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"Force" under Article 2(4) of the United Nations Charter: The Question of Economic and Political Coercion

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**“FORCE” UNDER ARTICLE 2(4) OF THE
UNITED NATIONS CHARTER: THE
QUESTION OF ECONOMIC AND
POLITICAL COERCION**

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I. INTRODUCTION

Article 2(4) of the United Nations Charter declares that:

All Members shall refrain in their international relations from the threat or use of *force* against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Since the adoption of this article the meaning of the word force has been disputed by political leaders and delegates to the United Nations. Invariably these disputes have centered on whether the prohibition against “the threat or use of force” in article 2(4) applies only to the threat or use of military force or extends to the threat or use of political and economic force as well.

Prompted in some instances by the economic and political coercion of the Arab oil boycott, international scholars have begun to study the legal definition of the term force, as it is used in article 2(4). After examining the history of international regulation of the use of force, this note will compare the legal arguments enunciated by these scholars and reach its own conclusions with respect to the definition of force. This note will also examine possible approaches to regulating the economic and political use of force and determine if effective principles can be developed. Even if such rules could be developed, this note questions whether the use of economic and political force should be regulated. Finally, it examines the pros-

pects for United Nations development of rational prohibitions on the use of economic and political coercion.

II. HISTORY OF INTERNATIONAL REGULATION OF ECONOMIC AND POLITICAL FORCE

Until recently nations have accepted the use of economic and political pressure in international relations. The first attempt at world-wide lawmaking, the League of Nations, appears to have regulated only the exercise of military power. The League of Nations Covenant directed member states to "respect . . . the territorial integrity and existing political independence" of other members.¹ The Covenant prohibited the "resort to war" in certain instances, without mentioning economic or political force or even recognizing them as factors in international disputes.² In addition, the League sponsored a number of treaties specifically prohibiting aggression, but which did not deal with economic and political factors.³ Similarly, the Kellogg-Briand Pact of 1928, signed by 63 nations, outlawed all wars, but made no mention of non-military pressures leading up to war.⁴ The 1933 Conventions for the Definition of Aggression,⁵ which were signed by many nations within the Soviet Union's sphere of influence, likewise defined aggression solely in terms of military force.⁶ Economic and political coercion were mentioned only as insufficient grounds for military reprisal. Seventeen years later, in preparation for the Nurnberg trials, the Charter of the International Military Tribunal, signed by the Four

1. LEAGUE OF NATIONS COVENANT art. 10.

2. *Id.*

3. See Ferencz, *Defining Aggression: Where It Stands and Where It's Going*, 66 AM. J. INT'L L. 491, 491 (1972).

4. Kellogg-Briand Pact, Aug. 27, 1928, 46 Stat. 2343, T.S. No. 796, 94 L.N.T.S. 57; see Ferencz, *supra* note 3, at 491.

5. Convention for the Definition of Aggression, July 4, 1933. 148 L.N.T.S. 211, reprinted in Secretary General Report 7, U.N. GAOR, Annex (Agenda Item 54) 34-35, U.N. Doc. A/2211 (1952); Convention for the Definition of Aggression, July 3, 1933, 147 L.N.T.S. 67. U.S.S.R., Afghanistan, Estonia, Latvia, Persia, Poland, Rumania, Czechoslovakia, Turkey and Yugoslavia signed the Conventions. See generally 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, 1000 (1974).

6. The U.S.S.R. has been a leader in attempts to define aggression. As early as 1917 an All-Russian Congress in the Decree of Peace stated that aggressive war was a crime against all mankind. No mention of economic or political force, however, appeared in the Decree. See Ferencz, *supra* note 3, at 491.

Allied Powers, called aggression a crime.⁷ Although the Tribunal did not define aggression, it appears from the context of the Charter that the Tribunal only considered military action.

The use of economic and political force has, in a few instances, met with international disapproval. A special committee of the League of Nations, the Committee of Nineteen, specifically considered the legality of China's boycott of Japanese goods from 1931 to 1932. This Committee did not reach a conclusion with respect to the boycott at its inception, but found it legal as a form of reprisal following the September 18, 1931 Japanese attack on Mukden.⁸ The Committee of Nineteen accepted the report of the Commission of Inquiry, which the Nineteen were appointed to review, which concluded that: "it seems difficult to contest that the boycott is a legitimate weapon of defense against military aggression by a stronger country."⁹ Its justification of China's actions as a reprisal might imply that the Committee considered the boycott unlawful except in response to military force.¹⁰ Nevertheless, failure to reach a conclusion concerning the boycott prior to such action renders such an inference unwarranted.¹¹ This uncertainty does, however, leave open the possibility that the Committee considered the exercise of economic force illegal under some circumstances.

III. THE TRADITIONAL VIEW

The Traditional view interprets article 2(4) of the United Nations Charter as referring only to military force. Proponents of this

7. Charter of the International Military Tribunal, Aug. 8, 1945, 59 Stat. 1546, 1547, E.A.S. No. 472, 82 U.N.T.S. 284, 288.

8. *Report of Special Committee of the Assembly*, LEAGUE OF NATIONS O.J., Spec. Supp. 112, at 56 (1933); see Boorman, *Economic Coercion in International Law: The Arab Oil Weapon and the Ensuing Juridical Issues*, 9 J. INT'L L. & ECON. 205 (1974); Bouve, *The National Boycott as an International Delinquency*, 28 AM. J. INT'L L. 19, 42 (1934).

9. Supplement to Report of Special Committee of the Assembly, *supra* note 8, at 249; see INTERNATIONAL CONCILIATION, No. 286, THE FAR EASTERN PROBLEM 3, 73-74 (1933).

10. Reprisals denote "any kind of forcible or coercive measures whereby one State seeks to exercise a deterrent effect or to obtain redress or satisfaction, directly or indirectly, for the consequences of the *illegal* acts of another State, which has refused to make amends for such conduct." J. STONE, LEGAL CONTROLS OF INTERNATIONAL CONFLICT 289 (2d rev. ed. 1959).

11. Muir, *The Boycott in International Law*, 9 J. INT'L L. & ECON. 187, 194-95 (1974).

interpretation generally speak for the developed Western countries. Their stand reflects the natural reluctance of Western nations, which wield great economic and political power, to apply article 2(4) against this type of force.¹²

Traditionalists point out that the language of article 2(4) of the Charter speaks only of force and makes no mention of economic or political compulsion. According to this view:

Taking the words in their plain, common-sense meaning, it is clear that, since the prohibition is of the "use or threat of force," they will not apply to economic or political pressure but only to physical, armed force.¹³

Without a clear and specific expansion of the meaning of this term, it can only include military force. Implicit in this assertion lies the belief that force in international affairs has traditionally referred to armed conflict and that any different use of the term should and would have been specifically delineated. As one commentator put it:

In a society which prior to World War I regarded the recourse to military force as permissible in international relations and in which war was a perfectly legitimate instrument of national policy, the use of the boycott weapon did not appear to present legal problems worthy of discussion.¹⁴

A review of some of the standard works in the field lends support to this assumption. In his text *International Government*, Eagleton concluded that a:

state is free to set up almost any sort of barrier to trade and intercourse, against one or all states. She may prohibit trade entirely, or in certain articles, or with certain states; she may establish high tariffs against some or all states, so far as customary international law is concerned¹⁵

Similarly, Julius Stone in his classic *Legal Controls of International Conflict* treated economic force as merely a measure used

12. *Id.*

13. D. BOWETT, *SELF-DEFENSE IN INTERNATIONAL LAW* 148 (1958).

14. Blum, *Economic Boycotts in International Law*, 12 *TEX. INT'L L.J.* 5, 6 (1977). Although Blum qualifies as a Third World scholar, he concedes that prior to 1945 economic and political coercion was clearly legal.

15. C. EAGLETON, *INTERNATIONAL GOVERNMENT* 87 (3d ed. 1957). See also Boorman, *supra* note 8, at 215; Lillich, *The Status of Economic Coercion Under International Law: United Nations Norms*, 12 *TEX. INT'L L.J.* 17 (1977); J. STONE, *supra* note 10, at 192.

to further military efforts.¹⁶

Traditionalists rely on nations' use of foreign trade to buttress their claims that the exercise of economic and political power has traditionally been a matter of national sovereignty.¹⁷ Pointing to Japan and China's long-standing trade policies, they assert that foreign trade has been subject to diplomatic negotiation and the threat or use of military force, but has never been a matter of legal right.¹⁸ Until Commodore Perry's expedition in 1854, Western nations could trade with Japan only through the Dutch trading concession at Nagasaki. During the seventeenth century, China restricted Western trade to the ports of Macao and Canton and barred various Western nations altogether.¹⁹ It was not until 1842 with Britain's Treaty of Nanking that China began liberalizing its trade policies. This turnabout was prompted by political and economic pressures, however, Western powers never claimed that China's policies were illegal.²⁰ Even after this liberalization, China persisted in applying economic sanctions. Between 1905 and 1933 the Chinese people, incited by their government, instituted eleven boycotts—one each against the United States and Britain and nine against Japan.²¹ Again while these actions caused political outcry throughout the world, China was not branded an international outlaw.²²

Traditionalist commentators support their interpretation with evidence that the drafters of the Charter considered proposals specifically prohibiting exercises of economic and political force, yet rejected them.²³ The Drafting Subcommittee for the United Nations Charter, for instance, rejected a Brazilian amendment to article 2(4) which would have added a prohibition "from the threat

16. See J. STONE, *supra* note 10.

17. Hyde & Wehle, *The Boycott in Foreign Affairs*, 27 AM. J. INT'L L. 1, 2 (1933); Lauterpacht, *Boycott in International Relations*, 14 BRIT. Y.B. INT'L L. 125, 130 (1933).

18. Lauterpacht, *supra* note 17, at 130.

19. Muir, *supra* note 11, at 188. See generally C. HIBBERT, *THE DRAGON WAKES* (1970); D. LI, *THE AGELESS CHINESE*, 385-95 (2d ed. 1971).

20. Muir, *supra* note 11, at 188.

21. Bouve, *supra* note 8, at 22.

22. Other boycotts illustrating this point include one by a large portion of the Turkish population in protest of Austria-Hungary's 1908 annexation of Bosnia-Herzegovina, a 1909 Turkish boycott of Greek goods in an attempt to force Greece to withdraw support for the Cretan insurrection, and Egypt's attempts starting in 1924 to boycott British goods. Lauterpacht, *supra* note 17, at 126.

23. See Blum, *supra* note 14, at 10.

or use of economic measures.”²⁴ Traditionalists look to articles 39 and 51 for textual support of their interpretation of article 2(4).²⁵ The Security Council’s monopoly over the use of force contained in these two Charter articles parallels the prohibition of force in article 2(4).²⁶ Since most nations do not consider economic and political pressure as possible “threat[s] to peace” under article 39, such pressure should not be included in the article 2(4) definition of force.²⁷ At the 1945 San Francisco Convention, which drafted the United Nations Charter,²⁸ Bolivia proposed a definition of aggression under article 39 that included certain economic measures.²⁹ The Convention did not adopt Bolivia’s proposal, but in article 39 reserved to the Security Council the power to decide when a “threat or use of force” or a “threat to the peace, breach of peace or act of aggression” has occurred.³⁰ Consequently, the traditionalists argue, the Convention considered definitions of force in determining restrictions on aggression and, as in article 2(4), rejected them. Similarly, the article 51 right of self-defense³¹

24. Doc. 784, I/1/27, 6 U.N.C.I.O. Docs. 334 (1945); Doc. 215, I/1/10, 6 U.N.C.I.O. Docs. 559 (1945).

25. U.N. CHARTER art. 39 states: “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”

U.N. CHARTER art. 51 states:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

26. 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, 21-22 (1974) (although generally espousing the Third World view, Brosche makes this argument in his discussion of the problem).

27. *Id.*

28. *Id.*

29. Doc. 215, I/1/10, 6 U.N.C.I.O. Docs. 583 (1945).

30. See Muir, *supra* note 11, at 196.

31. Some authorities believe that the right of self-defense may justify unilateral economic measures that otherwise might be illegal. For example, according to Bowett, such measures are justifiable when in response to an offense by another

has generally been interpreted as applying only to armed force.³² Since articles 2(4) and 51 deal with similar concepts, the prohibition of force and self-defense, traditionalists claim that article 2(4), like article 51, should be read to apply only to military force.³³

The deliberations of the International Law Commission, according to traditionalist scholars, confirm the Charter's restriction of the term "force" to armed force.³⁴ In 1951 the Commission rejected proposals for its Draft Code of Offenses Against the Peace and Security of Mankind, which would have specifically broadened the definition of aggression.³⁵ Opponents of such proposals claimed that they would weaken the concept of aggression by diverting it from its primary application to armed aggression.³⁶ Those who opposed inclusion of the broadened concept of aggression also relied on article 2(4), which, they asserted, did not cover the use of economic, ideological, or any other uses of force except armed force.³⁷ They argued that since the article 51 right to self-defense was clearly intended to apply only to defense against armed attack, the United Nations Charter has consistently proscribed only military aggression and force.³⁸ Even the Soviet Union's draft, otherwise bereft of references to economics, was rejected because its use of the term armed aggression implied that there could be other forms of aggression.³⁹

In 1952 the Commission again convened a Special Committee on the Question of Defining Aggression. Bolivia proposed that the definition of aggression include "unilateral action to deprive a state of economic resources derived from the fair practice of inter-

state that poses an immediate danger to a nation's security or independence, giving it no other way to protect itself. These measures, however, must be in proportion to the harm threatened. Bowett, *Economic Coercion and Reprisals by States*, 13 VA. J. INT'L L. 1, 7 (1972).

32. Some writers, however, believe that economic coercion may amount to "armed attack" under article 51 and justify a resort to armed reprisal. Blum, *supra* note 14, at 14.

33. Brosche, *supra* note 26, at 22.

34. Muir, *supra* note 11, at 197.

35. Report of the Secretary General, U.N. Doc. A/2211 (1952). See also Report of the Special Committee on the Question of Defining Aggression, 24 U.N. GAOR, Supp. (No. 20) 15-16, U.N. Doc. A/7620 (1969); J. STONE, *AGGRESSION AND WORLD ORDER* 59 (1958).

36. Report of the Secretary General, *supra* note 35.

37. *Id.*

38. A. THOMAS & A. THOMAS, *THE CONCEPT OF AGGRESSION IN INTERNATIONAL LAW*, 30-32 (1972).

39. *Id.* at 40.

national trade"⁴⁰ The Iranian representative similarly contended that "economic aggression" constituted "indirect aggression" which should be proscribed.⁴¹ He argued that aggression encompasses "coercive economic and political measures taken against a state . . . designed to impede the exercise of its sovereignty over its natural resources or its efforts towards economic development."⁴² The Soviet Union's proposal stated that certain economic pressures or blockages could not be excused by any "considerations of a political, strategic or economic nature" or because of "capital invested" or any other interest.⁴³ As in 1951, traditionalist commentators point out, such proposals were turned down.

At least one traditionalist scholar has referred to international treaties in support of a strict interpretation of the word force.⁴⁴ Since a large number of treaties and conventions explicitly limit the right to impose boycotts, they reflect "a wide recognition" that such acts are "matters of sovereign right absent agreement."⁴⁵ The United States, for instance, has entered into approximately forty treaties of friendship, commerce, and navigation.⁴⁶ These treaties usually include, as a major feature, an agreement not to restrict exports and imports.⁴⁷

IV. THE THIRD WORLD VIEW

Advocates of expanding the United Nations definition of the term force to include economic and political force generally reflect the stance of developing Third World nations. Since these countries generally possess little economic and political strength and see themselves as victims of Western economic and political dominance, they have invariably supported the more expansive version of the word force.⁴⁸ For ideological reasons, Eastern-bloc Communist nations support this position.⁴⁹

Third World nations base their interpretation of article 2(4) on

40. Report of the Secretary General, *supra* note 35, at 58.

41. *Id.* See also J. STONE, *supra* note 35, at 59.

42. Report of the Secretary General, *supra* note 35, at 58.

43. *Id.* See also J. STONE, *supra* note 35, at 34.

44. Muir, *supra* note 11, at 200.

45. *Id.*

46. See *id.*

47. *Id.*

48. See Brosche, *supra* note 26.

49. *Id.*

the basic purposes and principles of the United Nations, including the development of friendly relations, respect for equal rights and self-determination of peoples, and international cooperation in conquering economic and social problems. Specifically, the Third World writers cite the preamble to the United Nations Charter in which member nations pledge "to practice tolerance and live together in peace with one another as good neighbors" Article 1(1) further directs United Nations members "to take effective collective measures for the prevention and removal of threats to the peace, . . . and to bring about by peaceful means . . . adjustment or settlement of international disputes or situations which might lead to a breach of the peace" According to article 1(2) a purpose of the United Nations is to foster "friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples" ⁵⁰

A number of contemporary commentators have backed these general statements with persuasive legal arguments. Chief among them stands the contention that the drafters of the Charter purposely left the meaning of force ambiguous in order to allow further development of the term.⁵¹ While conceding that the founders rejected the inclusion of economic and political pressure in the definition of force, these commentators point out that specific limitation of the term force to military force was likewise rejected.⁵² Champions of this view cite the session reports from the time of the drafting of the Charter which state that: "[T]he intention of the Authors of the original text was to state in the broadest terms an absolute all-inclusive prohibition; the phrase [in article 2(4)] 'or in any other manner' was designed to insure that there should be no loopholes."⁵³

The definition of the word force itself, they further assert, admits of either meaning. Traditional and Third World interpretations are

50. *Id.*

51. *See id.*, at 22-23. *See also* L. GOODRICH & E. HAMBRO, CHARTER OF THE UNITED NATIONS, COMMENTARY AND DOCUMENTS 104 (2d ed. 1949); H. Kelsen, GENERAL INTERNATIONAL LAW AND THE LAW OF THE UNITED NATIONS, THE UNITED NATIONS' TEN YEARS LEGAL PROGRESS 4-5 (1956). Goodrich and Hambro state that article 2(4) is not directed at economic or political force, but admit that delegates to the San Francisco Conference decided not to make a detailed definition of force. Kelsen suggests that the term force in article 2(4) refers to both armed and non-armed force.

52. *See* Muir, *supra* note 11, at 196.

53. Doc. 885, I/1/24, 6 U.N.C.I.O. Docs. 405 (1945); Doc. 784, I/1/27, 6 U.N.C.I.O. Docs. 335 (1945).

possible whether the word appears in English, French, Spanish or Russian, the official languages of the United Nations under the original Charter.⁵⁴

According to Third World scholars, since the drafters deliberately left unclear the meaning of force, authority other than the text of the Charter may be relied upon to supply its meaning. Supporters of this view look principally to resolutions of the General Assembly for additional authority. They submit that, "Resolutions of the General Assembly . . . represent at a minimum a consensus of world community expectation and therefore reflect the customary law."⁵⁵ Furthermore, some proponents of the Third World view claim that:

Even if these documents are not in themselves a source of international law, and therefore do not impose direct obligations on states, they may, nevertheless, initiate the development of general principles of customary law and are thus useful in interpreting general clauses of the Charter in accordance with the corresponding will of the majority of states.⁵⁶

Some modern writers believe that important United Nations resolutions place direct obligations on member nations and amount to some sort of international legislation.⁵⁷

While early resolutions supported a strict interpretation of force,⁵⁸ most recent resolutions dealing with nonintervention support the Third World position by specifically condemning the use of economic and political pressure. The most frequently cited resolution on this point declared: "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."⁵⁹ This language was repeated in another General Assembly resolution passed in 1970, some five years later.⁶⁰ In its 1970

54. Brosche, *supra* note 26, at 19.

55. Boorman, *supra* note 8, at 213. See generally J. CASTANEDA, 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).

56. Brosche, *supra* note 26, at 23.

57. *Id.* at 23 n.74.

58. G.A. Res. 380, 378, 376, 5 U.N. GAOR, Supp. (No. 20), U.N. Doc. A/1775 (1950).

59. G.A. Res. 2131, 20 U.N. GAOR, Supp. (No. 14) U.N. Doc. A/6014 (1965).

60. G.A. Res. 2625, 25 U.N. GAOR, Supp. (No. 28) 123, U.N. Doc. A/8028 (1970).

resolution on Permanent Sovereignty Over Natural Resources, the General Assembly stated that it "[d]eplore[d] acts of State which use force, armed aggression, economic coercion or any other illegal or improper means in resolving disputes . . . [and] [e]mphasized the duty of all States to refrain in their international relations from military, political, economic or any other form of coercion" ⁶¹

Third World scholars also turn to the United Nations Special Committee on Principles of International Law Concerning Friendly Relations and Cooperation, established in 1953 by the General Assembly, for supplemental authority. As in the Charter deliberations, disagreements arose⁶² within the Special Committee concerning whether a prohibition on the use of force to threaten the territorial integrity or political independence of a state should include economic and political coercion.⁶³ As with the Charter, the declaration of the Special Committee arrived at in 1970 did not specifically define force. Its preamble, however, refers to "the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State."⁶⁴ The declaration also provides that: "No State may use or encourage the use of economic, political or any other type of measure to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind."⁶⁵ This statement is coupled with the Committee's directive that nation-states should: "conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention" ⁶⁶

61. G.A. Res. 3171, 28 U.N. GAOR, Supp. (No. 30) 52, U.N. Doc. A/9030 (1973).

62. In general, Communist block, African, and Asian nations supported an expansive definition. They argued that national political independence could just as easily be threatened by economic and political pressure as by armed force. Muir, *supra* note 11, at 198; Rosenstock, *The Declaration of Principles of International Law Concerning Friendly Relations: A Survey*, 65 AM. J. INT'L L. 713, 724-25 (1971).

63. See generally McWhinney, *The "New" Countries and the "New" International Law: The United Nations' Special Conference on Friendly Relations and Co-operation Among States*, 60 AM. J. INT'L L. 1 (1966).

64. G.A. Res. 2625, *supra* note 60, at 122.

65. *Id.* at 123.

66. *Id.*

In addition, Third World advocates rely on other United Nations authority, for example, treaties and international regional documents, in support of their position. The final act of the United Nations Conference on the Law of Treaties signed in 1969, they claim, constitutes a mandate for United Nations control of economic power and the authority for an expanded definition of force under 2(4). Article 52 of the Conference (popularly known as the Vienna Conference on Treaties) declared that: "a treaty is void if its conclusion has been procured by the threat or abuse of force in violation of the principles of international law embodied in the Charter of the United Nations."⁶⁷ A proposed amendment to this article would have added "including economic or political pressure" after the word "force." According to Blum, although this proposal was ultimately withdrawn in order to avoid antagonizing Western nations, it would clearly have passed if it had been brought to a vote.⁶⁸ The Convention did, however, adopt a declaration which, despite United States objection, condemned certain exercises of economic and political pressure. This declaration deplored:

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.⁶⁹

At least one regional body affiliated with the United Nations, the Organization of American States, has called the exercise of coercive economic measures an illegal use of force. Its Charter declares that: "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."⁷⁰ Even Third World proponents, however, doubt the relevance of such continental documents since they represent a consensus of only one segment of the world community.⁷¹

Finally, proponents of the Third World view cite to language in other parts of the United Nations Charter as textual evidence that

67. See generally Blum, *supra* note 14, at 12 n.31.

68. *Id.*

69. U.N. Conf. on the Law of Treaties, U.N. Doc. A/Conf. 39/11/2 Ad. 2, at 285 (1969).

70. O.A.S. CHARTER art. 16.

71. Muir, *supra* note 11, at 33 n.23.

the United Nations founders intended to prohibit the use of economic and political coercion.⁷² According to a number of these scholars, the use of economic or political force is incompatible with the duty of states under article 2(3) of the Charter to "settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."⁷³ Other text in the Charter creates an obligation in every member state to seek pacific settlement of disputes.⁷⁴ Article 33(1) states:

The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.⁷⁵

Use of economic and political force, like the exercise of military force, certainly qualifies as a solution to a dispute. The exercise of such force is not listed among the solutions permitted by article 2(3). Nor is it within the same class or type of solutions listed. Applying the principle of *ejusdem generis*,⁷⁶ the general phrase "or other peaceful means" includes only "means" similar to those specifically listed. Since economic and political force bears no similarity to the listed measures, use of such force falls under neither the specific nor general provisions of article 33. Third World advocates, therefore, conclude that the use of such force violates article 33 and must have been proscribed by the more specific provisions of article 2(4).⁷⁷

Third World proponents find additional textual support in a number of specific references to armed force in articles 41 and 46 and section 7 of the preamble to the Charter.⁷⁸ If the United Na-

72. Blum, *supra* note 14, at 15.

73. Blum, *supra* note 14, at 13; see Brosche, *supra* note 26, at 31-32.

74. See Blum, *supra* note 14, at 13.

75. U.N. CHARTER art. 33(1).

76. The items specifically listed define the type of things included in the accompanying general term. See generally 17 AM. JUR. 2D *Contracts* § 270 (1964).

77. Blum, *supra* note 14, at 13.

78. U.N. CHARTER art. 41 states (emphasis added):

The Security Council may decide what measures not involving the use of *armed force* are to be employed to give effect to its decisions, and may call upon the Members of the United Nations to apply such measures. They may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

tions founders had intended to prohibit the use of military force alone, the argument goes, they would have used the term armed force in article 2(4) as they had elsewhere.⁷⁹

V. TRADITIONAL VERSUS THIRD WORLD: WHO WINS?

Although traditionalist scholars persuasively argue that at the time of the Charter's creation international law only applied to the exercise of military force, legislative history suggests that the definition of force in article 2(4) was intended to remain subject to development. The drafters clearly rejected proposals that would have specifically prohibited the use of economic and political force. They similarly rejected proposals restricting the definition of force to military force. At the time of the drafting of the Charter, the term force referred only to military force: nevertheless, it seems that the framers contemplated further interpretation of this term.

Thus, the issue becomes what definition of force under article 2(4) has developed since the creation of the Charter. Deliberations of the International Law Commission, relied upon by the traditional view, provide some indication of the movement of the law since the Charter's inception.⁸⁰ The General Assembly established the International Law Commission as part of its duty to "initiate studies and make recommendations for the purpose of encouraging the progressive development of international law."⁸¹ As the General Assembly resolution accompanying the creation of the Commission stated, the Commission should be "composed of persons of recognized competence in international law representing as a whole the chief forms of civilization and the basic legal systems of

U.N. CHARTER art. 46 states (emphasis added): "Plans for the application of *armed force* shall be made by the Security Council with the assistance of the Military Staff Committee."

U.N. CHARTER, Preamble § 7 states (emphasis added): "We the Peoples of the United Nations determined . . . to ensure, by the acceptance of principles and the institution of methods, that *armed force* shall not be used, save in the common interest . . ."

79. Brosche, *supra* note 26, at 20. Traditionalists contend that this conclusion is unwarranted because the Charter often uses the word "force" where it means "armed force." Article 44, for example, speaks of "force," even though its context shows that it must deal with "armed force." *Id.*

80. For a detailed account of the International Law Commission's deliberations on the definition of economic aggression, see A. THOMAS & A. THOMAS, *supra* note 38, at 22-44.

81. G.A. Res. 174, U.N. Doc. A/519 (1947).

the world.”⁸² Consequently, the Commission, by authority, operates as an expert advisory body pledged to pioneer new frontiers in international law.

While the Commission has not defined force in article 2(4) as limited to military force, neither has it attempted to expand the scope of international regulation of the exercise of economic and political force. The legislative history of its 1951 and 1952 deliberations on aggression, however, demonstrates the Commission’s preference for application of United Nations prohibitions of aggression and force only to armed force.⁸³ Unlike discussions of force at the adoption of article 2(4), some Commission members advanced at least one policy reason for a strict limitation of United Nations regulation to armed force—a broader interpretation would detract from the primary goal of restricting armed aggression. As with the discussions leading to enactment of the Charter, however, the Commission did not expressly limit the application of United Nations sanctions to armed coercion. Furthermore, since these deliberations occurred in 1951 and 1952, their value in interpreting the current meaning of force has diminished.

On the other hand, reliance by Third World scholars on the broadly stated principles of the United Nations hardly strengthens their argument for an expansion of the term force. These statements of purpose only show that a broad definition of force is possible under the Charter.⁸⁴ The vague and general terms the Charter employs to describe the purpose of the United Nations renders any other definition just as likely.

A strong case for an expansive interpretation of the term force can be based on General Assembly resolutions. The legal effect of General Assembly resolutions is an issue surrounded by considerable controversy. Some commentators would deny any legal effect to the resolutions. For example, it has been stated that: “Under the United Nations Charter the General Assembly may discuss and make recommendations, but it is not a law-making body and its Resolutions, no matter how solemnly expressed or characterized, nor how often repeated, do not make law or have binding effect.”⁸⁵ General Assembly resolutions were never intended to have binding effect. In deliberations leading up to the creation of

82. *Id.*

83. See text accompanying notes 34-43 *supra*.

84. See text accompanying notes 49-50 *supra*.

85. Haight, *The New International Economic Order and the Charter of Economic Rights and Duties of States*, 9 INT’L LAW. 591, 597 (1975).

the International Law Commission, the San Francisco Committee decided, almost unanimously, that the General Assembly should not have legislative power to pass binding rules of international law.⁸⁶

A number of commentators, however, ascribed significant legal effect to the resolutions. One commentator has concluded that, "The body of resolutions as a whole, taken as indications of a general customary law, undoubtedly provide a rich source of evidence."⁸⁷ According to his view, since General Assembly resolutions represent an expression of world community sentiment analogous to world custom and practice, they should be given weight in interpreting the current meaning of the Charter. Resolutions become particularly important where, as in the definition of force, the Charter is subject to further interpretation. Therefore, the strong preference for restrictions on the use of economic force expressed in General Assembly resolutions must be considered persuasive when interpreting the current meaning of the word force under article 2(4).⁸⁸

Accepted principles of constructing legal documents lend credence to this view. Even Western commentators consider the United Nations Charter a "living organism" that can change without formal amendment.⁸⁹ The Charter is compared with the United States Constitution, which has recently undergone its most profound changes not through formal amendment, but through congressional action, judicial interpretation and the development of constitutional custom and practice.

Statements issued by the United Nations Committee on Principles of International Law Concerning Friendly Relations and Cooperation, relied on by Third World scholars, also are of probative value in defining force. To the extent they represent world community sentiment, they provide legal authority for the inclusion of economic and political force under article 2(4). Although Committee declarations express viewpoints similar to those voiced by the General Assembly in their resolutions,⁹⁰ the Committee is less rep-

86. H. BRIGGS, *THE INTERNATIONAL LAW COMMISSION* 9 (1965).

87. R. HIGGINS, *THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH POLITICAL ORGANS OF THE UNITED NATIONS* 5 (1963); accord, J. CASTANEDA, *supra* note 55; Falk, *supra* note 55; Lillich, *supra* note 15, at 21.

88. See text accompanying notes 44-46 *supra*. See generally A. MARTIN & J. EDWARDS, *THE CHANGING CHARTER* 14 (1955).

89. B. COHEN, *THE UNITED NATIONS* (1961); A. MARTIN & J. EDWARDS, *supra* note 88, at 15.

90. See text accompanying notes 64-66 *supra*.

representative of the world view. Consequently, while providing some support for the Third World view, they are not as useful as General Assembly resolutions.

Third World reliance on the provisions of the United Nations Conference on the Law of Treaties and the Constitution of the Organization of American States stands on weak ground. Article 52 of the Conference uses the broad term force, which only resurrects the arguments surrounding the construction of article 2(4). Despite the assertion that "economic and political pressures" would have been proscribed if they had been voted on, the fact remains that they were never adopted. Withdrawal of this proposal before a vote, in order to avoid antagonizing Western nations, indicates that the Committee could not reach a consensus on this issue. The Conference's adoption of a measure condemning certain exercises of economic and political coercion when used to force a treaty upon a state, however, does accurately reflect Committee consensus. The Committee, therefore, provides less legal support for the regulation of economic and political coercion than Third World scholars contend. In addition, Committee directives apply only to force used to compel the adoption of treaties; they do not apply to the use of economic and political force in general. Furthermore, as Third World advocates admit, the Charter of the Organization of American States, which also supports an expansive definition of force, reflects only a segment of world community sentiment and is persuasive only to that extent.

While Third World scholars have built a strong case for including the exercise of economic and political coercion within the proscription of article 2(4), the term force contained therein remains undefined. Supplemental authority, like General Assembly resolutions and statements of United Nations Committees, which support an expanded interpretation, must be considered expressions of world community sentiment affecting the definition of force. Other expressions, like the Conference on the Law of Treaties and the Charter of the Organization of American States, however, only marginally further the Third World view. On the other hand, the legal organ of the United Nations, the International Law Commission, has yet to break from its 1952 position which reads article 2(4) force as referring only to military force. The Third World has not demonstrated such an unmistakable expression of world community sentiment as to compel inclusion of economic and political coercion under article 2(4) force.

VI. CAN EFFECTIVE RULES BE DRAFTED?

Assuming that article 2(4) were expanded to include economic and political compulsion, more specific principles concerning its regulation would have to be developed. A number of standards for restricting the use of economic and political force have been enunciated, each with its own advantages and disadvantages.

Proposals for the regulation of economic and political coercion often include national intent as an element of the offense of economic coercion. General Assembly resolutions on economic coercion in 1965 and 1970, for instance, proscribe the use of economic coercion in order "to obtain from the coerced State the subordination of its sovereign will or to secure from it advantages of any kind."⁹¹ Bolivia's 1952 draft resolution defined economic aggression as: "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."⁹² Scholars have proposed tests of economic and political compulsion that are also based upon intent requirements of domestic law. According to one author:

much might be gained by adopting analogies from the fair trade regulations of various systems of municipal law. For example, in English law a necessary element of the tort of "economic conspiracy" is that the defendant's predominant purposes or motive be to cause injury to the plaintiff rather than to advance or protect his own economic interests.⁹³

Such a test would allow the use of economic force to protect economic interests, but would prohibit the use of economic force intended to further the state's political interests.⁹⁴ Since economic motives are not clearly distinguishable from political ones, economic coercion would be prohibited under this test if the economic purpose predominated.⁹⁵

Other commentators have recommended refinements of this "political intent" test that would prohibit politically motivated economic pressure only if it involved threats to fundamental na-

91. 25 U.N. GAOR, Supp. (No. 18) 122-24, U.N. Doc. A/8028 (1970); 20 U.N. GAOR, Supp. (No. 14) 11-12, U.N. Doc. A/6014 (1965).

92. 7 U.N. GAOR, 2 Annex (Agenda Item 54) 74, U.N. Doc. A/211 (1952).

93. D. Bowett, *International Law and Economic Coercion*, 16 VA. J. INT'L L. 245, 248 (1976).

94. *Id.* at 249.

95. *Id.*

tional or human rights. Consequently, the use of such force to destroy or subjugate a state, to commit genocide, or to force the imposition of "other policies opposed to fundamental human rights" would be barred.⁹⁶ Of course, authorities disagree on the content of this prohibition. At least one interpretation would prohibit the exercise of such force only if the purpose is total annihilation of a state,⁹⁷ while another would proscribe threats to economic integrity and independence.⁹⁸ One writer would add the requirement that the accused nation be capable of achieving its objective.⁹⁹

Any prohibition based on intent, however, may be too subjective to be practicably applied. The actions of a state typically result from the collective wisdom of a number of its leaders and, to varying degrees, from the opinion of its people. Moreover, nations often pursue contradictory courses of action at different levels of government. Sometimes even the highest levels in a government are unaware of the activities of other branches. Indeed, governments frequently operate secretly, particularly when they hope to undermine or damage other nations. Intent-based prohibitions on the use of economic pressure would fail because the intent of a government could only infrequently be determined.¹⁰⁰ Decisions under such a subjective test would invariably depend on political considerations.

Even if such a test were practicable, its application would not necessarily further the goals of international law. A paramount objective of international law is the maintenance of international peace and security.¹⁰¹ Since breaches of peace usually result not from what nations consider to be another state's *mens rea*, but from the effect of the policies of the other state, an intent test would not adequately address itself to the causes of international conflict. Nor does an intent test focus on the international legal

96. Bilder, *Comments on the Legality of the Arab Oil Boycott* 12 TEX. INT'L L.J. 41, 43 (1977).

97. See Muir, *supra* note 11, at 203.

98. See *id.*

99. See *id.*

100. M. AKEHURST, *A MODERN INTRODUCTION TO INTERNATIONAL LAW* 45 (1970). Akehurst suggests that "there is clearly something artificial about trying to analyze the psychology of collective entities such as states." See Blum, *supra* note 14, at 13.

101. L. GOODRICH, E. HAMBRO & A. SIMONS, *CHARTER OF THE UNITED NATIONS* 27 (3d ed. 1969). This text discusses international peace and security as a goal of the United Nations.

goal of the protection of human and national rights. Once again, the degree of national intent to harm another country does not necessarily correspond to the harm visited upon it and its inhabitants.

A few authorities have espoused a reliance test, which applies when one nation has used foreign aid or trade agreements to induce another to rely on it economically.¹⁰² A nation accused under this test could not take advantage of the vulnerable position it had encouraged the target nation to accept. The reliance test is a response to the outcry from Third World nations who have relied on trade and assistance from developed countries only to have them cut-off for political reasons. Cuba, for one, vehemently protested the United States' sharp reduction in its quota of Cuban sugar following a long period of trade with the United States.¹⁰³ Peru and Egypt similarly reacted to United States threats to discontinue food assistance and other aid.¹⁰⁴

Although the reliance test addresses itself to some instances of unfairness, it ignores the political independence of nations granting aid and assistance. While, arguably, applying pressure to another nation can be characterized as illegal, the refusal to continue to confer a benefit or to deal with another nation has traditionally been considered a matter of national sovereignty. Indeed, since developed nations commonly grant aid and enter into trade agreements for political reasons, it seems unreasonable to expect them to refrain from terminating such arrangements for political reasons. The reliance theory appears to require that all aid programs and trade agreements continue perpetually despite changes in political climates. Such a standard protects the rights of lesser developed nations, but at the expense of the freedom of other nations to pursue their own legitimate political interests.

Some scholars emphasize political independence in advocating the prohibition of certain methods of economic and political coercion. They would, for instance, restrict application of economic pressure to innocent or neutral nations. While recognizing the right of a nation to refuse to trade with an enemy, they would prohibit secondary boycotts—one nation attempting to force another to re-

102. Bilder, *supra* note 96, at 44; Muir, *supra* note 11, at 195. See also M. McDUGAL & F. FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER* 121-29 (1961); J. STONE, *LEGAL CONTROLS OF INTERNATIONAL CONFLICT* 289 n.35 (3d ed. 1973).

103. 15 U.N. SCOR (874th mtg.) 6, U.N. Doc. S/PV/874 (1960); Bilder, *supra* note 96, at 44.

104. Bilder, *supra* note 96, at 44.

fuse to deal with a third nation.¹⁰⁵ Such use of economic and political coercion, like the Arab nations' oil embargo of nations trading with Israel, has been condemned as an attempt "to control the foreign politics and conduct (international and domestic) of other States and peoples They constitute an interference in domestic affairs and a thwarting of fundamental community policy."¹⁰⁶ Other scholars would apply the common law principle of tortious conspiracy in order to regulate the use of force. Under this theory, a combination of two or more nations to boycott a third would violate international law.¹⁰⁷

Regulating the use of economic and political force by prohibiting certain methods of coercion, in most situations provides an objective and easily determinable standard of guilt. In the case of a secondary boycott, for instance, attempts to compel other nations not to deal with a target nation can be documented and proven objectively. Such documentation would be readily provided by nations subjected to the coercion. Since a number of nations would have to testify in order to establish a secondary boycott, barring a conspiracy of nations the information offered would be reliable. A rule prohibiting activities like combinations to boycott, though, would require proof of concert of action and possibly intent. Prosecutions for the use of methods of coercion that require either proof of intent or the inner workings of governments would, as under a strict intent analysis, deteriorate into political battles.

The methods approach, nevertheless, will further the goals of international law. Methods of compulsion that present the greatest threat to international peace and which can be used most destructively against national and human rights can be explicitly prohibited. Although such a restriction may not apply to some particularly harmful exercises of economic and political coercion and may prohibit some individual coercive measures that cause little harm, it can effectively prohibit the most potent methods of economic and political coercion.

Some commentators have recommended an effect-based regulation of economic and political compulsion.¹⁰⁸ These proposals have defined economic and political aggression as any action depriving

105. *Id.*; see Brosche, *supra* note 26, at 25.

106. Blum, *supra* note 14, at 14; see Paust & Blaustein, *The Arab Oil Weapon—A Threat to International Peace*, 68 AM. J. INT'L L. 410, 428 (1974).

107. Muir, *supra* note 11, at 195. Muir's articulation of the test makes a violation dependent on the intent behind the action.

108. Bilder, *supra* note 96, at 44.

a state of essential resources or interfering with its normal economic conditions.¹⁰⁹ The Soviet Union's 1954 declaration on economic aggression adopted such an approach by stating that economic aggression occurs when a nation:

(a) Takes against another State means of economic pressure violating its sovereign 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 national riches.¹¹⁰

Such tests, for instance, would distinguish between economic pressure producing hardship and that causing mass starvation.

Unlike tests based on intent, violations of these standards could be objectively determined, somewhat limiting the problem of political considerations. Information necessary for a determination under this test would be readily available to the United Nations, since this information would come from the aggrieved nation. The aggrieved nation would undoubtedly cooperate fully in providing information on the effect of coercion against them. The United Nations, in turn, could insure the accuracy of this information by requiring the aggrieved nation to accept United Nations field investigators.

An effects-based test focuses on the two major goals of international law: the maintenance of peace and the protection of national and human rights. Assuming that nations go to war based on a rational assessment of their interests, they are more likely to go to war against a nation whose economic coercion has a severely harm-

109. A. THOMAS & A. THOMAS, *supra* note 38, at 91. Following the U.S.S.R.'s dumping of cheap tin on world markets, Bolivia, whose principal export is tin, declared that economic aggression resulted from actions "whereby a state is deprived of economic resources derived from the proper conduct of international trade or its basic economy is endangered so that its security is affected and it is unable to act in its own defense or to cooperate in the collective defense of peace . . ." U.N. Doc. No. A/Ac.66/L9 (1959). Afghanistan's representative to the United Nations also expressed concern for the effect of coercion on a state: "Closing the historical trade routes of a landlocked country or creating difficulty in the way of free and normal trade and commerce . . ." should be condemned. 12 U.N. GAOR (Agenda Item 54) 50, U.N. Doc. A/C.6/SR/520 (1957). Pakistan asserted that depriving states of their access to international rivers amounts to economic aggression. *Id.* at 62.

110. 9 U.N. GAOR, Ad Hoc Political Committee Annexes (Agenda Item 51) 6-7, U.N. Doc. A/C.61.332/Rev. 1 (1954). This declaration also brands as economic coercion action which "subjects another State to an economic blockade." This type of prohibition, a "means" test, will be discussed later.

ful effect on them. An effects-based test, therefore, would apply to many situations most apt to erupt into military conflict. An effects test would also prohibit the most egregious violations of national and human rights, such as economic coercion producing mass starvation.

A few scholars have proposed an eclectic standard by which to measure economic and political coercion. National intent, the effects, and the type of economic and political force employed would all be weighed in reaching a final determination.¹¹¹ Ideally such a test would combine the best features of all the other tests and net the most equitable result. More likely, however, the more elements to be weighed the less predictable the result. This in itself makes the result less just. In addition, this type of test may be so vague and complex that political considerations would predominate.

Of all the proposed tests, only two could effectively restrict the economic and political exercise of power. Regulation of economic and political coercion cannot be based on national intent because it would be subjective and difficult to determine. A reliance test ignores the legitimate interests of nations who assist other nations. Restrictions using a combination of factors would, like an intent test, be susceptible to political manipulation. Restricting some methods of economic and political coercion, however, would be simple and somewhat objective. Likewise, an effects test, while requiring some administrative expense by the United Nations, would objectively proscribe the most egregious wrongs. An effects standard also centers upon two of the most important goals of international law—the maintenance of international peace and the protection of human rights.

VII. SHOULD ECONOMIC AND POLITICAL FORCE BE REGULATED?

Since there is no clear meaning of the word force under the United Nations Charter, the question becomes whether the use of economic and political pressure should be restricted. This determination rests upon the dangers of economic and political compulsion as they directly affect national and human rights, and the danger that economic and political coercion will lead to military conflict. It also depends upon the potential effect of an attempt to

111. One author listed the following elements that need to be balanced: Objectives of the coercer; number of people affected; number and types of Charter goals affected; and, the extent to which Charter goals are affected. Paust & Blaustein, *supra* note 106, at 414.

regulate economic and political pressure on the legitimacy of the United Nations.

The advent of the nuclear age has increased the importance of economic coercion.¹¹² With the vast destructiveness of atomic weaponry, the dangers inherent in the use of military force have increased. Consequently, the willingness of the major powers to resort to military force against each other has decreased. Therefore, lower levels of force, including economic and political pressure, have been used more extensively.¹¹³

The potential impact of economic coercion, and the resulting dangers, have also increased with increasing economic interdependence.¹¹⁴ As one authority has stated: "[T]he flow of goods and services in the international arena can be managed as to inflect a substantial measure of coercion upon a target state and . . . with increasingly tight economic interdependences, the vulnerability of most states to economic coercion tends to increase."¹¹⁵ Techniques of economic and political coercion have become more sophisticated as states have become more economically interdependent. Many nations have a vast arsenal of economic weapons,¹¹⁶ including: freezing of other state's assets within its boundaries; import and export embargoes; refusing to deal with those who deal with a target state; preclusive buying of products vital to another state; and the control of shipping through restricting access to credit,

112. The use of covert activities to undermine governments, which has been termed "indirect" military force, has also increased with the advent of nuclear weaponry. President Kennedy's speech to the American Society of Newspaper Editors on April 21, 1961, on the topic of recent events in Cuba, illustrates a consequence of the nuclear age that likewise applies to the use of economic force. President Kennedy said of Soviet "indirect" warfare:

We face a relentless struggle in every corner of the globe that goes far beyond the clash of armies or even nuclear armaments. The armies are there in large numbers. The nuclear armaments are there. But they serve primarily as a shield behind which subversion, infiltration, and a host of other tactics steadily advance . . . in situations which do not permit our own armed intervention

J. RUBENSAAL, *SUBSTITUTES FOR FORCE: THE EXAMPLES OF SUBVERSION, THE USE OF FORCE IN INTERNATIONAL RELATIONS* 127 (1974).

113. *Id.*, at 124.

114. Blum, *supra* note 14, at 11.

115. M. McDUGAL & F. FELICIANO, *supra* note 102, at 196.

116. See A. BASCH, *THE NEW ECONOMIC WARFARE* (1941); D. GORDON & R. DANGERFIELD, *THE HIDDEN WEAPON: THE STORY OF ECONOMIC WARFARE* (1947); D. JACK, *STUDIES IN ECONOMIC WARFARE* (1941); Y. WU, *ECONOMIC WARFARE* (1952).

insurance, fuel, port, and repair facilities.¹¹⁷ Furthermore, a nation's monetary system can be attacked by manipulating foreign exchange markets, by withdrawing or refusing credits, and by dumping large amounts of currency in order to force the target state to pay in gold.¹¹⁸ Nations, particularly those with raw materials, can create artificial scarcities and high prices by forming cartels. Highly developed nations in turn can impede the technological development of lesser developed nations by controlling patents.¹¹⁹

In some instances, economic coercion has clearly had a deleterious effect on the world community. The exercise of economic compulsion often can be as effective as military force. A boycott of Iranian oil in the 1950's, for instance, had a major effect on Iran's domestic situation. After the Iranian government, led by Massadeph, nationalized the oil industry, Britain and the seven major international oil companies refused to buy Iranian oil,¹²⁰ and threatened to stop buying from shippers who carried Iranian oil. As a consequence, only forty tankers loaded Iranian oil during Massadeph's rule from 1951-1954.¹²¹ United States economic and political coercion played a role in the domestic upheaval in Chile under the Allende regime.¹²² In response to Chile's 1971 nationalization of United States industry within its borders, the United States government¹²³ used its influence in international lending and finance institutions to deny funds to Chile. The Inter-American Development Fund, 40 percent of which was controlled by the United States, refused to grant loans to Chile.¹²⁴ The World Bank discontinued plans to finance projects in Chile on

117. M. McDUGAL & F. FELICIANO, *supra* note 102, at 30.

118. *Id.*, at 31; see R. STRAUZ-HUPE & S. PASSONY, *INTERNATIONAL RELATIONS* 509-16 (2d ed. 1954).

119. M. McDUGAL & F. FELICIANO, *supra* note 102, at 31; see Y. WU, *supra* note 116.

120. Muir, *supra* note 11, at 189; see B. NIRUMAND, *IRAN, THE NEW IMPERIALISM IN ACTION* (1969).

121. Muir, *supra* note 11, at 189.

122. See Petras & La Porte, *Can We Do Business With Radical Nationalists?: Chile: No*, 7 *FOREIGN POL.* 132 (1972); Sigmund, *The "Invisible Blockade" and the Overthrow of Allende*, 52 *FOREIGN AFFAIRS* 322 (1974); Comment, *supra* note 5.

123. The United States Congress in 1972 passed the Gonzales amendment, which directed United States representatives in multilateral lending institutions and international finance organizations to vote against loans to nations expropriating United States companies without compensation. This amendment was prompted by Chile's expropriation of United States industry. Brosche, *supra* note 26, at 13.

124. *Id.* at 11.

the grounds that Chile's economic situation was temporarily uncertain.¹²⁵ In the same year the Export-Import Bank withheld approval of a \$21 million loan to Chile pending further information on how Chile would compensate corporations in the copper industry that it had nationalized.¹²⁶ Partly as a result of these actions, Chile's inflation rate skyrocketed.¹²⁷ Many observers believe that these exercises of United States economic and political influence were a major factor in the overthrow of the Allende government that soon followed.

In some situations non-military use of force not only achieves the same goals, but is practically indistinguishable from exercises of military power. Such non-military action includes supplying aid, as well as providing strategic and tactical instruction to insurgent groups of another nation. Albania, Bulgaria, Yugoslavia and Romania, for example aided Greek Communists in their efforts to overthrow the Greek constitutional government by giving them military supplies and allowing them to use their territory as a base for military operations.¹²⁸

Where developed nations with large military capabilities are targets of economic coercion, the use of economic and political pressure may lead to armed conflict. For example, witness the verbal threats by Secretary of State Kissinger and the less subtle statements of other United States politicians concerning the possible use of force to counter the Arab oil embargo.¹²⁹ Indeed, Italy's Mussolini responded violently to the League of Nations economic sanctions imposed on his country. After initially submitting to various economic sanctions applied by the League, Mussolini announced that he would consider the League's proposed oil embargo an act of war justifying military reprisal.¹³⁰

Although many commentators believe that lesser developed countries are most susceptible to economic and political pressure, coercion of these nations does not seem to present a great danger to international peace.¹³¹ As the cases of Iran and Chile illustrate,

125. *Id.*

126. *Id.*

127. *Id.*

128. M. McDUGAL & F. FELICIANO, *supra* note 102, at 190.

129. N.Y. Times, Nov. 21, 1973, at 53, col. 8.

130. The League thereafter shied away from the embargo proposal. Muir, *supra* note 11, at 195. See M. DOXEY, ECONOMIC SANCTIONS AND INTERNATIONAL ENFORCEMENT (1971); G. SCHWARZENBERGER, POWER POLITICS 382-84 (3d ed. 1964).

131. Brosche, *supra* note 26, at 20.

economic coercion appears most damaging to states whose economy relies mainly on a single crop, raw material or product.¹³² The economies of these nations depend heavily on trade with other nations, which renders them vulnerable to the economic power of well-developed nations. If this is true, the free use of economic force would relegate a large segment of the world population to a subservient position. Since most developing nations are not capable of directly waging war on more developed nations, however, such a use of force usually does not threaten international peace.

The use of economic and political coercion may promote world peace in some situations. Inevitably states must exercise influence over other states in some fashion. Economic coercion allows nations to resolve differences less destructively than through military force. According to one author,

to a certain extent the exercise of influence on the politics and economy of other states is desirable. Without this influence no normal economic and diplomatic relations between states are possible; a minimum of influence and contact is essential and necessary for the peaceful co-existence of nations and for the maintenance of peace.¹³³

Developed nations have used their economic and political power to promote peace, as well as to exploit. The United States, for instance, exerted strong political pressure on South Vietnam to sign the treaty ending the Vietnam War,¹³⁴ while combined United States and Soviet political and economic pressure helped end the 1973 Arab-Israeli conflict.¹³⁵

Although the regulation of economic and political force might decrease dangers to international peace and protect national and human rights, adopting such rules may be inadvisable because they would damage the legitimacy of the United Nations. Unworkable rules would probably not be obeyed. In light of the United Nations lack of success in policing the use of military force, it seems unlikely that even well-drafted restrictions on the use of economic and political power would be obeyed. Furthermore, determinations under a subjective approach to regulation would be dominated by political considerations. Widespread disobedience and political abuse would then decrease respect for the United Nations and hamper its effectiveness in reducing the use of military force.¹³⁶

132. See text accompanying notes 120-127, *supra*.

133. Brosche, *supra* note 26, at 21.

134. *Id.*

135. *Id.*

136. See Henkin, *Force, Intervention and Neutrality in Contemporary Inter-*

Restrictions of economic and political coercion, on the other hand, may have independent symbolic value. Such rules, even if not obeyed or enforced, would represent exemplary international behavior. The United Nations would be on record against the use of economic and political pressure. These rules would operate as a model for international conduct and spark further development of the law of the economic and political use of force.¹³⁷

Despite an increase in the use and destructiveness of economic and political coercion as a result of the nuclear age and the interdependence of states, regulation might not further the goals of international law. Political and economic influence provide an instrument of foreign relations less damaging than the exercise of military force. Even though there might be some symbolic effect in regulating the use of economic and political force, the adoption and subsequent disobedience of regulations would hinder the regulation of the exercise of force as a whole. Disobedience of these restrictions would damage the prestige of the United Nations and hamper it in its main goal of reducing the use of military force.

VIII. PROSPECTS FOR DEVELOPMENT OF PRINCIPLES REGULATING THE ECONOMIC AND POLITICAL USE OF FORCE

A change in the meaning of article 2(4) force to include economic and political coercion appears unlikely. Western nations supporting a restrictive interpretation, although outnumbered, still control enough votes and wield enough influence to prevent amendment. Through their control of the General Assembly, however, proponents of an expansive definition of force can provide further support for themselves by generating supplemental authority, such as resolutions. As Third World nations gain economic power through the control of natural resources, support for a strict reading of the term force may shift. Once Western developed nations feel the sting of economic coercion from developing countries, they may be willing to accept United Nations regulation of the use of economic pressure. Conversely, Third World nations, particularly those with significant natural resources, will be less enthusiastic about such prohibitions. Even these nations, though, will probably remain subject to economic coercion. Therefore, the United Na-

national Law, 57 PROC. AM. SOC'Y INT'L L. 147, 158 (1963).

137. Comment, *supra* note 5, at 997. The author states that expansion would have a "salutary effect" on international relations and might lead to development of rules governing the use of economic and political force.

tions should be able to reach a consensus that economic and political coercion should be regulated in some way.

Political factors, however, militate against any immediate agreement on the type of regulation. United Nations members seem motivated more by political expediency than by commitment to legal principles. For instance, although Arab nations have traditionally been among the staunchest supporters of an expanded definition of article 2(4) force,¹³⁸ and despite the advocacy of such a definition by other Third World nations, the issue of the legality of the Arab oil embargo was never broached on the United Nations floor.¹³⁹ The Arab embargo was, arguably, violative of an expansive reading of article 2(4)—the interpretation advocated by the Third World.¹⁴⁰ Whether economic and political coercion has been accepted by the Third World as a legal concept or whether it is only a convenient charge to be thrown at Western developed nations remains unclear. Additional evidence of this attitude appears in the Charter of Economic Rights and Duties of States.¹⁴¹ Pushed through the General Assembly by Third World countries during the Arab oil embargo in 1974, the fifth article of this resolution declares that:

All States have the right to associate in organizations of primary commodity producers in order to develop their national economies, to achieve stable financing for their development and, in pursuance of their aims, to assist in the promotion of sustained growth of the world economy, in particular accelerating the development of developing countries. Correspondingly, all States have the duty to respect that right by refraining from applying economic and political measures that would limit it.¹⁴²

In other words, under this declaration, nations with natural resources, primarily developing nations, can form cartels in order to

138. Blum, *supra* note 14, at 11.

139. Lillich, *supra* note 15, at 22.

140. See Boorman, *supra* note 8, at 229; Shihata, *Arab Oil Policies and the International Economic Order*, 16 VA. J. INT'L L. 263 (1976). Boorman argues that the Arab oil embargo was a lawful reprisal directed principally against the United States due to its economic and political support of Israel. Shihata contends that the embargo was legal as a reasonable restraint of international commerce for a legitimate purpose, conservation of a "fast depleting asset."

141. G.A. Res. 3281, 24 U.N. GAOR, Supp. (No. 31) 50, U.N. Doc. A/1943 (1974).

142. *Id.* This is only the most obvious example of this resolution's uneven application of proscriptions concerning economic and political force.

advance the "development of developing countries," but other countries cannot band together to protect their interests. With such a self-serving approach to economic and political coercion, Third World nations can scarcely hope to produce international consensus.¹⁴³

At present, economic and political influence is too concentrated in Western developed nations for them to accede to regulation of economic and political force under article 2(4). As Third World nations develop and better utilize their control over natural resources, Western nations might become willing to accept such restrictions. Western and Third World nations, however, will continue to disagree on the substance of these principles. Despite development, Third World countries will undoubtedly remain dependent on their control over natural resources. Their interests in marshalling these resources while restricting the exercise of other economic and political force runs directly counter to Western interests. Consequently, a set of regulatory principles agreeable to both the Western and Third World nations may be a distant goal.

IX. CONCLUSION

Although authority exists for the application of article 2(4) to the use of economic and political coercion, a specific and acceptable definition of the term force remains elusive. The Charter of the United Nations does not mention economic and political force. When the Charter was written the article 2(4) restriction on the use of force certainly was not intended to apply to the use of economic and political force. Since that time, the Third World has strongly advocated such an interpretation through General Assembly resolutions and United Nations committees, treaties, and regional documents. As an expression of international community sentiment, their position must have some bearing on the meaning of force in article 2(4). At this time, however, this does not mandate application of article 2(4) to economic and political coercion.

If economic and political coercion were restricted, the test used must be practicably applicable and in furtherance of the goals of international law. Determinations under most of the proposed tests would be either so subjective or complicated that political considerations would prove decisive. A standard that proscribes certain methods of economic and political coercion would be prac-

143. Lillich, *supra* note 15, at 241. For a more favorable view of this resolution, see White, *A New Economic Order?*, 16 VA. J. INT'L L. 323, 329 (1976).

tically applicable and would indirectly further the international legal goals of maintaining international peace and protecting human rights. Tests based on the effect of economic and political coercion would also provide an objective determination of guilt and would directly further the goals of maintaining international peace and protecting human rights.

If adequate standards were drafted, the actual regulation of economic and political force might not further the chief goal of international law—the maintenance of peace. With the advent of the nuclear age, the increased interdependence of states, and the new methods of economic and political coercion, the exercise of political and economic power is potentially more destructive than ever. Yet regulation of economic coercion might eliminate a non-violent means of resolving international conflict as well as hamper the United Nations in its main task of preventing the use of military force.

Finally, even if article 2(4) does apply to the exercise of economic and political pressure, accepted principles for regulating such conduct will probably not appear for some time. The commitment of both the West and the Third World appears to be based more on practical economics than on a belief in legal principles. As long as Third World interests in marshalling natural resources run directly counter to those of the Western developed nations, these two blocs will continue to disagree on the content of principles necessary to an effective and fair regulation of the economic and political use of force.

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