, officer, director, or employee of such person.[236] Persons within the Act's jurisdiction are prohibited from supplying information concerning business relationships with boycotted countries or blacklisted persons[237] and communicating information about supporters of charitable or fraternal organizations that support a boycotted country.[238] In addition, United States persons are legally precluded from "paying, honoring, confirming, or otherwise implementing" letters of credit which contain any condition or compliance requirements forbidden by the regulation.[239]

The effect of the 1977 Amendments has some important international legal implications. First, nothing contained in the provisions purports to encroach upon the sovereign right of foreign states to conduct primary boycott operations against other states; the statute clearly applies only to United States persons. Second, the prohibitions obviously are aimed directly at a transnational boycott's secondary and tertiary levels, rather than at its primary

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369.1(c).

232. 50 U.S.C. app. § 2407(a)(1).

233. *Id.*

234. *Id.* § 2407(a)(1)(A).

235. *Id.* § 2407(a)(1)(B).

236. *Id.* § 2407(a)(1)(C).

237. *Id.* § 2407(a)(1)(D). This provision deals directly with information questionnaires that must be submitted by companies who wish to do business with certain governments in the Middle East. *See supra* note 78.

238. 50 U.S.C. app. § 2407(a)(1)(E).

239. *Id.* § 2407(a)(1)(F).

level.[240] A United States person cannot refuse to deal with a business concern in a boycotted state at the request of the boycotting government, nor can he refuse to deal with another United States person for boycott-related reasons.[241] United States persons, however, are permitted by exceptions enumerated in the Act[242] to comply or agree to comply with (1) requirements forbidding importation of goods or services from a targeted state;[243] (2) prohibitions against shipping goods on a carrier belonging to a targeted state;[244] or (3) route stipulations prescribed by the boycotting government.[245] The statute serves to preserve the integrity of a primary boycott, but circumscribes the use of secondary and tertiary boycotts as instruments of national policy.[246]

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240. *See* Kestenbaum, *The Arab Boycott in U.S. Law: Flawed Remedies for an International Trade Restraint*, 10 L. & POL'Y INT'L BUS. 769, 781-82; Lahoud, *Federal and New York State Anti-Boycott Legislation: The Preemption Issue*, 14 N.Y.U. J. INT'L L. & POL. 371, 385 (1982).

During the 1977 House debates on the extension of the Export Administration Act of 1969, Secretary of State Cyrus R. Vance made it clear that the Carter Administration considered instigation of transnational boycotts at the primary level to be a legitimate sovereign right:

> We are strongly opposed to foreign boycotts directed against friendly countries. But we understand that states do exercise their sovereign rights to regulate their commerce, and to decide, if they wish, to refuse to deal with other nations or the firms of other nations. They have the right to control the source of their imports as well as the destination of their exports.
>
> We view as a different matter, however, efforts by any foreign countries to influence decisions and activities of American firms in connection with any primary boycott of another country. Thus, secondary boycott practices of other countries can intrude seriously into the business practices of American firms engaged in U.S. commerce and can have the effect of using U.S. commerce to harm third countries with whom we are friends. I believe we will all agree that U.S. firms should not be required, by the decision of a foreign nation, to avoid commercial relations with other friendly countries or with other U.S. firms.

Extension of the Export Administration Act of 1969: Hearings and Markup Before the House Comm. on International Relations, 95th Cong., 1st Sess. 6 (1977).

241. 50 U.S.C. app. § 2407(a)(1)(A) (1982).

242. *Id.* § 2407(a)(2)(A)-(F).

243. *Id.* § 2407(a)(2)(A).

244. *Id.*

245. *Id.*

246. Kestenbaum, *supra* note 240, at 809-11; Marcuss, *supra* note 228, at 561.

Other explicit exceptions set out in the 1977 Amendments underscore the United States concomitant concerns over national sovereign prerogatives, international comity considerations, and potential extraterritorial jurisdictional conflicts. The statute allows United States persons to comply with a boycotting state's import and shipping documentation requirements by providing information regarding the country of origin, name of the carrier, route of the shipment, and name of the suppliers.[247] The Act permits compliance or agreements to comply with the boycotting state's practice of unilateral and specific selection of goods and services. This includes the selection of carriers, insurers, and suppliers of services to be performed within the boycotting state or of specific goods which, in "the normal course of business," are identifiable by source when imported into that state.[248] A United States person may not only comply or agree to comply with export requirements of a boycotting state regarding shipments and transshipments of exports to the target state, or to any business concern or resident located there,[249] but also may comply with the immigration or passport requirements of a boycotting state affecting the person or members of the person's family, or with information requests that are required for the person's employment within the boycotting state.[250] A further exception permits United States persons who are bona fide residents of a boycotting state to comply with that state's laws regarding activities exclusively within the state.[251] Finally, compliance with a boycotting state's import laws is permitted when those laws pertain to the importation of any trademarked, tradenamed, or other "specifically identifiable products, or components . . . for . . . [the United States person's] own use."[252]

The 1977 Amendments, as currently embodied in the EAA, represent a qualified attempt by the United States to maintain sovereign authority over its interstate and international commerce. On one hand, the Act works to deter United States corporations from complying with secondary and tertiary levels of foreign boy-

247. 50 U.S.C. § 2407(a)(2)(B). Information may not be knowingly furnished or conveyed in response to these requirements in negative replies, blacklisting, or other similar exclusionary terms. *Id.*

248. *Id.* § 2407(a)(2)(C).

249. *Id.* § 2407(a)(2)(D).

250. *Id.* § 2407(a)(2)(E).

251. *Id.* § 2407(a)(2)(F).

252. *Id.*

cotts. On the other hand, the regulation considers a qualified compliance with primary boycotts to be an exercise of inherent national sovereignty.[253] Though deferential to some particular foreign states' interests,[254] these regulations nevertheless accommo-

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253. *See* 15 C.F.R. pt. 369 (1984). Resolution of the inherent jurisdictional conflicts posed by extraterritorial legislative measures taken against foreign transnational boycotts may be considered in terms of international comity. In this regard, the appropriate doctrine has been authoritatively set out as follows:

> Where two states have jurisdiction to prescribe and enforce rules of law and the rules they may prescribe require inconsistent conduct upon the part of a person, each state is required by international law to consider, in good faith, moderating the exercise of its enforcement jurisdiction, in the light of such factors as;
>
> (a) vital national interests of each of the states,
>
> (b) the extent and the nature of the hardship that inconsistent enforcement actions would impose upon the person,
>
> (c) the extent to which the required conduct is to take place in the territory of the other state,
>
> (d) the nationality of the person, and
>
> (e) the extent to which enforcement by action of either state can reasonably be expected to achieve compliance with the rule prescribed by that state.

RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 40 (1965). It should be emphasized that the United States Government considers primary boycotts to be legitimate exercises of sovereignty, even when applied as premeditated measures of "economic warfare." An official congressional report noted:

> The Arab boycott is not entirely unique in relations among sovereign states. The practice of one state boycotting another is one of a number of traditional techniques of exerting economic pressure to achieve desired, mostly political ends. . . . Techniques of economic warfare . . . are generally considered to be legitimate exercises of sovereignty, not contrary to international law.

The Arab Boycott and American Business, *supra* note 48, at 9 (footnotes omitted).

254. In this connection, one commentator has opined that:

> The U.S. response represents more than a necessarily flexible balancing of its own interests with those of the Arab states. Although a goal of the EAA is to enhance U.S. sovereignty, the United States has permitted impairment of its sovereignty by failing to enact stricter legislation against compliance with the Arabs' extraterritorial imposition of the secondary and tertiary boycotts. It has compromised its interest in exercising jurisdiction over its internal trade in favor of supposedly more pressing national interests, *i.e.*, maintaining a steady flow of petrodollars into the United States, avoiding interruption of U.S. commercial operations in Arab countries and continuing U.S. diplomatic efforts toward a resolution of the Middle East conflict. The EAA is exceedingly deferential to the ju-

date United States national interests in broader international legal norms that affect extraterritorial sovereign jurisdiction and human rights considerations.

Although the 1977 Amendments remain paramount among United States antiboycott legislation, other United States laws contain provisions relevant to the regulation of foreign boycotts. Under the Ribicoff Amendments to the Tax Reform Act of 1976,[255] participation in, or cooperation with, an international boycott could result in substantial tax losses on income derived from such participation.[256] Title VII of the Civil Rights Act of

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risdictional conflicts created by the anti-boycott legislation. Its broad exceptions, misplaced priorities and restrictive jurisdiction in effect permit compliance with the boycott to a degree beyond that prescribed by international comity, *i.e.*, good faith concessions to limitations of sovereignty and territorial jurisdiction. The excessive compromise by Congress is illustrated by the weighted consideration of both Arab and U.S. interests . . . .

Lahoud, *supra* note 240, at 384 (footnotes omitted).

255. I.R.C. § 999(a) (1982).

256. While participation in foreign boycotts was not specifically outlawed by this provision, a taxpayer or its shareholder could lose certain of the following tax benefits: the foreign tax credit under I.R.C. § 908(a); the shareholder's circumscribed inclusion of a controlled foreign corporation's income under § 952(a)(3); and the tax deferral associated with owners of Domestic International Sales Corporations (DISCs) under 995(b)(1)(F). For elaboration, see I.R.C. § 999(b)-(c).

The Internal Revenue Code defines participation in, or cooperation with, an international boycott to include any agreement:

(A) (i) to refrain from doing business with or in a country which is the object of the boycott or with the government, companies, or nationals of that country;

(ii) to refrain from doing business with any United States person engaged in trade in a country which is the object of the boycott or with the government, companies, or nationals of that country;

(iii) to refrain from doing business with any company whose ownership or management is made up, all or in part, of individuals of a particular nationality, race or religion, or to remove (or refrain from selecting) corporate directors who are individuals of a particular nationality, race, or religion; or

(iv) to refrain from employing individuals of a particular nationality, race, or religion; or

(B) as a condition of the sale of a product to a government, a company, or a national of a country, to refrain from shipping or insuring that product on a carrier owned, leased or operated by a person who does not participate in or cooperate with an international boycott (within the meaning of subparagraph (A)).

I.R.C. § 999(b)(3). *See* Treasury Boycott Guidelines H-M, 43 Fed. Reg. 3,454,

1964[257] is also applicable in situations involving possible employment discrimination from boycott-related personnel policies.[258] Transnational boycotts also raise significant implications for United States antitrust laws[259] and the Securities and Exchange

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3,462-68 (1978); Rubenfeld, *Legal and Tax Implications of Participating in International Boycotts*, 32 TAX L. REV. 613 (1977).

257. 42 U.S.C. §§ 2000e to 2000-17 (1982). Title VII states that:

> It shall be an unlawful employment practice for an employer—to fail or refuse to hire or to (1) discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin . . . .

Id. § 2000(e)-2(a)(1).

258. If a United States business were to modify its personnel policies in order to comply with pressures emanating from a foreign government's transnational boycott, and the business failed to employ or promote individuals of a particular religious or ethnic group in order to gain market access to the boycotting state, it is very likely that the employer would be in violation of Title VII. *See* Comment, *The Arab Boycott and Title VII*, 12 HARV. C.R.-C.L. L. REV. 181 (1977).

259. If goods or services are contracted out by a foreign boycotting state to a United States supplier on the condition that a blacklisted subcontractor not be used in the transaction, the United States supplier may refuse to deal with the otherwise qualified corporate subcontractor. In such an instance, the critical factor is whether compliance with the request constitutes a concerted "contract, combination in the form of trust or otherwise, or conspiracy" within the parameters of section 1 of the Sherman Antitrust Act. 15 U.S.C. § 1 (1982).

In *United States v. Bechtel Corp.*, the Justice Department alleged that Bechtel Corporation and its affiliates, as principal contractors on major construction projects in Arab countries, "entered into and implemented in the United States a combination and conspiracy which resulted in an unreasonable restraint of . . . interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act," by refusing to deal with persons blacklisted by Arab boycott organizations. Complaint, pt. VII, ¶¶ 20-21, United States v. Bechtel Corp., No. C-76-99 (N.D. Cal. Jan. 16, 1976), *reprinted in* [Jan.-June] ANTITRUST & TRADE REG. REP. (BNA) No. 747, at D-1, D-2 (Jan. 20, 1976).

In January 1977 the Department of Justice and Bechtel Corporation agreed on a consent decree enjoining Bechtel from pursuing actions within the United States that would result in the boycott of blacklisted subcontractors, but allowing Bechtel to use certain specified subcontractors as long as the selection had been made unilaterally by the client Arab government or a company engaging Bechtel. Proposed Final Judgment, No. C-76-99 (N.D. Cal. Jan. 16, 1976), *reprinted in* [Jan.-June] ANTITRUST & TRADE REG. REP. (BNA) No. 796, at E-1 (Jan. 11, 1977) *and in* 42 Fed. Reg. 3,716 (1977); Competitive Impact Statement, No. C-76-99 (N.D. Cal. Jan. 16, 1976), *reprinted in* [Jan.-June] ANTITRUST & TRADE REG. REP. (BNA) No. 796, at E-4 (Jan. 11, 1977) *and in* 42 Fed. Reg. 3,718 (1977). For analyses detailing the specific antitrust issues in question, see

Commission's disclosure statutes.[260] In addition, since 1975, several state governments in the United States[261] have directly responded to the various pressures from foreign boycotts[262] by passing their own explicit antiboycott legislation.[263]

Baker, *Antitrust Remedies Against Government-Inspired Boycotts, Shortages, and Squeezes: Wandering on the Road to Mecca*, 61 CORNELL L. REV. 911 (1976); Johnstone & Paugh, *The Arab Boycott of Israel: The Role of United States Antitrust Laws in the Wake of the Export Administration Amendments of 1977*, 8 GA. J. INT'L. & COMP. L. 661 (1978); Kestenbaum, *The Antitrust Challenge to the Arab Boycott: Per Se Theory, Middle East Politics, and United States v. Bechtel Corporation*, 54 TEX. L. REV. 1411 (1976); Schwartz, *The Arab Boycott and American Responses: Antitrust Law or Executive Discretion*, 54 TEX. L. REV. 1260 (1976); Timberg, *Sovereign Immunity and Act of State Defenses: Transnational Boycotts and Economic Coercion*, 55 TEX. L. REV. 1 (1976); Note, *The Antitrust Implications of the Arab Boycott*, 74 MICH. L. REV. 795 (1976).

260. 15 U.S.C. § 78m(d) (1982).

261. Between 1975 and 1978, at least thirteen states passed legislation specifically designed to protect their residents from boycott-related trade restrictions and discriminatory practices. *See* CAL. BUS. & PROF. CODE §§ 16721, 16721.5, 16721.6 (West Supp. 1984); CONN. GEN. STAT. ANN. §§ 42-125a to 42-125n (West Supp. 1984); FLA. STAT. ANN. § 542.34 (West Supp. 1984); ILL. ANN. STAT. ch. 29, §§ 91-96 (Smith-Hurd Supp. 1984); MD. COM. LAW CODE ANN. §§ 11-101 to 11-115 (1983); MASS. GEN. LAWS ANN. ch. 151E (West 1982); MINN. STAT. ANN., § 325D.53 (West 1981); N.J. STAT. ANN. §§ 10:5-3, :5-5, :5-12, :5-17 (West Supp. 1984); N.Y. EXEC. LAW §§ 296, 298-a (McKinney 1975 & Supp. 1984); N.C. GEN. STAT. §§ 75B-1 to 75B-7 (1981); OHIO REV. CODE ANN. §§ 1129.11, 1153.05, 1331.01-1331.11 (Page 1979 & Supp. 1984); ORE. REV. STAT. § 30.860 (1983); WASH. REV. CODE ANN. § 49.60.030 (Supp. 1979).

262. Legal justification for these state statutes rests upon two broad concepts. The first is a state's legitimate interest in preventing its citizens and residents from being discriminated against on grounds of race, color, religion, sex, or national origin. *Cf. supra* note 257. The second justification is based on the antitrust notions of illegal conspiracies or combinations that have affected commerce within a state. At least twelve states have legislated private rights of action for parties injured by violation of their state antiboycott laws. *See* CAL. BUS. & PROF. CODE § 16750 (West Supp. 1984); CONN. GEN. STAT. ANN. § 42-125i (West Supp. 1984); ILL. ANN. STAT. ch. 38, § 60-7(2) (Smith-Hurd Supp. 1984); MD. COM. LAW CODE ANN. § 11-109(b)(2) (1983); MASS. GEN. LAWS ANN. ch. 151E, § 3 (West 1982); MINN. STAT. ANN. § 325D.57 (West 1981); N.J. STAT. ANN. § 10:5-13 (West Supp. 1984); N.Y. EXEC. LAW § 297 (McKinney 1975 & Supp. 1984); N.C. GEN. STAT. § 75B-4 (1981); OHIO REV. CODE ANN. § 1331.08 (Page 1979); ORE. REV. STAT. § 30.860(2) (1983); WASH. REV. CODE ANN. § 49.60.030(2) (Supp. 1984).

263. *See supra* note 261. For example, New York's Human Rights Law is directed at intrastate rather than foreign commerce, and provides that:

It shall be an unlawful discriminatory practice (i) for any person to dis-

Since 1975 the United States has consciously endeavored to adopt a less permissive policy toward foreign imposed boycotts. This redirection in United States commercial law occurred in response to the negative spillover effects produced by the secondary and tertiary levels of the Arab boycott against Israel. Nevertheless, the applicability of United States antiboycott provisions to

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criminate against, boycott or blacklist, or to refuse to buy from, sell to or trade with, any person, because of the race, creed, color, national origin or sex of such person, or of such person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers or customers, or (ii) for any person wilfully to do any act or refrain from doing any act which enables any such person to take such action.

N.Y. EXEC. LAW § 296(13) (McKinney 1982).

Significantly, the New York Executive Law extends its jurisdiction extraterritorially to encompass targets abroad.

1. The provisions of this article shall apply as hereinafter provided to an act committed outside this state against a resident of this state or against a corporation organized under the laws of this state or authorized to do business in this state, if such act would constitute an unlawful discriminatory practice if committed within this state.

2. If a resident person or domestic corporation violates any provision of this article by virtue of the provisions of this section, this article shall apply to such person or corporation in the same manner and to the same extent as such provisions would have applied had such act been committed within this state except that the penal provisions of such article shall not be applicable.

3. If a non-resident person or foreign corporation violates any provision of this article by virtue of the provisions of this section, such person or corporation shall be prohibited from transacting any business within this state. . . . If the division of human rights has reason to believe that a non-resident person or foreign corporation has committed or is about to commit outside of this state an act which if committed within this state would constitute an unlawful discriminatory practice and that such act is in violation of any provision of this article by virtue of the provisions of this section, . . . [it may issue] an order prohibiting such person or corporation from transacting any business within this state.

Id. at § 298-a. For appropriate analytical commentary on the antiboycott legislation of various states, see Feinerman, *The Arab Boycott and State Law: The New York Anti-Boycott Statute*, 18 HARV. INT'L L. J. 343 (1977); Hirschhorn & Fenton, *States' Rights and the Antiboycott Provisions of the Export Administration Act*, 20 COLUM. J. TRANSNAT'L L. 517 (1981); Lahoud, *supra* note 240; Note, *State Reaction to the Arab Boycott of Israel: Legislative and Constitutional Preemption*, 57 B.U.L. REV. 335 (1977); Note, *The Constitutionality of New York's Response to the Arab Boycott*, 28 SYRACUSE L. REV. 631 (1977); Note, *State Legislative Responses to the Arab Boycott of Israel*, 10 U. MICH. J.L. REF. 592 (1977).

any extraterritorial boycott that falls within United States jurisdiction, as well as the legal consequences that flow from that justiciability, cannot be denied.

C. France

France was the first European state to adopt antiboycott legislation. The initial attempts to pass such a law occurred in the 1976 debates of the National Assembly and in legal propositions submitted to the French Senate.[264] On June 7, 1977, after wrangling over semantic connotations,[265] the Parliament unanimously added new articles to the French Penal Code that, in effect, constituted antiboycott legislation. The French statute curtailing participation in transnational economic boycotts, article 187-2, provides:

> I. . . . Art. 187-2 . . . [P]enalties . . . are equally applicable to all civil servants or any government appointee who, by their action or omission, would have contributed to making more difficult the normal exercise of economic activities:
>
> 1. By all natural persons because of their national origin, or because of their belonging or not belonging, real or supposed, to a particular ethnic group, race or religion.
>
> 2. By any corporate entity because of the national origin, racial, religious or ethnic affiliation of all or some of its members or directors.
>
> II. . . . Art. 416-1 . . . [P]enalties . . . are also applicable to any person who, by his action or omission, and without legitimate reason, would have contributed to making more difficult the normal exercise of economic activities:
>
> 1. By all natural persons because of their national origin, or because of their belonging or not belonging, real or supposed, to a particular ethnic group, race or religion.
>
> 2. By any corporate entity because of the national origin, racial,

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264. *See* Senat. Rapport No. 235 (France) 59-60 (1976); Senat. Rapport No. 241 (France) (1976).

265. Much of the debate centered around the propriety of including the phrase "belonging to a nation" (i.e. nationality), as a prohibited basis for boycotting. The final version adopted the words "belonging to a [particular] national origin [origine nationale]." *See* Assemblée Nationale, 1ere Seance du 30 novembre 1976, at 8806-07; Assemblée Nationale, 1ere Seance du 3 mai 1977, at 2370-72; Assemblée Nationale, Seconde Session Ordinaire de 1976-1977. Rapport No. 2925 fait au Nom de law Commission Miste partaire, 26 mai 1977, at 9-10; Assemblée Nationale, 1ere Seance du 2 juin 1977, at 1130j; Turck, *supra* note 214, at 726-31.

religious or ethnic affiliation of all or some of its members.
III. The provisions of articles 187-2 and 416-1 of the penal code do not apply when the acts described in these articles conform to directives issued within the framework of the government's economic and commercial policies or in applications of its international obligations.[266]

While the statute is vague in scope and relatively undefined in application, the impetus for its promulgation clearly stemmed from the Parliament's desire to preclude French firms from actively complying with the discriminatory facets[267] of the Arab boycott against Israel.[268] Interestingly enough, the statute was legally usurped soon after its enactment for precisely that reason.

Within a month after enactment of the antiboycott law, *Campagnie Francaise d'Assurance pour le Commerce Exterieur* (COFACE), France's state-controlled and largest insurance company, refused to provide any further financial guarantees on contracts made by French businesses exporting to Middle East Arab states.[269] This policy was purportedly adopted by COFACE because the French Government had failed to provide explicit guidelines on how the agency should perform under the new antiboycott legislation.[270] Faced with this situation, on July 24, 1977, Prime Minister Raymond Barré issued an avis, or advisory opinion,[271] that essentially stripped the French antiboycott statute of any practical effect upon the overseas exporting and contractual activities of COFACE and French firms.[272] This action by

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266. Loi no. 77-574 du 7 juin, 1977, 1977 Journal Officiel de la République Française [J.O.] 3151, 3154, 1977 Dalloz-Sirey, *Legislation* [D.S.L.] 219, 221-22 (author's unofficial translation).

267. The practice of issuing negative certificates of origin and the presumed scrutiny of the religious and ethnic affiliations of corporate directors to determine contractual recipients were particularly odious. *See* Assemblée Nationale, 27 Novembre 1976, D.D.O.F. (no. 2148-1634).

268. Phillips, *supra* note 49, at 15; Le Monde, Feb. 7, 1978, at 26, col. 1.

269. MIDDLE E. ECON. DIG., July 1, 1977, at 6; MIDDLE E. ECON. DIG., June 24, 1977, at 10.

270. MIDDLE E. ECON. DIG., July 1, 1977, at 6.

271. Avis du 24 juillet, 1977, 1977 J.O. 2360.

272. The *avis* averred:

Because of the need to reestablish a balance in foreign trade and to alleviate the employment situation in France by searching for new markets, the development of French exports is an objective that has higher priority than ever.

This line is consistent with the guidelines of the law of July 21, 1976

the French Government effectively nullified the caveat provided in paragraph III of the antiboycott legislation.[273] French commercial initiatives in the markets of both oil-producing states and lesser developed countries were, thus, deemed a "higher priority" than what the new antiboycott legislation would have permitted. As a result, from 1977 through 1981, the French antiboycott law remained moribund, but certainly not forgotten.[274]

The vitality of article 187-2 was apparently resuscitated after the 1981 election of Francois Mitterand as President of France. In July 1981 the Mitterand Government reportedly reinstated the antiboycott statute.[275] The status of the law is currently uncertain, ill-publicized, and somewhat polemic. In short, it is too early to assess the law's efficacy in relation to French trade. Since its inception, the French antiboycott legislation clearly has been aimed directly at the elimination of religious, racial, and ethnic discrimination in transnational commerce. At the very least, the

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approving Plan VII of Economic and Social Development, which provides that it is appropriate "to promote penetration by exporting countries and countries in the process of industrialization in the Mid-East, Southeast Asia, Latin America and certain countries of Africa." The rapid development of exports towards these markets is a fundamental goal of the economic and commercial policy of the Government.

It is therefore specified, in application of Paragraph III of Article 32 of Law No. 77-574 of June 7, 1977, that commercial operations performed for these markets enter within the framework of the economic and commercial policy of the Government and are therefore in agreement with Government directives. In particular, it therefore follows that Paragraphs I and II of Article 32 mentioned above are not applicable to decisions granting COFACE guarantees with regard to contracts relating to the aforesaid commercial operations.

Id. (author's unofficial translation).

273. *See supra* text accompanying note 266.

274. In October 1977 a challenge to the Prime Minister's *avis* was filed by the Movement for the Liberty of Commerce (MLC) with the *Conseil d'Etat*, the court having jurisdiction over French government officials. AMERICAN JEWISH CONGRESS, 6 BOYCOTT REPORT: DEVELOPMENTS AND TRENDS AFFECTING THE ARAB BOYCOTT 5 (1977). *See also* Phillips, *supra* note 49, at 42. A complaint was also initiated by the MLC before the European Economic Community (EEC) Commission accusing COFACE of violating article 86 of the Treaty of Rome, March 25, 1957, 298 U.N.T.S. 3, the abuse of dominant position provision. The EEC Commission decided that COFACE was not in violation of any of the Treaty of Rome's provisions, and the MLC dropped the case in late 1977. *Id.* at 43.

275. *Mitterand Reinstates French Anti-Boycott Law*, BOYCOTT L. BULL., July 1981, at 1-2; *see also French Government Moves Against Arab Boycott*, BOYCOTT L. BULL., Aug. 1981, at 6.

French antiboycott law experience underscores the international community's disdain for multitiered transnational boycotts, particularly those rooted in discriminatory practices that violate fundamental norms of international human rights.[276]

D. Canada

Canada has no formal federal legislation requiring noncompliance with transnational boycotts. The Canadian Government, nevertheless, has enacted a program designed to curtail possible support for boycott-related activities within its own institutional structure. This official antiboycott policy program was synthesized from a set of policy options first enumerated in a secret Cabinet memorandum concerning the Arab boycott against Israel.[277] As enunciated during the House of Commons debates of October 1976, the Canadian Government's policy was based upon the following positions:

> (1) Prohibition of Canadian firms from adhering to boycotts imposed by foreign countries against third countries;
>
> (2) Denial of Canadian Government support to any project requiring Canadians to comply with a foreign country's boycott of a third country and the requirement that Canadian firms report boycott-related requests to the Government;
>
> (3) Denial of Canadian Government support to projects requiring compliance with the boycott, condemnation of boycotts and the requirement that Canadian firms report boycott-related requests which discriminate against Canadian companies or citizens on the basis of race, color, religion, sex, or national origin; and
>
> (4) Forbidding government support of contracts containing provisions discriminating on the basis of race, religion, or ethnic group and the issuance of a government statement reaffirming Canada's (a) opposition to discrimination, (b) policy of trading in peaceful goods with all nations, and (c) view that private firms have the responsibility to choose their own trading partners and contract terms.[278]

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276. *See, e.g.*, Universal Declaration of Human Rights, G.A. Res. 217A, arts. 1-2, 7, 13, 15, 23, 28, U.N. Doc. A/810, at 135 (1948).

277. Toronto Globe and Mail, Aug. 6, 1976, *reprinted in* S. HADAWI, ARAB BOYCOTT OF ISRAEL: PEACEFUL DEFENSIVE AND CONSTRUCTIVE 10 (1977).

278. Toronto Globe and Mail, *supra* note 277, *reprinted* at 10-12. *See* Commons Debates, Oct. 21, 1976, at 302 (statement of Donald Jamieson, Canadian Secretary of State for External Affairs). The first policy option, "[p]rohibition of Canadian firms from adhering to boycotts imposed by foreign countries against

The Canadian Government's position was formally effectuated in January 1977 when the Department of Industry, Trade, and Commerce issued official implementing instructions to its regional offices and foreign missions.[279] These offices and missions were directed to "withhold all Departmental support and services in connection with any specific transaction where it is found that, in connection with that transaction, a Canadian company, agency, or individual has made undertakings in contravention of this policy."[280] The Canadian Government's policy simply was to deny export assistance to those firms complying with certain discriminatory or restrictive trade practices of a foreign transnational boycott.[281]

The Canadian Government's official policy regarding international economic boycotts has recently been further refined and clarified. The Government has deemed "unacceptable" any boycott-related activity that would require a Canadian firm or individual to:

> (a) engage in discrimination based on the race, national or ethnic origin, or religion of any Canadian firm or individual;
> (b) refuse to purchase from or sell to any other Canadian firm or individual;
> (c) refuse to sell Canadian goods to any country;
> (d) refrain from purchases from any country; or
> (e) restrict commercial investment or other economic activity in any country.[282]

Primary boycotts are viewed as legally "acceptable" under current Canadian policy.[283] "Secondary boycott undertakings,"[284] are

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third countries," failed to become Canada's policy. *Id.*

279. Memorandum by G.F. Osbaldeston, Deputy Minister, Dept. of Industry, Trade and Commerce, *International Economic Boycotts* (Jan. 21, 1977).

280. *Id.*

281. *See generally* Department of Industry, Trade and Commerce, International Economic Boycotts: First Semiannual Report (Oct. 21, 1976-July 31, 1977).

282. Canadian Government Policy on International Economic Boycotts (1978), at 1 (mimeograph) [hereinafter cited as Canadian Government Policy].

283. *Id.* at 2; Department of Industry, Trade and Commerce, International Economic Boycotts: Third Semiannual Report (Feb. 1, 1978 to July 31, 1978), at 3 [hereinafter cited as International Economic Boycotts].

284. "Secondary boycott undertakings" refer to those boycott clauses that "in general terms may require a Canadian company, as a pre-condition for doing business in boycotting countries, to limit its commercial activities with respect

deemed *"to be at variance"*[285] with, and "unacceptable"[286] to, official policy guidelines, because those activities "could involve a relationship separate and distinct from the transaction in question, and would require the Canadian company to restrict its commercial freedom."[287] "Tertiary boycott undertakings"[288] similarly have been declared at variance with, and unacceptable to, official policy guidelines because "Canadian firms could . . . be limited in their ability to do business with other Canadian companies."[289] In addition, negative certificates of origin have been declared "unacceptable" in Canadian commercial transactions after October 1, 1978,[290] and questionnaires requiring information from firms about another person's race, religion, sex or national origin for use in boycott enforcement are considered *"to be at variance* with the Canadian Government policy."[291] No Canadian federal statutes or regulations specifically prohibiting compliance with international boycotts have been enacted to elaborate upon these guideline provisions, nor does it appear likely that any will be promulgated in the foreseeable future.

The province of Ontario, however, has enacted antiboycott legislation. On November 9, 1978, the Ontario legislature adopted The Discriminatory Business Practices Act.[292] This law applies only to activities of natural and juridical Ontario persons,[293] and is in the form of human rights legislation, presumably to preclude possible preemption by federal jurisdiction.

The Discriminatory Business Practices Act prohibits an Ontario person from refusing to "engage in business" with an individual if that decision is based on the other person's "race, creed, colour, nationality, ancestry, place of origin, sex or geographical

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to another country." Canadian Government Policy, *supra* note 282, at 2.

285. *Id.* (emphasis in original).

286. International Economic Boycotts, *supra* note 283, at 3.

287. *Id.* at 3; Canadian Government Policy, *supra* note 282, at 2.

288. "Tertiary boycott undertakings" refer to those boycott clauses that "in general terms may require an exporter to certify that goods or services are not procured in whole or part from companies with which a boycotting country refuses to do business." International Economic Boycotts, *supra* note 283, at 4; Canadian Government Policy, *supra* note 282, at 2.

289. *See* Canadian Government Policy, *supra* note 282, at 2.

290. *Id.*

291. *Id.* (emphasis in original).

292. Discriminatory Business Practices Act, ONT. REV. STAT. ch. 60 (1978).

293. *Id.* § 5(1).

location."[294] The Act also forbids refusals to engage in any business relationship with another corporate firm or government predicated upon the aforementioned attributes of that firm's or government's employees, shareholders, management, or directors.[295]

The Ontario law further prohibits a person from dismissing or refusing to employ, appoint, or promote another person on grounds of the latter's "race, creed, colour, nationality, ancestry, place of origin, sex or geographical location."[296] The Act also makes it unlawful for an Ontario person to solicit or provide "designated information" about these attributes for purposes of engaging in discriminatory business practices.[297] The law expressly forbids both the solicitation and provision of this type of information when it relates to someone's membership in, or contribution to, "charitable, fraternal or service organization[s],"[298] particularly if that information is requested as a precondition for conducting business with a second firm or foreign government.[299]

In addition, the law prohibits oral or written statements declaring that "any goods or services supplied or rendered by any person or government do not originate in whole or in part in a specific location, territory, or country for the purpose of engaging in or assisting in engaging in a discriminatory business practice."[300] Persons who receive boycott-related requests must report them to a special ministry in the Ontario Government within thirty days.[301] In addition, firms found to be in contravention of the Act are disqualified from bidding on any Crown contracts for five years,[302] and persons convicted of offenses are liable for punitive and exemplary damages,[303] as well as fines.[304]

Both the Canadian Government and the Ontario Legislature have recognized that foreign transnational boycotts are legitimate

294. *Id.* § 4.
295. *Id.* § 4(3).
296. *Id.* § 4(1), (2).
297. *Id.* § 5(2).
298. *Id.* § 5(5).
299. *See id.* § 5(6).
300. *Id.* § 5(4).
301. *Id.* § 5(8).
302. *Id.* § 10.
303. *Id.* § 9(1).
304. *Id.* § 16. The maximum fine for individuals convicted of an offense is $5,000 (Canadian); the maximum liability for corporations is $50,000. *Id.*

exercises of national sovereignty when conducted at the primary level.[305] Nonetheless, when such boycotts transcend the government-to-government plane and employ discrimination based upon race as an enforcement tool, their legitimacy is seriously impugned. The Canadian attitude reiterates an important point—that the ends sought by economically coercive transnational boycotts may be less controversial legally than the means used to achieve them.

E. The Netherlands

The Netherlands was the most recent state to adopt formal legislation relevant to transnational boycott activities. As with other national antiboycott laws enacted after 1975, the Dutch regulation reflected a cautious expression of concern over disciminatory trade conditions that typify Dutch commercial activities in Middle East markets. Transnational boycotts evoked little public concern in the Netherlands until February 1978, when the Center for Information and Documentation Israel published a study entitled, *Blackbook: The Arab Boycott and the Netherlands.*[306] The *Blackbook* not only suggested that the Dutch business community had been actively engaged in complying with Arab League boycott demands,[307] but more disturbing, that the Dutch Govern-

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305. International Economic Boycotts, *supra* note 283, at 4. As noted during the House of Commons debates:

> The Government recognizes that Arab countries consider their boycott of Israel to be a legitimate economic weapon in view of the continuing state of war between Arab countries and Israel. Canada, however, seeks to improve its relations and to develop trade in peaceful goods with all nations. Any discrimination against Canadian firms or individuals is contrary to Canadian concepts of fairness and the Government is determined to ensure that any such discriminatory aspects are not in any way supported by Government programmes.

Commons Debates, *supra* note 278, at 302.

306. R. NAFTANIEL, BLACKBOOK: THE ARAB BOYCOTT AND THE NETHERLANDS (1978).

307. According to Naftaniel's analysis, the following five methods of boycott compliance occurred frequently:

> 1. Placing or threatening to place firms on the *blacklist* that do not comply with Arab League boycott demands. In addition, most Arab contracts carry a clause that exported products should not be manufactured with the aid of other firms which are on the blacklist.
>
> 2. The *anti-Israel clause* which compels the exporter to declare he will respect and abide by the Arab boycott rules—which usually means the

ment had rarely acted to suppress or even deter such discriminatory activities.[308] The Second Chamber of the Dutch Parliament reacted to the latter charge in April 1978. Chaired by Mr. Harry Vander Bergh, a select twenty-two member committee conducted closed-door hearings concerning the Arab boycott throughout the remainder of 1978 and released its report in February 1979.[309] The Vander Bergh report generally substantiated the *Blackbook's* allegations of discriminatory boycott compliance by Dutch corporations.[310] The report did not, however, offer conclusive recom-

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firm may not have any form of business cooperation with Israeli firms. If the exporters' declaration proves to be faulty, the Arab partner to the contract need not pay.

3. The *negative certificate of origin* indicating that no raw materials or components of Israeli origin have been used in the goods delivered. These certificates must be legalized by Dutch Chambers of Commerce.

4. *Non-Jew declarations* which require firms to provide official statements that personnel sent to Saudi Arabia, the Persian Gulf States, Libya, and North Yemen are non-Jewish. Firms also sometimes receive questionnaires asking if the firm is owned or managed by Jews and/or has Jewish personnel in leading functions.

5. Letters of Credit from banks in Arab countries demand a *negative certificate of origin* (and sometimes an anti-Israel clause) to be handed over with the bill of lading before the letter of credit is paid out. Thus banks outside the Arab world are reluctant to pay out letters of credit without required documents.

Id., quoted in Phillips, *supra* note 49, at 65-66 (emphasis in original).

308. In this connection, Naftaniel's study concluded that Dutch Chambers of Commerce and the Dutch Foreign Ministry had approved more than 7,000 negative certificates of origin annually. Phillips, *supra* note 49, at 25.

309. *Id.* at 66.

310. The Select Committee's report concluded that: (1) Dutch companies were confronted with boycott demands in virtually all phases of their business transactions with Arab League states; (2) many Dutch companies were forced to sign negative certificates of origin (to show the company had no business ties in Israel) in order to be eligible for Arab business; (3) negative certificates of origin were approved on a large scale by the Chambers of Commerce and by the Foreign Ministry, which verified the authenticity of the signatures under the statements; (4) some Dutch companies had collected and issued collective or individual declarations that employees sent to Arab countries were not Jewish; (5) particular sectors of Dutch trade and industry had discontinued or refused to embark on business relationships with Israel because of the risks involved; (6) while the Committee believed the Arab economic boycott started from the principle of nonracial discrimination, it was clear that the boycott obviously discriminated between Jews and non-Jews, and that people had been blacklisted simply because they were Jewish; and (7) both the Dutch Government and private sector institutions seemed to cooperate to a greater degree with Arab boycott de-

mendations as to how the Government should counter these discriminatory practices.[311] Following protracted debate and controversy in the Parliament, article 419 quater[312] emerged as the compromise regulatory statute.

Article 429 quater of the Dutch Criminal Code went into effect on June 29, 1981.[313] The fundamental aim of article 429 quater is to secure "an overall picture of the size and scope of the effects of foreign boycott embargoes in the Netherlands."[314] Article 429 provides that Dutch business firms who receive requests to comply with foreign sanctions must notify the Minister of Economic Affairs.[315] Penalties in the law relate only to a firm's failure to comply with this notification obligation. Unlike United States legislation, article 429 quater does not prescribe penalties for compliance or noncompliance with the foreign sanctions themselves.[316] In the personal opinion of one Dutch diplomat:

> This approach is in keeping with the view of the government of the Netherlands that compliance by individual persons or companies with embargoes or boycotts imposed against states as part of a military or political conflict should continue to be permissible provided, of course, that such compliance did not conflict with the rule of law in the Netherlands.[317]

The political and legal presumptions upon which the regulatory substance of article 429 rests has been summarized as follows:

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mands than did their counterparts in other Western countries. *Id.* at 24-25.

311. *Id.* at 25.

312. According to a spokesman in the Dutch embassy, "quater" may be roughly translated as "section."

313. Wetboek van Strafrecht art. 429 (1981) (Neth.). The article provides that:

> He, who, in the practice of a profession or trade, makes a distinction between persons because of race will be punished with imprisonment for a maximum of one month or with a fine of a maximum of Hfl. 10,000. This provision is not applicable to transactions to which persons belonging to a particular ethnic or cultural minority group confer a privileged position in order to abolish a factual inequality.

Letter from Daniel Magraw to the author (Jan. 24, 1983).

314. Letter from Ch. R. van Beuge, Economics Minister, Netherlands Embassy, Washington, D.C. to the author (Feb. 15, 1983), at 1 [hereinafter cited as van Beuge letter].

315. *Id.*

316. *Id.*

317. *Id.* at 2.

> The government of the Netherlands has always taken the view that there is no general obligation under international law to maintain trade relations with another country. The refusal of certain countries to do business directly or indirectly with another country or countries does not in itself constitute a violation of an obligation under international law. Although the government of the Netherlands does not therefore object from the point of view of international law to economic sanctions in international relations and does not regard them as unacceptable as instruments of international relations in themselves, it is concerned about the possible secondary consequences of such measures for the Netherlands. In this connection [the Netherlands] considered that it would be useful to obtain more precise information as to the nature and scope of the secondary consequences of foreign embargoes and boycotts for the Netherlands.[318]

As antiboycott legislation, article 429 quater is not directed at any specific foreign transnational boycott imposed as a facet of some political or military conflict,[319] but instead, is concerned "with the phenomenon as a whole" and intends to obtain through compulsory notification, greater information regarding the "possible side effects" of foreign sanctions upon the Netherlands.[320]

When compared with previous commercial discrimination provisions in the Dutch criminal code, article 429 quater has at least three notable improvements. First, the conceptual range of "nondiscrimination" is no longer limited to a few business endeavors; it now spans the entire spectrum of economic activities.[321] Second, article 429 quater "has improved on the old in so far as the discriminated person [previously] had to prove that he had been disadvantaged, which was difficult, whilst it is now sufficient to prove that there has been a difference in treatment."[322] Third, the reprehensibility of integrating racial discrimination into commerce was deemed sufficiently odious by the Dutch Parliament to warrant multiplying the old criminal penalty ten times in the new law.[323] Although information regarding violations of and prosecu-

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318. *Id.* at 1. Eerste Kamer, 20 mei 1981, at 1025 (statement of De heer Derks).

319. van Beuge letter, *supra* note 313, at 2.

320. *Id.*

321. *Id.*; Eerste Kamer, *supra* note 317, at 1025.

322. van Beuge letter, *supra* note 313, at 2.

323. *Id.*; Eerste Kamer, *supra* note 317, at 1029-30 (statement of Minister de Ruiter).

tions under article 429 quater is as yet unavailable, the Dutch Government clearly intended the tenfold increase in the fine to be a conspicuous signal of official concern.

The legislative history of the Dutch antiboycott provision suggests that the Dutch Government has been ambivalent about transnational boycotts in general. While the Government evinces sensitivity to the political nuances of racial, ethnic, and religious discrimination, Dutch officials are openly reluctant to become involved with any transnational boycott that lacks international recognition or sanction.[324] Consequently, the Dutch Government refuses to grant legal recognition to, or maintain official diplomatic relations with, any foreign boycott office.[325] The Government is also noticeably hesitant to intervene legally either for or against Dutch firms that encounter business problems stemming from a foreign boycott's operation.[326] In assuming this laissez-faire attitude, the Dutch Government ostensibly intends to eschew any official role regarding transnational boycotts and private-sector activities; whether by prosecuting corporations for participating in the restrictive trade practices of a boycott, or in sanctioning the legality of a corporation's complicity as participants in a boycott.

F. Great Britain

Great Britain has not adopted antiboycott legislation, nor is it likely to do so in the near future. British public interest in, and government attention to, transnational boycotts, however, has not been indifferent.

Prompted by growing public agitation over discriminatory aspects of the Arab boycott against Israel,[327] a parliamentary com-

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324. Phillips, *supra* note 49, at 27.

325. In February 1979, a spokesman for the Dutch Foreign Ministry stated:

> The Government does not wish to be involved in a boycott which is not internationally sanctioned. We do not recognize the Arab Boycott Office, and we have never had official contacts with it. The Ministry never intervenes on a firm's behalf in cases of boycott problems. The Government feels it is up to individual companies to decide on compliance. We have no role, and will take none until we see the results of the Parliamentary debates.

Id., at 69.

326. *Id.* at 27.

327. The Arab boycott first aroused British public interest in 1963, when Lord Mancroft, a British Jew and former Cabinet member, resigned from the

mittee was created in May 1977 for the express purpose of drafting antiboycott legislation.[328] The product of the committee's deliberations was the Foreign Boycotts Bill of 1977,[329] modeled closely after the United States Export Amendments of 1977.[330] Introduced by Lord Byers to the House of Lords on July 12, 1977, the bill died when that session of Parliament adjourned. The bill was reinstated by Lord Byers on November 22, 1977, and was given a second reading on January 30, 1978.

The Byers boycott bill defined a foreign boycott as "any policy adopted by or action taken by a foreign government or agency thereof to discriminate against any other nation or citizen of other nation or a religious, ethnic or political group in the course of trade or business."[331] The prohibitions contained in the bill were relatively extensive in scope, and covered refusals to do bus-

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corporate board of Norwich Union Insurance Company in reaction to Arab pressure for his dismissal. *See* N.Y. Times, Dec. 3, 1963, at 13, col. 1; *id.*, Dec. 4, 1963, at 13, col. 1; *id.*, Dec. 6, 1963, at 7, col. 3; *id.*, Dec. 14, 1963, at 7, col. 1.

328. The Committee membership included Arthur Bottomley of the Labour Party; Conservative MP Hugh Frazer; Lord Byer, Liberal Leader of the House of Lords; and the Duke of Devonshire.

329. An Act to Prevent Foreign Boycotts; and for Connected Purposes (1977) [hereinafter cited as Foreign Boycott Bill].

330. *See supra* note 228. The Foreign Boycott Bill of 1977 specifically prohibited any British person:

> (1) by themselves, or through persons controlled by them, from discriminating against or refusing to do business with any other person in furtherance of a foreign boycott request or condition [made or imposed directly or indirectly to implement or further a foreign boycott];
>
> (2) from altering their normal course of business for the purpose of furthering a foreign boycott or complying with a boycott request or condition;
>
> (3) from adopting or continuing any course of business or practice to further a foreign boycott or comply with a boycott request or condition and which course of business would not be adopted or continued save for the boycott condition;
>
> (4) from seeking or providing any information concerning another person's religion, racial or national origin, business connections or memberships if that information is sought or provided to further a foreign boycott or in consequence of a foreign boycott request or condition;
>
> (5) from providing or demanding a certificate of origin of goods which excludes a specific country, or;
>
> (6) from paying, confirming or processing a letter of credit or shipping documents which contain a condition or requirement whose fulfillment or performance is an offense under the Act.

Id. § 2; *cf. supra* notes 225-39 and accompanying text.

331. Foreign Boycott Bill, *supra* note 328, § 1(a).

iness, complicity in furthering discriminatory boycotts, provision of information for boycott requests, the supplying of certificates of origin, and the processing of letters of credit.[332] Reporting requirements for British firms were also provided,[333] as were strict penalties for convictions arising from boycott-related offenses.[334]

As a private bill lacking official government support, the Foreign Boycotts Bill of 1977 had little prospect of passage. The Bill's probability of failure intensified during its second reading in January 1978, when the British Government confirmed its opposition to any antiboycott legislation that deprived corporate firms of the right to make their own decisions regarding foreign commercial opportunities.[335] Lord Byers' bill was referred to a House of Lords Select Committee for perusal, study, and assessment, and six months later, on July 28, 1978, the Select Committee released its findings in a two volume report.[336] The Committee's report to the British Government contained eleven policy recommendations for dealing with transnational boycotts in general and the Arab boycott in particular: (1) British policy toward the Arab boycott of Israel should (a) not impede a Middle East

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332. *See id.*

333. Any British firm receiving a boycott-related request had to report it to the Secretary of State within 28 days. *Id.* § 3(1).

334. Failure to provide reports to the Secretary of State carried a maximum fine of £ 5,000. *Id.* § 3(3). A conviction for a substantive offense under the Act would have subjected an individual or corporate executive to a maximum fine of £ 5,000. Subsequent offenses could have resulted in fines of £ 10,000, two years in prison, or both. *Id.* § 7(1). Corporations convicted would have been liable for fines ranging up to £ 100,000. *Id.* § 7(2).

335. Baroness Stedman stated the British Government's official position:

> The justification for this legislation is said to be the protection of individuals, companies, and businesses from the direct and indirect consequences and pressures of the foreign boycott. There is, however, no way in which passage of legislation will prevent these pressures and consequences from causing inquiries. Requests for information will still be sent to companies. If they cannot respond to inquiries, the result may simply be that they are prevented from arguing their case or even from representing the true facts in a case involving mistaken or misleading information.

Statement of Baroness Stedman, House of Lords (Jan. 30, 1978) *reprinted in* Turck, *supra* note 214, at 724; *see also* Response of Michael Meacher, Parliamentary Undersecretary of Trade, to Hugh Frazer, MP (Stafford and Stone) and Anthony Steen, MP (Liverpool, Wavertree), House of Commons, Parliamentary Question 1213 (July 13, 1977).

336. Select Committee on the Foreign Boycotts Bill, House of Lords Paper 1977/8 No. 265 (2 Vols.) (1978).

settlement; (b) maintain friendly relations with Arab states and Israel; (c) promote exports of the United Kingdom; and (d) preserve the principle of nondiscrimination within the United Kingdom among peoples of different races, religions, and ethnic origins. (2) Because the Foreign Boycotts Bill failed to meet the first three conditions above, "its passage involved risks which nearly all those involved were unwilling to take." Accordingly, the Select Committee recommended that the Boycotts Bill should not proceed. (3) Given that the "situation is not satisfactory," British companies should be free to decide their own policy attitudes towards boycotts in light of their commercial interests; however, the Government and Parliament should set the political context within which companies may make those decisions. (4) Companies should be encouraged to trade in Middle East markets despite the boycott, with the Government providing active assistance toward that end. (5) More diplomatic opportunities should be taken, especially informally, to reduce the incidence of secondary and tertiary boycotts. (6) "Whenever possible," British companies should avoid signing contracts containing conditions that specifically discriminate against a friendly state. (7) The British Government should carefully evaluate the use of public funds in support of particular boycott-related transactions and whether boycott-related documents should be recognized at all. (8) No ban should be imposed on guarantees by the Export Credits Guarantee Department (i.e. the British Government's export credit insurance company) for boycott-related transactions or advertisements that publicize boycott conditions. (9) The British Government should cease authenticating negative certificates of origin. (10) Compliance with a discriminatory boycott within the United Kingdom should come within the legal scope of the Race Relations Act. (11) The British Government should take the initiative in the Council of the European Economic Community to develop a common European policy regarding boycotts, the ultimate goal of which would be to foster the Community's fundamental principle of nondiscrimination.[337]

Since the Select Committee's findings were made public in 1979, the British Government has remained overtly reluctant to support any antiboycott legislation in Parliament.[338] This unwill-

337. *Id.* at 40-41.

338. In a recent debate in the House of Commons, Dr. M.S. Miller attributed the current "lily-livered" policy of the British Government toward the anti-Is-

ingness presumably stems from several factors. First, antiboycott legislation would undoubtedly have a negative effect on British trade with Arab states and would likely exacerbate Britain's already weak balance of payments situation.[339] Second, not only would antiboycott enforcement be very difficult and complicated to maintain, it would also necessitate the creation of an unwanted new bureaucratic administrative structure within the Govern-

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raeli boycott to Arab oil power, Arab petrodollar investments, and military-strategic considerations:

> These factors have contributed to the British singular, and even exceptional, weakness in the face of the boycott. In no other European country is there a more widespread secondary boycott—the Arab blacklisting of British firms which continue trading with Israel and which receive no protection from Whitehall. However, there is also a tertiary boycott—a boycott of British firms which trade with other British firms already blacklisted. This is a very intricate ball game. In no other European country is there a more widespread voluntary boycott, entailing spontaneous application to the Arab boycott offices for forms to fill in and negative certificates of origin to be completed. There is a veritable deluge of these, because the British Government does nothing to discourage the practice.

36 PARL. DEB. H.C. (6th ser.) 732 (1983) (statement of Dr. M.S. Miller, M.P. East Kilbride). Dr. Miller went on to propose policy prescriptions for dealing with the Arab boycott:

> It is not enough for the Government to express disapproval of the boycott. They should officially and actively discourage compliance with it. Government Departments, offices and institutions should be instructed not to comply with the boycott. This should also apply to nationalized industries and companies in which there is a majority public interest.
>
> The Foreign Office should cease authenticating signatures on discriminatory certificates of origin. I do not accept that this would be "an unacceptable risk to our exports." There should be a legal obligation on British firms to notify the Department of Trade of any boycott requests or demands that they receive and whether these have been complied with. Such reports of compliance should be open to public inspection. Compliance with the secondary boycott should be made illegal. This would enable British business men to give a prompt and effective response to boycott pressure.

Id. at 733.

339. *The Economist* wryly commented on this particular Committee recommendation when it observed:

> British exporters to rich Arab markets can relax. The possibility of a British law forbidding companies to comply with Arab boycott demands is sinking into the oil-rich sands of Arabia. A House of Lords select committee studying the Foreign Boycotts Bill this week found £2.7 billion reasons for burying it.

My Lords, The Boycott Must Go On, ECONOMIST, Sept. 2, 1978, at 101.

ment. Last, and perhaps most telling, no discernably strong consensus exists, either in Parliament or among the British public generally, for the enactment of such an antiboycott law.

The British Government has reacted to the Select Committee's report and recommendations with modest enthusiasm. Indeed, there is an admitted official aversion to any governmental intervention into free trade arrangements abroad—a repugnance generally shared by Great Britain's business and banking communities. There is little likelihood that British policy will change sufficiently to produce national antiboycott legislation. Without government support, there is little chance that an antiboycott bill will be passed in Great Britain in the foreseeable future. The lesson to be gleaned from the British antiboycott legislative experience is clear. Absent a perceived domestic need, political will, and requisite constituency pressure, national antiboycott bills are unlikely to be regarded as political priorities. Municipal proposals will, therefore, have little chance for eventual enactment into law.

G. Concluding Observations

Despite the discriminatory trade practices engendered by transnational boycotts, municipal regulations enacted to dissuade compliance with boycotts tend to be the exception rather than the rule. More specifically, few nations have enacted legislation against corporate compliance with the secondary and tertiary facets of the ongoing Arab boycott. Only the United States has passed comprehensive antiboycott legislation that is actively enforced. Since 1977 France, Canada, the Netherlands, Great Britain, Norway,[340] Sweden,[341] Denmark,[342] and West Germany[343]

340. *See* Turck, *supra* note 214, at 713-38.

341. Sweden has no specific antiboycott laws. A private bill, The Protection of Swedish Trade with Israel Act, was introduced by Gabriel Romanus in the *Risksdag* on January 21, 1976. It was subsequently rejected. *Id.* at 733-35.

342. Although Denmark has no national antiboycott legislation, it has reportedly refused to authenticate negative certificates of origin in boycott-related activities. *Id.* at 736 & n. 108 (citing J. BAHTI, THE ARAB BOYCOTT OF ISRAEL 61 (1967)).

343. West Germany has no specific antiboycott laws and reportedly does not intend to introduce any. According to embassy officials, West German companies must decide on their own how to react to boycott pressures and requirement demands. W. NELSON & T. PRITTIE, THE ECONOMIC WAR AGAINST THE JEWS 138 (1977); Discussion with Mr. Werner Hein, Embassy of Federal Republic of Germany, in Washington, D.C., (Feb. 10, 1983).

have officially voiced concern over transnational boycotts. These governments have not deemed legislative responses necessary, appropriate, or sufficiently cost-effective to counter the discriminatory commercial ramifications of a transnational boycott.

VI. Conclusion

Writing in 1934, C.L. Bouvé observed that, "the place of the national boycott in international relations has to a limited extent only engaged the attention of international jurists. This may be due in part to the fact that one member only of the family of nations has, so to speak, specialized in the use of this instrumentality."[344] Professor Bouvé was, of course, referring to China's proclivity to resort to national boycotts as measures of public protests against the policies of foreign governments.[345] In recent years, however, use of the transnational boycott as a measure of international coercion has become a topic of considerably more concern, largely due to the pervasive, commercially coercive actions taken against Israel by Arab League member states.

The primary transnational boycott is generally regarded as a legitimate instrument of international economic coercion. This undoubtedly is true if a boycott is employed either as a measure of self-defense or as an act of retorsion. When placed within the context of United Nations Charter law, a transnational boycott does not qualify either as a "threat or use of force," or as "aggression." Furthermore, primary transnational boycotts usually do not violate the accepted norm of nonintervention. In the absence of relevant treaty arrangements, the conduct and cultivation of international trade relationships remains a legal function of state choice, not an implicit or universal obligation.

On the other hand, the legality of transnational boycotts having secondary and tertiary levels is jeopardized by their very character. By promoting commercial policies expressly designed to affect the national economic domain of noninvolved third-party states, multitiered transnational boycotts are clearly considered to be a means of illicit, albeit indirect, economic intervention, despite the paucity of pertinent municipal legislation. This is especially true when these boycotts resort to enforcement techniques that foster religious, ethnic, racial, or creedal discrimination in third-party

344. Bouvé, *supra* note 4, at 22.

345. *See supra* text accompanying notes 12-14.

states. Thus, under international law, the secondary and tertiary aspects of transnational boycotts should be viewed as illegal appendages to a generally legal means of international economic coercion.

History indicates that the functional utility of transnational boycotts has been temporally sporadic, politically opportunistic, and economically inconclusive. The recognized status of transnational boycotts in international law has evolved piecemeal through customary state practice, emergent general principles of law, and writings of legal commentators. The increasingly interdependent global economic order underscores the paramount role international law must assume in maintaining regularized patterns of transnational commercial intercourse. Given these considerations, the international legal community should continue to treat transnational boycotts as an appropriate legal issue that merits serious attention.